

## **RULES OF THE JUDICIAL STANDARDS COMMISSION**

The Rules of the Judicial Standards Commission are hereby amended to read as follows:

### **RULE 1. AUTHORITY**

These rules are promulgated pursuant to the authority contained in N.C. Gen. Stat. § 7A-375(g), and § 97-78.1, and are effective September 1, 2014. The term “judge” shall at all times refer to any member of the General Court of Justice of North Carolina or any commissioner or deputy commissioner of the North Carolina Industrial Commission.

### **RULE 2. ORGANIZATION**

(a) The Commission shall have a Chairperson, who is the Court of Appeals member and two Vice-Chairpersons, each of whom shall be a superior court judge. A Vice-Chairperson shall preside in the absence of the Chairperson during Commission recommendation hearings. The Executive Director shall serve as the secretary to the full Commission and to each panel, and shall perform such duties as the full Commission or a panel may assign.

(b) The Chairperson shall divide the Commission into two six (6) member panels, one to be designated Panel A and the other Panel B. Each panel shall include one (1) superior court judge, one (1) district court judge, two (2) members appointed by the North Carolina State Bar, one (1) citizen appointed by the Governor, and one (1) citizen appointed by the General Assembly. Membership on the panels may rotate in a manner determined by the Chairperson of the Commission, provided that no member, other than the Chairperson, shall sit on both the hearing and investigative panel for the same proceeding. The Chairperson of the Commission shall preside over all panel meetings. The two Vice-Chairpersons shall be assigned to different panels and each shall preside over their respective panel meetings in the absence of the Chairperson. No member, other than the Commission Chairperson who shall preside over all disciplinary recommendation hearings, who has served on an investigative panel for a particular inquiry shall serve upon the hearing panel for the same matter. Should both panels of the Commission meet jointly, and the Chairperson not be present, then the Vice-Chairperson with the longest tenure of service on the Commission shall preside.

(c) The full Commission shall meet on the call of the Chairperson or upon the written request of any five (5) members. Each panel of the Commission shall meet every other month, unless prevented by exigent circumstances, such as inclement weather, emergency, or unresolvable conflict with court calendars, alternating such meetings with the other panel, or upon the call of the Chairperson. Hearing panels shall also meet as needed to conduct disciplinary recommendation hearings upon the call of the Chairperson. Each member of the Commission, including the Chairperson, Vice-Chairpersons, or other presiding member shall be a voting member.

(d) A quorum for the conduct of business of the full Commission shall consist of any nine (9) members. A quorum for the conduct of the business of a panel shall consist of five (5) members. A quorum for the conduct of any disciplinary recommendation proceeding instituted pursuant to Rule 12 shall consist of five (5) members of the panel assigned to hear the proceeding. The affirmative vote of five (5) members of a hearing panel is required to make a recommendation to the Supreme

Court that a judge be issued a public reprimand, censured, suspended, or removed from office.

(e) The Commission shall ordinarily meet in Raleigh, but may meet anywhere in the State. The Commission's address is P.O. Box 1122, Raleigh, N.C. 27602.

### **RULE 3. EXECUTIVE DIRECTOR**

The Executive Director shall have duties and responsibilities prescribed by the Commission including but not limited to:

- (1) Receive and screen complaints and allegations as to misconduct or disability, and make preliminary evaluations with respect thereto;
- (2) Maintain the Commission's records;
- (3) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;
- (4) Administer the funds for the Commission's budget, as prepared by the Administrative Office of the Courts;
- (5) Employ and supervise other members of the Commission's staff;
- (6) Prepare an annual report of the Commission's activities for presentation to the Commission, to the Supreme Court and to the public;
- (7) Employ, with the approval of the Chairperson, a special counsel, and an investigator as necessary to investigate and process matters before the Commission and before the Supreme Court.

### **RULE 4. COUNSEL**

Commission counsel shall have duties and responsibilities prescribed by the Commission including but not limited to:

- (1) Advise the Commission during its investigations and draft decisions, orders, reports and other documents;
- (2) Direct investigations involving alleged misconduct or disability;
- (3) Direct letters of notice to respondents when directed to do so by the Commission;
- (4) Prosecute disciplinary recommendation proceedings before the Commission;
- (5) Appear on behalf of the Commission in the Supreme Court in connection with any recommendation made by the Commission;

(6) Perform other duties at the direction of the Executive Director or Commission Chairperson.

