

IN THE SUPREME COURT OF NORTH CAROLINA


ORDER APPROVING THE
RULES OF THE JUDICIAL STANDARDS COMMISSION

Pursuant to subsection 7A-375(g) of the General Statutes of North Carolina, the Court hereby approves the Rules of the Judicial Standards Commission, which appear on the following pages. These rules supersede the Rules of the Judicial Standards Commission published at [367 N.C. 936–53](#).

The Rules of the Judicial Standards Commission are effective immediately and apply to all matters pending before the Judicial Standards Commission on or after this date.


This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 3rd day of June, 2020.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 4th day of June, 2020.



AMY L. FUNDERBURK
Clerk of the Supreme Court

Rules of the Judicial Standards Commission

Rule 1. Authority and Definitions

(a) **Authority.** These rules are promulgated pursuant to the authority contained in N.C.G.S. § 7A-375(g) and § 97-78.1 and are effective as of the date of approval by the Supreme Court of North Carolina and apply to all matters pending before the Commission on or after that date.

(b) **Definitions.**

- (1) The term “Code” refers to the North Carolina Code of Judicial Conduct.
- (2) The term “Supreme Court” refers to the Supreme Court of North Carolina.
- (3) The term “disability” refers to “incapacity” as defined in N.C.G.S. § 7A-374.2 to include any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of the judicial office.
- (4) The term “disability proceeding” refers to a proceeding before a hearing panel of the Commission to determine whether to recommend suspension or removal of a judge by the Supreme Court for temporary or permanent incapacity pursuant to N.C.G.S. § 7A-376(c).
- (5) The term “disciplinary proceeding” refers to a proceeding before a hearing panel of the Commission to determine whether to recommend public discipline of a judge by the Supreme Court pursuant to N.C.G.S. § 7A-376(b).
- (6) The term “judge” refers to any justice or judge of the General Court of Justice of North Carolina, any retired justice or judge who is subject to recall to service, any emergency judge of any division of the General Court of Justice, and any commissioner or deputy commissioner of the North Carolina Industrial Commission.
- (7) The term “Respondent” shall at all times refer to a judge who is the subject of a disciplinary or disability proceeding.
- (8) Unless otherwise indicated, “writing” or “written” includes electronic communication.

Rule 2. Organization and Meetings

(a) **Officers.** The Commission shall have a Chairperson, who is the North Carolina Court of Appeals member of the Commission, and two Vice-Chairpersons, who are the superior court judge members of the Commission. The Executive Director shall serve as the secretary to the Commission and to each panel and shall perform other duties as the Commission or a panel may assign.

(b) **Panels.** The Chairperson shall divide the Commission into 2 panels, designated Panel A and Panel B.

- (1) The Chairperson shall be assigned to and serve as the Chairperson of Panel A and Panel B.
- (2) The Chairperson shall assign the other members of the Commission to serve on Panel A or Panel B, each panel to include 1 superior court judge, 1 district court judge, 2 members appointed by the North Carolina State Bar, 1 citizen appointed by the Governor, and 1 citizen appointed by the General Assembly. Other than the Chairperson, no member shall be assigned to both Panel A and Panel B for consideration of the same matter.
- (3) The superior court judge assigned to Panel A or Panel B shall serve as the Vice-Chairperson of the panel, and in the absence or disqualification of the Chairperson, shall preside over panel meetings, whether meeting as an investigative or hearing panel. In the absence or disqualification of both the Chairperson and Vice-Chairperson, the district court judge assigned to the panel shall preside.
- (4) Each panel shall serve as an investigative panel at its regular business meetings for purposes of reviewing complaints, ordering investigations, or authorizing the initiation of disciplinary or disability proceedings. Each panel shall also serve as a hearing panel for any disciplinary or disability proceeding authorized by the other panel. No panel may function as both an investigative and hearing panel in the same matter.

(c) **Panel Meetings.** Panel meetings shall occur pursuant to the following requirements:

- (1) Panel A and Panel B shall meet in alternating months, unless prevented by exigent circumstances, such as inclement weather, an emergency, or an unresolvable conflict with court calendars. Upon the call of the Chairperson, additional or special panel meetings may also be convened as needed to conduct or conclude the panel's business.

- (2) Each panel member, including the Chairperson, Vice-Chairperson, or other presiding member, shall be a voting member of the panel unless disqualified from considering a particular matter pursuant to Rule 7.
- (3) A quorum for the conduct of the business of a panel, whether sitting as an investigative or hearing panel, shall consist of 5 members present. The affirmative vote of at least 5 members present is required to authorize official action of the panel.
- (4) The Chairperson may direct the reassignment of any matter for initial review to the other panel so long as no action has been taken by the original investigative panel scheduled to review and consider the matter.
- (5) In the event that a hearing panel member will be absent for a hearing in a disciplinary or disability proceeding and the member's absence will prevent the formation of a quorum, the Chairperson or Executive Director shall request the appointing authority for the absent member to appoint an alternative member for the sole and exclusive purpose of participating as a member of the hearing panel for that disciplinary or disability proceeding.

