

IN THE SUPREME COURT OF ALABAMA
April 1, 2010

ORDER

IT IS ORDERED that Rule 5.C., Rule 6, and Rule 19, Rules of Procedure of the Judicial Inquiry Commission, are amended to read in accordance with Appendices A, B, and C, respectively, attached to this order.

IT IS FURTHER ORDERED that the amendments be effective May 1, 2010.

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 5.C., Rule 6, and Rule 19, Rules of Procedure of the Judicial Inquiry Commission:

"Note from the reporter of decisions: The order amending Rule 5.C., Rule 6, and Rule 19, Rules of Procedure of the Judicial Inquiry Commission, effective May 1, 2010, as well as Chief Justice Cobb's writing dissenting from that order, is published in that volume of the Alabama Reporter that contains Alabama cases from _____ So. 3d."

Lyons, Woodall, Stuart, Smith, Bolin, Parker, Murdock, and Shaw, JJ., concur.

Cobb, C.J., dissents. (Written dissent follows Appendix C to this order.)

APPENDIX A

Rule 5.C.

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 who has been charged.

APPENDIX B

Rule 6. Initiation of Proceedings

A. 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.

B. Within 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 to 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 duly called 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 filing of the complaint.

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 before such service upon the judge. Further, the commission shall advise the judge of those aspects of the complaint that it then considers worthy of some investigation.

D. Every six weeks after serving the judge pursuant to Rule 6.C., the commission shall serve on the judge being investigated copies of 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 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 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 of the extension and shall describe the exigent circumstances necessitating the extension.

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.

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.

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

APPENDIX C

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

Any judge who is the subject of investigation 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.