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SENATE BILL NO. 1517

Offered January 20, 2023

A BILL to amend and reenact § 17.1-913 of the Code of Virginia, relating to courts of record; Judicial Inquiry and Review Commission; confidentiality of papers and proceedings; waiver.

Patron—Obenshain

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:**1. That § 17.1-913 of the Code of Virginia is amended and reenacted as follows:****§ 17.1-913. Confidentiality of papers and proceedings.**

A. All papers filed with and proceedings before the Commission, and under §§ 17.1-909 and 17.1-910, including the identification of the subject judge as well as all testimony and other evidence and any transcript thereof made by a reporter, shall be confidential and shall not be divulged, other than to the Commission, by any person who (i) either files a complaint with the Commission, or receives such complaint in an official capacity; (ii) investigates such complaint; (iii) is interviewed concerning such complaint by a member, employee or agent of the Commission; or (iv) participates in any proceeding of the Commission or in the official recording or transcription thereof, except that the record of any proceeding filed with the Supreme Court shall lose its confidential character. *Any appeal of a final determination of the Commission to the Supreme Court that is made by the subject judge or any writ of mandamus or prohibition filed by the subject judge that seeks to void, avoid, or collaterally attack a Commission disciplinary proceeding or a Commission disciplinary decision shall be considered a waiver of the confidentiality granted to such judge with respect to briefs, appendices, transcripts, and other papers filed with the Supreme Court of Virginia pursuant to the hearing underlying such appeal. Nothing in this section shall be construed to waive the confidentiality of any person involved in such proceeding except the subject judge, and any identifying information of any persons other than such subject judge shall be redacted prior to making such information available for public inspection.*

However, if the Commission finds cause to believe that any witness under oath has willfully and intentionally testified falsely, the Commission may direct the chairman or one of its members to report such finding and the details leading thereto including any transcript thereof to the attorney for the Commonwealth of the city or county where such act occurred for such disposition as to a charge of perjury as the Commonwealth may be advised. In any subsequent prosecution for perjury based thereon, the proceedings before the Commission relevant thereto shall lose their confidential character.

All records of proceedings before the Commission which are not filed with the Supreme Court in connection with a formal complaint filed with that tribunal, shall be kept in the confidential files of the Commission.

However, a judge who is under investigation by the Commission, or any person authorized by him, may divulge information pertaining to a complaint filed against such judge as may be necessary for the judge to investigate the allegations in the complaint in preparation for the proceedings before the Commission.

B. Advice on judicial ethics given by an attorney employed by the Commission to a judge and the records of such advice shall be confidential and not be divulged except as permitted in subsection A. However, the Commission may share such advice, but not the identity of the judge to whom the advice was given, with a committee established by the Supreme Court for the development of formal judicial ethics advisory opinions. Any such shared information shall remain confidential within such committee.

INTRODUCED

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