(d) **Plenary Meetings.** Meetings of the full Commission shall occur pursuant to the following requirements:

- (1) The full Commission shall meet on the call of the Chairperson or upon the written request of any 5 members.
- (2) A quorum for the conduct of the business of the full Commission shall consist of 9 members present. The affirmative vote of at least 9 members is required to authorize any Commission action that requires a vote of the full membership.
- (3) In the absence of the Chairperson at a plenary meeting, the Vice-Chairperson with the longest tenure on the Commission shall preside.
- (4) Upon the authorization of the Chairperson, the full Commission may conduct votes on specific matters by electronic means, with the votes to be recorded and maintained by the Executive Director.

(e) **Meeting Places.** Panel and plenary meetings of the Commission shall ordinarily meet at the North Carolina Court of Appeals, 1 West Morgan Street, Raleigh, North Carolina. The Chairperson may also direct that meetings be held anywhere in the state or through telephonic or electronic means.

Rule 3. Commission Staff

(a) **Executive Director.** The Executive Director shall have the duties and responsibilities prescribed by the Commission, including but not limited to:

- (1) reviewing complaints and information as to alleged misconduct or disability, and making preliminary evaluations with respect thereof;
- (2) providing training and developing educational resources relating to the Code and Commission procedures;
- (3) issuing informal advisory opinions to judges and preparing formal advisory opinions as directed by the Commission, as provided in Rule 8;
- (4) maintaining the Commission's records concerning the operation of the Commission;
- (5) administering funds for the Commission's budget as prepared by the Administrative Office of the Courts;
- (6) preparing an annual report and statistical information regarding the Commission's activities for presentation to the Commission, Supreme Court, and public;
- (7) employing, with the approval of the Chairperson, the Commission Counsel, Commission Investigator, and other authorized Commission staff;
- (8) supervising the Commission staff; and
- (9) performing other duties at the direction of the Commission, the Chairperson, or as required by these rules.

(b) **Commission Counsel.** The Commission Counsel shall have the duties and responsibilities prescribed by the Commission, including but not limited to:

- (1) reviewing complaints and information as to alleged misconduct or disability, and making preliminary evaluations thereof;
- (2) conducting limited confidential inquiries with respect to complaints or information as to alleged misconduct or disability as necessary to verify information to be presented to an investigative panel for initial review;
- (3) directing investigations as to alleged misconduct or disability and reporting to and advising the appropriate investigative panel as to the investigations;
- (4) prosecuting disciplinary and disability proceedings before the Commission and appearing on behalf of the Commission in the

Supreme Court in connection with any recommendation made by the Commission;

- (5) providing training and developing educational resources relating to the Code and Commission procedures;
- (6) issuing informal advisory opinions to judges as provided in Rule 8; and
- (7) performing other duties at the direction of the Commission, Chairperson, or Executive Director, or as required by these rules.

(c) **Commission Investigator.** The Commission Investigator shall have the duties and responsibilities prescribed by the Commission, including but not limited to:

- (1) conducting investigations initiated pursuant to these rules;
- (2) assisting the Commission Counsel during disciplinary proceedings;
- (3) maintaining records of Commission investigations; and
- (4) performing other duties at the direction of the Commission, Chairperson, Executive Director, or Commission Counsel, or as required by these rules.

Rule 4. Contempt

(a) **Basis for Contempt.** A person may be held in contempt by the Commission through an order of the Chairperson issued in accordance with subsection (b) for refusal to obey a lawful order or process of the Commission and for any other conduct that would warrant punishment for contempt in a trial court of the General Court of Justice.

(b) **Procedure.** Procedures to hold a person in contempt and the appropriate punishment shall be in accordance with applicable provisions of Chapter 5A of the General Statutes of North Carolina.

Rule 5. Privilege and Immunity from Civil Action

(a) **Absolute Privilege.** In accordance with N.C.G.S. § 7A-377(a2), information or testimony provided to the Commission is absolutely privileged and shall not form the basis of a civil action against a complainant, witness, or their counsel.

(b) **Immunity of Members and Staff.** In accordance with N.C.G.S. § 7A-375(e), members of the Commission and its staff are immune from a

civil action that is based upon conduct undertaken in the course of their official duties.

Rule 6. Confidentiality

(a) **Confidentiality, Generally.** Except as expressly provided in subsection (b) of this rule, all complaints and related information received by the Commission, meeting materials and records, investigative files, documents and evidence relating to disciplinary and disability proceedings, private letters of caution, informal advisory opinions, and all documents and communications related to any of the foregoing are confidential. Commission meetings and deliberations, disciplinary and disability hearings, and work product of the Commission and its staff are also confidential and shall not be disclosed.

(b) Exceptions to Confidentiality.

- (1) **Action by the Supreme Court.** Upon the public reprimand, censure, suspension, or removal of a judge by the Supreme Court in a disciplinary or disability proceeding, the pleadings, the Commission's recommendation, and the record filed in support of the recommendation are no longer confidential. All other documents and information relating to the complaint, investigation, and disciplinary or disability proceeding shall remain confidential.
- (2) **Waiver.** Upon an express written waiver by a judge, the Commission may disclose documents or information specified by the judge in the written waiver. Waiver shall not be implied, and a partial waiver as to the specified documents or information shall not constitute a waiver as to other Commission documents and information.
- (3) **Action by the Commission.** In a 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 statements of clarification and correction as it deems appropriate in the interest of maintaining confidence in the administration of justice. The 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 or disposition by the Commission. The Commission may also disclose facts and documents as necessary to notify another person or agency of potential threats to public safety or the administration of justice, or as otherwise authorized by these rules. A private letter of caution issued

pursuant to Rule 11 may also become public if included in a record that becomes public pursuant to subsection (b)(1) of this rule.

