

EFFECTIVE DATE OF THESE AMENDMENTS SHALL BE MAY 1, 2010

RULES OF PROCEDURE OF THE JUDICIAL INQUIRY COMMISSION
(as amended, effective 02-01-09)

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Rule 1. Definitions

In these Rules, unless the context or subject matter otherwise requires:

(a) "Commission" means Judicial Inquiry Commission.

(b) "Judge" means any judge or justice of the judicial system of this state.

(c) "Chairman" means the chairman of the Judicial Inquiry Commission and includes the acting chairman.

(d) "Secretary" means such person as may be designated by the commission to act as secretary and includes the acting secretary. The secretary shall be ex officio clerk of the commission.

(e) "Examiner" means any person designated by the commission to gather information, conduct field investigations, take depositions, or prosecute charges preferred by the commission with the Court of the Judiciary.

(f) "Subpoena" means any type subpoena that may be issued by any court of this state.

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

(h) "Mail" includes ordinary mail and personal delivery.

Rule 2. Disqualification

A member of the commission may not participate as such in any proceeding involving a charge against himself or herself, or in which he or she is involved, or involving a charge against a person who is related to him or her within the ninth degree by consanguinity or within the fifth degree (computed according to the rules of civil law) by affinity.

Rule 3. Style of Proceedings and Process

Proceedings and process issued by the commission shall be styled:

"BEFORE THE JUDICIAL INQUIRY

"COMMISSION OF ALABAMA

"Inquiry Concerning a Judge, No. ____"

Rule 4. Privilege

All papers filed with and proceedings before the commission shall be privileged in any action for defamation.

Rule 5. Confidentiality of Proceedings

A. All proceedings of the commission shall be confidential, except the filing of a complaint with the Court of the Judiciary; provided, however, that none of the following actions permitted to be taken by the commission shall be deemed a violation of confidentiality:

(1) When a judge has been publicly charged or is the subject of an investigation by the commission, or in any proceeding in which the subject matter is generally known to the public and in which there is a broad public interest, the commission may, at the request of the judge involved, issue one or more short announcements approved by the judge confirming or denying the existence of charges before it, clarifying the procedural aspects, or defending the right of a judge to a fair hearing, or in order to preserve public confidence in the administration of justice.

(2) In any instance where accusations against a judge have been considered by the commission and it has been determined that there is no basis for the filing of charges against the judge or for further proceedings before the commission, the commission may, at the request of the judge,

issue an explanatory statement approved by the judge.

(3) The commission may, from time to time, issue press releases and other public statements explaining the nature of its jurisdiction, the procedure for institution of complaints, limitations on its powers and authority, and reports of the conduct of affairs of the commission, provided that such releases and reports shall not identify by name, position, address, or otherwise the identity of any judge or other person involved in any inquiry before the commission.

(4) When the commission refers a judge to the Alabama Lawyers Assistance Program ("ALAP") for evaluation under Rule 16, the commission may disclose relevant information to ALAP.

B. The commission shall have no power to restrict speech or communications by persons other than the members, staff, and agents of the commission itself.

C. No mandate for confidentiality shall be construed to abrogate or to restrict in any way the obligations of the commission to communicate with, and to disclose information to, a judge under investigation or charge.

Rule 6 Investigations Initiation of Proceedings

A. ~~Investigations~~ Proceedings may be instituted by the commission only upon a verified complaint filed either by a member of the public or by a member of the commission or the commission's staff, and only upon the affirmative vote of a majority of all members of the commission at a duly called meeting agreeing to investigate the complaint.

