

# **Rules of Procedure of the Arkansas Judicial Discipline and Disability Commission**

## **Rule 1. Organization Of Commission.**

A. Composition of Commission. In accordance with Ark. Const. Amend. 66 and Act 637 of 1989, the Commission on Judicial Discipline and Disability shall have nine members who shall be residents of Arkansas. Three members shall be justices or judges appointed by the Supreme Court (judicial members); three shall be lawyers admitted to practice in this state, who are not justices or judges, one appointed by the Attorney General, one by the President of the Senate, and one by the Speaker of the House of Representatives (lawyer members); and three members who are neither lawyers nor sitting or retired justices or judges shall be appointed by the Governor (public members).

B. Meetings. The Commission shall hold an organization meeting immediately upon establishment and biannually thereafter, and shall meet at least monthly at announced dates and places, except when there is no business to be conducted. Meetings shall be called by the Chair or upon the written request of three members of the Commission.

C. Terms of Commission Members and Alternates. With the exception of the initial appointees, whose initial terms shall be made so that reappointments and later appointments are to be staggered, Commission members and alternates shall serve for terms of six (6) years and shall be eligible for reappointment to second full terms. (Initial appointees shall be eligible for second terms of six (6) years.) At its organization meeting, the members of the Commission shall draw for lengths of initial terms so that one member in each group of members, judicial, lawyer, and public, shall have a four (4) year initial term, one member in each group shall have a five (5) year term, and one member in each group shall have a six (6) year term. After the terms of the initial appointees have been established, slips of paper, each with the name of the alternate, shall be placed in a container. Each member shall draw one of the slips of paper, and the alternate whose name is thus drawn shall have the same length of term as the member who drew his or her name.

D. Officers. At the organization meeting the members of the Commission shall elect one among them to serve as chair and another to serve as vicechair.

The vicechair shall perform the duties of the chair whenever he is absent or unable to act.

E. Quorum; Voting Requirements. Five members of the Commission shall constitute a quorum for the transaction of business. A finding of probable cause shall require the concurrence of a majority of the members present. Any alternate member may serve in the place of any member of the same category whenever such member is disqualified or unable to serve and upon the call of, or on behalf of, the chair. An alternate member who is present at a Commission meeting but who has not been called to serve may neither be included in a quorum count nor vote on any matter being considered at such meeting. Whenever an alternate member is called to serve in the place of a member of the Commission, an announcement with respect thereto shall be made at the commencement of the meeting. A recommendation that discipline be imposed shall require the concurrence of a majority of the members of the Commission.

F. Investigation Panels and Hearing Panels. The initial review and investigation of complaints shall be conducted by and at the direction of an Investigation Panel, which shall act only by majority vote of the Panel. At the regular organization meetings of the Commission, the chair shall appoint from the nine Commission members and nine Alternates no fewer than three Investigation Panels of three members, each consisting of one judicial member, one lawyer member, and one public member. Thus constituted, these Investigation Panels shall conduct and direct the initial review and investigation of complaints without the knowledge or involvement of the Commission whose members shall serve as the Hearing Panel and conduct the formal proceedings to inquire into charges against a judge.

Complaints shall be allocated among the Investigation Panels in rotation. No Commission member or Alternate shall serve on a Hearing Panel involving any matter considered by an Investigation Panel of which he or she was a member.

## **Rule 2. Powers And Duties Of The Commission.**

A. Rules and Forms. The Commission may recommend to the Supreme Court adoption or amendment of rules with regard to all disciplinary and disability proceedings, promulgate additional rules of procedure not inconsistent with these rules, and require the use of appropriate forms.

B. Annual Report. The Commission shall have prepared an annual report of its activities for presentation to the Supreme Court and the public at the end of each calendar year.

## **Rule 3. Financial Arrangements For Commission.**

A. Compensation Proscribed. The Commission members shall serve without compensation for their services.

B. Expenses Allowed. The Commission members shall be reimbursed for expenses necessarily incurred in the performance of their duties.

C. Authorization for Payments. Expenses of the Commission as provided in section 2.(d) of Act 637 of 1989, shall be authorized to be paid in accordance with the approved Commission budget.

## **Rule 4. Commission Office.**

The Commission shall establish a permanent office in a building open to the public. The office shall be open and staffed at announced hours.

