

Stricken language will be deleted and underlined language will be added.

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

SENATE BILL 390

By: Senator B. Ballinger

## For An Act To Be Entitled

AN ACT TO MAKE AN APPROPRIATION FOR PERSONAL SERVICES  
AND OPERATING EXPENSES FOR THE ARKANSAS SUPREME COURT  
- COURT COMMISSION FOR THE FISCAL YEAR ENDING JUNE  
30, 2022; AND FOR OTHER PURPOSES.

## Subtitle

AN ACT FOR THE ARKANSAS SUPREME COURT -  
COURT COMMISSION APPROPRIATION FOR THE  
2021-2022 FISCAL YEAR.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. REGULAR SALARIES - COURT COMMISSION. There is hereby established for the Arkansas Supreme Court - Court Commission for the 2021-2022 fiscal year, the following maximum number of regular employees.

Item No.	Class Code	Title	Maximum No. of Employees	Maximum Annual Salary Rate Fiscal Year 2021-2022
(1)	U101U	EXECUTIVE DIRECTOR	1	GRADE SE01
(2)	G028N	DEPUTY EXECUTIVE DIRECTOR	1	GRADE GS12
(3)	A105C	FISCAL MANAGER	1	GRADE GS08
(4)	X187C	INVESTIGATOR	1	GRADE GS07
(5)	G230C	PARALEGAL	1	GRADE GS06
(6)	C092C	LEGAL/ADMIN SECRETARY	<u>1</u>	GRADE GS05
		MAX. NO. OF EMPLOYEES	6	



SECTION 2. APPROPRIATION - COURT COMMISSION. There is hereby appropriated, to the Arkansas Supreme Court, to be payable from the Miscellaneous Agencies Fund Account, for personal services and operating expenses of the Arkansas Supreme Court - Court Commission for the fiscal year ending June 30, 2022, the following:

ITEM NO.		FISCAL YEAR 2021-2022
(01)	REGULAR SALARIES	\$392,341
(02)	PERSONAL SERVICES MATCHING	122,521
(03)	MAINT. & GEN. OPERATION	
	(A) OPER. EXPENSE	96,150
	(B) CONF. & TRAVEL	8,875
	(C) PROF. FEES	72,740
	(D) CAP. OUTLAY	0
	(E) DATA PROC.	0
(04)	INVESTIGATOR EXPENSES	<u>28,080</u>
	TOTAL AMOUNT APPROPRIATED	<u><u>\$720,707</u></u>

SECTION 3. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. Uncodified Sections 1 and 2 of Act 98 of 2021 Regular Session are repealed.

~~SECTION 1. REGULAR SALARIES — OPERATIONS. There is hereby established for the Judicial Discipline and Disability Commission for the 2021-2022 fiscal year, the following maximum number of regular employees.~~

<del>Item</del>	<del>Class</del>	<del>No. of</del>	<del>Fiscal Year</del>
<del>No.</del>	<del>Code</del>	<del>Title</del>	<del>2021 2022</del>
<del>(1)</del>	<del>U101U</del>	<del>EXECUTIVE DIRECTOR</del>	<del>1 GRADE SE01</del>
<del>(2)</del>	<del>G028N</del>	<del>JDDC DEPUTY EXEC DIRECTOR</del>	<del>1 GRADE GS12</del>
<del>(3)</del>	<del>A105C</del>	<del>JDDC FISCAL MANAGER</del>	<del>1 GRADE GS08</del>
<del>(4)</del>	<del>X187C</del>	<del>INVESTIGATOR</del>	<del>1 GRADE GS07</del>

<del>(5) C230C JDDC PARALEGAL</del>	<del>1</del>	<del>GRADE GS06</del>
<del>(6) C092C JDDC LEGAL/ADMIN SECRETARY</del>	<del>1</del>	<del>GRADE GS05</del>
<del>MAX. NO. OF EMPLOYEES</del>	<del>6</del>	

~~SECTION 2. APPROPRIATION — OPERATIONS. There is hereby appropriated, to the Judicial Discipline and Disability Commission, to be payable from the Miscellaneous Agencies Fund Account, for personal services and operating expenses of the Judicial Discipline and Disability Commission for the fiscal year ending June 30, 2022, the following:~~

