

Rules of the Commission on Judicial Tenure and Discipline

Rule 1. Scope of rules. - These rules govern proceedings before the Commission on Judicial Tenure and Discipline pursuant to Chapter 16 of Title 8 of the Rhode Island General Laws of 1956, as reenacted and amended, involving complaints against any justice or judge of the Supreme, Superior, Family, District, and the Workers' Compensation Courts or the Rhode Island Traffic Tribunal, or magistrate appointed pursuant to §§ 8-2-11.1, 8-2-39, 8-2-39.1, 8-2-39.2, 8-8-8.1, 8-8-16.2, 8-8-2-1, 8-10-3.1, and/or 8-10-3.2, and any judge of a probate court appointed or elected by any municipality in the State of Rhode Island alleging violation of the Canons of Judicial Ethics, or the Code of Judicial Conduct, or willful or persistent failure to perform the judge's duties, or disabling addiction to alcoholic beverages, drugs or narcotics, or conduct that brings the judicial office into serious disrepute, or that the judge has a physical or mental disability that seriously interferes and will continue to interfere with the performance of the judge's duties. For the purposes of these rules, wherever the word “judge” or “member of the judiciary” or “judicial officer” appears it shall be construed to include any justice or judge of the Supreme, Superior, Family, District, and the Workers' Compensation Courts or the Rhode Island Traffic Tribunal, any magistrate appointed pursuant to §§ 8-2-11.1, 8-2-39, 8-2-39.1, 8-2-39.2, 8-8-8.1, 8-8-16.2, 8-8-2-1, 8-10-3.1, and/or 8-10-3.2, and any judge of a probate court appointed or elected by any municipality in this state.

Rule 2. Sanctions. - The Commission has the authority to recommend to the Supreme Court that one or more of the following sanctions be imposed upon a respondent who has been found guilty of misconduct:

- (a) Public reprimand;
- (b) Censure;
- (c) Suspension;
- (d) Removal;
- (e) Retirement.

The Commission also has the authority to issue a private reprimand as set forth in Rule 14.

Rule 3. Quorum. - Nine (9) members shall constitute a quorum of the Commission and, except as otherwise provided in these rules, determinations shall be made by a majority vote of those present.

Rule 4. Commencement of proceedings. - Proceedings under these rules shall be commenced by the filing with the Commission of a verified complaint by any

person (“complainant”) or by the Commission on its own initiative. The Commission has authority to investigate and make recommendations to the Supreme Court with regard to proceedings that it initiates and complaints that complainants file alleging:

- (a) Any conduct that constitutes a violation of the Canons of Judicial Ethics or the Code of Judicial Conduct;
- (b) A willful or persistent failure to perform judicial duties;
- (c) A disabling addiction to alcoholic beverages, drugs, or narcotics;
- (d) Any conduct that brings the judicial office into serious disrepute; and
- (e) A physical or mental disability that seriously interferes and will continue to interfere with the performance of the judge's duties.

Rule 5. Complaint. - (a) *Contents.* A complaint shall contain a statement of facts, circumstances or other matter upon which the complaining party relies for his or her charge that a member of the judiciary (“respondent”) has engaged in a violation of the Canons of Judicial Ethics or the Code of Judicial Conduct, or has willfully or persistently failed to perform his or her duties, or suffers from a disabling addiction to alcoholic beverages, drugs or narcotics, or has engaged in conduct that brings his or her judicial office into serious disrepute, or has a physical or mental disability that interferes and will continue to interfere with the performance of the respondent's duties.

(b) *Verification.* The complaint shall be verified by the complainant. If the complaining party is an association or organization, the complaint shall be verified by an officer or principal thereof. If a proceeding is commenced by the Commission on its own initiative, the complaint need not be verified.

(c) *Construction.* A complaint shall not be rejected solely because it fails to conform to ordinary rules of pleading and shall be construed so as to do substantial justice.

Rule 6. Extension of time. - The chairperson may extend for periods not to exceed thirty (30) days in the aggregate the time for doing any act required or permitted to be done under these rules.