B. Within ~~60~~ 70 days after a complaint is filed with the commission, the commission may dismiss the complaint if it determines, based on a preliminary review limited to the complaint and public records available on the internet that the complaint is not worthy of further action. A complaint shall become void if the commission fails to meet for a vote on whether to investigate the complaint within the 70 days allowed or if, upon the vote at a meeting, fewer than a majority of all members of the commission vote to investigate it. If the complaint is dismissed after such preliminary review, the judge who was the subject of the complaint shall not be notified of the complaint. ~~whether by a member of the public or of the commission, the commission must meet and vote on whether to investigate the complaint. A complaint shall~~

~~become void if the commission fails to meet for such a vote within the 60 days allowed or if, upon the vote at a meeting, fewer than a majority of all members of the commission vote to investigate it. The commission shall promptly notify the judge named in the complaint upon its becoming void.~~

~~C. Within 21 days after any person, whether a member of the public or of the commission, files a complaint with the commission, the commission must serve upon the judge who is the subject of the complaint copies of the complaint and any and all documents, photographs, tape recordings, transcripts, notes, and other materials of any nature whatsoever constituting, supporting, or accompanying the complaint.~~

~~D.~~ C. If a complaint is not dismissed on preliminary review pursuant to Rule 6 B., the commission, within 14 days of its decision to conduct some investigation of the complaint, and in no event more than 84 days after a complaint is filed, shall serve upon the judge who is the subject of the complaint copies of the complaint and all other documents or other materials of any nature whatsoever constituting, supporting, or accompanying the complaint, or accumulated by the commission prior to such service upon the judge. Further,

the commission shall advise the judge that it considers the complaint worthy of some investigation of those aspects of the complaint that it then considers worthy of some investigation.

~~Within 21 days of instituting an investigation upon the vote required by subdivision A of this rule, the commission must serve on the judge to be investigated a full description of the conduct to be investigated and all information received, gathered, or possessed by the commission tending to establish or to refute that the conduct occurred or that the investigation is appropriate and must serve on the judge copies of any and all documents, photographs, tape recordings, transcripts, notes, and other materials of any nature whatsoever tending to prove or to disprove the occurrence of the conduct to be investigated or the appropriateness of the investigation.~~

~~E. D.~~ Every six weeks after serving the judge pursuant to Rule 6 ~~D. C.~~, the disclosures, statements, and materials required by subdivision ~~D~~ of this rule, the commission shall must serve on the judge being investigated or to be investigated copies of any and all materials of any nature whatsoever not already served upon him or her tending to

establish that the conduct either did or did not occur or that the investigation is or is not still appropriate, and shall serve upon the judge a full statement of whether the commission then intends to continue the investigation and any modification of the previous advice as to aspects of the complaint that it then deems worthy of some investigation. The chairman or acting chairman may ~~shall have the authority to~~ extend any deadline arising under this subdivision for up to 21 days in the event that exigent circumstances prevent the commission from complying with such deadline. As soon as practicable after any such extension is made, the chairman or acting chairman, or his or her designee, shall notify in writing the judge to whom the materials and statement are to be provided ~~under this subdivision~~ of the extension and shall describe the exigent circumstances necessitating the extension.

~~F. Any failure to serve disclosures, statements, or materials upon the judge as required by subdivisions C and D of this rule shall bar any prosecution for the conduct being investigated or to be investigated and shall bar the continuation of the investigation.~~

~~G. Any failure to serve disclosures, statements, or materials upon the judge as required by subdivision E. of this rule shall bar any prosecution for the conduct being investigated or to be investigated and bar the continuation of the investigation if the judge moves the commission to supply the overdue subdivision E. disclosures, statements, or materials and the commission does not serve them within seven days thereafter.~~

E. Notification of a judge as provided by this rule may be delayed:

(1) Where the commission has reason to believe from the nature of the complaint that providing such information to the judge is likely to result in the secreting, altering, or destroying of evidence material to the complaint. In such event, notice may be delayed until such evidence is obtained, unless the complaint is first dismissed, in which case no notification shall be necessary.

(2) Where the commission has reason to believe that the judge is mentally or emotionally unstable and is likely to act in a manner dangerous to himself or herself or to others. In such event, notice may be delayed until such danger ends,

unless the complaint is first dismissed, in which case no notification shall be necessary.

(3) Where the commission has reason to believe that law enforcement is conducting a criminal investigation and that notification to the judge could jeopardize that criminal investigation. In such event, notice shall be delayed until such danger ends, unless the complaint is first dismissed, in which case no notification shall be necessary.

~~H.~~ **F.** No judge may be compelled to give evidence against himself or herself; provided, however, that a judge who chooses to testify on his or her own behalf shall be subject to cross-examination.