<del>ITEM</del>	<del>FISCAL YEAR</del>
<del>NO.</del>	<del>2021-2022</del>
<del>(01) REGULAR SALARIES</del>	<del>\$392,341</del>
<del>(02) PERSONAL SERVICES MATCHING</del>	<del>122,521</del>
<del>(03) MAINT. &amp; GEN. OPERATION</del>	
<del>(A) OPER. EXPENSE</del>	<del>96,150</del>
<del>(B) CONF. &amp; TRAVEL</del>	<del>8,875</del>
<del>(C) PROF. FEES</del>	<del>72,740</del>
<del>(D) CAP. OUTLAY</del>	<del>0</del>
<del>(E) DATA PROC.</del>	<del>0</del>
<del>(04) INVESTIGATOR EXPENSES</del>	<del>28,080</del>
<del>TOTAL AMOUNT APPROPRIATED</del>	<del>\$720,707</del>

~~SECTION 4. SPECIAL LANGUAGE - CODE AMENDMENT. Arkansas Code § 7-6-218(b)(3)(B)(ii)(b), concerning citizen complaints regarding campaign finance violations, is amended to read as follows:~~

~~(b) If an investigation or inquiry concerns an attorney or judge, the Arkansas Ethics Commission may, through its members or staff, disclose confidential information to the Supreme Court Committee on Professional Conduct or the Judicial Discipline and Disability Commission.~~

~~SECTION 5. SPECIAL LANGUAGE - CODE AMENDMENT. Arkansas Code Title 16, Chapter 10, Subchapter 4, is repealed.~~  
~~Subchapter 4 – Judicial Discipline and Disability Commission~~

~~16-10-401. Definitions.~~

~~The word "judge" in this subchapter means anyone, whether or not a lawyer, who is an officer of the judicial system performing judicial functions, including an officer such as a referee, special master, court commissioner, or magistrate, whether full time or part time.~~

~~16-10-402.—Creation.~~

~~(a) There is hereby established a commission to be known as the Judicial Discipline and Disability Commission, hereinafter referred to as the "commission", consisting of nine (9) members, each of whom shall be residents of Arkansas, and shall be appointed as follows:~~

~~(1) Three (3) members shall be judges of the Arkansas Court of Appeals, circuit court, or municipal court appointed by the Arkansas Supreme Court;~~

~~(2) Three (3) members shall be lawyers admitted to practice in Arkansas who are not judges or former or retired judges, one (1) of whom shall be appointed by the Attorney General, one (1) by the President of the Senate, and one (1) by the Speaker of the House of Representatives; and~~

~~(3) Three (3) members, who are neither lawyers, or judges, or former or retired judges, appointed by the Governor.~~

~~(b)(1) A commission member shall serve for a term of six (6) years and shall be eligible for reappointment to a second full term.~~

~~(2) A member appointed to a term of less than six (6) years or to fill an unexpired term may be reappointed to two (2) full terms.~~

~~(3) The appointing authority for each category of commission membership shall also appoint an alternate member for each regular member appointed. An alternate member shall be appointed for a term of six (6) years and may be reappointed for a second term. An alternate member appointed to fill an unexpired term shall be eligible for an appointment for two (2) full terms.~~

~~(c) If a commission member or an alternate commission member moves out of the jurisdiction, ceases to be eligible for appointment to represent the category for which he or she was appointed, or becomes unable to serve for any reason, a vacancy shall occur. An appointment to fill a vacancy for the duration of its unexpired term shall be made by the appropriate appointing authority, effective no later than sixty (60) days from the occurrence of the vacancy. If a vacancy is not filled in accordance with this subsection, the~~

~~Chief Justice of the Supreme Court shall, within ten (10) days thereafter, appoint, from the category to be represented, a member who shall serve for the duration of the unexpired term.~~

~~(d) Commission members shall serve without pay, but may receive expense reimbursement in accordance with § 25-16-901 et seq.~~

~~16-10-403. Director — Staff.~~

~~(a) The Judicial Discipline and Disability Commission shall employ a director and such additional professional and clerical staff as may be authorized, from time to time, by appropriation passed by the General Assembly.~~

~~(b) Effective July 1, 1994, the Director of the Judicial Discipline and Disability Commission shall be an attorney licensed to practice in the State of Arkansas.~~

~~(c) The director shall not engage in the practice of law nor serve in a judicial capacity during his or her employment.~~

~~16-10-404. Duties — Records.~~

~~(a) The Judicial Discipline and Disability Commission shall initiate or shall receive information, conduct investigations and hearings, and make recommendations to the Supreme Court concerning:~~