Rule 7. Service of notice or papers. - Except as otherwise provided below with regard to subpoenas, whenever these rules direct that a respondent be given written notice or provided with papers, it shall be sufficient if the notice or papers are delivered to the respondent personally or are sent to the respondent by certified mail, return receipt requested, addressed to the last-known address. If the respondent, or the respondent's guardian or guardian ad litem, has retained counsel to represent the respondent before the Commission, all notices or other papers required to be served upon the respondent should also be served upon counsel unless the respondent, or

such guardian, requests otherwise in writing. If service is made by mail, and the respondent or the Commission has a right or is required to do some act or take some proceeding within a prescribed period after such service, three (3) days shall be added to the prescribed period.

Rule 8. Standard of proof. - Charges brought before or by the Commission shall be established by a preponderance of the evidence.

Rule 9. Filing and docketing. - A complaint shall be filed with the Commission by delivering it to the Chairperson personally or sending it to the Chairperson by certified mail, return receipt requested. The Chairperson shall keep a docket in which he or she shall keep a record of the filing of complaints and their final disposition.

Rule 10. Notice to judge. - Notice shall be given to the respondent pursuant to Rule 14 or Rule 15 or whenever the Commission determines that it is in the interest of justice to notify the respondent sooner in order to allow the judge to respond to, deny, or admit to the allegations.

Rule 11. Dismissal of unfounded or frivolous complaint. - A complaint that a majority of the members of the Commission in attendance finds, on its face, to be unfounded or frivolous shall be dismissed and no further action shall be taken upon such a complaint. The Commission shall give written notice of its action to the complainant and to the respondent.

Rule 12. Preliminary investigation. - The Commission, upon the filing of a complaint that it finds is not unfounded or frivolous, shall conduct a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held. Any member of the investigative subcommittee as described in Rule 12 may participate in deliberations and votes. The preliminary investigation shall be conducted by a committee appointed by the Chairperson and composed of not fewer than three (3) nor more than five (5) members of the Commission. Any member of the Commission may attend proceedings of the committee conducting the preliminary investigation. Upon completion of the investigation, the committee shall file a written report to the Commission containing its finding and recommendations. The Commission shall thereupon consider the report and take such action as it deems appropriate to complete the preliminary investigation. If the Commission finds that there is not substantial evidence to support the charges, the complaint shall be dismissed and notification of such action shall be given in writing to the complainant and the respondent.

The result of the preliminary investigation shall be confidential but the Commission in its sole discretion may provide notice of the preliminary investigation, or any result of the preliminary investigation, or any portion thereof to the respondent judicial officer. Any such notice shall be provided only upon a duly recorded vote of a majority of the Commission. When such notice is provided to a respondent judicial officer, notice of same shall be provided to the Chief Justice of the Supreme Court and may also be provided to the Presiding Justice, Chief Judge or Chief Magistrate of the respondent's court. These notices shall not be public.

Rule 13. Closed meetings and confidentiality. - The Commission shall conduct closed meetings for the discharge of all its business other than public hearings held pursuant to Rule 15. All evidence obtained by the Commission and all evidence that the respondent obtains through discovery or otherwise shall remain confidential until it becomes the subject of testimony at the public hearing or is introduced into evidence at the public hearing. All judicial proceedings in aid of or ancillary to a confidential Commission proceeding, and all papers filed in connection with such judicial proceedings, shall be confidential. Notwithstanding this rule, a respondent may waive confidentiality in writing at any time.

Rule 13A. Oath to be taken by members. - The following oath shall be administered to all members of the Commission on Judicial Tenure and Discipline.

I _____ do hereby solemnly swear (or affirm) that I shall faithfully and impartially carry out the duties of my office as a member of the Commission on Judicial Tenure and Discipline as set forth in chapter 8-16 of the Rhode Island General Laws according to the best of my abilities, and that I will support the Constitution and Laws of this state and the Constitution of the United States so help me God (or: this affirmation I make and give upon the peril of the penalty of perjury).

I further solemnly swear (or affirm) that I shall maintain the confidentiality of all deliberations, documents, and activities of the Commission as required by statute and by these rules. I understand that a breach of the confidentiality requirements of this oath may be punishable as contempt of the Supreme Court.

Subscribed and sworn to before me this ____ day of _____, ____ at the city of _____, county of _____, State of Rhode Island.

Officer authorized to administer oaths

Rule 14. Private reprimand. - If the preliminary investigation discloses that there exists a violation of the Canons of Judicial Ethics or the Code of Judicial Conduct and said violation is not one of a serious nature, the Commission may in its

discretion issue a private reprimand to the respondent. Said private reprimand shall caution the respondent that the conduct complained of, if continued, may be the cause for discipline. The private reprimand shall include a statement of the facts found by the Commission as a result of the preliminary investigation and may include confidential suggestions and recommendations with respect to the respondent. A respondent shall have the right to appeal said private reprimand within ten (10) days and request a hearing before the Commission with the same rights as otherwise provided by these rules. Such hearing shall not be open to the public and all evidence and proceedings relating to said private reprimand shall be kept confidential.