## **RULE 5. INVESTIGATOR**

The Investigator shall have duties and responsibilities prescribed by the Commission including, but not limited to:

- (1) Conduct preliminary investigations;
- (2) Conduct formal investigations, upon authorization of the Commission;
- (3) Assist Counsel in the preparation and coordination of disciplinary recommendation proceedings initiated pursuant to Rule 12;
- (4) Maintain records of the investigations and subsequent proceedings as set forth above;
- (5) Perform other duties at the direction of the Executive Director or Commission Chairperson.

## **RULE 6. CONFIDENTIALITY**

- (a) During Investigative and Initial Disciplinary Recommendation Proceedings.
  - (1) Except as otherwise provided herein, or unless a written waiver is provided by the subject judge, at all times unless and until the Supreme Court orders any disciplinary action taken, all Commission proceedings including Commission deliberations, investigative files, records, papers and matters submitted to the Commission, shall be held confidential by the Commission, its Executive Director, Counsel, Investigator and staff except as follows:
    - (A) With the approval of the Commission, the investigative officer may notify respondent that a complaint has been received and may disclose to respondent the name of the person making the complaint.
    - (B) The Commission may inform a complainant or potential witness of the date when respondent is first notified that a complaint alleging misconduct or incapacity has been filed with the Commission.
    - (C) When the Commission has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.
    - (D) In any case in which a complaint filed with the Commission is made public by the complainant, the judge involved, independent sources, or by

rule of law, the Commission may issue such statements of clarification and correction as it deems appropriate in the interest of maintaining confidence in the justice system. Such statements may address the status and procedural aspects of the proceeding, the judge's right to a fair hearing in accordance with due process requirements, and any official action of disposition by the Commission, including release of its written notice to the complainant or the judge of such action or disposition.

(E) In any case in which the Commission initiates a formal investigation that would create a reasonable conflict of interest for the respondent judge if he or she were to proceed in adjudicating a matter involving the complainant, the identity of the complainant may be made known to the respondent judge to facilitate recusal.

(2) The fact that a complaint has been made, or that a statement has been given to the Commission, shall be confidential during the investigation and initial proceeding except as provided in this Rule.

(3) No person providing information to the Commission shall disclose information they have obtained from the Commission concerning the investigation, including the fact that an investigation is being conducted, unless and until the Supreme Court orders any disciplinary action taken against the respondent.

(4) The work product of the Commission members, its Executive Director, Commission Counsel and investigator shall be confidential and shall not be disclosed.

(5) Where a complaint has been made to the State Ethics Commission and the Ethics Commission has forwarded the complaint to the Judicial Standards Commission and, as required by statute, notified the respondent judge of the complaint, the Judicial Standards Commission may, at its discretion, confirm the receipt and disposition of the complaint upon inquiry of the judge so notified.

(b) Commission Deliberations. All deliberations of the Commission in reaching a decision on the statement of charges or a recommendation to the Supreme Court shall be confidential and shall not be disclosed.

(c) General Applicability.

(1) No person shall disclose information obtained from Commission proceedings or papers filed only with the Commission, except information obtained from documents disclosed to the public by the Commission pursuant to this Rule.

(2) Any person violating the confidentiality requirements of this Rule 6 may be subject to punishment for contempt.

(3) A judge shall not intimidate, coerce, or otherwise attempt to induce any person to

disclose, conceal or alter records, papers, or information made confidential by the Rule. A violation of this subsection may be charged as a separate violation of the Code of Judicial Conduct.

(4) All written communications from the Commission or its employees to a judge or his or her counsel which are deemed confidential pursuant to these rules shall be enclosed in a securely sealed inner envelope which is clearly marked "Confidential".

(d) After Investigation by the Commission and Findings of Misconduct by the Supreme Court.

(1) If, after an investigation is completed, the Commission concludes that disciplinary proceedings should be instituted, the notice and statement of charges filed by the Commission, along with the answer and all other pleadings, remain confidential. Disciplinary hearings ordered by the Commission are confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation.

(2) Upon issuance of a public reprimand, censure, suspension, or removal by the Supreme Court, the notice and statement of charges filed by the Commission along with the answer and all other pleadings, and recommendations of the Commission to the Supreme Court along with the record filed in support of such recommendations, are no longer confidential.