(c) **Improper Disclosure of Confidential Information.**

- (1) No person shall disclose confidential documents or information obtained from the Commission unless confidentiality has ceased in accordance with subsection (b) of this rule.
- (2) A person violating the confidentiality requirements in these rules may be held in contempt pursuant to Rule 4.

Rule 7. Disqualification

(a) **Applicable Standard.** A member of the Commission is disqualified from considering a matter in which disqualification would be required of a judge by the Code or by law. A judge who is a member of the Commission is disqualified from acting in a matter in which the judge is the subject of a complaint, investigation, or disciplinary or disability proceeding, except in his or her own defense.

(b) **Procedure.** At the convening of each panel meeting, whether an investigative panel or a hearing panel, the Chairperson shall remind all members to voluntarily disqualify themselves from consideration of any matter wherein disqualification is required pursuant to subsection (a) of this rule. In the absence of a voluntary disqualification from the matter under consideration, or upon motion of a party to a disciplinary or disability proceeding, the Chairperson shall decide in his or her sole discretion whether disqualification is required in that instance.

Rule 8. Advisory Opinions

(a) **Formal Advisory Opinions.** A person may request that the Commission issue a formal advisory opinion as to whether actual or contemplated conduct on the part of a judge conforms to the requirements of the Code, subject to the following procedures:

- (1) A request for a formal advisory opinion shall be submitted to the Executive Director in writing, who shall present the request to the Commission for consideration.
- (2) Upon the affirmative vote of 9 members, the full Commission may issue a formal advisory opinion, which shall be written and shall state its conclusion with respect to the question asked and the reasons therefor.
- (3) A formal advisory opinion shall be provided to the Appellate Reporter for publication, and the Reporter shall, from time to time, as directed by the Commission, publish an index of advisory

opinions. The formal advisory opinion shall also be published on the Commission's website.

- (4) A formal advisory opinion shall have precedential value in determining whether similar conduct conforms to the Code but shall not constitute controlling precedent or legal authority in the Supreme Court for the purpose of reviewing a disciplinary recommendation. To the extent the Supreme Court expressly nullifies an existing formal advisory opinion, the formal advisory opinion shall be deemed automatically withdrawn.
- (5) Other than as provided in subsection (a)(4) of this rule, a formal advisory opinion may be modified or withdrawn by the Commission only upon the affirmative vote of 9 members of the full Commission. Until a formal advisory opinion is modified or withdrawn by the Commission or nullified by the Supreme Court, a judge shall be deemed to have acted in good faith if he or she acts in conformity with the advisory opinion.
- (6) Except as published in the formal advisory opinion, information provided to the Commission and work product or communications associated with drafting and issuing the formal advisory opinion shall be confidential.

(b) **Informal Advisory Opinions.** A judge subject to the jurisdiction of the Commission may seek a confidential informal advisory opinion from the Chairperson, Executive Director, or Commission Counsel as to whether conduct, actual or contemplated, conforms to the requirements of the Code, subject to the following procedures:

- (1) An informal advisory opinion may be requested orally or in writing.
- (2) Any oral or written communications between the requesting judge and the Commission relating to an informal advisory opinion shall be confidential unless waived in writing by the judge.
- (3) If a request for an informal advisory opinion discloses actual conduct that may be actionable as a violation of the Code, then the Chairperson, Executive Director, or Commission Counsel shall refer the matter to an investigative panel of the Commission for consideration.
- (4) An informal advisory opinion may be issued orally but shall be confirmed in writing and shall approve or disapprove only the matter in issue, shall not otherwise serve as precedent, and shall be confidential.

- (5) Informal advisory opinions shall be reviewed at regularly scheduled panel meetings. If upon review, a majority of the panel members present and voting decide that an informal advisory opinion should be withdrawn or modified, then the inquiring judge shall be notified in writing by the Executive Director. Until this notification takes place, the judge shall be deemed to have acted in good faith if he or she acts in conformity with the informal advisory opinion that is later withdrawn or modified.
- (6) If an inquiring judge disagrees with the informal advisory opinion issued by the Chairperson, Executive Director, or Commission Counsel, then the judge may submit a written request in accordance with subsection (a) of this rule for consideration of the inquiry by the full Commission as a formal advisory opinion.

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

Rule 9. Procedure on Receipt of Complaint or Information

(a) **Summary Dismissal After Initial Review.** The Executive Director and the Commission Counsel shall review a written complaint received by the Commission to determine whether the complaint discloses facts that, if true, indicate that a judge has engaged in conduct in violation of the Code or suffers from a disability that seriously interferes with the judge's judicial duties. If the initial review does not disclose such facts, or if the allegations in the written complaint are obviously unfounded or frivolous, then the Chairperson shall summarily dismiss the complaint at the next investigative panel meeting, subject to the right of a member of the panel to review the complaint and request consideration of it pursuant to subsection (b) of this rule.

