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Bill would make complaints against judges public record

Some worry the move could have a chilling effect on complaints

By Mark D. Killian

Managing Editor

A House panel has moved a bill that would make public most Judicial Qualifications Commission proceedings once the commission has determined whether to file formal charges.

Rep. Shawn Harrison, R-Tampa, told the House Civil Justice Subcommittee March 9 that [HJR 11-05](#) would amend the constitution so that the JQC process matches the standards of the Florida Commission on Ethics that apply to all other elected officials. "The upside of this bill is transparency," Harrison said. "We are giving the voters the opportunity to decide whether or not we want to have the same transparency standards apply to the members of the judiciary as apply to other elected officials."



Nearly all records of the JQC are currently confidential. Only if formal charges are filed against a judge are the records open, and then only the records created after the filing of charges. If charges are not filed, the records never become public.

"Because this process is not open to the public, we don't really know what the statistics are," said Harrison, a commercial litigator. "We know how many complaints were filed [and how many] resulted in formal charges. But we don't know what happened in the middle. We don't know if 50 percent of the complaints — or 75 percent — are just totally frivolous and without merit, or if they were close calls. I think that is good information to have, and I think, ultimately, that's probably information voters are entitled to have, too."

JQC Chair Miles McGrane of Coral Gables said, while the commission welcomed the spotlight: "We fear if we just lift the blanket of confidentiality we are going to put a chilling effect on the source of the very important complaints that we investigate."

McGrane said the JQC wants to work with Harrison and the committee to improve the transparency of the JQC process without hindering the commission's ability to protect the public by going after bad judges.

McGrane said many of the complaints received by the JQC come from internal court employees and young lawyers who — especially in the smaller communities — may be reluctant to file complaints out of fear of retribution if their identities are exposed. He also said those initial complaints trigger wider investigations where other witnesses are identified as the JQC builds its case, and many times the initial complainant is never involved in the trial. With the confidentiality in place now, the complainants know the power of the JQC is behind them if charges are filed and their names become public.

“They know the JQC says they have merit and understand there will be a full hearing with other witnesses,” McGrane said.

Another tool the JQC uses to remove judges after probable cause is found, but before formal charges are filed, is to negotiate the resignation of the judges, with the agreement that the judges will never apply to become a judge again or seek to serve as a senior judge, McGrane said.

“To remove that from our arsenal . . . would hurt the role of the JQC,” said McGrane, adding without that tool, many more judges would opt for a full trial, which can cost upwards of \$150,000, straining the JQC’s modest budget.

“That is not to say this should not be addressed,” said McGrane, noting he would like to work with the sponsor to come up with a compromise to provide for more transparency, but not lift the “total cloak of confidentiality.”

If pushed, McGrane said personally he could live with providing confidentiality until the point where probable cause is found. That’s the same standard that applies to Bar complaints against lawyers.

While that might be a “fair compromise,” McGrane said he would still be reluctant to give up the window the JQC uses to negotiate judicial resignations before formal charges are brought.

“Sounds like you are willing to look at the issue, take an objective look at it, and work on it,” said Chair Rep. Eric Eisnagle, R-Orlando. “I encourage you to work with Rep. Harrison going forward.”

Harrison said his door is open, and “we will continue to take a look at this as we move forward to see if there are other areas we can explore.”

The measure passed the committee by a vote of 14-0.

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