## **Rule 5. Duties Of The Director.**

The Commission shall prescribe the duties and responsibilities of the director which shall include the authority to:

- (1) Consider information from any source and receive allegations and complaints;
- (2) Make preliminary evaluations;
- (3) Screen complaints;

- (4) Conduct investigations;
- (5) Maintain and preserve the Commissions records, including all complaints, files and written dispositions;
- (6) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;
- (7) Prepare the Commission's budget for its approval and administer its funds;
- (8) Employ and supervise other members of the Commission's staff;
- (9) Prepare an annual report of the Commission's activities; and
- (10) Employ, with the approval of the Commission, special counsel, private investigators or other experts as necessary to investigate and process matters before the Commission and before the Supreme Court.

## **Rule 6. Jurisdiction 1**

The Commission shall administer the judicial discipline and disability system, and perform such duties as are required to enforce these rules. The Commission shall have jurisdiction over any "judge" regarding allegations of misconduct or disability, pursuant to the limitations set forth below.

A. Establishment of Grounds for Discipline. The grounds for discipline are those established in part (b) of Ark. Const. Amend. 66 and those established by Act 637 of 1989.

B. Distinguished from Appeal. In the absence of fraud, corrupt motive or bad faith, the Commission shall not take action against a judge for making findings of fact, reaching a legal conclusion or applying the law as he or she understands it. Claims of error shall be considered only in appeals from court proceedings.

C. Judge-in-Office. As used in this section, "judge" is anyone, whether or not a lawyer, who is an officer of the judicial system and who is eligible to perform judicial functions, including a justice, magistrate, court commissioner, special master, referee, whether full-time or part-time. The Commission shall have jurisdiction over allegations of misconduct occurring prior to or during service as a judge, and regarding issues of disability during service as a judge.

D. Former Judge. The Commission has continuing jurisdiction over any former judge regarding allegations of misconduct occurring before or during service as a judge, provided that a complaint is received within one year of the person's last service as a judge unless the person has actively concealed material facts giving rise to the complaint.

E. Overlapping Jurisdiction. Nothing in these rules, or in the provisions regarding jurisdiction of the Commission, shall be construed as limiting in any way the jurisdiction of the Arkansas Supreme Court Committee on Professional Conduct.

## **Rule 7. Disclosure.**

A. Any action taken by the Commission after investigation of a judge shall be communicated to the judge by letter which shall become public information. If the allegations leading to the investigation have proven to be groundless, the letter to the judge shall so state.

B. If the Commission finds it necessary to file a formal statement of allegations against a judge and to proceed to a hearing, the statement of allegations and the hearing shall be open to the public as shall the records of formal proceedings. The Commission may, however, conduct its deliberations in executive session which shall not be open to the public. Any decision reached by the Commission in such an executive session shall be announced in a session open to the public.

C. Investigatory records, files, and reports of the Commission shall be confidential, and no disclosure of information, written, recorded, or oral, received or developed by the Commission in the course of an investigation relating to alleged misconduct or disability of a judge, shall be made except as stated in A. and B. above or as follows:

(1) Upon waiver in writing by the judge under consideration at the formal statement of allegations stage of the proceedings;

(2) Upon inquiry by an appointing authority or by a state or federal agency conducting investigations on behalf of such authority in connection with the selection or appointment of judges;

(3) In cases in which the subject matter or the fact of the filing of charges has become public, if deemed appropriate by the Commission, it may issue a statement in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, and to state that the judge denies the allegations;

(4) Upon inquiry in connection with the assignment or recall of a retired judge to judicial duties, by or on behalf of the assigning authority;

(5) Where the circumstances necessitating the initiation of an inquiry include notoriety, or where the conduct in question is a matter of public record, information concerning the lack of cause to proceed shall be released by the Commission;

(6) If during the course of or after an investigation or hearing the Commission reasonably believes that there may have been a violation of any rules of professional conduct of attorneys at law, the Commission may release such information to any committee, commission, agency or body within or outside the State empowered to investigate, regulate or adjudicate matters incident to the legal profession; or

(7) If during the course of or after an investigation or hearing, the Commission reasonably believes that there may have been a violation of criminal law, the Commission shall release such information to the appropriate prosecuting attorney.

D. It shall be the duty of the Commission and its staff to inform every person who appears before the Commission or who obtains information about the Commission's work of the confidentiality requirements of this rule.

