

**RULES OF THE MISSISSIPPI
COMMISSION ON JUDICIAL PERFORMANCE**

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**RULES OF THE MISSISSIPPI
COMMISSION ON JUDICIAL PERFORMANCE
Adopted July 9, 1980**

RULE 1. GENERAL

A. Definitions. In these rules, unless the context or subject matter otherwise requires:

- (1) "Commission" means the Mississippi Commission on Judicial Performance.
- (2) "Supreme Court" means the Mississippi Supreme Court.
- (3) "Judge" means a Justice of the Supreme Court or a judge of the Court of Appeals,

Circuit Court, Chancery Court, County Court, Family Court, Justice Court, Municipal Court, and all other courts in existence in Mississippi, including someone serving as a part-time judge, special judge or a judge in senior status. Reference to "the judge" shall mean any judge whose conduct or mental or physical condition is under consideration.

(4) "Chairman" means the chairman of the Commission or the vice-chairman when serving as chairman.

(5) "Member" means a member of the Commission or an alternate member serving in the place of a member of the Commission.

(6) "Shall" is mandatory and "may" is permissive.

(7) The masculine gender includes the feminine gender.

B. Purpose. The Commission was created in 1979 by the Mississippi Legislature and the voters of the State of Mississippi by constitutional amendment. The Commission shall enforce the standards of judicial conduct, inquire into judicial disability and conduct, protect the public from judicial misconduct and disabled judges, and protect the judiciary from unfounded allegations. All proceedings before the Commission shall be of a civil nature, not criminal, as the purpose of the Commission is to be rehabilitative and educational as well as disciplinary.

C. Construction of Rules. These rules shall be liberally interpreted so as to carry out the mandate of the electorate by its approval of Section 177A of the Mississippi Constitution of 1890.

[Amended effective June 29, 1995; amended effective March 27, 1997.]

RULE 2. JURISDICTION

The Commission shall consider conduct of a judge or the physical or mental condition of a judge. In the absence of fraud, corrupt motive, or bad faith, the Commission shall not consider allegations against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. The Commission may consider allegations against a judge regarding any conduct prior to January 1, 1980, where such prior conduct relates to the judge's ability to serve, brings discredit to the judiciary, or adversely affects the administration of justice. Notwithstanding that a judge has resigned his office, the Commission shall retain jurisdiction over that judge if prior to his resignation the Commission has initiated an inquiry into the conduct of the judge.

RULE 3. ORGANIZATION

A. Membership and Terms. The membership of the Commission shall be as prescribed in Section 177A of the Mississippi Constitution of 1890 for such terms as prescribed by general law.

B. Vacancies. When a judge ceases to be a judge of the court from which he was appointed or whenever any member becomes otherwise ineligible to hold office, his membership shall terminate. The Chairman shall promptly notify the appointing authority of the vacancy. The appropriate alternate member shall serve as a temporary replacement until such time as the appointing authority shall duly certify to the Commission a replacement member for the remainder of the unexpired term. An alternate member appointed to fill an unexpired term shall be eligible for an appointment for a full term. If a member who is a judge becomes a respondent to a formal complaint under Rule 6 before the Commission, that member shall be disqualified from attending meetings and shall not perform any Commission duties until the formal complaint is finally disposed of. The appointing authority shall be notified and shall appoint another alternate member to serve during the term of disability or disqualification. A formal complaint against a member shall be given highest priority on the Commission's docket and shall be brought to a conclusion expeditiously unless waived by the member.

C. Alternate Members. An alternate member shall serve in the place of a member of the same category whenever such member is absent, disqualified, unwilling or unable to serve.

D. Disqualification. A member shall be disqualified to serve in any inquiry or complaint when (1) he is related to the judge or complainant by affinity or consanguinity, (2) the judge is a resident of his county, or (3) the member has personal knowledge or information which could interfere with the member impartially considering such matter.

A member may voluntarily disqualify himself when (1) the member resides in the judge's judicial district; or (2) upon a showing of good cause, the Commission approves the member's request for voluntary disqualification.

E. Officers. A Chairman and Vice-Chairman shall be elected each year at the January meeting to serve from January 1 through December 31 of such year. The Vice-Chairman shall perform the duties of the Chairman whenever he is absent or unable to act.

F. Executive Director. The Commission shall appoint a member of the Mississippi

State Bar as executive director to serve at its pleasure. He shall neither engage in the private practice of law nor serve in any judicial capacity.