(b) **Action on Review by the Investigative Panel.** A written complaint not summarily dismissed pursuant to subsection (a) of this rule shall be considered by an investigative panel. The investigative panel shall also consider any complaint brought on the Commission's own motion that is based on credible information received by the Commission disclosing facts that, if true, indicate that a judge has engaged in conduct in violation of the Code or suffers from a disability that seriously interferes with the judge's judicial duties. By the affirmative vote of at least 5 members, the investigative panel may dismiss the complaint or authorize an investigation pursuant to Rule 10.

(c) **Notice to Judge Regarding Complaint.** A judge who is the subject of a complaint pending before the Commission shall not be notified of the filing of the complaint, except:

- (1) if notification to the judge is required pursuant to Rule 10, following the authorization of a formal investigation;
- (2) if the investigative panel considering the complaint has authorized the Chairperson, Executive Director, Commission Counsel, or Commission Investigator to notify the judge of the complaint in the interests of the administration of justice; or
- (3) if the judge has been notified by the complainant that the complaint was filed, or if the judge has been notified by another state agency of the receipt of a complaint that was received by that agency and forwarded to the Commission as required by law or other rules.

(d) **Notice to Complainant Regarding Commission Action.** A complainant who files a complaint with the Commission shall be notified in writing of:

- (1) the Commission's receipt of the complaint;
- (2) the initiation of a formal investigation into the complainant's allegations;
- (3) a dismissal of the complaint by the investigative panel, if applicable;
- (4) the investigative panel's decision with respect to an appropriate request for reconsideration after the dismissal of a complaint; and
- (5) the issuance of an order of public discipline by the Supreme Court in the matter.

In cases in which a complaint is dismissed with a private letter of caution pursuant to Rule 11, the complainant shall be notified that the matter has concluded and that the Commission has taken appropriate action within its authority to address the complainant's concerns of judicial misconduct.

In cases in which disciplinary proceedings against the judge have been initiated, the complainant shall be notified of the proceedings only if the complainant is to be called as a witness, or if the Chairperson deems notice to be necessary in the interests of the administration of justice.

(e) **Requests for Reconsideration.** Upon dismissal of a complaint, a complainant may request reconsideration of the dismissal, provided that a request for reconsideration will only be considered by the investigative panel that dismissed the complaint if a request includes new or additional information not previously considered by the panel. Multiple requests for reconsideration without new or

additional information will be considered an abuse of the Commission's complaint process and may result in a bar order pursuant to subsection (f) of this rule.

(f) **Abuse of the Complaint Process.** At any meeting of an investigative panel, the Commission Counsel may request that the Commission bar a complainant from filing further complaints or requests for reconsideration with the Commission for either a specified period of time or permanently as to allegations against the judge that have already been considered by the Commission. A bar shall be ordered only upon the affirmative vote of at least 5 members of the panel after a finding by clear and convincing evidence that the complainant has abused the complaint process by:

- (1) using abusive or threatening language that is directed toward the Commission, Commission members, or Commission staff, or toward specific members of the judiciary;
- (2) knowingly filing false information with the Commission;
- (3) repeatedly demanding that the Commission rehear a complaint that has already been reviewed and dismissed without providing new or significantly different allegations or evidence, or repeatedly demanding that the Commission consider a complaint that has already been determined to be outside of the time period allowed for review of the alleged misconduct by the Commission or outside of the Commission's jurisdiction; or
- (4) filing complaints that maintain the complainant is not subject to the authority of the State of North Carolina, or its laws, rules, or procedures, and that refuse to recognize the authority of the General Statutes of North Carolina over the Commission's operations and procedures.

Rule 10. Investigations

(a) **Generally.** An investigative panel may authorize either a preliminary or formal investigation based on a complaint considered pursuant to Rule 9(b) upon the affirmative vote of at least 5 members, or upon the granting of a motion for reconsideration pursuant to Rule 9(e).

(b) **Preliminary Investigations.** A preliminary investigation is made for the purpose of verifying the credibility of or ascertaining additional facts necessary to evaluate allegations in a complaint received by the Commission regarding potential judicial misconduct or disability. Notice of the preliminary investigation shall not be provided to the judge unless the notice is required by the investigative panel or is otherwise required by these rules.

(c) **Formal Investigations.** A formal investigation is made for the purpose of determining whether a judge has engaged in actual misconduct in violation of the Code or suffers from a disability that seriously interferes with the

judge's judicial duties. In all formal investigations, the following procedures shall apply:

- (1) The judge shall be notified in writing of the initiation of the formal investigation and shall be given a general description of the subject matter thereof, including, if available, the specific case caption and number if the investigation relates to the judge's conduct in a particular case. The notice letter shall not identify the name of the complainant unless necessary to allow the judge to determine whether the judge must be disqualified from continued involvement in cases involving the complainant, but shall state whether the investigation is initiated on written complaint or motion of the Commission.
- (2) The notice of formal investigation shall be delivered by personal service or by Certified Mail, return receipt requested, to the judge's residence or business address, or in any manner otherwise agreed to by the judge.
- (3) The judge shall be afforded a reasonable opportunity to respond to the notice letter and provide relevant information to the Commission relating to the subject matter of the investigation.