E. Any person who knowingly violates the confidentiality requirements of this rule shall be subject to punishment for contempt of the Arkansas Supreme Court.

## **Rule 8. Procedures Of Commission Regarding Conduct Of A Judge.**

A. *Initiation of Inquiry.* In accordance with these rules, any sworn or verified complaint brought to the attention of the Commission stating facts that, if true, would be grounds for discipline, shall be good cause to initiate an inquiry relating to the conduct of a judge. The Commission on its own motion may make inquiry with respect to the conduct of a judge. All complaints shall bear the name of the complainant, unless anonymous or based upon media reports. If the complaint is anonymous or based upon a media report, it shall be signed by the Executive Director, but not sworn. If the Executive Director, an individual staff member, Commissioner member or Alternate files, solicits, or initiates a complaint, he or she shall sign the sworn complaint. All contacts with potential witnesses shall be in accordance with these Rules.

B. *Screening.* The Executive Director shall dismiss all complaints that are clearly outside of the Commission's jurisdiction. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant, if any, and the judge shall be informed in writing of the dismissal.

C. *Investigation of Complaints.* All complaints not summarily dismissed by the Executive Director shall then be presented to an Investigation Panel. The Investigation Panel shall dismiss all complaints for which sufficient cause to proceed is not found by that Panel. If the complaint is not dismissed, the Panel shall then direct the staff to make a prompt, discreet, and confidential investigation. In no instance may the staff undertake any investigation or make any contact with anyone other than the complainant and the judge unless authorized to do so by the Investigation Panel. If authorized by the Investigation Panel, subpoenas may be used to obtain documents, procure witness statements, and collect other evidence requested by the Panel. Upon completion, the Panel shall review the findings from the investigation. The Panel shall dismiss all complaints for which sufficient cause to proceed is not found. A report as to matters so dismissed shall be furnished to the Commission at its next meeting. The complainant and the judge shall be informed in writing of the dismissal.

D. *Mandatory Notice to the Judge.* If a complaint, or any portion of it, is not dismissed by the Investigation Panel following the discreet and confidential investigation, then the Panel shall notify the judge in writing immediately of those portions of the complaint that the Panel has concluded warrant further examination and attention. The judge shall receive the complaint, or any portion of the complaint that is not dismissed, along with any information prepared by or for the Panel or staff to enable the judge to adequately respond to the issues in the complaint. The judge shall be invited to respond to each of the issues from the complaint that the Panel has identified as possible violations of the Arkansas Code of Judicial Conduct. The time for the judge to respond shall be within 30 days unless shortened or enlarged by the Investigation Panel for good cause.

E. *Dismissal or Formal Statement of Allegations.* The Investigation Panel may dismiss the complaint with notice to the complainant and the judge, upon a finding of probable cause that the judge violated the Code of Judicial Conduct, it may direct that a formal statement of allegations citing specific provisions of the Code of Judicial Conduct alleged to have been violated and the

specific facts offered in support of the alleged violation(s), be prepared and served on the responding judge along with all materials prepared by the Panel or staff. Service may be by any means provided for service of process in the Arkansas Rules of Civil Procedure.

F. *Answer* The judge shall file a written answer with the Executive Director within thirty (30) days after the service upon him/her of the statement of allegations, unless such time is enlarged by the Executive Director. The answer may include a description of circumstances of a mitigating nature bearing on the charge.

## ***HISTORY***

Amended and effective by per curiam order Sep. 26, 2013.

### **Rule 9. Hearing On Formal Statement Of Allegations**

A. *Hearing*. The hearing on a formal statement of allegations prepared against a judge shall be before a Hearing Panel comprised of a full nine member Commission on which no member of the Investigation Panel which considered the initial complaint may serve. This same nine-member Hearing Panel shall be the only panel to hear the particular allegations, whether the hearing is recessed, continued, or requires more than one day.

B. *Scheduling*. The Commission shall, upon the receipt of the judge's response or upon expiration of the time to answer, schedule a public hearing to commence within 90 days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time and place of the hearing.

C. *Discovery*. The respondent judge and the Commission shall be entitled to discovery in accordance with the Arkansas Rules of Civil Procedure. Both the Commission and the respondent judge shall have the authority to issue summonses for any persons and subpoenas for any witnesses, and for the production of papers, books, accounts, documents, records, or other evidence and testimony relevant to an investigation or proceeding. The summonses or subpoenas shall be served in any manner provided by the Arkansas Rules of Civil Procedure for service of process. Any fees or expenses incurred for issuing or service of subpoenas or summonses shall be borne by the requesting party. The Circuit Court of Pulaski County shall have the power to enforce process.