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

- (1) Receive information from any proper source, including allegations and complaints;
- (2) Make preliminary evaluations;
- (3) Screen complaints and make recommendations to the Commission;
- (4) Conduct and/or supervise investigations as directed by the Commission;
- (5) Maintain and preserve in confidentiality the Commission's records, including all complaints, files and written dispositions;
- (6) Maintain statistics concerning the operations 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) Recommend employment and supervise other members of the Commission's staff;
- (9) Prepare an annual report of the Commission's activities;
- (10) Employ, upon the direction 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; and
- (11) Represent the Commission as counsel in formal proceedings and in other proceedings, upon the direction of the Commission.
- (12) Represent the Commission at conferences, seminars, and other educational functions.

G. Meetings. The Commission 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 Chairman or upon the written request of two (2) members.

H. Quorum; Voting Requirements. Four members (or their alternates) shall constitute a quorum for the transaction of all Commission business. Commission business may be decided by a majority vote of the members present. A two-thirds (2/3) vote of the Commission shall be required for any action pertaining to its disciplinary authority.

I. Rules and Forms. These rules shall control complaints to, investigations by, and proceedings by the Commission. The Commission may, for good cause, suspend any or all of its rules upon a two-thirds (2/3) vote of the Commission. The Commission shall prescribe such forms as it deems appropriate.

J. Commission Office. The Commission shall establish a permanent office, in a building approved by the Capitol Commission, which shall be open to the public at regular announced hours.

K. Finances. The expenses of the Commission shall be authorized to be paid in accordance with the approved Commission budget and in compliance with applicable procedures established by the Auditor of Public Accounts. In the event of an unanticipated funding shortage, the Commission shall not curtail the discharge of its constitutionally mandated operations, but shall authorize the executive director to seek a deficit appropriation to fund the Commission's operations.

[Amended effective June 29, 1995; amended January 9, 1998.]

RULE 4. CONFIDENTIALITY

A. All Proceedings. All proceedings before the Commission shall be confidential, except upon unanimous vote of the Commission, as prescribed in Section 177A of the Mississippi Constitution of 1890. Confidentiality shall attach upon the initiation of an inquiry and shall include all records, files and reports of the Commission. All proceedings before the Supreme Court and any final decisions made by the Supreme Court shall be made public as in other cases at law. However, an appeal from a private admonishment by the Commission shall be confidential unless on appeal the Supreme Court imposes sanctions harsher than the private admonishment.

B. Disclosure. By unanimous vote, the Commission may waive confidentiality and disclose such information deemed appropriate by the Commission. Such action may be taken upon the Commission's own motion or upon written request of the judge.

C. Violation by Staff. Employment of the executive director or any member of the staff may be terminated for violation of confidentiality.

[Amended March 7, 2002.]

Comment

_____ Proceedings before the Commission and the Court in matters of judicial discipline are governed by Section 177A of the Mississippi Constitution. Generally, unless the Commission unanimously votes to make its proceedings public, they remain confidential. However, except in the case of an appeal by a judge of a private admonishment issued by the Commission against that judge, and in cases where the Court expressly seals the record following a private reprimand issued by the Court after the Commission has filed recommendations for more severe sanctions, proceedings before the Court and decisions of the Court are public.

[Adopted March 7, 2002.]

RULE 5. PROCEDURES OF COMMISSION

A. Initiation of Inquiry. Upon receipt of proper information regarding a judge's conduct or physical or mental condition, the Commission shall initiate a confidential inquiry to determine whether the matter is within the Commission's jurisdiction. On its own motion, the Commission may make inquiry concerning a judge's conduct or physical or mental condition, and may file a formal complaint based upon the results of such inquiry on its own motion.

B. Preliminary Inquiry. Upon receipt of such information, the executive director shall make a prompt, discreet, and confidential preliminary inquiry and evaluation under guidelines approved by the Commission. The executive director shall then make a report to the Commission.

After such report, the Commission shall dismiss complaints which are not within the Commission's jurisdiction, relate only to claimed errors of law or fact, or are unfounded. The complainant shall be informed in writing of the Commission's action.

C. Notice to Judge. The Commission shall not notify a judge of any initial complaint dismissed after preliminary inquiry, unless otherwise determined by the Commission.

