

THE NORTH CAROLINA JUDICIAL STANDARDS COMMISSION



2014 ANNUAL REPORT

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This report provides statistical data of the activities of the Commission in 2014. For further information please visit the Judicial Standards Commission’s web site at:

<http://www.nccourts.org/Courts/CRS/Councils/JudicialStandards/Default.asp>

INTRODUCTION

The North Carolina Judicial Standards Commission reviews and investigates allegations of misconduct or disability made against members of the North Carolina General Court of Justice and the North Carolina Industrial Commission. It advises judges and commissioners regarding their ethical obligations under the North Carolina Code of Judicial Conduct and, when necessary, makes recommendations to the North Carolina Supreme Court for disciplinary action against judges and commissioners when there is clear and compelling evidence of judicial misconduct. By working to increase awareness, on the part of both the judiciary and the public, as to ethical obligations of judges under the Code of Conduct, the Commission works to protect the integrity of the judiciary, to prevent conduct prejudicial to the administration of justice and to preserve public confidence in the state's courts.

2014 COMMISSION MEMBERS

The membership of the Commission consists of one Court of Appeals judge, who serves as the chairperson, two superior court judges, and two district court judges, each appointed by the Chief Justice of the Supreme Court; four members of the Bar, elected by the Council of The North Carolina State Bar; and four citizens who are neither judges, active or retired, nor attorneys, two appointed by the Governor, one appointed by the Speaker of the North Carolina House of Representatives and one appointed by the President Pro Tempore of the North Carolina Senate.

The Honorable Wanda G. Bryant

NC Court of Appeals Judge
(Chair)

The Honorable Tanya T. Wallace

NC Superior Court Judge
(Vice-Chair)

The Honorable W. Douglas Parsons

NC Superior Court Judge
(Vice-Chair)

The Honorable Rebecca W. Blackmore

NC District Court Judge

The Honorable Wayne L. Michael

NC District Court Judge

Edward T. Hinson, Jr., Esq.

Attorney

L.P. Hornthal, Jr., Esq.

Attorney

William H. Jones, Jr., Esq.

Attorney

Fred H. Moody, Jr., Esq.

Attorney

Mr. R. Wayne Troutman

Citizen

Hon. Arthur B. Schools, Jr.

Citizen

Mr. Gregory H. Greene

Citizen

Ms. Lorraine G. Stephens

Citizen

The Honorable Cy A. Grant (NC Superior Court Judge) and Honorable Alexander Lyerly (NC District Court Judge) also served partial terms in 2014.

ORGANIZATIONAL OVERVIEW

Jurisdiction

The Judicial Standards Commission was created in 1973 by virtue of an amendment to Article IV, Section 17 of the Constitution of North Carolina and the enactment of Article 30 of Chapter 7A of the General Statutes. North Carolina General Statute § 7A-374.1 establishes the Commission as the agency responsible “for the investigation and resolution of inquiries concerning the qualifications or conduct of any justice or judge of the General Court of Justice” and proscribes the procedure for the discipline of any judge or justice of the General Court of Justice. However, these procedures shall not affect the process for the impeachment of judges under the North Carolina Constitution, Article IV, Sections 4 and 17.

The Commission’s jurisdiction was expanded in 2011 to include commissioners and deputy commissioners of the NC Industrial Commission by North Carolina General Statute §97.78.1.

The jurisdiction of the Commission, therefore, extends to over 500 judges, including justices of the North Carolina Supreme Court, judges of the North Carolina Court of Appeals, the North Carolina Superior Courts, and the North Carolina District Courts, emergency and recalled judges, as well as to the commissioners and deputy commissioners of the North Carolina Industrial Commission.

The Commission does not have any jurisdiction or authority, however, over the following officials often associated with the judiciary: district attorneys, assistant district attorneys, public defenders, clerks of court, magistrates, administrative law judges, private attorneys, law enforcement officers, or any other court room personnel. As a state agency, the Commission has no jurisdiction or authority over federal judges at any level.

Confidentiality

All papers filed with the Commission, and all proceedings before the Commission, including any investigation that the Commission may make, are confidential. No person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission. Those papers are not subject to disclosure under Chapter 132 of the North Carolina General Statutes, the Open Records law. Even after investigation, information about the complaint remains confidential under state law. Upon the issuance of an order for the public reprimand, censure, suspension, or removal of a judge by the Supreme Court, confidentiality ceases as to the pleadings, recommendation and record of the case.

Limited details about a case under investigation may be shared with the judge or the complainant in the course of the investigation, as allowed by the Rules of the Judicial Standards Commission. Other exceptions may exist under these rules for the Commission to alert the appropriate authorities in situations where confidentiality is waived by the judge or where there is an extenuating circumstance, such as the threat of imminent harm that can be prevented.

These confidentiality requirements do not prevent a citizen from discussing their grievances or experiences with others, only from sharing any information they have received from the Commission about their complaint with others.