D. *Right to Counsel*. The judge shall be entitled to counsel of his/her own choice at his or her own expense.

E. *Conduct of Hearing*. The Arkansas Rules of Evidence shall apply and all testimony shall be under oath. Commission attorneys, or special counsel retained for the purpose, shall present the case to the fact finder. The judge whose conduct is in question shall be permitted to adduce evidence and cross examine witnesses. Facts justifying action shall be established by clear and convincing evidence. The proceedings shall be recorded verbatim.

F. *Immunity from Prosecution*. The Commission and the judge are authorized to request from the appropriate prosecuting authorities immunity from criminal prosecution for a reluctant witness, using the procedure outlined in Ark. Code Ann. § 1643601, et seq. 10

G. Public Hearing. The hearing shall be open to the public and recorded by a certified court reporter.

H. Determination. The Commission shall, within sixty (60) days after the hearing, submit its finding and recommendations, together with the record and transcript of the proceedings. Both the decision of the Commission and a copy of the record shall be served upon the judge.

I. Disposition. In its report, the Commission shall dispose of the case in one of the following ways: (1) If it finds that there has been no misconduct, the complaint shall be dismissed and the Director shall send the judge and each complainant notice of dismissal; (2) If it finds that there has been conduct that is cause for discipline but for which an admonishment or informal adjustment is appropriate, it may so inform or admonish the judge, direct professional treatment, counseling, or assistance for the judge, or impose conditions on the judge's future conduct; and (3) If it finds there has been conduct that is cause for formal discipline, it shall be imposed as set forth in Rule 9.

J. Commission Decision - Formal Discipline. The recommendation for formal discipline shall be concurred in by a majority of all members of the Commission and may include one or more of the following: (1) A recommendation to the Supreme Court that the judge be removed from office; (2) A recommendation to the Supreme Court that the judge be suspended, with or without pay; (3) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be granted leave with pay; (4) Upon a finding of physical or mental disability, a recommendation to the Supreme Court that the judge be retired and considered eligible for his/her retirement benefits, pursuant to Ark. Code Ann. § 248217 (1987); (5) Reprimand or censure.

K. Dissent. If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the Supreme Court.

L. Opinion to be Filed. The final decision in any case which has been the subject of a formal disciplinary hearing shall be in writing and shall be filed with the clerk of the Arkansas Supreme Court, along with any dissenting or concurring opinion by any Commission member. The opinion or opinions in any case must be filed within seven (7) days of rendition.

M. Witness Fees. All witnesses shall receive fees and expenses in the amount allowed by rule or statute for witnesses in civil cases. Expenses of witnesses shall be borne by the party calling them.

## **Rule 10. Interim Sanctions.**

A. Suspension with Pay. In instances of the (1) filing of an indictment or information charging a judge with a felony under state or federal law, or (2) the filing of a misdemeanor charge against a judge or justice where his ability to perform the duties of his office is adversely affected, the Commission shall convene within ten (10) days for the purpose of considering a recommendation to the Supreme Court that the judge or justice be temporarily suspended with pay pending the outcome of any disciplinary determination.

B. Effect on Commission Action. A temporary suspension with pay as an interim sanction shall not preclude action by the Commission with respect to the conduct that was the basis for the felony or misdemeanor charge, nor shall the disposition of the charge in any manner preclude such action.

## **Rule 11. Ex Parte Communications**

Commission Members and Alternates shall not communicate ex parte with the Executive Director or the staff of the Commission, or the respondent judicial officer, his or her family, friends, representatives, or counsel regarding a pending or impending investigation or disciplinary matter except as explicitly provided for by law or Rules of the Commission, or for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits. A violation of this rule may be cause for removal of any member or Alternate from a panel before which a matter is pending.

## **Rule 12. Supreme Court Review.**

A. Filing and Service. The Executive Director of the Commission shall prepare the record consisting of the transcript of the proceedings, exhibits, and all pleadings, and the Chair of the Commission shall certify the record prepared by the Executive Director. The Commission shall file the record and the Commission's report, findings, and recommendations with the Supreme Court no later than 30 days after the filing made under Rule 9(L) and shall serve copies of its report, findings, and recommendations upon the judge.. On application by the Commission, the court may direct the withholding of a recommendation regarding discipline pending the determination of other specified matters.