Rule 15. Institution and notice of public hearing. - If the Commission finds that substantial evidence exists to support the charges, it shall set a time and place for holding a public hearing. The Commission shall thereupon give a written notice to the respondent advising him or her of the institution of public proceedings. Such notice shall be given by prepaid registered or certified mail addressed to the respondent at his or her last-known place of residence. The notice shall specify the charges against the respondent and the alleged conduct upon which such charges are based. The notice shall advise the respondent of the time when and place where the public hearing will be held and shall be served upon the respondent not fewer than thirty (30) days prior to the hearing. It shall also advise the respondent that he or she shall file a written answer to the charges within twenty (20) days after the notice has been served upon the respondent. Allegations contained in the notice that are not denied in the answer shall be deemed admitted. The failure of the respondent to submit to a medical examination requested by the Commission may be taken into consideration in reaching a decision unless it appears that such failure was due to circumstances beyond the control of the judge. The notice and the answer shall be public documents except as otherwise provided in these rules.

Rule 16. Amendments to notice or answer. - The Commission, at any time prior to reaching a determination, may allow amendments to the notice of formal proceedings or to the answer. The notice may be amended to conform to the proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. If an amendment to the notice is made, the respondent shall be given reasonable opportunity to answer the amendment and to prepare and present a defense thereto.

Rule 17. Discovery. - After the Commission institutes formal proceedings and schedules a public hearing, the Commission and the respondent shall be entitled to conduct discovery in the same manner as litigants in civil cases in the Superior Court,

and the Superior Court Rules of Civil Procedure shall govern all such discovery. Except as otherwise provided in these rules, all discovery proceedings and all materials obtained by either side through discovery shall be kept confidential. Any disputes concerning discovery shall be heard on motion before the Presiding Justice of the Superior Court. If the Presiding Justice is the subject of the Commission proceeding in question, then such motion shall be heard before the senior associate justice of the Superior Court. All papers filed with and proceedings before the Superior Court pursuant to this section shall be confidential except as otherwise provided in these rules.

Rule 18. Depositions. - The Commission on its own motion and upon notice to the respondent, or upon application of the respondent, may order depositions on oral examination or on written interrogatories to be taken for the purpose of perpetuating testimony. Such depositions may be received in evidence at the hearing if it appears: that the witness is dead; or that the witness is outside of Rhode Island and is unwilling to attend the hearing, unless it appears that the absence of the witness was procured by the proponent of the deposition; or that the witness is unable to attend or testify because of sickness or infirmity.

Rule 19. Identity and statements of witnesses. - Within ten (10) days after receiving a written request from the respondent, the Commission shall furnish the respondent with the names and addresses of all witnesses whose testimony it expects to be offered at the public hearing in support of the charges together with copies of all written statements and transcripts of testimony of such witnesses that are in the possession of the Commission and are relevant to the charges.

Rule 20. Prehearing admission by judge. - Whenever the respondent, prior to the commencement of a public hearing, admits to said allegations or violations, as a consent to the Commission's recommendation of reprimand, censure, suspension, removal, or retirement, the public hearing may be waived by the Commission, subject to the approval of the Supreme Court. The Commission shall make recommendations to the Supreme Court based on the respondent's admissions. The respondent's admissions, the Commission's findings and recommendations shall be public. The Supreme Court's order shall also be public.

Rule 21. Hearing. - A hearing shall not be conducted with fewer than nine (9) members of the Commission in attendance. The Chairperson or the Chairperson's designee shall preside. A person designated by the Commission shall present the case in support of the charges contained in the notice. The respondent shall attend the public hearing without the necessity of a subpoena being served upon him or her;

and, if he or she is called as a witness by the Commission at the public hearing, he or she shall take the witness stand and shall testify in the same manner as if under subpoena. The hearing may proceed whether or not the respondent has filed an answer or appears. The hearing shall be recorded by electronic or other verbatim means and oral testimony shall be taken on oath or affirmation, administered by the presiding member. The hearing shall be public except as otherwise provided in these rules. Judicial proceedings in aid of or ancillary to a public hearing or the Commission shall be open to the public, and all papers filed in connection with such judicial proceedings shall be public documents. The Commission shall have the same authority to exclude temporarily all spectators from the public hearing as is possessed by justices of the Superior Court in criminal cases. The Chairperson or presiding member shall have the same discretion to admit or exclude “media” as defined in Article VII of the Supreme Court Rules as is conferred by said Article upon a trial justice.