## **RULE 7. DISQUALIFICATION**

A judge who is a member of the Commission is disqualified from acting in any case in which he or she is a respondent, except in his or her own defense.

## **RULE 8. ADVISORY OPINIONS**

(a) A judge may seek an informal advisory opinion as to whether conduct, actual or contemplated, conforms to the requirements of the Code of Judicial Conduct. Such informal advisory opinion may be requested verbally or in writing. The Chairperson, Executive Director, or Counsel may grant or deny a request for an informal advisory opinion. Information contained in a request for an informal advisory opinion shall be confidential, however, when a request for an informal advisory opinion discloses actual conduct which may be actionable as a violation of the Code of Judicial Conduct, the Chairperson, Executive Director, or Counsel shall refer the matter to an investigative panel of the Commission for consideration. The Chairperson, Executive Director, or Counsel may issue an informal advisory opinion to guide the inquiring judge's own prospective conduct if the inquiry is routine, the responsive advice is readily available from the Code of Judicial Conduct and formal Commission opinions, or the inquiry requires immediate response to protect the inquiring judge's right or interest. An informal advisory opinion may be issued verbally, but shall be confirmed in writing and shall approve or disapprove only the matter in issue and shall not otherwise serve as precedent and shall not be published. An inquiry requesting an opinion concerning past conduct or

that presents a matter of first impression shall be referred to the Commission for formal opinion. Such informal advisory opinions shall be reviewed periodically by the Commission and, if upon such review, a majority of the Commission present and voting decided that such informal advisory opinion should be withdrawn or modified, the inquiring judge shall be notified in writing by the Executive Director. Until such notification, the judge shall be deemed to have acted in good faith if he or she acts in conformity with the informal advisory opinion which is later withdrawn or modified. If an inquiring judge disagrees with the informal advisory opinion issued by the Chairperson, Executive Director, or Counsel, such judge may submit a written request, in accordance with subsection (b), for consideration of the inquiry by the Commission at its next regularly scheduled meeting.

(b) Any person may request that the Commission issue a formal opinion as to whether actual or contemplated conduct on the part of a judge conforms to the requirements of the Code of Judicial Conduct. Such requests for formal opinions shall be submitted to the Executive Director. Information contained in a request for a formal opinion shall not be confidential. The Commission shall determine whether to issue a formal opinion in response to such request; if the Commission determines to issue a formal opinion, it shall prepare a formal written opinion which shall state its conclusion with respect to the question asked and the reason therefor. Such formal opinions shall be provided to interested parties in the manner deemed appropriate by the Chairperson and a copy shall be provided the Appellate Reporter for publication and such Reporter shall, from time to time as directed by the Commission, publish an index of advisory opinions. Formal advisory opinions shall have precedential value in determining whether similar conduct conforms to the Code of Judicial Conduct, but shall not constitute controlling legal authority for the purposes of review of a disciplinary recommendation by a reviewing court. A formal opinion may be reconsidered or withdrawn by the Commission in the same manner in which it was issued. Until a formal advisory opinion is modified or withdrawn by the Commission or overturned by a reviewing court, a judge shall be deemed to have acted in good faith if he or she acts in conformity therewith.

(c) All inquiries, whether requesting a formal opinion or an informal advisory opinion, shall present in detail all operative facts upon which the inquiry is based, but should not disclose privileged or sensitive information which is not necessary to the resolution of the question presented.

## **RULE 9. PROCEDURE UPON RECEIPT OF COMPLAINT OR INFORMATION**

(a) The Executive Director and Commission Counsel shall review each complaint or information received by the Commission to determine whether the complaint or information, if true, discloses facts indicating that a judge has engaged in conduct which is in violation of the Code of Judicial Conduct, has engaged in willful misconduct in office, has willfully and persistently failed to perform the duties of his or her judicial office, has engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or is habitually intemperate, or alleging that a judge is suffering from a mental or physical incapacity interfering with the performance of his duties, which incapacity is, or is likely to become, permanent.

(1) If such initial review discloses no such facts so that the complaint is obviously unfounded or frivolous, the Executive Director shall notify the Chairperson who, if he or she agrees, may dismiss the complaint. The Chairperson shall inform the investigative panel of any such dismissal at the panel's next meeting and, upon the

request of any member, such determination may be reconsidered; otherwise the dismissal of the complaint shall be final and the complainant shall be notified.