Limits on Commission Action and Authority

The Commission is not a court. It has no power or authority to change any judge's ruling or to intervene in any litigation on behalf of a party, or to remove a judge from a case. The Commission cannot award anyone with compensation or restitution. The Commission cannot award changes of venue or reassign judges to a case. The Commission cannot prosecute criminal behavior and allegations of criminal behavior should be reported to the appropriate law enforcement authorities for investigation and prosecution. The mere filing of a complaint against a judge with the Commission does not mean that a judge is required to disqualify himself or herself from a case. The Commission cannot assign anyone a lawyer nor request nor require that specific attorneys be removed from a case. The Commission cannot rehear a case to determine whether or not the judge arrived at the correct verdict. Neither the Commission nor its staff can provide legal advice or make recommendations to citizens about legal services.

As the Commission is not a court, it will not typically investigate allegations of legal error, absent some other evidence of a judge's abuse of discretion. For example, the Commission will not typically investigate allegations that a judge improperly weighed or improperly excluded certain evidence, was too strict or lenient in sentencing, awarded custody to the wrong party, or believed perjured testimony. However, where another court of law has reviewed and confirmed that a judge has erred, and that such error was made in bad faith or was the result of an abuse of discretion, that determination may be submitted to the Commission as evidence to support allegations of misconduct.

In most cases, the Commission has no authority to take any disciplinary action against a judge that happened more than three years ago. This is not a limit on citizens and does not mean that citizens have up to three years to file a complaint against a judge with the Commission. What this means is that the Commission itself is limited and, by law, cannot initiate any disciplinary action against a judge that occurred more than three years ago. As the Commission cannot initiate disciplinary action against a judge without taking the time to review and investigate complaints, review court files, and interview witnesses, it is recommended that potential complainants not delay in filing a potential complaint, in order to allow sufficient time for the Commission to act. Where the complaint against a judge is for political misconduct, the time limits placed on the Commission are even more narrow, and the Commission may not act on most allegations of political misconduct more than three months after the alleged misconduct took place.

The Commission does have the same power as a trial court of the General Court of Justice in one very limited circumstance, in that it may punish those appearing before the Commission for contempt or for the refusal to obey lawful orders or process issued by the Commission.

Procedures

The Commission receives and investigates written complaints of judicial misconduct or disability, institutes disciplinary proceedings, conducts hearings, and recommends appropriate disciplinary action to the North Carolina Supreme Court. No complaint form is currently required in order to make a written complaint to the Commission. A proper complaint should be typed or neatly printed, and should include the name of the judge, the date that the alleged misconduct occurred, details as to what happened, and if possible a court file number associated with the allegations if the misconduct is connected to a specific case and the names of any witnesses, along with their current contact information. The complainant should also include his

or her name and a mailing address so that the Commission may communicate and respond confidentially. The Commission cannot accept complaints by telephone or email.

Complaints should be sent to: North Carolina Judicial Standards Commission
 Post Office Box 1122
 Raleigh, North Carolina, 27602-1122

During review of complaints, the Commission staff must find sufficient evidence of misconduct to show that there is probable cause that judicial misconduct took place. Judicial misconduct has been defined by the North Carolina Code of Judicial Conduct, but has been further defined by numerous binding decisions by the North Carolina Supreme Court. Thus, what may or may not appear to be misconduct under a plain reading of the language of the Code, might have been interpreted differently by the Supreme Court.

Examples of allegations that have typically resulted in investigation by the Commission include credible allegations of improper *ex parte* (one sided, without including the other party) communications between a judge and someone involved in a case, acting on a case despite a clear conflict of interest, clear displays of rude, inappropriate language and behavior such as racist or sexist remarks, neglect of cases resulting in unjustified delays in providing written orders in cases, the abuse of the judicial office for the personal gain of the judge or other private interests, financial improprieties, and serious personal misconduct by the judge of a criminal nature.

Complaints that are unlikely to proceed past initial review typically involved allegations that fall into one of these categories: (1) are frivolous or unfounded, (2) merely state the dissatisfaction with a judge's ruling, (3) is based on the complainant's misunderstanding of the judicial process, the proper role of the court, the extent of a judge's authority, or some other error that is actually a misunderstanding by the complainant about the law, such that no actual error exists, (4) are based entirely on some alternative, discredited legal theory challenging the court's or government's jurisdiction over the complainant.

Other times, complaints may raise legitimate grievances over an incident that are outside of the Commission's authority, such as when: (1) an incident occurred too long ago for the Commission to act, (2) the judge made a clear legal error, but there is insufficient evidence that the error was made in bad faith or as the result of misconduct, (3) there is no viable way to obtain credible evidence to support an allegation, or (4) the alleged conduct, though concerning or improper, was not a serious violation of the Code of Judicial Conduct. In such case, the Commission may not be able to proceed after review.

The Commission itself cannot publically discipline a judge. It functions to aid in determining whether a justice or judge is unfit or unsuitable, and it is for the Supreme Court to actually assess the disciplinary sanctions provided in North Carolina General Statute §7A-376.

