

Supreme Court

In re Commission on Judicial Tenure and :
Discipline: Rule Amendments :

ORDER

Pursuant to G. L. 1956 (1997 Reenactment) §8-16-12, the attached amendments to Rules 1, 3, 7, 13A, 14, 15, 21, 28, and 29 of the Rules of the Commission on Judicial Tenure and Discipline (the Commission), as proposed by the said Commission, are hereby approved by the Rhode Island Supreme Court.

Entered as an Order of this Court this 27th day of *March 2012*.

_____/s/_____
Suttell, C. J.

_____/s/_____
Goldberg, J.

_____/s/_____
Flaherty, J.

_____/s/_____
Robinson, J.

_____/s/_____
Indeglia, J.

PROPOSED AMENDMENTS TO THE RULES OF THE COMMISSION ON JUDICIAL TENURE AND DISCIPLINE (THE COMMISSION) AS APPROVED BY THE COMMISSION

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, ~~(1985 reenactment, as amended by P.L. 1987, ch. 99, § 2; P.L. 1987, ch. 492, § 1; P.L. 1990, ch. 30, § 3; P.L. 1990, ch. 332, art. 1, § 13; P.L. 1991, ch. 132, § 2; and P.L. 1991, ch. 205, § 2) as reenacted and amended,~~ involving complaints against any justice or judge of the Supreme, Superior, Family, District Court, and the Workers' Compensation Courts or the ~~Administrative Adjudication Court~~ Rhode Island Traffic Tribunal, or ~~masters~~ 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, 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 of~~ 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 ~~state courts~~ Supreme, Superior, Family, District, and the Workers' Compensation Courts or the Rhode Island Traffic Tribunal, including but not limited to judges from the Workers' Compensation Court, and judges from the Administrative Adjudication Court, and masters 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, 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.

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Rule 3. Quorum

~~Eight (8)~~ 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.

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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 ~~respondent's chambers or~~ 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 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 a contempt of the Supreme Court.

Subscribed and sworn to before me this _____ day of _____, ~~2000~~ _____ 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 ~~chambers or~~ 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.

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Rule 21. Hearing

A hearing shall not be conducted with fewer than ~~eight (8)~~ 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.

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Rule 28. Findings and Recommendation

Upon completion of a formal hearing the Commission shall determine whether the charges against the respondent have been sustained. If at least ~~eight (8)~~ nine (9) members of the Commission who were present throughout the hearing 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 ~~chambers or~~ 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.