Rule 22. Procedural rights of judge at hearing. - The respondent shall have the right to be represented by counsel and shall be given an opportunity to introduce evidence, to testify and to examine and cross-examine witnesses. The respondent shall also have the right to the issuance of subpoenas by the Commission for the attendance of witnesses to testify or to compel production of papers, books, accounts, documents, records, certificates or other evidentiary matter. A transcript of the testimony or proceedings at a hearing shall be prepared at the expense of the Commission and a copy thereof shall be furnished at no cost to the respondent.

Rule 23. Evidence. - The Commission shall exclude evidence that would not be admissible in a civil case tried to a court without a jury. The presiding member shall rule on objections to the introduction of evidence. The presiding member's ruling shall be final unless a member of the Commission objects, in which case the ruling may be reversed or modified by a two-thirds vote of the members present.

Rule 24. Hearing additional evidence. - The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and the place for holding the hearing and shall state the matters on which additional evidence is to be taken. At least twenty (20) days prior to the hearing, a copy of the order shall be served upon the respondent.

Rule 25. Subpoena powers of commission. - The members of the Commission are hereby severally authorized and empowered to administer oaths; and said Commission, in all cases of every nature pending before it, is hereby authorized and empowered to summon and examine witnesses and to compel the production and

examination of papers, books, accounts, documents, records, certificates, and other legal evidence that may be necessary or proper for the determination and decision of any question before or the discharge of any duty required by law of said Commission. All subpoenas and subpoenas duces tecum shall be signed by the Chairperson or, in the absence or disqualification of the Chairperson, by any other member thereof, and shall be served as subpoenas are now served in civil cases in the Superior Court; witnesses so subpoenaed shall be entitled to the same fees for attendance and travel as are now provided for witnesses in civil cases in the Superior Court. If any person fails to obey the command of any such subpoena without reasonable cause, or if a person in attendance before such Commission shall, without reasonable cause, refuse to be sworn, or to be examined or to answer a legal and pertinent question, the Commission may apply to any justice of the Superior Court, upon proof by affidavit of the fact, for a rule or order, returnable in not fewer than two (2) nor more than five (5) days, directing such person to show cause why he or she should not be adjudged in contempt. Upon the return of such order, the judge before whom the matter is brought for a hearing shall examine under oath such person and such person shall be given an opportunity to be heard, and if the judge shall determine that such person has refused without reasonable cause or legal excuse to be examined, or to answer a legal and pertinent question, or to produce books, accounts, papers, records and documents, material to the issue, that he or she was ordered to bring or produce, he or she may forthwith commit such person to the Adult Correctional Institutions, there to remain until he or she submits to do the act that he or she was so required to do, or is discharged according to law. If an application for contempt pursuant to this section relates to the actions of a witness at a public hearing, then the papers filed with and proceedings before the court shall be open to the public; otherwise, such papers and proceedings shall be confidential.

Rule 26. Compelling evidence and immunity. - Whenever a witness refuses, on the basis of his or her privilege against self-incrimination, to answer a question or to produce other evidence of any kind during a preliminary investigation or at a deposition or at a public hearing, the Chairperson may, upon a majority vote of a quorum of the Commission, submit a written request to the Presiding Justice of the Superior Court to order the witness to answer the question or produce the evidence. If the Presiding Justice is the subject of the Commission proceeding in question, then the request shall be made to the senior associate justice of the Superior Court. The court, in its discretion, after notice to the witness, may order the witness to answer the question or produce the evidence. The witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination; but the witness shall not be prosecuted or subjected to penalty or forfeiture for, or on account of, any transaction or matter regarding which, in accordance with the order, he or

she gave answer or produced evidence; and no testimony or other evidence compelled under the order, or any information directly or indirectly derived from such testimony or other evidence, shall be used against the witness in any criminal case, except he or she may be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing, or contempt committed in answering or failing to answer, or in producing or failing to produce evidence, in accordance with the order. If a request for an order pursuant to this section relates to the refusal of a witness at a public hearing to answer a question or to produce evidence, then the papers filed with and proceedings before the court shall be open to the public; otherwise, such papers and proceedings shall be confidential. No order entered pursuant to this section shall operate to vacate, modify, or otherwise prevent the enforcement of any conviction, judgment, or sentence entered by any court against said witness prior to the grant of immunity, unless the order entered pursuant to this section expressly so provides.