(d) **Subpoenas During Investigation.** After a formal investigation has been authorized, the Commission Counsel may issue subpoenas to the judge or witnesses to provide testimony and produce pertinent records, communications, and documents for purposes of concluding the formal investigation.

(e) **Retaliation by Judge.** A judge receiving notice under this rule, or otherwise becoming aware of a complaint, investigation, or disciplinary or disability proceeding, shall not retaliate against, intimidate, coerce, or otherwise attempt to influence a complaining party or a witness cooperating with the Commission's investigation or disciplinary or disability proceeding. A violation of this subsection may be charged as a separate and independent violation of the Code.

Rule 11. Private Letters of Caution

(a) **Grounds for Issuance.** An investigative or hearing panel of the Commission may issue a private letter of caution to a judge upon a determination that the judge engaged in conduct in violation of the Code that is not of such a nature as to warrant a recommendation of discipline by the Supreme Court. The issuance of a private letter of caution shall be in lieu of further proceedings in the matter, but in no instance may it be issued prior to the conclusion of a formal investigation. A private letter of caution issued by the Commission may advise the judge to engage in remedial action that is necessary to avoid a continuation or recurrence of the conduct in violation of the Code.

(b) **Response by the Judge.** A judge who receives a private letter of caution may provide a confidential written response, which will be maintained by the Commission with the private letter of caution.

(c) **Confidentiality and Use in Future Proceedings.** Unless waived in writing by the judge, a private letter of caution is confidential. Notwithstanding this provision, a private letter of caution may be used in future disciplinary proceedings against the same judge as an aggravating factor, as evidence of a pattern or practice of misconduct, or as evidence that the judge acted willfully or knew or should have known that the alleged conduct was contrary to the law or the requirements of the Code. In such circumstances, if included as part of the record of a disciplinary proceeding submitted to the Supreme Court, the private letter of caution may become public pursuant to Rule 6.

Rule 12. Initiation of Disciplinary or Disability Proceedings

(a) **Authorization of Disciplinary or Disability Proceedings.** After completion of a formal investigation authorized pursuant to Rule 10, and upon the affirmative vote of at least 5 members, the investigative panel considering the matter may authorize the initiation of a disciplinary or disability proceeding against the judge, who thereafter shall be referred to as the Respondent. The authorization to initiate a disciplinary or disability proceeding constitutes a finding that probable cause exists to believe that the Respondent engaged in conduct that warrants public reprimand, censure, suspension, or removal by the Supreme Court or that the Respondent suffers from a disability that warrants suspension or removal by the Supreme Court pursuant to Article 30 of Chapter 7A of the General Statutes of North Carolina.

(b) **Filing of the Statement of Charges.** A disciplinary or disability proceeding is initiated through the filing of a Statement of Charges by the Commission Counsel at the Commission offices. The Statement of Charges shall contain:

- (1) a caption entitled “BEFORE THE JUDICIAL STANDARDS COMMISSION, Inquiry Concerning a Judge No. ___.”;
- (2) a description of 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 misconduct or disability;
- (3) the name of the complainant;
- (4) a statement about the Respondent’s right to be represented by counsel at the Respondent’s expense; and
- (5) directions to the Respondent to file a Verified Answer as required pursuant to Rule 13.

(c) **Notice and Service of the Statement of Charges.**

- (1) Service of the Statement of Charges shall constitute notice to the Respondent of the initiation of disciplinary or disability proceedings.
- (2) Unless waived by the Respondent, a copy of the Statement of Charges shall be personally served upon the Respondent by a person of suitable age and discretion who has been designated by the Commission. If, after reasonable efforts to do so, personal service upon the Respondent cannot be effected, service may be made to the Respondent's home address by Registered Mail or Certified Mail, return receipt requested. Proof of service in accordance with N.C.G.S. § 1-75.10(a)(4) shall be filed with the Commission.

(d) **Withdrawal of the Statement of Charges.** Upon motion by the Commission Counsel and good cause shown, the investigative panel that authorized the initiation of disciplinary or disability proceedings may withdraw the Statement of Charges upon the affirmative vote of at least 5 members. Notice of withdrawal of the Statement of Charges shall be made in the same manner as service of the Statement of Charges.

(e) **Interim Suspension During Disciplinary or Disability Proceedings.** At any time following the conclusion of a formal investigation, if the investigative panel finds by clear and convincing evidence that a judge has (1) been charged with a felony under state or federal law, or (2) engaged in serious misconduct that poses an ongoing threat of substantial harm to public confidence in the judiciary or to the administration of justice, then the investigative panel may, upon the affirmative vote of at least 5 members, direct the Chairperson to recommend that the Chief Justice temporarily suspend the judge from the performance of his or her judicial duties with pay pending final disposition of the proceedings. A copy of the recommendation of interim suspension shall be provided to the judge by Certified Mail, return receipt requested, or as otherwise agreed to in writing by the judge. At any time after an interim suspension is issued, the judge shall have the right to submit written objections to the Commission. The Executive Director shall provide the judge's objections to the Chief Justice, along with the Commission's response. The Executive Director shall also provide a copy of the Commission's response to the judge.

Rule 13. Answer

(a) **Procedure for Filing.** Unless the time is extended by order of the Chairperson, the Respondent shall file a written original Verified Answer at the Commission offices within 30 days after service of the Statement of Charges.