When the initial complaint is not dismissed, within ninety (90) days of its receipt the judge shall be notified of the investigation and nature of the charge. Failure to make timely notification shall not be grounds for dismissal of any investigation or proceeding. Such notice shall be in writing and may be transmitted by a member of the Commission, the

executive director, any adult person designated by the Commission, or by certified or registered mail addressed to the judge at his last known residence of record.

When a judge has been notified of an investigation and the Commission has dismissed the matter, the judge shall be so notified and the file shall be closed.

D. Sworn Complaint or Statement in Lieu of Complaint. If the initial complaint is not dismissed, the complainant shall be asked to file a detailed, signed, sworn complaint against the judge. The sworn complaint shall state the names and addresses of the complainant and the judge, the facts constituting the alleged misconduct, and, so far as is known, whether the same or a similar complaint by the complainant against the judge has ever been made to the Commission. A sworn complaint may be waived by a two-thirds (2/3) vote of the Commission; a sworn complaint shall not be required in an inquiry initiated by the Commission on its own motion.

E. Informal Conference. The Commission may request the judge to attend an informal conference concerning the matters relating to his judicial performance.

F. Right to Counsel. At all stages of the Commission's proceedings, the judge shall be entitled to counsel.

G. Subpoena. The subpoena power granted the Commission by law shall apply at any stage of the investigation or any proceedings. The judge shall be entitled to subpoenae for any formal hearing. All subpoenae shall be on the form prescribed by the Commission, and the Commission shall have the power to enforce process.

H. Earwiggling Prohibited. No person shall discuss or attempt to discuss with or in the presence or hearing of a member anything concerning an inquiry or proceeding then pending with or likely to be considered by the Commission, except in accordance with these rules. Any person knowingly violating this or any other rule of the Commission may be guilty of contempt.

[Amended effective June 29, 1995.]

RULE 6. PROBABLE CAUSE

A. Grounds for Discipline and Retirement. The grounds for discipline and retirement, as prescribed by the Constitution, are:

- (1) Actual conviction of a felony in a court other than a court of the State of

Mississippi¹;

- (2) Willful misconduct in office;
- (3) Willful and persistent failure to perform his duties;
- (4) Habitual intemperance in the use of alcohol or other drugs;
- (5) Conduct prejudicial to the administration of justice which brings the judicial office into disrepute;
- (6) Physical or mental disability seriously interfering with the performance of his duties, which disability is or is likely to become of a permanent character;
- (7) Any willful violation of law constituting a serious misdemeanor or felony;
- (8) Any violation of the code of judicial conduct; and
- (9) Any violation of the rules of professional conduct as adopted by the Supreme Court.

B. Disposition. The Commission shall dispose of the case in one (1) of the following ways:

- (1) If it finds that there has been no misconduct, the case shall be dismissed.
- (2) If it finds that there has been misconduct for which a private admonishment constitutes adequate discipline, it shall issue the admonishment. The complainant shall be notified that the matter has been resolved. The Commission shall notify the Chief Justice of the Supreme Court of its action.
- (3) The Commission may enter into a memorandum of understanding with the judge concerning his future conduct or submission to professional treatment or counseling.
- (4) If it is determined that probable cause exists to require a formal hearing, it shall

¹Under Section 175, Mississippi Constitution of 1890, and Section 25-5-1, Mississippi Code of 1972, public officers convicted of a crime in this state shall be removed from office. Section 25-5-1 was amended in 1979 to provide for removal upon conviction of certain crimes in federal courts and the courts of other states as well as in state courts.

so notify the judge by service of a notice and a formal complaint.

C. Formal Complaint. The formal complaint shall be entitled "BEFORE THE MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE, INQUIRY CONCERNING A JUDGE, NO. _____." The formal complaint shall identify any complainant and shall specify in ordinary and concise language the charges against the judge. The notice shall advise the judge of his right to file a written, sworn answer to the charges against him within thirty (30) days after service of the notice upon him. The notice and formal complaint shall be served upon the judge by personal service by a member of the Commission, the executive director, or by any adult person designated by the Commission, or by certified or registered mail addressed to the judge at his last known residence of record.

D. Answer. Within thirty (30) days after service of the notice and the formal complaint, the judge may file with the Commission a sworn answer or motions. The formal complaint and answer shall constitute the pleadings. Thereafter, no further motions or pleadings may be filed unless the Commission shall first grant leave.

[Amended effective June 29, 1995; amended April 4, 2002.]

