

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 672

An Act to amend the Code of Virginia by adding sections numbered 2.1-37.12:1 and 2.1-37.12:2, relating to suspension of judge; mental or physical examinations.

[S 642]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 2.1-37.12:1 and 2.1-37.12:2 as follows:

§ 2.1-37.12:1. Suspension of judge.

A. In any pending investigation or formal hearing, the Commission may suspend a judge with pay if it finds that there is probable cause to believe that the continued performance of judicial duties by the judge constitutes both a substantial and immediate threat to the public interest in the administration of justice.

B. The Commission shall give the judge reasonable notice of such suspension as prescribed by the rules of the Commission and, if requested by the judge or his attorney, shall schedule a hearing during the first fifteen days of the suspension in order to determine whether justice would be served for the suspension to continue until the completion of the investigation or formal hearing. There shall be no investigation or formal hearing conducted or a suspension imposed relating to matters which are the subject of a pending criminal case in which a judge is the defendant until final disposition of such case by a court of competent jurisdiction, including the exhaustion of all appeals.

C. Any judge whose powers are suspended by the Commission shall not exercise judicial powers during such suspension, but shall continue to be bound by the Canons of Judicial Conduct.

§ 2.1-37.12:2. Physical or mental examination.

A. Whenever the Commission has probable cause to believe a judge is unable to perform his duties as a judge because of excessive use of alcohol or drugs or physical or mental illness, the Commission, after preliminary investigation by informal conference, may direct that the judge submit to a mental or physical examination by a health care provider approved by the Commission, after consultation with the judge. The health care provider's report shall be in writing. Upon request, the judge shall provide the Commission with all waivers and releases necessary to authorize the Commission to receive all medical records, reports, and information from any health care provider regarding the judge's mental or physical condition.

B. Any judge ordered to be examined pursuant to this section shall be afforded reasonable notice and an opportunity for a hearing before such examination is conducted as to any matters regarding the examination and as to whether there is probable cause to believe that the judge is unable to perform his duties as a judge because of excessive use of alcohol or drugs or physical or mental illness. During such hearing, the judge shall have the right to call witnesses on his behalf.

C. All costs related to examinations conducted at the direction of the Commission shall be paid out of sums appropriated for the operation of the Commission. The failure of a judge to submit to an examination ordered pursuant to this section or to provide waivers and releases required by this section shall constitute grounds for a new charge.