The Commission may issue private disciplinary warnings or letters of caution to judges where it has discovered conduct in violation of the Code of Judicial Conduct that requires a judge's immediate attention but that does not meet the requirements necessary to make a recommendation of discipline to the Supreme Court.

Where the Commission finds sufficient credible allegations of serious misconduct to proceed with investigation of a complaint, there are many steps and stages of review the Commission may take in collecting evidence and evaluating the allegations. Ultimately, where the Commission finds sufficient grounds to proceed it may order a formal investigation into the matter, where the judge is notified of the Commission's investigation and the nature of the allegations of misconduct, and is given an opportunity to respond. If, after a formal investigation is completed, the Commission finds probable cause of judicial misconduct that it believed can be proven by clear and compelling evidence, it will serve a Statement of Charges upon the judge, who will be summoned to appear at disciplinary recommendation hearing. Under the legislative changes made in 2013, the Statement of Charges and the disciplinary recommendation hearing are confidential and are only made public after any disciplinary action is taken by the North Carolina Supreme Court.

Upon the conclusion of a disciplinary recommendation hearing, the Commission will make a recommendation to the Supreme Court, and if that recommendation is contested by the judge, counsel for the Commission may appear before the Court to argue for their recommendation. Any disciplinary action taken by the Court against the judge will be made public and will be published on the Commission's website.

Advisory Opinions

The Commission also provides formal advisory opinions to judges and justices in response to written requests. The executive director and Commission counsel provide informal advisory opinions to judges upon request and participate in new judge training and continuing judicial education. More details of these opinions are provided later in this Annual Report.

Educational Activities

The Commission frequently takes part in education activities and training for judges and attorneys related to the North Carolina Code of Judicial Conduct and the procedures and activities of the Commission. In 2014, the Commission took part in seven conferences, orientations, and other training events for judges, and one continuing education seminar for public and private attorneys.

ACTIVITIES IN 2014

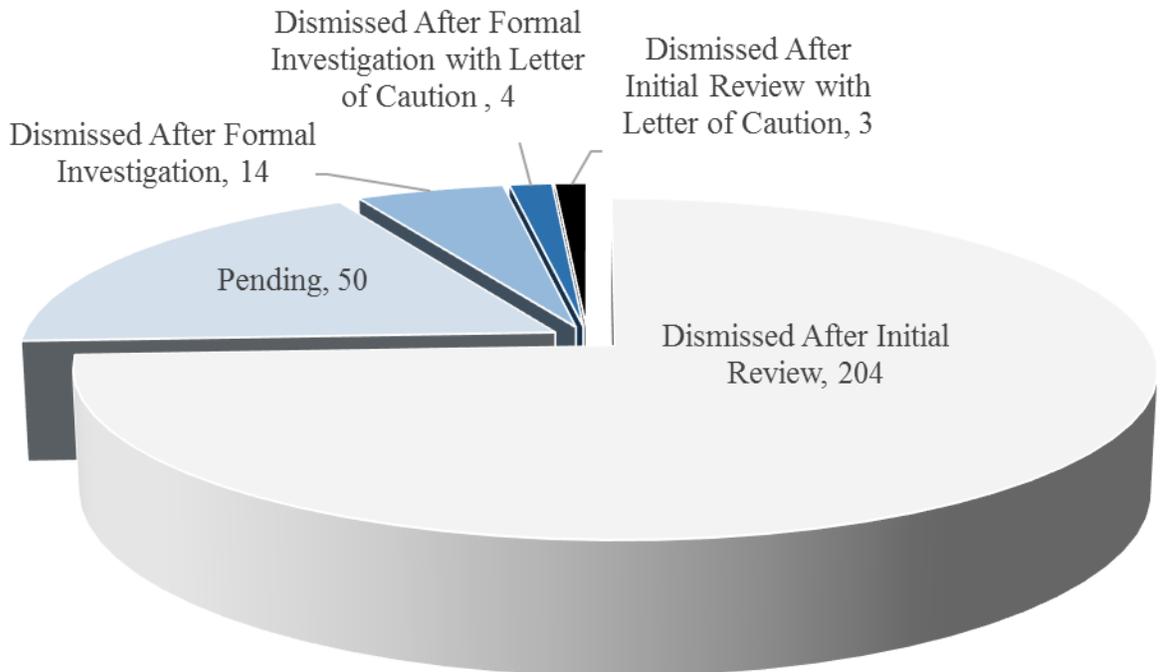
Inquiries concerning the conduct of any justice or judge of the General Court of Justice are initiated by written complaints from members of the public or opened by the Commission acting on its own motion. 28 such complaints were pending at the beginning of 2014: 21 awaiting initial review or receipt of additional information, 6 under formal investigation, and one matter awaiting the filing of a Statement of Charges following an investigative panel's determination to initiate disciplinary proceedings. During the year, 250 new complaints were filed or initiated by the Commission on its own motion. Formal investigations were ordered in 29 complaints. Two disciplinary proceedings were initiated by filing a Statement of Charges in 4 inquiries. As indicated below, 50 matters were left pending at the end of 2014: 36 complaints awaiting initial review or the receipt of additional information, 14 complaints under formal investigation.