RULE 7. INTERIM SUSPENSION OF JUDGE

Upon the filing of a formal complaint, the Commission may, in its discretion, issue its order directed to the judge to show good cause before the Commission why the Commission should not recommend to the Supreme Court that he be suspended from office while the inquiry is pending. The order to show cause shall be returnable before the Commission at a designated place and at a time certain, at which place and time the Commission shall consider the question of suspension. Either after issuing its order to show cause or without such order to show cause, the Commission may recommend to the Supreme Court that the judge be suspended from performing the duties of his office, pending final determination of the inquiry. If the Commission recommends suspension, such recommendation and a transcript of all proceeding of the Commission shall be immediately forwarded to the Clerk of the Supreme Court. An interim suspension shall not preclude further action by the Commission.

RULE 8. FORMAL HEARING

A. Scheduling of Hearing. The Commission shall schedule a formal hearing concerning the charges. The hearing shall be held no sooner than five (5) days after filing of an answer or after the deadline for filing of the answer if no answer is filed. Notice of the hearing shall be sent to the judge at his last known residence of record or to his attorney.

At the date set for the formal hearing, the hearing shall proceed whether or not the judge has filed an answer, and whether or not he appears in person or through counsel. The failure of the judge to answer or appear may be taken as evidence of the facts alleged in the formal complaint.

B. Discovery and Procedure. In all formal proceedings the Mississippi Rules of Civil Procedure shall be applicable except as otherwise provided in these rules. The sole parties to formal proceedings shall be the Commission and the judge.

C. Fact finder. The formal hearing shall be conducted before the entire Commission or before a committee of the Commission, a master or a Fact finder designated by the Commission.

D. Conduct of Hearing. Facts requiring action of the Commission shall be established by clear and convincing evidence.

The Mississippi Rules of Evidence shall apply to any formal hearing. All witnesses shall take an oath or affirmation to tell the truth. All Commission members, staff, witnesses, counsel, or any other person privy to any hearing before the Commission shall take an oath of secrecy concerning all proceedings before the Commission, violation of which shall be punishable as contempt.

The Commission shall employ a member of the Mississippi State Bar to prepare and present the formal complaint to the Commission and otherwise act as counsel and to represent the Commission before the Supreme Court or direct the Executive Director to so represent the Commission as counsel.

The Commission shall designate one (1) of its judicial or attorney members to preside over each formal hearing. He shall dispose of all preliminary matters and shall rule on procedural and evidentiary matters during the course of the hearing.

The judge shall have the right to present evidence and to produce and cross-examine witnesses.

The judge shall be limited to two (2) character witnesses who may testify at the formal hearing; he may submit the affidavits of any other character witnesses he deems appropriate.

The hearing shall be recorded by a reporter employed by the Commission.

E. Determination. If the full Commission has held the formal hearing, it shall

promptly prepare its findings of fact and any recommendations.

When a committee, master, or Fact finder has held the formal hearing, its findings of fact and recommendations shall be filed with the Commission within thirty (30) days after the hearing's conclusion; provided, however, the Commission may grant additional time for the preparation of such findings and recommendations. The executive director shall promptly deliver to the judge or his legal representative and to the Commission counsel a copy of the transcript of the proceedings and a copy of the findings and recommendations. Within ten (10) days from receipt of such copies, the judge and Commission counsel may submit written objections to the findings and recommendations. The Commission shall review the findings and recommendations, the written objections, and the transcript; and it may accept, modify, or reject, in whole or in part, the findings and recommendations and may make additional findings of fact and recommendations.

F. Commission Recommendation. The Commission recommendations to the Supreme Court for discipline may include removal from office, suspension, fine, public censure or reprimand, or retirement. In addition, the Commission may privately admonish a judge as provided by law.

The Commission findings and recommendation and the numerical vote shall be recorded; all other Commission action shall remain confidential.

G. Dissent. If any member dissents from a recommendation as to discipline or retirement, the dissenting recommendation shall also be transmitted to the Supreme Court. Only the dissent, with the number of dissenters shall be transmitted; the names of the individual dissenters shall remain confidential.

H. No Discipline Recommended. If two-thirds (2/3) of the members of the Commission fail to recommend discipline or retirement, the case shall be dismissed.

I. Witness Fees. All witnesses shall receive fees and expenses in the statutorily allowable amount. Expenses of witnesses shall be borne by the party calling them. When the physical or mental disability of the judge is in issue, the Commission may reimburse the judge for the reasonable fees of any physician rendering a report or testifying at a Commission hearing. If the judge is exonerated of the charges against him and the Commission determines that the imposition of costs and expert witness fees would work a financial hardship or injustice upon him, the Commission may order that part or all of those costs and fees be reimbursed.