B. Prompt Court Consideration. The Clerk of the Supreme Court shall docket any Commission matter for expedited consideration.

C. Objection and Appeal. Within twenty days of service of the Commission's report, findings, and recommendations, the judge may appeal the findings and recommendations to the Supreme Court by filing a notice of appeal with the Clerk of the Supreme Court with a copy to the Executive Director of the Commission. The notice of appeal shall designate the findings and recommendations of the Commission from which appeal is sought. The appeal shall be processed in accord with the Rules of the Supreme Court and Court of Appeals for civil matters with the judge as the appellant the Commission as the appellee. The judge shall file the appellant's brief with the Supreme Court within thirty days of the filing of the notice of appeal.

D. Report not contested. If the judge does not challenge or object to the Commission's report, finding, and recommendations, the Supreme Court shall review the record and Commission's report, findings, and recommendations and make a decision pursuant to subsection G of this rule. No briefs are filed.

E. Supplementation. If the court desires an expansion of the record or additional findings, either with respect to the recommendation for discipline or sanction to be imposed, it shall remand the case to the Commission for the appropriate directions, retaining jurisdiction, and shall withhold action pending receipt of the additional filing. The Supreme Court may order additional filings or oral argument as to the entire case or specified issues. The Supreme court may accept or solicit supplementary filings with respect to medical or other information without remand and prior to an



imposition of discipline provided that the parties have notice and opportunity to be heard thereon.

F. Scope of Discipline. The Supreme Court, when considering removal of a judge, shall determine whether discipline as a lawyer also is warranted. If removal is deemed appropriate, the court shall notify the judge, the Commission and the Supreme Court Committee on Professional Conduct and give each an opportunity to be heard on the issue of the imposition of lawyer discipline.

G.. Decision. Based upon a review of the entire record the Supreme Court shall file a written opinion and judgment directing such disciplinary action as it finds just and proper. It may accept, reject, or modify in whole or in part, the findings and recommendation of the Commission. In the event that more than one recommendation for discipline for the judge is filed, the court may render a single decision or impose a single sanction with respect to all recommendations. The court may direct that no motion for rehearing will be entertained, in which event its decision shall be final upon filing. If the court does not so direct, the respondent may file a motion for rehearing within fifteen (15) days of the filing of the decision.

H. Certiorari. The Supreme Court may bring up for review any action taken upon any complaint filed with the Commission, and may also bring up for review a case in which the Commission has failed to act.

### **Rule 13. Cases Involving Allegations Of Mental And Physical Disability.**

A. Procedure. In considering allegations of mental and physical disability, the Commission shall, insofar as applicable and except as provided in Paragraph B., follow procedure established by these rules.

B. Special Provisions.

(1) If a complaint or statement of allegation involves the mental or physical health of a judge, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the judge shall be required to produce his medical records.

(2) In the event of a waiver of medical privilege, the judge shall be deemed to have consented to an examination by a qualified medical practitioner designated by the Commission.

(3) The Commission shall bear the costs of the proceedings, including the cost of a physical or mental examination ordered by it.

### **Rule 14. Involuntary Retirement.**

A judge who is advised to retire voluntarily and who refuses may be retired involuntarily by the Supreme Court following the filing of a formal complaint, a public hearing thereon before the Commission, and a report containing a finding that he is physically or mentally disabled, and recommendation to the court that such action be taken.

## **Rule 15. Complaints Shall Be Adjudicated Or Dismissed Within 18 Months.**

A sworn complaint shall be dismissed if not disposed of as provided in these Rules within 18 months from receipt of the complaint by the Commission. The following periods are excluded in computing the time for disposition:

- A. All periods of delay granted at the request of the judge from and to a date certain.
- B. All periods of suspension under Rule 10.
- C. All periods of time in which the judge has concealed or conspired to conceal facts that would be evidence or could lead to evidence of any violation of the code of judicial conduct.

The dismissal of a complaint under this or any Rule of the Commission shall be an absolute bar to any subsequent filing of the complaint or any complaint that could have been joined with the complaint dismissed. (Added March 13, 2008.)