

Appendix A

Terminology Section Changes

“Admonition” is a confidential, informal disciplinary sanction imposed when a judge has committed a violation of the Code or other applicable disciplinary standard, but the conduct is not so egregious or clear as to warrant a public reprimand, censure, suspension, removal, or retirement.

Rule 9. Public Access and Confidentiality

(a) Public access. As a general rule, complaints against judges shall be ~~disclosed~~ available to the public following, but not before, final disposition, except in formal proceedings, as set forth below.

~~(i) Dismissed Cases~~ Dismissal and Admonition Cases: ~~In dismissed cases, however,~~ only the complaint and the commission's order shall be public after all identifying information pertaining to an individual or court has been redacted.

~~(ii) Other Informal Proceedings~~ Reprimand Cases: ~~In informal proceedings,~~ the record, as defined in these rules, shall be public after the complainant and the judge are notified of the outcome of the proceedings and the time provided for further commission review has expired.

(iii) Motions for Reconsideration: motions for reconsideration will not generally be made public, except when specifically authorized by the commission.

~~(iiiiv) In formal proceedings;~~ the record shall be public after the filing of the judge's response to formal charges or the expiration of the time provided for such a response, the entry of an order approving an agreement for discipline by consent, or the waiver of confidentiality by the judge.

(b) Confidential matters. All other commission correspondence, draft documents, computer records, investigative reports, attorney work product, commission deliberations, and records in dismissed cases, except as provided in the preceding paragraph, are confidential.

(c) Discretionary disclosure.

(i) The commission may disclose a complaint to a judge and a judge's response to a complainant at any time upon request by the complainant and a finding by the commission that such disclosure is necessary in the interests of justice.

(ii) It may also disclose confidential information to confirm a pending investigation in a case in which an investigation has become public or to clarify proceedings in such a case; to protect individuals, the public, or the administration of justice; and to comply with official requests from agencies and other organizations involved in criminal prosecutions, bar discipline investigations, or judicial nomination, selection, and retention proceedings.

(d) Unless otherwise ordered by the commission, complainants, respondent judges and witnesses or other individuals involved in complaint investigations are not prohibited from disclosing the existence of proceedings or from disclosing any documents or correspondence served on or provided to those persons.

~~(de)~~ Protective orders. Upon motion by a party or by a person from whom the information was obtained, or by disciplinary counsel, and for good cause shown, the commission, an investigative panel, a hearing panel or a hearing officer may make an order sealing a portion of the record. Sealed materials shall be opened and viewed only by the commission or one of its corresponding panels, a hearing officer, ~~disciplinary counsel~~ commission staff, or the supreme court. The information shall not otherwise be disclosed unless the parties and the person providing the information are given notice and an opportunity to be heard.

(f) Press Releases. Commission staff may issue press releases for the purpose of informing the public regarding formal proceedings.

(g) Notification of Commission Action. Commission staff shall notify the chief or presiding judge of the state, county, or municipality in which any respondent judicial officer receiving a sanction for ethical misconduct serves.

Rule 17. Informal Sanctions

(a) Admonition. The commission may issue a confidential admonition to a judge without a formal hearing when the conduct at issue violates the Code or other applicable disciplinary standard, but does not warrant the imposition of a public reprimand. Specifically, an admonition is appropriate when a judge has committed an unintentional or technical violation of the Code. An admonition is only available when the judge has not previously received a disciplinary sanction related to the type or category of misconduct at issue, and has not received a disciplinary sanction related to any type of misconduct within the previous two years. The decision to impose an admonition is otherwise a discretionary one, made on a case-by-case basis.

(b) Reprimand. The commission may reprimand a judge without a formal hearing for conduct that is unacceptable under one or more of the grounds for judicial discipline, but that is not so serious as to warrant formal proceedings or further discipline by the supreme court.

~~(c) Other informal sanctions~~Other conditions. If the commission imposes a sanction under subsection (a) or (b), it may take additional informal action. The commission may take any other informal action consistent with these rules, including, but not limited to, directing a judge to participate in professional counseling, judicial education, mentoring or similar activities, and assessing attorney fees and costs. Failure to satisfactorily complete any conditions imposed pursuant to this subsection will be considered a violation of Canon 2, Rule 2.16(A) of the Code, and provides grounds for the commission to open a new ethical misconduct case.

Rule 18. Formal Sanctions

(a) Censure, suspension, or removal. The commission may recommend to the supreme court, pursuant to article 6.1, § 4 of the constitution, that a judge be censured, suspended without pay, or removed from office for misconduct following a formal hearing or the approval of an agreement for discipline by consent.

(b) Involuntary retirement. The commission may recommend to the supreme court, pursuant to article 6.1, § 4 of the constitution, that a judge be involuntarily retired for a mental or physical incapacity that seriously interferes with the performance of the judge's duties and is likely to become permanent following an incapacity proceeding or the approval of an agreement for discipline by consent.

(c) Immediate disqualification. A judge shall be disqualified, without loss of salary, pursuant to article 6.1, § 2 of the constitution, from acting as a judge when the commission files a recommendation to the supreme court for the judge's suspension, removal, or retirement.

(d) Criminal conduct. The commission may recommend to the supreme court, pursuant to article 6.1, § 3 of the constitution, that a judge be suspended from office without salary when the judge pleads guilty or no contest to, or is found guilty of, a crime punishable as a felony under state or federal law or of any other crime that involves moral turpitude under such law. The supreme court may also act on its own motion under this section.

(e) Other ~~formal sanctions~~ conditions. If the commission recommends the imposition of a sanction under subsection (a), it may also recommend additional conditions to the formal sanction. The commission may recommend the imposition of other formal sanctions consistent with these rules, including, but not limited to, directing a judge to participate in professional counseling, judicial education, mentoring or similar activities, and assessing attorney fees and costs. Failure to satisfactorily complete any conditions imposed pursuant to this subsection will be considered a violation of Canon 2, Rule 2.16(A) of the Code, and provides grounds for the commission to open a new ethical misconduct case.