~~I.~~ **G.** Service shall be by personal service or by certified mail. Service by certified mail shall be deemed effective upon mailing.

Rule 7. Subpoenas and Other Process

Subpoenas for attendance of witnesses or for the production of documentary evidence (including the production of documentary evidence for copying) before the commission, and other process of the commission, may be served in the same

manner provided for service of subpoenas and other process under the rules of civil procedure applicable to the circuit courts of this state and may be served by mail or by any person designated by the commission, its clerk, or the chairman. The commission shall have jurisdiction coextensive with the circuit courts of the state to compel the attendance of witnesses and the production of documents; the failure of any person without adequate excuse to obey a subpoena or other process of the commission shall constitute contempt of the commission. All witnesses shall be entitled to such witness fees and expenses as in any civil proceeding in this state.

B. Any subpoena must be relevant to the particular complaint filed.

C. Prior to or simultaneously with serving a subpoena on a person or entity being subpoenaed, the commission shall serve a copy of the subpoena on the judge being investigated, charged, or prosecuted. Failure to serve the judge as required by this subdivision of this rule shall bar the admissibility of the information or material sought by the subpoena, all information and material obtained in response to the subpoena, and all information and material discovered as

a result of information or material obtained in response to the subpoena.

D. Service shall be by personal service or by certified mail. Service by certified mail shall be deemed complete upon mailing.

Rule 8. Contempt

The commission shall have power coextensive with that of the circuit courts of this state to punish for contempt of the commission.

Rule 9. Meetings

Meetings of the commission may be held at such times and places as the commission may, from time to time, determine. Meetings may be called by the chairman, by the acting chairman, or by any two members of the commission on three days' notice, which notice may be given by telephone message left during normal business hours at the business or residence of the members.

Meetings may be held at any time and place by unanimous consent of the members.

A majority of the commission shall constitute a quorum for the transaction of business, and the action of a majority of the members at a meeting at which a quorum is present shall constitute the action of the commission, except that no charges against any judge may be filed with the Court of the Judiciary except upon affirmative vote of a majority of all the members of the commission, taken at a duly called meeting of the commission and except that no investigation may be instituted nor subpoena issued except upon the affirmative vote of a majority of all the members of the commission taken at a duly called meeting of the commission. The institution of an investigation contrary to the provisions of this rule shall bar the admissibility of all information and material sought by the subpoena, all information and material received in response to the subpoena, and all information and material discovered as a result of information and material received in response to the subpoena.

Rule 10. Alternate Dispute Resolution

A. At any time during the pendency of a charge or investigation but more than 10 days before the trial, the

judge being charged or investigated may demand, and the whole commission must conduct, a hearing before the whole commission to discuss the charge or suspected conduct and to attempt to resolve the charge or investigation on terms to be presented by joint motion to the Court of the Judiciary. A majority of the commission may bind it to any such resolution. Any such resolution reduced to writing and signed by the judge and a majority of the commission shall bind the judge and the commission unless and until the proposed resolution is rejected by the Court of the Judiciary.

B. All statements made by or for the judge in or for a hearing conducted or to be conducted pursuant to this rule shall be privileged and inadmissible as either substantive evidence or impeachment evidence against the judge.

Rule 11. Officers of the Commission

In addition to its chairman, the commission may elect one or more vice chairmen, an executive secretary who shall be ex officio clerk of the commission, and such other officers and agents, including examiners, as the commission may, from time to time, determine. In the absence of the chairman or in any

instance in which he or she may not be readily available, any of the vice chairmen or any member of the commission designated by the executive committee, may act as chairman.

Rule 12. Executive Committee

The commission may appoint an executive committee consisting of the chairman and two other members of the commission to advise with the chairman on matters arising between meetings of the commission in which action is deemed desirable. If any member or members of the executive committee so appointed are not readily available to act when action by the remaining member or members is deemed desirable, the remaining member or members may select other members of the commission to serve in his or her stead.

Rule 13. Seal

The commission may adopt a seal.