(b) **Default.** Failure of the Respondent to answer the Statement of Charges shall constitute an admission of the allegations contained therein.

Rule 14. Pleadings and Amendments

(a) **Definition of Pleadings.** The Statement of Charges and Verified Answer shall constitute the pleadings. No further pleadings may be filed and no dispositive motions may be filed at any time in the proceedings, including at the close of evidence in a disciplinary or disability hearing held pursuant to Rule 19.

(b) **Amendments to Pleadings Prior to the Disciplinary or Disability Hearing.** At any time prior to the commencement of a disciplinary or disability hearing held pursuant to Rule 19, the investigative panel that authorized the Statement of Charges against the Respondent may authorize an amendment to the Statement of Charges in order to include new factual allegations and charges in accordance with Rule 12. The amended Statement of Charges shall be served on the Respondent in the same manner as required under Rule 12, and the Respondent shall have the right to answer new or amended charges in accordance with Rule 13.

(c) **Amendments to Pleadings During the Disciplinary Hearing.** Once the disciplinary or disability hearing has commenced, and at any time prior to its conclusion, the hearing panel may allow amendments to the pleadings to conform to the proof or defenses offered at the disciplinary or disability hearing.

Rule 15. Ex Parte Communications

(a) **During Disciplinary or Disability Proceedings.** Except as provided in subsection (b) of this rule, upon the initiation of a disciplinary or disability proceeding, no member of the Commission shall engage in ex parte communications with the Respondent, Respondent's counsel, Commission Counsel, or witness regarding the facts or merits of the proceeding.

(b) **Administrative and Procedural Matters.** Commission members may communicate with the Executive Director, Commission Counsel, and Commission staff with respect to procedural and administrative matters involved in a disciplinary or disability proceeding as may be required in these rules. Upon consent of the Respondent, or the Respondent's counsel, if any, the Commission Counsel may also communicate with the Chairperson regarding administrative and procedural motions submitted on consent of the parties during the course of a disciplinary or disability proceeding.

Rule 16. Discovery

(a) **Required Disclosures.** Unless extended by order of the Chairperson, within 60 days of the filing of the Verified Answer, the Commission Counsel and the Respondent shall disclose to the other:

- (1) the name, address, and contact information of each witness the party expects to offer at the disciplinary or disability hearing;
- (2) a brief summary of the expected testimony of each witness;
- (3) written statements provided by a witness to the Commission or the Respondent; and
- (4) copies of documentary or other evidence that may be offered at the disciplinary or disability hearing.

(b) **Exculpatory Evidence.** At the same time the Commission Counsel provides the disclosures required under subsection (a) of this rule, the Commission Counsel shall also provide the Respondent with exculpatory evidence that he or she is aware of and that is relevant to the allegations contained in the Statement of Charges or in a defense thereto.

(c) **Other Forms of Discovery.** The taking of depositions, serving of interrogatories, document requests, requests for admissions, and other discovery procedures authorized by the North Carolina Rules of Civil Procedure shall be permitted only by stipulation of the parties or by order of the Chairperson for good cause shown, and shall be completed in the manner and subject to any conditions as the Chairperson may prescribe.

(d) **Discovery Disputes.** Disputes concerning discovery shall be determined by the Chairperson, whose decision may not be appealed prior to the conclusion of the disciplinary or disability proceeding.

(e) **Failure to Disclose and Duty to Supplement.** Upon the failure of either party to disclose information or evidence as required under subsections (a) and (b) of this rule, the opposing party may move the Chairperson for an order compelling disclosure. A copy of the motion to compel shall be served on the opposing party and shall be heard before the Chairperson, who shall decide the motion in his or her sole discretion. A willful or continuing failure to provide required disclosures may result in the exclusion of the testimony of the witness or of the documentary evidence that was not provided. Both the Commission Counsel and the Respondent shall have a continuing duty to supplement information required to be exchanged under this rule.

Rule 17. Special Rules as to Disability Cases

(a) **Applicability of Rules Relating to Judicial Misconduct.** A proceeding shall be considered a disability proceeding if it is initiated by either a complaint or motion of the Commission alleging a disability of a judge that seriously

interferes with the judge's judicial duties. If a disability proceeding is authorized by the investigative panel upon the completion of a formal investigation pursuant to Rule 10, then the disability proceeding shall be conducted in accordance with the procedures for disciplinary proceedings except as provided in this rule.

(b) **Waiver of Medical Privilege.** A judge waives the medical privilege and shall produce to the Commission Counsel the judge's medical records relating to an alleged disability, if the judge:

- (1) provides a written waiver to the Commission;
- (2) denies the existence of a disability in a proceeding in which the mental or physical condition or health of the judge is in issue; or
- (3) asserts the existence of a disability as a defense to a Statement of Charges.

(c) **Physical or Mental Examination.** Upon the affirmative vote of 5 members, the investigative panel may order a judge who is subject to a formal investigation based on alleged disability to submit to a physical or mental examination by one or more qualified licensed physicians, psychologists, or mental health professionals appointed by the Chairperson to conduct the examination. The examination shall be at the Commission's expense and copies of the report of the examination shall be provided to the judge and the Commission Counsel. The examining physician or health professional shall be compensated by the Commission in the same manner as experts in civil cases in the General Court of Justice are compensated. If called to testify at a disciplinary proceeding, the Commission shall bear the witness costs of the examining physician or health professional as provided in Rule 20.