(2) If such initial review discloses no such facts so that the complaint is obviously unfounded and frivolous, and the complaint substantially conforms to an abuse of the complaint process, the Executive Director shall notify the Chairperson, who, if he or she agrees, may dismiss the complaint and recommend that the complainant be barred from further complaints to the Commission. The Chairperson shall inform the investigative panel of any such dismissal and recommended bar at the panel's next meeting and, upon the request of any member, such dismissal may be reconsidered. Provided, a recommended bar of further complaints by the complainant shall be ordered only upon the affirmative finding of the panel, by clear and convincing evidence, that the complainant has abused the complaint process by one or more of the following:

(A) Abusive or threatening language directed toward the staff, Commission, or judiciary;

(B) Knowingly filing false information with the Commission;

(C) Repeated demands to rehear a complaint already reviewed and dismissed with no new or significantly different allegations or evidence, or repeated demands to rehear a complaint already determined to be outside of the time period allowed for review of alleged misconduct by the Commission;

(D) Complaints which maintain that the complainant is not subject to the authority of the State of North Carolina, its laws, rules, or procedures and refuse to recognize the authority of the General Statutes of North Carolina over the Commission's operations and procedures;

(b) If a complaint or information is not dismissed as frivolous or unfounded, the Executive Director and Investigator shall conduct such preliminary review as may be necessary to apprise the investigative panel of the nature thereof, and such panel shall review the complaint or information at the next meeting occurring after the complaint or information is received.

(c) If the investigative panel, by the affirmative vote of not less than five (5) members, determines that the complaint alleges, or information discloses, facts indicating that a judge has engaged in conduct which is in violation of the Code of Judicial Conduct, has engaged in willful misconduct in office, has willfully and persistently failed to perform the duties of his or her judicial office, has engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or is habitually intemperate, or alleging that a judge is suffering from a mental or physical incapacity interfering with the performance of his duties, which incapacity is, or is likely to become, permanent, such panel shall order a formal investigation to determine whether disciplinary proceedings or health-related retirement should be recommended.

(d) The judge shall be notified of the formal investigation, the nature of the allegations which the Commission is investigating, and whether the formal investigation is on the Commission's own motion or upon written complaint. The notice shall afford the judge a reasonable opportunity to present such relevant information as he or she may deem advisable. Such notice shall be in writing and may be personally delivered by the Chairperson, Executive Director, Commission Counsel, or Investigator, or it may be delivered by certified mail, return receipt requested.

(e) If, upon ordering a formal investigation in accordance with subparagraph (d) above, the investigative panel determines that immediate suspension of the judge is required for the proper administration of justice, it may recommend to the Chief Justice that such judge be temporarily suspended from the performance of his or her judicial duties pending final disposition of the inquiry. A copy of such recommendation shall be provided the judge by certified mail, return receipt requested.

#### **RULE 10. RECORD OF PROCEEDINGS**

The Commission shall keep a record of all formal investigations and disciplinary recommendation proceedings concerning a judge. In disciplinary recommendation hearings, testimony shall be recorded verbatim by a court reporter and by video recording and, if the Commission recommends to the Supreme Court that the judge be disciplined, a transcript of the evidence and all proceedings therein shall be prepared, including a video recording of the testimony of all witnesses who testify at the disciplinary recommendation hearing, and made a part of the record.

#### **RULE 11. LETTER OF CAUTION**

If the inquiry discloses conduct by a judge which requires attention but is not of such a nature as to warrant a recommendation by Commission that the judge be disciplined by the Supreme Court, the investigative panel may issue a letter of caution to the judge. No letter of caution may be issued after a disciplinary recommendation proceeding has been initiated pursuant to Rule 12.