CASELOAD 2014

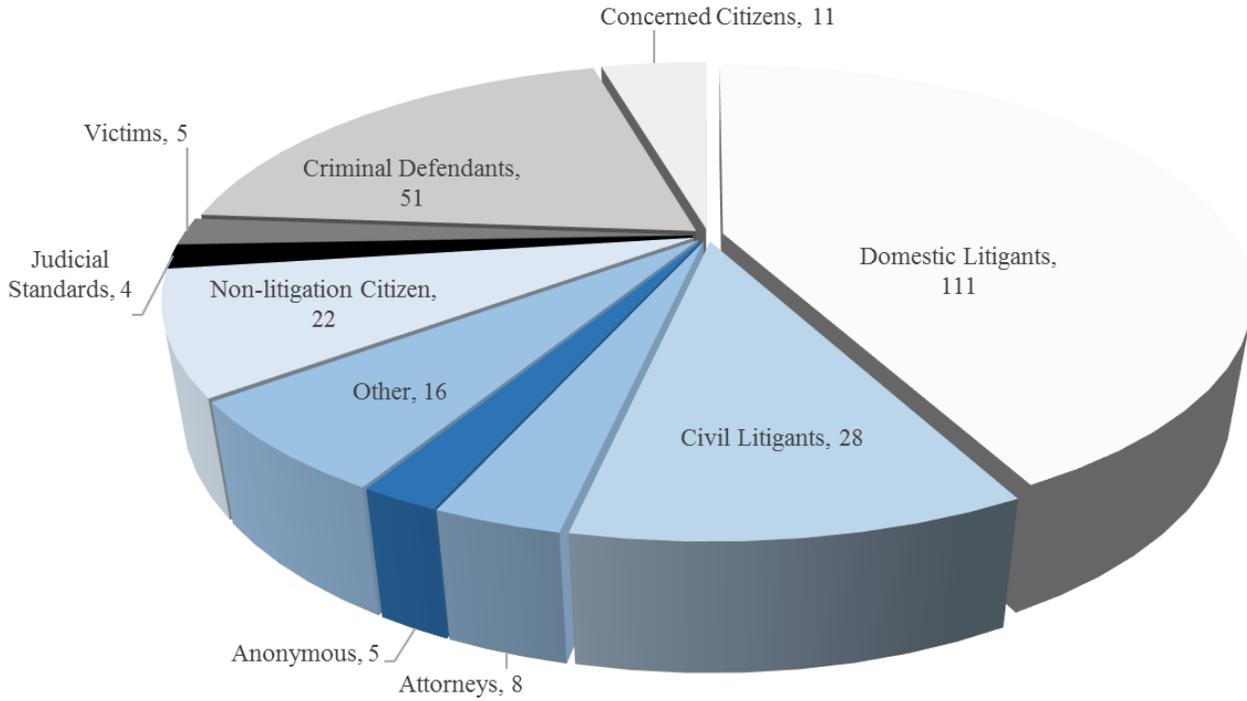
Matters Pending 1/1/14	28
2014 Complaints	250
Reconsideration Requests	15
Total Workload	293
Denied Reconsider Requests	14
Complaints Closed in 2014	229
Matters Pending 12/31/14	50

The majority of complaints were dismissed by the Commission after initial review, typically because such complaints merely expressed dissatisfaction with a judge's ruling, alleged legal error that should be addressed through the court system, or otherwise described actions that would not be considered judicial misconduct. Of the 229 complaints disposed of during the year, 204 were dismissed after initial review, 3 were dismissed after initial review with a letter of caution, 14 were dismissed after formal investigations, and 4 were dismissed after a formal investigation with a letter of caution. Two hearings were conducted by the Commission in 2014 addressing 4 complaints.