~~(1) Allegations of judicial misconduct;~~

~~(2) Allegations of physical or mental disability of judges requiring leave or involuntary retirement; and~~

~~(3) Matters of voluntary retirement or leave for disability.~~

~~(b)(1) Investigatory records, files, and reports of the Judicial Discipline and Disability Commission are confidential, and no disclosure of information, written, recorded, or oral, received or developed by the Judicial Discipline and Disability Commission in the course of an investigation related to alleged misconduct or disability of a judge shall be made except as follows:~~

~~(A) Upon waiver in writing by the judge at any stage of the proceedings;~~

~~(B) Upon inquiry by an appointing authority or by a state or federal agency conducting investigations on behalf of such authority in connection with the selection or appointment of judges;~~

~~(C) In cases in which the subject matter or the fact of the filing of charges has become public, if deemed appropriate by the Judicial Discipline and Disability Commission, it may issue a statement in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, and to state that the judge denies the allegations;~~

~~(D) Upon inquiry in connection with the assignment or recall of a retired judge to judicial duties, by or on behalf of the assigning authority;~~

~~(E) Upon the Judicial Discipline and Disability Commission's taking final action with respect to a complaint about a judge, notice of the final action shall become public information;~~

~~(F) Where the circumstances necessitating the initiation of an inquiry include notoriety, or where the conduct in question is a matter of public record, information concerning the lack of cause to proceed shall be released by the Judicial Discipline and Disability Commission;~~

~~(G) If, during the course of or after an investigation or hearing, the Judicial Discipline and Disability Commission reasonably believes that there may have been a violation of any rules of professional conduct of attorneys at law, the Judicial Discipline and Disability Commission may release such information to any committee, commission, agency, or body within or outside of the state empowered to investigate, regulate, or adjudicate matters incident to the legal profession;~~

~~(H) If, during the course of or after an investigation or hearing, the Judicial Discipline and Disability Commission reasonably believes that there may have been a violation of a law or rule falling under the jurisdiction of the Arkansas Ethics Commission, the Judicial Discipline and Disability Commission may release such information to the Arkansas Ethics Commission; or~~

~~(I) If, during the course of or after an investigation or hearing, the Judicial Discipline and Disability Commission reasonably believes that there may have been a violation of criminal law, the Judicial Discipline and Disability Commission shall release such information to the appropriate prosecuting attorney.~~

~~(2) All proceedings held prior to a determination of probable cause and the filing of formal charges shall be confidential. Any hearing~~

~~scheduled after the filing of formal charges shall be open to the press and to the public, except that following the completion of the introduction of all evidence, the Judicial Discipline and Disability Commission may convene to executive session for the purpose of deliberating its final conclusions and recommendations, provided that, upon completion of the executive session, the final action of the Judicial Discipline and Disability Commission shall be announced in an open and public session.~~

~~(3) The Judicial Discipline and Disability Commission is authorized to request the appropriate prosecuting authorities to seek to obtain immunity from criminal prosecution for a reluctant witness using the procedure outlined in § 16-43-601 et seq.~~

~~16-10-405.— Rules.~~

~~The Supreme Court shall adopt rules with regard to all matters of Judicial Discipline and Disability Commission operations and all disciplinary and disability proceedings and promulgate rules of procedure.~~

~~16-10-406.— Immunity from suit.~~

~~Members of the Judicial Discipline and Disability Commission, referees, commission counsel, and staff shall be absolutely immune from suit for all conduct in the course of their official duties.~~

~~16-10-407.— Leave.~~

~~Grounds for leave consist of a temporary physical or mental incapacity which impairs the ability of the judge to substantially perform the duties of his or her judicial office and which exists or is likely to exist for a period of one (1) year or less. Leave cannot be granted to exceed one (1) year.~~

~~16-10-408.— Suspension with pay.~~

~~A judge may be suspended by the Supreme Court with pay:~~

~~(1) While a recommendation to the Supreme Court by the Judicial Discipline and Disability Commission for his or her removal or involuntary disability retirement is pending; or~~

~~(2) When articles of impeachment have been voted by the House of Representatives.~~

~~16-10-409. Mandatory suspension.~~

~~(a)(1) A judge shall be suspended from office with pay by the Supreme Court if:~~

~~(A) An indictment or information charges the judge in any court in the United States with a crime punishable as a felony under the laws of Arkansas or the United States or with any other offense that involves moral turpitude; or~~