#### **RULE 12. INITIATION OF DISCIPLINARY RECOMMENDATION PROCEEDINGS**

If, after completion of the formal investigation, the investigative panel determines, by the affirmative vote of not less than five (5) members, that probable cause exists that a judge has:

- (a) violated the Code of Judicial Conduct and engaged in conduct prejudicial to the administration of justice and that such conduct, if proven, would warrant a recommendation by the Commission that the judge receive a public reprimand by the Supreme Court, that may require that the judge follow a corrective course of action or, be disciplined by the Supreme Court; or
- (b) that a judge is temporarily incapacitated or is suffering from an incapacity which is, or is likely to become, permanent; then,

the Commission shall initiate disciplinary recommendation proceedings by the filing, at the



Commission offices, a Statement of Charges alleging the charge or charges. The Statement of Charges shall identify the complainant and state the charge or charges in plain and concise language and in sufficient detail to give fair and adequate notice of the nature of the alleged conduct or incapacity. The Statement of Charges shall be entitled "BEFORE THE JUDICIAL STANDARDS COMMISSION, Inquiry Concerning a Judge No. \_\_\_\_." A copy of the Statement of Charges shall be personally served upon the respondent judge by the Chairperson, the Executive Director, the Commission's Investigator, or by some person of suitable age and discretion designated by the Commission. If, after reasonable efforts to do so, personal service upon the respondent judge cannot be effected, service may be made by registered or certified mail with a delivery receipt, and proof of service in accordance with N.C. Gen. Stat. § 1-75.10(4) shall be filed with the Commission. Service of a copy of the Statement of Charges shall constitute notice to the respondent judge of the initiation of disciplinary recommendation proceedings.

### **RULE 13. ANSWER**

Unless the time is extended by order of the Commission, the respondent judge shall file at the Commission offices, within twenty (20) days after service of the Statement of Charges, a written original and 10 copies of an Answer, which shall be verified. The Statement of Charges and Answer shall constitute the pleadings. No further pleadings may be filed, and no motions may be filed against any of the pleadings. The assertion of a mental or physical condition as a defense by the respondent judge shall constitute a waiver of medical privilege for the purpose of the Commission proceeding.

Failure to answer the Statement of Charges shall constitute an admission of the factual allegations contained in the Statement of Charges.

### **RULE 14. EX PARTE CONTACTS**

After the filing of a Statement of Charges and disciplinary recommendation proceedings by the Commission, members of the Commission shall not engage in *ex parte* communications regarding the matter with the respondent judge, counsel for the respondent judge, Commission counsel, or any witness, except that Commission members may communicate with Commission staff and others with respect to procedural and administrative matters as may be required to perform their duties in accordance with these rules.

### **RULE 15. DISCOVERY**

(a) Upon written demand after the time for filing an Answer has expired, Commission Counsel and respondent judge will each disclose to the other, within 20 days after such demand, the following:

- (1) the name and address of each witness the party expects to offer at the disciplinary recommendation hearing;
- (2) a brief summary of the expected testimony of each witness;
- (3) copies of any written statement and a transcript of any electronically recorded statement made by any person the party anticipates calling as a witness;

(4) copies of documentary evidence which may be offered;

(b) Failure to disclose the name of any witness, or to provide any material required to be disclosed by section (a) may result in the exclusion of the testimony of such witness or the documentary evidence which was not provided.

(c) Commission Counsel shall provide the respondent judge with any exculpatory evidence of which he or she is aware and which is relevant to the allegations of the complaint.

(d) Both Commission Counsel and respondent judge shall have a continuing duty to supplement information required to be exchanged under this rule.

(e) The taking of depositions, serving of requests for admission, and other discovery procedures authorized by the Rules of Civil Procedure, shall be permitted only by stipulation of the parties or by order of the Commission Chairperson for good cause shown, and in such manner and upon such conditions as the Chairperson may prescribe.

(f) Disputes concerning discovery shall be determined by the Chairperson, whose decision may not be appealed prior to the conclusion of the disciplinary recommendation hearing and the entry of a recommendation for discipline or other final order by the Commission.

(g) Unless the time is extended by order of the Commission, all discovery shall be completed within 60 days of the filing of the answer.

#### **RULE 16. AMENDMENTS TO NOTICE OR ANSWER**

At any time prior to the conclusion of the disciplinary recommendation hearing, the hearing panel may allow or require amendments to the Statement of Charges or to the Answer. The Statement of Charges may be amended to conform to the proof or to set forth additional facts, whether occurring before or after the commencement of the disciplinary recommendation hearing. In the event of an amendment setting forth additional facts, the respondent judge shall be given a reasonable time to answer the amendment and to prepare and present his or her defense to the matters charged thereby.