COMPLAINT DISPOSITION 2014

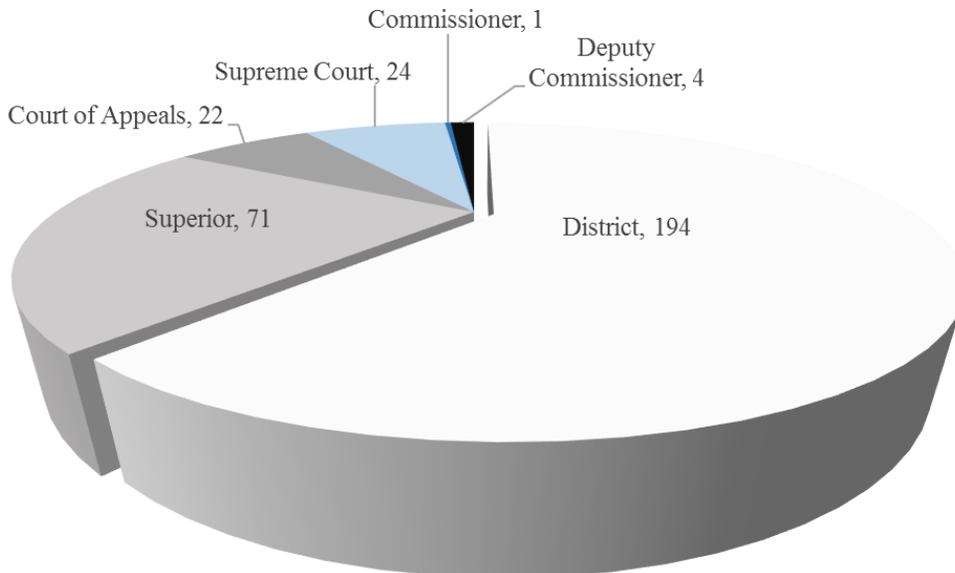


SOURCES OF COMPLAINTS



Note: some complaints were provided by more than one complainant, or alleged more than one type of complaint

CATEGORIES OF RESPONDENT JUDGES and COMMISSIONERS



Note: some complaints named more than one judge, justice, deputy commissioner, or commissioner.

COMPLAINT ALLEGATIONS

Abuse of Power	40
Bias	59
Campaign conduct	12
Conflict of Interest	33
Criminal Conduct	1
Delay	25
Demeanor	30
Denied Fair Hearing	33
Disability	3
Ex Parte Communication	25
Failed Administrative Duty	10
Fraud/Corruption	5
Inappropriate Comments	35
Legal/Procedural Error	142
Other	13
<u>Prestige Misuse</u>	<u>3</u>
TOTAL	469

Note: some complaints contained more than one allegation.

ADVISORY OPINIONS

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. It may also be requested 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.

Information contained in a request for an informal advisory opinion is 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 shall approve or disapprove only the matter in issue and shall not otherwise serve as precedent and shall not be published. 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.

During 2014, the Commission responded to, and granted, over 300 requests for informal advisory opinions.

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.

During 2014, three formal advisory opinions were issued by the Commission, and are contained within Appendix C of this report.

FIVE YEAR COMPARATIVE ANALYSIS

Year	Pending from Previous Years	New	Pending at Year End	Dismissed After Initial Review	Formal Investigation Ordered	Dismissed After Formal Investigation	Private Letter of Caution	Public Reprimand	Statement of Charges Filed	Stipulated Dismissal	Hearing Conducted	Dismissed After Hearing	Recommendation For Discipline Filed
2014	28	250	50	204	29	14	7	0	2 (3)	0	2(4)	1(3)	1
2013	57	235	28	239	17	8	1	1+	0	0	0	0	0
2012	41	312	57	260	30	20	14	2	0	0	0	0	0
2011	22	282	41	241	20	9	9≠	3	2	0	2	0	2
2010	25	241	22	220	21	12	7	1	0	1(4)±	0	0	0
Total	173	1320	198	1164	117	63	38	7	4	1	4	1	3
Avg	34.6	264	39.6	232.8	23.4	12.6	7.6	1.4	.8	.2	.8	.2	0.6

Number in () indicates total number of complaints addressed

+ withdrawn following the judges' acceptance of a public reprimand

≠ a letter of caution was issued in one matter, while other issues remained under investigation

± dismissed due to removal of the respondent judge

APPENDIX A

**PAST AND PRESENT MEMBERS OF THE
JUDICIAL STANDARDS COMMISSION**

December 31, 2014

Judges Appointed by the Chief Justice

Court of Appeals

Hon. Walter E. Brock
Hon. Edward B. Clark
Hon. Gerald Arnold
Hon. Clifton E. Johnson
Hon. Sidney S. Eagles, Jr.
Hon. Jack L. Cozort
Hon. John B. Lewis, Jr.
Hon. John C. Martin
Hon. Wanda G. Bryant*

Superior Court

Hon. George M. Fountain
Hon. W. Douglas Albright
Hon. James M. Long
Hon. Robert D. Lewis
Hon. Marvin K. Gray
Hon. James L. Baker, Jr.
Hon. Richard D. Boner
Hon. Paul L. Jones
Hon. Tanya T. Wallace*
Hon. Cy A. Grant +
Hon. W. Douglas Parsons*

District Court

Hon. E. D. Kuykendall, Jr.
Hon. C. Walter Allen
Hon. L. T. Hammond, Jr.
Hon. W. S. Harris, Jr.
Hon. A. Elizabeth Keever
Hon. Joyce A. Hamilton
Hon. Tanya T. Wallace
Hon. Rebecca B. Knight
Hon. Alexander Lyerly +
Hon. Rebecca Blackmore*
Hon. Wayne L. Michael *