Rule 27. Incompetency of judge to participate. - If the Commission concludes that a respondent is incompetent to act for himself or herself or to defend against the charges, it shall appoint a guardian ad litem unless the respondent has a guardian who will represent him or her. In appointing a guardian ad litem, the Commission shall consult with and consider the wishes of the respondent's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the respondent with the same force and effect as if claimed, exercised, or made by the respondent, if competent, and whenever these rules provide for serving or giving notice or sending matter to the respondent, a copy of such notice or matter shall also be served upon the guardian or guardian ad litem.

Rule 28. Findings and recommendation. - Upon completion of a formal hearing the Commission shall determine whether the charges against the respondent have been sustained. Any member of the preliminary investigative subcommittee as described in Rule 12 may participate in the hearing, deliberations and votes of the Commission. Any member who was present for the hearing, or who certifies that he or she has reviewed a video-recording or transcript of each hearing where he or she was not in attendance, may participate in deliberations and votes. If at least nine (9) members of the Commission who are eligible to deliberate and vote in accordance with this rule find that the charges have been sustained by a preponderance of the evidence, the Commission shall report that finding to the Supreme Court and shall recommend the reprimand, censure, suspension, removal, or retirement of the respondent. The Commission may also recommend the immediate, temporary suspension of the respondent during the pendency of further proceedings. If the Commission does not find that the charges have been sustained by a preponderance

of the evidence, it shall dismiss the complaint and give written notification of its findings to the respondent and the complaining party.

Rule 29. Certification to the Supreme Court. - If the Commission votes to recommend that action be taken against the respondent, it shall file forthwith a copy of the recommendation, certified by the Chairperson, together with the transcript of the proceedings and the findings and conclusions, with the Chief Justice of the Supreme Court for the distribution to the members of the Court. The Commission shall serve upon the respondent written notice of the filing, together with a copy of its findings and recommendation and a transcript of the proceedings. Such notice shall be mailed to the respondent's last-known place of residence or may be personally delivered to him or her by a member of the Commission. The transcript and the findings, conclusions and recommendation of the Commission shall be public documents, except when they relate to a hearing concerning a private reprimand, in which case they shall be kept confidential.

Rule 30. Suspension of judge pending review. - Whenever the Supreme Court reviews a Commission recommendation for the suspension, immediate temporary suspension, removal or retirement of a judge other than a justice of the Supreme Court, the Commission may, in its discretion, order the suspension of the judge pending the completion of such review. Such suspension shall be without loss of compensation.

Rule 31. Retirement of judges for incapacity or disability. - (a) Whenever the Commission shall, after investigation and hearing, determine that a respondent has a physical or mental disability that seriously interfered and will continue to interfere with the performance of his or her duties, it may recommend to the Supreme Court the retirement of such judge, saving to such judge all retirement benefits that have accrued to him or her, if any. Such investigation, hearing, and recommendation shall be confidential. A justice of the Supreme Court may not be retired under this section without his or her consent, and where consent to such retirement is withheld, a further recommendation shall be made to the Speaker of the House of Representatives to initiate proceedings for the removal of such judge pursuant to the provisions of article X, section 4 of the constitution.

(b) Whenever any judge has served in judicial office without having reached the prescribed age that would entitle him or her to retirement benefits, the Commission, proceeding pursuant to subsection (a) of this section, may recommend to the Supreme Court that such judge be retired and that his or her pension rights be accelerated to become effective as of the date of his or retirement. The Supreme Court may endorse such recommendation and may forward such recommendation

to the General Assembly for appropriate legislative action in order that his or her pension rights be so accelerated. Judges retired under this section shall be deemed to have retired voluntarily. Any judge shall be disqualified and prohibited from acting in his or her judicial capacity while any recommendation for his or her retirement, based upon physical or mental disability, is pending before the Supreme Court; provided, however, that such disqualification shall be without loss of compensation.

Rule 32. Effective date. - These rules shall take effect on September 13, 1993.