#### **RULE 17. DISCIPLINARY RECOMMENDATION HEARING**

Upon the filing of an Answer, or upon the expiration of the time allowed for its filing, the hearing panel shall order a disciplinary recommendation hearing before it upon the charges contained in the Statement of Charges. The disciplinary recommendation hearing shall be held no sooner than 60 days after filing of the Answer or, if no Answer is filed, 60 days after the expiration of time allowed for its filing, unless the judge consents to an earlier disciplinary recommendation hearing. The Commission shall serve a notice of the disciplinary recommendation hearing upon the respondent judge in the same manner as service of the Statement of Charges under Rule 12.

Upon the date set for the disciplinary recommendation hearing, such disciplinary recommendation hearing shall proceed whether or not the respondent judge has filed an Answer,

and whether or not he or she appears in person or through counsel. At least six members, or alternates, shall be present continually during the presentation of evidence at the disciplinary recommendation hearing.

Commission Counsel, or other counsel appointed by the Commission for that purpose, shall present evidence in support of the charges alleged in the Statement of Charges. Commission counsel may call the respondent judge as a witness.

The disciplinary recommendation hearing shall be recorded verbatim in accordance with the provisions of Rule 10.

### **RULE 18. RIGHTS OF RESPONDENT; BURDEN OF PROOF**

The respondent judge shall have the right to representation by counsel and the opportunity to defend against the charges by the introduction of evidence, examination and cross-examination of witnesses and to address the hearing panel in argument at the conclusion of the disciplinary recommendation hearing. The respondent judge shall also have the right to the issuance of subpoenas to compel the attendance of witnesses or the production of documents and other evidentiary material.

Upon the entry of an appearance by counsel for the respondent judge, a copy of any notices, pleadings, or other written communications sent to the respondent judge shall be furnished to such counsel by the Executive Director.

Commission Counsel shall have the burden of proving the existence of grounds for a recommendation of discipline by clear, cogent and convincing evidence, as that term is defined by the Supreme Court.

### **RULE 19. WITNESSES; OATHS; SUBPOENAS**

The respondent judge and the Commission shall have the right to call witnesses to testify to the character of the respondent and any genuine dispute of material facts between the parties in the disciplinary recommendation hearing. Neither the respondent judge nor the Commission shall call more than four character witnesses in such a proceeding. Additional character witnesses may submit affidavits or be identified and tendered for the record. Neither the respondent judge nor the Commission shall be limited in the number of witnesses called to testify to material facts in a disciplinary recommendation hearing.

Every witness who testifies before the hearing panel at a disciplinary recommendation hearing shall be required to declare, by oath or affirmation, to testify truthfully. The oath or affirmation may be administered by any member of the Commission. A subpoena to compel the attendance of a witness at a disciplinary recommendation hearing before the Commission, or a subpoena for the production of documentary evidence, shall be issued in the name of the State upon request of any party, and shall be signed by a member of the Commission, by the Executive Director, or by Commission Counsel. A subpoena shall be served, without fee, by any officer authorized to serve a subpoena pursuant to the provisions of N.C. Gen. Stat. § 1A-1, Rule 45(b).

Witnesses shall be reimbursed in the manner provided in civil cases in the General Court of Justice, and their expenses shall be borne by the party calling them unless, when mental or physical disability of the judge is in issue, in which case the Commission shall bear the reasonable expenses of the witnesses whose testimony is related to the disability. Vouchers authorizing disbursements by the Commission for witnesses shall be signed by the Chairperson or Executive Director.

## **RULE 20. RULES OF EVIDENCE**

Except as otherwise provided in these rules, the Rules of Evidence as set forth in Chapter 8C of the North Carolina General Statutes shall apply in all disciplinary recommendation hearings under these rules. Rulings on evidentiary matters shall be made by the Chairperson, or by member presiding in the absence of the Chairperson.

## **RULE 21. MEDICAL EXAMINATION**

When the mental or physical condition or health of the respondent judge is in issue, a denial of the alleged condition shall constitute a waiver of medical privilege for the purpose of the Commission proceeding, and the respondent judge shall be required to produce, upon request of Commission Counsel, his or her medical records relating to such condition. The respondent judge shall also be deemed to have consented to a physical or mental examination by a qualified licensed physician or physicians designated by the Commission. A copy of the report of such examination shall be provided to the respondent judge and to the Commission. The examining physician or physicians shall receive the fee of an expert witness, to be set by the Commission.