(d) **Failure or Refusal to Submit to Examination.** The failure or refusal of a judge to submit to a physical or mental examination ordered by the investigative panel shall preclude the judge from presenting evidence of the results of a physical or mental examination done at the judge's own expense. An investigative or hearing panel may consider a refusal or failure to submit to a physical or mental examination ordered pursuant to subsection (c) of this rule as evidence that the judge has a disability that seriously interferes with the ability of the judge to perform the duties of the judicial office.

Rule 18. Stipulated Facts and Agreed Disciplinary or Disability Dispositions

(a) Factual Stipulations.

- (1) At any time prior to the conclusion of a disciplinary or disability hearing, the Respondent may stipulate to any of the factual allegations in the Statement of Charges and any other agreed upon facts. The factual stipulations shall be in writing and shall be signed by the Respondent, the Respondent's counsel, if any,

and by the Commission Counsel. The factual stipulations may include an agreement as described in subsection (b) of this rule.

- (2) The Chairperson of the hearing panel may accept the factual stipulations and any agreement made pursuant to subsection (b) of this rule into the record at the disciplinary hearing upon the Chairperson's satisfaction that they were entered into freely and voluntarily.
- (3) At the conclusion of the disciplinary hearing, the hearing panel shall deliberate and may adopt the factual stipulations upon the affirmative vote of at least 5 members present at the disciplinary hearing. Adoption of the factual stipulations constitutes a finding that the facts contained therein are established by clear and convincing evidence.
- (4) If the factual stipulations are rejected by the hearing panel, then they shall be deemed withdrawn. In such circumstances, the Executive Director shall promptly notify the Respondent and the Commission Counsel of a date for a full evidentiary hearing.

(b) **Agreements as to Code Violations and Disciplinary Disposition.**

- (1) Factual stipulations made pursuant to subsection (a) of this rule may, but are not required to, include an agreement as to specified violations of the Code in exchange for a requested disciplinary disposition. Upon its de novo review, the hearing panel may accept the agreement upon the affirmative vote of at least 5 members.
- (2) In the absence of an agreement as to violations of the Code or a requested disciplinary disposition, or in the event the hearing panel rejects the agreement, the Executive Director shall promptly notify the Respondent and the Commission Counsel of a date for a hearing to consider the arguments of the parties with respect to the Code violations and the disciplinary disposition of the matter.

(c) **Consent Order Upon Resignation or Retirement of the Respondent.** At any time prior to the conclusion of a disciplinary or disability proceeding, the Respondent may enter into a consent order, signed by all parties and approved by the Chairperson, by which the Respondent resigns or retires from judicial office and agrees never to seek judicial office in North Carolina in the future in exchange for dismissal of the Statement of Charges without prejudice and upon any other terms and conditions as the parties may agree. A violation of the consent order shall be deemed a separate and independent violation of the Code.

Rule 19. Disciplinary and Disability Hearings

(a) **Notice of Hearing.** The Executive Director shall serve a notice of hearing upon the Respondent in the same manner as service of the Statement of Charges under Rule 12, or in any manner otherwise agreed to by the Respondent. The Notice of Hearing shall set forth the date, time, and location of the disciplinary hearing. Unless otherwise agreed to in writing by the Commission Counsel and the Respondent, the disciplinary hearing shall be held no sooner than 60 days after filing of the Verified Answer or, if no response to the Statement of Charges is filed, 60 days after the expiration of time allowed for its filing.

(b) **Failure of the Respondent to Appear for Hearing.** The disciplinary hearing shall proceed whether or not the Respondent has filed a Verified Answer or appears for the hearing, either in person or through counsel.

(c) **Applicable Rules of Evidence.** The North Carolina Rules of Evidence set forth in Chapter 8C of the General Statutes of North Carolina shall apply in all disciplinary hearings except as otherwise indicated in these rules. Rulings on evidentiary matters shall be made by the Chairperson, or by the member presiding in the absence of the Chairperson.

(d) **Burden of Proof.** At the disciplinary hearing, the Commission Counsel shall have the burden of proving the existence of grounds for a recommendation of discipline, suspension, or removal based on disability by clear and convincing evidence, as that evidentiary standard is defined by the Supreme Court.

(e) **Additional Rights of the Respondent.** In addition to the rights specified in these rules, the Respondent shall have the right to defend against the charges by the introduction of evidence, by the examination and cross-examination of witnesses, and by the right to address the hearing panel in argument at the conclusion of the disciplinary hearing.

(f) **Record of Hearing.** The disciplinary or disability hearing shall be recorded verbatim by a court reporter. In the event that an evidentiary hearing is held, testimony of witnesses shall also be video recorded.

Rule 20. Witnesses; Oaths; Subpoenas

(a) **Witnesses.** The Commission Counsel and the Respondent shall have the right to call fact witnesses, expert witnesses, and character witnesses in accordance with the North Carolina Rules of Evidence, subject to the following limitations:

- (1) **Fact and Expert Witnesses.** The Commission Counsel and the Respondent shall have the right to call witnesses to testify about a genuine dispute of material fact between the parties in the disciplinary hearing. The Commission Counsel may call the Respondent as a witness. Expert witnesses may be called at the

expense of the party calling the expert and only in accordance with the North Carolina Rules of Evidence.