[Amended effective June 29, 1995.]

Comment

Disciplinary recommendations to the Supreme Court by the Commission may range from removal from office down to public censure or reprimand. Although the Commission generally does not impose disciplinary sanctions, but rather makes findings and recommendations for submission to the Supreme Court, it may, under Rule 6, dismiss cases or impose the lesser sanction of a private admonishment, without action by the Supreme Court. In the case of private admonishment, the Commission will notify the Chief Justice of the Supreme Court of its action.

[Comment adopted March 7, 2002.]

RULE 9. MENTAL OR PHYSICAL DISABILITY

When the mental or physical health of a judge is in issue, the Commission may request the judge either (1) to submit to examinations by licensed physicians chosen and paid by the Commission, or (2) to submit to the Commission all reports of recent examinations by licensed physicians relating to the alleged condition. If the judge fails to submit to the examinations or to submit all recent medical reports, such failure shall raise an adverse inference to the judge on such issue, unless the judge's failure was due to circumstances beyond his control. The judge shall be furnished a copy of the report of any examination conducted under this rule.

RULE 10. SUPREME COURT REVIEW

A. Filing and Service. The Commission shall promptly file the record, its findings and recommendations, and any dissents with the Clerk of the Supreme Court and shall immediately serve copies thereof upon the judge.

B. Procedure. The Mississippi Rules of Appellate Procedure shall be applicable for all Commission proceedings before the Supreme Court, except as otherwise provided in these rules.

C. Preference Cases. The Supreme Court shall treat all Commission matters as preference cases, to be determined with reasonable expedition.

D. Briefs. When the Commission has recommended the interim suspension of a

judge, the Commission, as petitioner, and the judge, as respondent, shall file simultaneous briefs with the Supreme Court within seven (7) days after the filing of the Commission's recommendations with the Clerk of the Supreme Court. No reply briefs shall be filed.

In other cases the Commission, as petitioner, and the judge, as respondent, shall file simultaneous briefs with the Supreme Court within thirty (30) days after the filing of the Commission's recommendations with the Clerk of the Supreme Court. No reply briefs shall be filed.

E. Decision. Based upon a review of the entire record, the Supreme Court shall prepare and publish a written opinion and judgment directing such disciplinary action, if any, as it finds just and proper. The Supreme Court may accept, reject, or modify, in whole or in part, the findings and recommendation of the Commission. In the event that more than one (1) recommendation for discipline of the judge is filed, the Supreme Court may render a single decision or impose a single sanction with respect to all recommendations.

F. Private Admonishments. If a judge desires to appeal a private admonishment, he shall file a notice of appeal with the Commission within thirty (30) days from the issuance of such admonishment. The Commission shall promptly file with the Clerk of the Supreme Court the record and its admonishment. The judge shall be the appellant and the Commission the appellee.

An appeal from a private admonishment issued by the Commission shall follow the same procedures as other Commission matters except that such appeal shall remain confidential, as provided by law.

[Amended effective March 27, 1997.]

RULE 11. CHARGES AGAINST JUSTICE OF THE SUPREME COURT

Charges against a Justice of the Supreme Court shall proceed in the same manner as charges against any other judge except that, upon the filing of the report and recommendation of the Commission, a special tribunal shall be empaneled as provided by Section 177A of the Mississippi Constitution of 1890. Upon recommendation by the Commission for discipline or retirement of a Justice of the Supreme Court, the executive director shall notify the Secretary of State to select the tribunal in accordance with the procedures established in the Constitution. In the event a judge selected for the tribunal is disqualified or otherwise unable to serve, such judge shall file a notice of recusal with the Clerk of the Supreme Court within

ten (10) days. The Clerk of the Supreme Court shall notify the Secretary of State and another member shall be selected in the manner provided by the constitution. When seven (7) qualified members have been selected the tribunal shall, within ten (10) days, meet and select one of its members as the presiding member of the tribunal. The tribunal shall proceed in accordance with the Mississippi Rules of Appellate Procedure, except as otherwise provided in these rules, and the Rules of the Commission, which shall control all proceedings before the seven (7) member tribunal.

[Amended effective March 27, 1997; amended effective May 27, 2004 to shorten period for filing notices of recusal and convening the tribunal.]