**Attorneys Elected by the State
Bar Council**

Mr. Emerson T. Sanders
Mr. Harold K. Bennett
Mr. Robert G. Sanders
Mr. Jerome B. Clark, Jr.
Mr. E. K. Powe
Mr. Rivers D. Johnson, Jr.
Mr. Louis J. Fisher, Jr.
Mr. William K. Davis
Mr. Z. Creighton Brinson
Mr. Charles M. Davis
Mr. Ronald Barbee
Mr. William O. King
Mr. Steven Michael
Mr. Dudley Humphrey
Mr. L.P. Hornthal, Jr. *
Mr. Edward T. Hinson, Jr.*
Mr. William H. Jones, Jr. *
Mr. Fred H. Moody, Jr.*

**Citizens Appointed by the
Governor**

Mr. Marvin B. Koonce, Jr.
Mrs. George L. Hundley
Ms. N. Susan Whittington
Mrs. Veatrice C. Davis
Ms. Pamela S. Gaither
Mr. Albert E. Partridge, Jr.
Mrs. Margaret H. Almond
Mr. Melvin C. Swann, Jr.
Mr. Roland W. Leary
Mr. James L. Mebane
Hon. T. Ray Warren
Mrs. Linda Brown Douglas
Hon.. Arthur B. Schools, Jr. *
Ms. Lorraine Stephens *

**Citizens Appointed by the
General Assembly**

Hon. Todd W. Tilley
Mr. R. Wayne Troutman *
Mr. Gregory H. Greene *

* 2014 members
+ resigned during 2014

APPENDIX B

SUPREME COURT OPINIONS
REGARDING RECOMMENDATIONS OF THE
JUDICIAL STANDARDS COMMISSION

In re Crutchfield, 289 N.C. 597, 223 S.E.2d 822 (1975)
In re Edens, 290 N.C. 299, 226 S.E.2d 5 (1976)
In re Stuhl, 292 N.C. 379, 233 S.E.2d 562 (1977)
In re Nowell, 293 N.C. 235, 237 S.E.2d 246 (1977)
In re Hardy, 294 N.C. 90, 240 S.E.2d 367 (1978)
In re Martin, 295 N.C. 291, 245 S.E.2d 766 (1978)
In re Peoples, 296 N.C. 109, 250 S.E.2d 890 (1978)
In re Martin 302 N.C. 299, 275 S.E.2d 412 (1981)
In re Hunt, 308 N.C. 328, 302 S.E.2d 235 (1983)
In re Kivett, 309 N.C. 635, 309 S.E.2d 422 (1983)
In re Wright, 313 N.C. 495, 329 S.E.2d 668 (1985)
In re Griffin, 320 N.C. 163, 357 S.E.2d 682 (1987)
In re Bullock, 324 N.C. 320, 377 S.E.2d 743 (1989)
In re Hair, 324 N.C. 324, 377 S.E.2d 749 (1989)
In re Greene, 328 N.C. 639, 403 S.E.2d 257 (1991)
In re Bullock, 328 N.C. 712, 403 S.E.2d 264 (1991)
In re Sherrill, 328 N.C. 719, 403 S.E.2d 255 (1991)
In re Harrell, 331 N.C. 105, 414 S.E.2d 36 (1992)
In re Martin, 333 N.C. 242, 424 S.E.2d 118 (1993)
In re Bissell, 333 N.C. 766, 429 S.E.2d 731 (1993)
In re Hair, 335 N.C. 150, 436 S.E.2d 128 (1993)
In re Cornelius, 335 N.C. 198, 436 S.E.2d 836 (1993)
In re Bullock, 336 N.C. 586, 444 S.E.2d 299 (1994)
In re Leonard, 339 N.C. 596, 453 S.E.2d 521 (1995)
In re Martin, 340 N.C. 248, 456 S.E.2d 517 (1995)

In re Greene, 340 N.C. 251, 456 S.E.2d 516 (1995)
In re Ammons, 344 N.C. 195, 473 S.E.2d 326 (1996)
In re Fuller, 345 N.C. 157, 478 S.E.2d 641 (1996)
In re Martin, 345 N.C. 167, 478 S.E.2d 186 (1996)
In re Renfer, 345 N.C. 632, 482 S.E.2d 540 (1997)
In re Renfer, 347 N.C. 382, 493 S.E.2d 434 (1997)
In re Tucker, 348 N.C. 677, 501 S.E.2d 67 (1998)
In re Tucker, 350 N.C. 649, 516 S.E.2d 593 (1999)
In re Brown, 351 N.C. 601, 527 S.E.2d 651 (2000)
In re Hayes, 353 N.C. 511, 546 S.E.2d 376 (2001)
In re Stephenson, 354 N.C. 201, 552 S.E.2d 137 (2001)
In re Brown, 356 N.C. 278, 570 S.E.2d 102 (2002)
In re Hayes, 356 N.C. 389, 584 S.E.2d 260 (2002)
In re Hill, 357 N.C. 559, 591 S.E.2d 859 (2003)
In re Brown, 358 N.C. 711, 599 S.E.2d 502 (2004)
In re Braswell, 358 N.C. 721, 600 S.E.2d 849 (2004)
In re Hill, 359 N.C. 308; 609 S.E.2d 221 (2005)
In re Harrison, 359 N.C. 415; 611 S.E.2d 834 (2005)
In re Daisy, 359 N.C. 622, 622 S.E.2d 529 (2005)
In re Ballance, 361 N.C. 338, 643 S.E.2d 584 (2007)
In re Royster, 361 N.C. 560, 648 S.E.2d 837 (2007)
In re Allen, 362 N.C. 73, 653 S.E.2d 423 (2007)
In re Badgett, 362 N.C. 202, 657 S.E.2d 346 (2008)
In re Badgett, 362 N.C. 482, 666 S.E.2d 743 (2008)
In re Belk, 364 N.C. 114, 691 S.E.2d 685 (2010)
In re Hartsfield, 365 N.C. 418, 722 S.E.2d 496 (2012)
In re Totten, 365 N.C. 458, 722 S.E.2d 783 (2012)