- (2) **Character Witnesses.** The Commission Counsel and the Respondent shall have the right to call witnesses to testify to the character of the Respondent, but neither the Commission Counsel nor the Respondent may call more than 4 character witnesses in a disciplinary proceeding. Additional character witnesses may submit affidavits or be identified and tendered for the record.
- (3) **Witness Costs.** 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. Vouchers authorizing disbursements by the Commission for witnesses shall be signed by the Chairperson or Executive Director.

(b) **Oaths.** Every witness who testifies before the hearing panel at a disciplinary 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 or by the Executive Director.

(c) **Subpoenas.** Both the Commission Counsel and the Respondent have the right to the issuance of subpoenas to compel the attendance of witnesses or the production of documents and other evidentiary material for the disciplinary or disability hearing. A subpoena to compel the attendance of a witness at a disciplinary or disability hearing before the Commission, or a subpoena for the production of evidence, shall be issued in the name of the State of North Carolina upon request of the Commission Counsel or the Respondent, and shall be signed by a member of the Commission, by the Executive Director, or by the Commission Counsel. A subpoena shall be served, without fee, by any officer authorized to serve a subpoena under Rule 45(b) of the North Carolina Rules of Civil Procedure.

Rule 21. Disposition of Disciplinary or Disability Proceeding

(a) **Recommendation to the Supreme Court.** At the conclusion of the disciplinary or disability hearing, the hearing panel shall deliberate and determine whether to file a recommendation with the Supreme Court pursuant to N.C.G.S. § 7A-376. The affirmative vote of at least 5 members of the hearing panel is required to make a recommendation to the Supreme Court that the Respondent either be publicly reprimanded, censured, suspended, or removed from office for misconduct or suspended or removed for disability.

(b) **Dismissal of Charges.** If fewer than 5 members of the hearing panel vote to recommend action by the Supreme Court in accordance with subsection (a) of this rule, then the hearing panel shall dismiss the charges with prejudice. Upon the

affirmative vote of at least 5 members of the hearing panel, the dismissal may be accompanied by a private letter of caution in accordance with Rule 11.

(c) **Severance of Charges or Counts.** If the hearing panel concludes that some, but not all, of the charges or counts alleged in the Statement of Charges warrant a recommendation to the Supreme Court under subsection (a) of this rule, then the hearing panel may sever and dismiss the remaining charges or counts in accordance with subsection (b) of this rule.

Rule 22. Recommendation to the Supreme Court; Record in Support of Recommendation

(a) Recommendation to the Supreme Court.

- (1) Unless the time is extended by order of the Chair, within 60 days of the conclusion of the disciplinary hearing, the Executive Director shall serve upon the Respondent and the Commission Counsel the hearing panel's recommendation to the Supreme Court. Service of the recommendation upon the Respondent shall be in the same manner as service of the Statement of Charges, or in any manner otherwise agreed to by the parties.
- (2) The recommendation shall be signed by the Chairperson, or Vice-Chairperson in the absence of the Chairperson, and shall contain findings of fact supported by the record, conclusions of law, and a recommended disposition as to the Respondent. If the hearing panel's recommendation is based upon a stipulation and an agreement entered into pursuant to Rule 18, then the conclusions of law and recommendation for the disposition shall rely only upon the factual stipulations, facts that may be properly judicially noticed, and admissions in the Verified Answer.

(b) Record in Support of Recommendation.

- (1) **Proposed Record.** At the same time and in the same manner that the recommendation is served upon the Respondent, the Executive Director shall also serve a proposed record in support of the recommendation. The proposed record shall include the pleadings, a verbatim transcript of the hearing, a copy of the video recording of any witness testimony at the hearing, and any evidence entered into the record during the hearing and referenced in the recommendation.
- (2) **Objections and Settling the Record.** Unless the Respondent files objections to the proposed record within 10 business days after service of the proposed record, the proposed record shall constitute the official record. If the Respondent files objections,

any objections not resolved by the agreement of the parties shall be settled by the Chairperson upon notice and an opportunity of the Respondent and the Commission Counsel to be heard. In such cases, the record as settled by the Chairperson shall be the official record.

(c) **Filing of the Recommendation and Record.**

- (1) Within 10 business days after the record has been settled, the Executive Director shall file with the Clerk of the Supreme Court the recommendation, the record in support of the recommendation, and a certification that the record has been settled and is the official record of the disciplinary or disability proceeding.
- (2) The Executive Director shall concurrently serve upon the Respondent a Notice of Filing giving notice of the recommendation, record, and certification, and specifying the date upon which they were filed in the Supreme Court. The Executive Director shall also transmit to the Respondent copies of the certification along with any changes to the official record occurring as a result of the settlement of the record.
- (3) The Executive Director shall serve copies of the filings upon the Respondent in the same manner as service of the Statement of Charges, or in any manner otherwise agreed to by the parties.

(d) **Proceedings in the Supreme Court.** Proceedings in the Supreme Court shall be governed by the Supreme Court's Rules for Review of Recommendations of the Judicial Standards Commission.