## **RULE 22. STIPULATIONS**

At any time prior to the conclusion of a disciplinary recommendation hearing, the respondent judge may stipulate to any or all of the allegations of the Statement of Charges in exchange for a stated disposition, which may include a stated recommendation to the Supreme Court for discipline. The stipulation shall be in writing and shall set forth all material facts relating to the proceeding and the conduct of respondent. The stipulation shall be signed by the respondent judge, his or her counsel, and by Commission Counsel. The stipulation shall be submitted to the hearing panel, which shall either approve the stipulation or reject it. If the stipulation provides for a stated recommendation for discipline, it must be approved by the affirmative vote of not less than five members of the hearing panel. If the stipulation is rejected by the hearing panel, it shall be deemed withdrawn and will not be considered in any proceedings before, or deliberations of, the hearing panel. If the hearing panel approves the stipulation, it shall prepare a written recommendation to the Supreme Court consistent therewith and transmit such recommendation in accordance with the provisions of Rules 24 and 25.

## **RULE 23. CONTEMPT POWERS**

The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process of the Commission. See N.C.

Gen. Stat. § 7A-377(d).

#### **RULE 24. PROCEDURE FOLLOWING DISCIPLINARY RECOMMENDATION HEARING**

At the conclusion of the disciplinary recommendation hearing, the hearing panel shall deliberate and determine whether to dismiss the proceeding or to file a recommendation with the Supreme Court. In all cases, the Executive Director shall notify the respondent judge in writing of the decision of the hearing panel within 60 days after the conclusion of the disciplinary recommendation hearing, unless the time is extended by order of the Chairperson.

At least five members of the Commission must concur in any recommendation to issue a public reprimand, censure, suspend, or remove any judge. If the hearing panel reaches a decision to recommend the public reprimand, censure, suspension or removal of a judge, the Executive Director shall prepare a proposed record of the proceedings and a written decision setting forth the hearing panel's findings of fact, conclusions of law, and recommendation. The proposed record of the proceeding shall include a verbatim transcript of the disciplinary recommendation hearing as well as a copy of the video recording of such disciplinary recommendation hearing. Such proposed record and decision shall be served upon the respondent judge and his or her counsel, if any, in the same manner as service of the complaint under Rule 12.

#### **RULE 25. TRANSMITTAL OF RECORD TO THE SUPREME COURT**

A respondent who is recommended for public reprimand, censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if the respondent has objections to it, to have the record settled by the Commission's chair. Unless the respondent judge files objections to the proposed record, or a proposed alternative record, within 10 days after the proposed record and the recommendation of the hearing panel have been served upon him or her, the proposed record shall constitute the official record. If the respondent judge files objections or a proposed alternative record, the Commission Chairperson shall send written notice to Commission Counsel and to the respondent judge and his or her counsel, setting a time and place for a hearing to settle the record, and the record as settled by the Commission Chairperson shall be the official record.

Within 10 days after the official record has been settled, the Executive Director shall certify the record and decision of the Commission and file it with the Clerk of the Supreme Court. The Executive Director shall concurrently serve upon the respondent judge, in the same manner as service of the complaint under Rule 12, a notice of the filing of such record and decision, specifying the date upon which it was filed in the Supreme Court. The Executive Director shall also transmit to the respondent judge copies of any changes to the official record occurring as a result of the settlement of the record.

#### **RULE 26. PROCEEDINGS IN THE SUPREME COURT**

The respondent is entitled to present a brief and to argue the respondent's case, in person and through counsel, to the Supreme Court. Proceedings in the Supreme Court shall be as prescribed by Supreme Court Rule. See N.C. Gen. Stat. § 7A-33 and The Rules for Review of

Recommendations of the Judicial Standards Commission.

Adopted unanimously by the Judicial Standards Commission during its regular business meeting on this the 8<sup>th</sup> day of August, 2014.

WANDA G. BRYANT  
Wanda G. Bryant  
Wanda G. Bryant, Chairperson  
Judicial Standards Commission

Witness my hand and the Seal of the Judicial Standards Commission, this the 8th day of August, 2014 .

J. CHRISTOPHER HEAGARTY  
J. Christopher Heagarty  
J. Christopher Heagarty, Executive Director  
Judicial Standards Commission