APPENDIX C

JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA**FORMAL ADVISORY OPINION: 2014-01**

January 10, 2014

QUESTION:

May a judge maintain membership in voluntary bar associations?

COMMISSION CONCLUSION:

The Judicial Standards Commission determined that a judge may maintain membership in a voluntary bar association so long as the organization promotes the bar in general and the legal profession as a whole, and is not essentially a law-related special interest group which promotes issues pertaining to the representation of a particular group of clients, such as criminal defendants, personal injury plaintiffs, criminal prosecution, insurance defense, etc..

DISCUSSION:

The Commission reasoned that membership in voluntary bar associations which promote the legal system and the administration of justice is to be encouraged, provided membership in such organizations does not call into question the judge's integrity, independence, and impartiality, which are the foundational principles of the judicial branch of government. While judges may attend seminars and conferences sponsored by voluntary bar associations, the Commission concluded that membership in organizations which primarily advocate for a particular group of clients, is inconsistent with judicial impartiality.

The Commission further reasoned that membership in gender, ethnic, and cultural based bar associations is permitted, so long as the entity does not practice unlawful discrimination.

References:

North Carolina Code of Judicial Conduct
Canon 1
Canon 2A
Canon 2B
Canon 2C
Canon 4

Canon 4A
Canon 4C



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2014-02

April 11, 2014

QUESTION:

Is a judge required to disqualify from matters wherein a party moves for the disqualification of the judge based upon the fact that the party has filed a complaint about the judge with the Judicial Standards Commission?

COMMISSION CONCLUSION:

The mere filing of a complaint with the Judicial Standards Commission, nothing else appearing, does not establish a reasonable basis upon which one may reasonably question the subject judge's impartiality in proceedings involving the complainant.

DISCUSSION:

Canon 3C(1) together with subsection (a) of the Code of Judicial Conduct reads, "[O]n motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to instances where: (a) The judge has a personal bias or prejudice concerning a party ..." Canon 3D provides that "nothing in this Canon shall preclude a judge from disqualifying himself/herself from participating in any proceeding upon the judge's own initiative." A judge should always disqualify when the judge questions his/her own ability to remain impartial.

The Commission recognizes the likely abuse of the judicial process which would arise should a party be permitted to "judge shop" by way of motions to disqualify a judge based upon the mere filing with the Commission of a complaint against the judge. The Commission further notices that the majority of complaints it receives arise from civil litigants and criminal defendants who disagree with a judge's decision and attribute the judgment to ethical misconduct without supporting evidence.

The Commission further advises that should a judge be notified of the initiation of a formal investigation, receive a private letter of caution, or be served with a statement of charges initiating disciplinary proceedings as the result of a complaint, the judge should disqualify from all matters involving the complainant.

The Commission distinguishes the scenario presented within this opinion from the situation underlying the case of *In re Braswell*, 358 N.C. 721 (2004), which held that a judge is disqualified from hearing a case when one of the parties has a pending lawsuit against the judge. The Commission notices that in the *Braswell* case, one of the parties had a pre-existing civil lawsuit filed against the judge in a matter unrelated to matter in which the judge was presiding and then asked the judge to recuse. Where a pre-existing conflict, such as a civil law suit, exists prior to a litigant's appearance before the judge, a reasonable appearance of bias or conflict of interest may arise. Similarly, a pre-existing complaint filed with the Judicial Standards Commission arising from another matter which results in discipline being taken against the judge could also create a reasonable appearance of bias or conflict of interest that might require recusal. However, the Commission concludes that any new lawsuit, or complaint, arising solely to complain about the adjudication of the present matter, and then used as the sole justification for disqualification or recusal, could be viewed as obstructive, dilatory, and purposed to thwart the administration of justice. In such situations, recusal should not be required under the Code of Judicial Conduct, unless the judge is notified of the initiation of a formal investigation, receives a private letter of caution, or is served with a statement of charges initiating disciplinary proceedings as the result of the complaint.