~~(B) In any court in the United States he or she pleads guilty or no contest to, or is found guilty of, an offense punishable as a felony under the laws of Arkansas or the United States or any other offense that involves moral turpitude.~~

~~(2)(A) If the judge requests a hearing on a suspension under subdivision (a)(1) of this section, the Supreme Court shall:~~

~~(i) Hold the hearing no later than ten (10) days after the request to determine whether the suspension with pay remains in effect during the pendency of criminal proceedings against the judge; and~~

~~(ii) Notify the requesting judge and the Judicial Discipline and Disability Commission of the date of the hearing.~~

~~(B) In the hearing under this subdivision (a)(2) the Judicial Discipline and Disability Commission shall act as the opposing party of the requesting judge.~~

~~(C) The suspension with pay under subdivision (a)(1)(A) of this section shall be removed and the judge shall be allowed to perform his or her duties as a judge if the judge shows at the hearing by a preponderance of the evidence that:~~

~~(i) The performance of his or her duties as a judge while charges are pending will not impair the public confidence in the independence, integrity, and impartiality of the judiciary; and~~

~~(ii) The charges are not likely to result in a conviction.~~

~~(b) If his or her conviction becomes final, he or she may be removed from office pursuant to § 16-10-410.~~

~~(c)(1) If his or her conviction is reversed and he or she is cleared of the charge, by order of the court, whether without further trial or after further trial and a finding of not guilty, his or her suspension terminates.~~

~~(2) If the judge is suspended under subdivision (a)(1)(A) of this section and the charge is subsequently dismissed, the judge's suspension terminates.~~

~~(d) Nothing in this section shall prevent the Judicial Discipline and Disability Commission from determining that a judge be disciplined or removed according to § 16-10-410.~~

~~16-10-410. Removal from office.~~

~~(a) The grounds for removal conferred by this subchapter shall be both alternative and cumulative to the power of impeachment provided by the Arkansas Constitution and removal otherwise provided by law.~~

~~(b) A judge may be removed from office on any of the following grounds:~~

~~(1) Conviction of any offense punishable as a felony under the laws of Arkansas or the United States;~~

~~(2) Conviction of a criminal act that reflects adversely on the judge's honesty, trustworthiness, or fitness as a judge in other respects;~~

~~(3) The commission of conduct involving dishonesty, fraud, deceit, or misrepresentation;~~

~~(4) The commission of conduct that is prejudicial to the administration of justice;~~

~~(5) Willful violation of the Arkansas Code of Judicial Conduct or the Model Rules of Professional Conduct;~~

~~(6) Willful and persistent failure to perform the duties of office; or~~

~~(7) Habitual intemperance in the use of alcohol or other drugs.~~

~~(c) In considering recommending removal, the Judicial Discipline and Disability Commission may consider the frequency of the offense, the motivation of the conduct, the length of time since the conduct in question, and similar factors.~~

~~(d) [Repealed.]~~

~~16-10-411. Vacancy.~~

~~The granting of leave, suspension, with or without pay, removal, or involuntary disability retirement pursuant to this subchapter shall create a vacancy in the judicial office.~~

SECTION 6. SPECIAL LANGUAGE - CODE AMENDMENT. Arkansas Code § 25-15-104(a)(1)(J), concerning the boards and commissions that have subpoena powers, is repealed.

~~(J) Judicial Discipline and Disability Commission, Arkansas Constitution, Amendment 66, and § 16-10-401 et seq.;~~

SECTION 7. COMPLIANCE WITH OTHER LAWS. Disbursement of funds authorized by this act shall be limited to the appropriation for such agency and funds made available by law for the support of such appropriations; and the restrictions of the State Procurement Law, the General Accounting and Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary Procedures and Restrictions Act, or their successors, and other fiscal control laws of this State, where applicable, and regulations promulgated by the Department of Finance and Administration, as authorized by law, shall be strictly complied with in disbursement of said funds.

SECTION 8. LEGISLATIVE INTENT. It is the intent of the General Assembly that any funds disbursed under the authority of the appropriations contained in this act shall be in compliance with the stated reasons for which this act was adopted, as evidenced by the Agency Requests, Executive Recommendations and Legislative Recommendations contained in the budget manuals prepared by the Department of Finance and Administration, letters, or summarized oral testimony in the official minutes of the Arkansas Legislative Council or Joint Budget Committee which relate to its passage and adoption.

SECTION 9. EMERGENCY CLAUSE. It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2021 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2021 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health

and safety shall be in full force and effect from and after July 1, 2021.