Rule 14. Judge Acting as Such While Disqualified

If any judge shall continue to act as such while there is pending (1) an indictment or information charging him or her

in the United States with a crime punishable as a felony under a state or federal law, or (2) a complaint against him or her filed by the commission with the Court of the Judiciary, such conduct shall constitute misconduct in office, and the commission may apply to the Supreme Court of Alabama for such writ or writs as may be appropriate to enforce § 156, Constitution of Alabama of 1901 (Off. Recomp.) (derived from § 6.17, Amendment No. 328, Constitution of Alabama 1901).

Rule 15. Prosecution of Charges before Court of the Judiciary

It shall be the duty of the attorney general of Alabama to prosecute charges filed by the commission with the Court of the Judiciary except in instances where, in the opinion of the commission, there exists or may arise a conflict of interest or the interests of justice would not thereby be served, in which instances the commission may employ counsel to prosecute the charges.

Rule 16. Deferral of Impairment Cases

A. If the commission finds during the course of an investigation that there is cause to believe that any misconduct specified in the complaint was the result of alcohol, drug, or substance abuse, addiction, or a mental or emotional disorder, the commission and the judge may agree that the judge undergo confidential evaluation through the Alabama Lawyers Assistance Program ("ALAP"). Should the evaluation reveal the existence of a condition for which treatment through ALAP is appropriate, the commission may thereafter enter into a diversion agreement with the judge under which resolution of the complaint is deferred upon the condition that the judge participate in the professional treatment, counseling, after-care, and/or other assistance program recommended in the ALAP evaluation. Every diversion agreement shall be reduced to writing, shall provide for periodic reporting by ALAP to the commission regarding the judge's compliance or noncompliance, and shall be signed by the judge and the chairman of the commission. A copy of the agreement will be given to the judge; the original shall be maintained in the commission's file. Upon the judge's satisfactory completion of the agreed treatment, counseling,

or other assistance program, the commission may dismiss the complaint or take other appropriate action. If the commission finds the judge is noncompliant with treatment or has otherwise failed to successfully complete the agreed program, the commission may reopen the deferred matter.

B. All statements made by or for a judge in the course of discussions or negotiations with the commission regarding deferral to ALAP or in the court of his or her involvement in or assessment by ALAP, including statements made in connection with any evaluation, treatment, counseling, or after-care, shall be privileged and inadmissible as either substantive evidence or impeachment evidence against the judge.

Rule 17. Informal Communications With Judge

The commission and its individual members shall have no informal communications with a judge pertaining to the complaint, following a decision by the commission not to investigate a complaint, or pertaining to the investigation, following institution of an investigation that does not result in any charge being filed before the Court of the Judiciary, unless such communication and its content are authorized by a

majority of the members of the commission present at a duly called meeting of the commission. No member of the commission who is a practicing member of the Alabama State Bar shall be authorized to undertake any informal communications authorized by this rule; however, the commission may authorize a member of the commission who is not a practicing member of the Alabama State Bar to undertake such communications.

Rule 18. Advisory Opinions

A judge may direct to the commission in writing a request for an opinion as to whether certain specified action contemplated or proposed to be taken by the judge may constitute a violation of the Canons of Judicial Ethics, and the commission may, in its discretion, render to the judge in writing such opinion as it may deem appropriate in the premises. Any such opinion rendered by the commission that certain specified conduct by the judge would not constitute a violation of the Canons of Judicial Ethics shall be admissible on behalf of the judge to whom it is directed in any disciplinary proceeding involving the propriety of such conduct by the judge to whom the opinion is directed.

Rule 19. Right to Relief From Violations of These Rules by Commission

Any judge who is the subject of investigation, ~~charge, or prosecution~~ by the commission and who claims to be aggrieved by any violation of these Rules may petition the Supreme Court directly for relief. Any judge who is the subject of prosecution by the commission may petition the Court of the Judiciary for relief and, if not satisfied with the Court of the Judiciary's action on such petition, may then petition the Supreme Court for relief. Such a petition shall be denominated "Petition for Relief," and a copy shall be served on the commission.

Rule 20. Publication

A. These Rules shall be deposited with the clerk of the Supreme Court of Alabama and shall be published in all publications where the rules of the Supreme Court of Alabama are published.

B. All amendments to these Rules shall be effective immediately as to all pending and future complaints, investigations, and charges.