References:

North Carolina Code of Judicial Conduct
North Carolina Judicial Standards Commission Annual Reports
Canon 3C(1)(a)
Canon 3D
In re Braswell, 358 N.C. 721 (2004)



JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

FORMAL ADVISORY OPINION: 2014-03

August 8, 2014

BACKGROUND:

Judges have recently been presented with requests to complete a Nonimmigrant Status Certification Form I-918 Supplement B (I-918B), a document from the federal office of the U.S. Citizenship and Immigration Services (USCIS) within the Department of Homeland Security. It appears that federal law provides temporary immigration benefits to aliens who are victims of certain qualifying criminal activity. This often allows these victims to remain available as witnesses for the prosecution of that activity, or potentially other related activity.

This federal document is used to certify that certain individuals who have submitted a Form I-918 Petition for Nonimmigrant Status are victims of qualifying criminal activity and are, have been, or are likely to be helpful in the investigation or prosecution of that qualifying activity. The instructions the I-918B define “helpful” as assisting law enforcement authorities in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim. USCIS has recently begun to contact judges to collect and maintain “Certifying Official” information; i.e. the names of individuals authorized to sign the I-918B on behalf of law enforcement agencies.

The instructions for the I-918B advise that a judge’s decision to provide certification is entirely discretionary and that the judge is under no legal obligation to complete a I-918B for any particular alien, but that without a completed I-918B the alien crime victim will be ineligible for “U Nonimmigrant Status”, a preferential status under the law. The I-918B may also be filled out by prosecutors, traditional law enforcement officers, and other agencies that have criminal investigative jurisdiction in their respective areas of practice, such as child protective services, the Equal Employment Opportunity Commission, the Department of Labor, and others.

QUESTION:

- Should judges complete a document to certify that individuals submitting I-918B are victims of certain qualifying criminal activity and are, have been, or are likely to be helpful in the investigation or prosecution of that qualifying activity?
- Should judges register with the USIC office of the Department of Homeland Security that they are a “Certifying Official” authorized to sign a I-918B on behalf of law enforcement agencies?
- If a judge has already completed a I-918B, certifying his or her assessment of an individual as a victim of a qualifying criminal offense and the individual’s helpfulness in assisting in the investigation or prosecution of a criminal matter, what are the judge’s obligations in any future matter concerning adjudication of that individual?

COMMISSION CONCLUSION:

The Judicial Standards Commission determined that judges should not execute I-918B forms, certifying the likelihood that an alien victim of criminal activity is, has been, or will be helpful in the investigation or prosecution of that activity. As a judge should not execute one of these forms, a judge should not provide information for a federal “Certifying Official” registry.

Where a judge has executed a I-918B certifying the helpfulness or potential helpfulness of an alien victim in the prosecution of a crime, that judge should disqualify himself or herself from any criminal matters involving that victim.

DISCUSSION:

The Commission first reasoned that certification by a judge as to the potential "helpfulness" of a witness to the prosecution of a criminal matter would seem to violate the North Carolina Code of Judicial Conduct's prohibition on a judge providing voluntary character testimony, under Canon 2B. A judge should not make personal recommendations to a federal agency predicting how useful a victim or witness might or might not be to a future prosecution. Such assessments are, in essence, the endorsement of the victim’s honesty, reliability, potential for cooperation and other character traits.

Secondly, the Commission finds that, by the language used in the I-918B and its instructions, the form clearly solicits information more appropriately provided by law enforcement or prosecutors. A judge sits in the role of an impartial arbiter and is responsible for the adjudication, not the prosecution, of criminal matters. A judge is not a representative of the prosecutorial team and should not collude with law enforcement or prosecutors in evaluating the helpfulness of potential witnesses in a case. A judge’s determination as to the credibility of victims should be formed through the hearing and trial process, and not be determined prior to

adjudication. Such active involvement in securing witnesses for the prosecution and predetermining their helpfulness puts the judge in an inappropriate role that could reasonably suggest bias, or the appearance of bias, on the part of the judge in potential violation of Canon 2A and Canon 3 which require a judge to act to promote public confidence in the impartiality of his or her office.

Canon 3 also proscribes, under subsection 3A(6) that a judge should “abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law...” While Canon 3A(6) permits a judge to make public statements in the course of official duties, the I-918B essentially asks that a judge forecast the helpfulness of a potential witness. To do so would be improper.

In recognition of cases where a judge has already executed a I-918B, the judge is thereafter obligated to disclose that certification of the helpfulness of the victim and, upon motion of any party, disqualify himself or herself from any further involvement in that matter and any matter in which the judge’s certification as to the victim’s helpfulness would present a reasonable question as to the judge’s impartiality in the matter.

References:

North Carolina Code of Judicial Conduct

Canon 1

Canon 2A

Canon 2B

Canon 3A

Canon 3C

Instructions for Form I-918 Supplement B, “U Nonimmigrant Status” Certification (1/15/13)

Form I-918 Supplement B, “U Nonimmigrant Status” Certification (1/15/13)

APPENDIX D**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 8th 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