

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION RULES (2018)

RULE 1. SCOPE AND TITLE

These rules apply to all proceedings before the Judicial Qualifications Commission involving the discipline, retirement or removal of justices of the Supreme Court, and judges of the District Courts of Appeal, Circuit Courts, and County Courts pursuant to Article V, Section 12 of the Constitution of the State of Florida, as amended, and removal or disqualification of members of the Commission. These rules shall be known as Florida Judicial Qualifications Commission Rules and may be abbreviated as "FJQCR."

RULE 2. DEFINITIONS

In these rules, the singular shall include the plural and vice-versa, and any singular personal pronoun shall include both feminine and masculine genders, and unless the context or subject matter otherwise requires:

(1) "Commission" means the Judicial Qualifications Commission.

(2) "Investigative Panel" means a division of the Commission vested with the jurisdiction to receive or initiate complaints, conduct investigations, dismiss complaints, and, upon a vote of a simple majority of the panel, submit formal charges to the hearing panel. The chair of the Commission shall be its chair.

(3) "Hearing Panel" means a division of the Commission vested with the authority to receive and hear formal charges from the Investigative Panel. The Hearing Panel, by majority vote of its members may recommend to the Supreme Court that a judge be subject to appropriate discipline. Upon a two-thirds vote, the panel may recommend to the Supreme Court the removal of a judge, as provided in Article 5, § 12, of the Constitution of the State of Florida, or the

involuntary retirement of a judge for any permanent disability that seriously interferes with the performance of judicial duties.

(4) “Judge” means a justice of the Supreme Court and a judge of the District Court of Appeal, Circuit Court and County Court.

(5) “Chair” includes the acting chair.

(6) “General Counsel” means any member of The Florida Bar employed by the Investigative Panel to gather and present evidence before the Investigative Panel or the Hearing Panel with respect to the charges against a judge and to represent the Commission in any proceedings, related to the activities of the Commission.

(7) “Counsel to the Hearing Panel” means any member(s) of The Florida Bar, designated by the Chair of the Commission to serve as legal advisor to the Hearing Panel. Counsel to the Hearing Panel shall act as clerk to the Hearing Panel during the trial, collect evidence, and transmit the record to the Supreme Court.

(8) “Special Counsel” means any member(s) of The Florida Bar designated by the Investigative Panel to gather and present evidence before the Investigative Panel or the Hearing Panel with respect to the charges against a judge and to represent the Commission in any proceedings, related to the activities of the Commission.

(9) “Shall” is mandatory and “may” is permissive.

(10) “Mail” and “mailed” include ordinary, registered, certified, or other form of United States mail, personal delivery, and delivery by a commercial delivery service.

(11) “Executive Director” means a member of The Florida Bar employed by the Commission to supervise its staff, to serve as legal advisor to the Commission and Investigative Panel, and to render such services to the Commission and its several panels as required. The Executive Director and

administrative staff will provide only ministerial or similar services to facilitate the activities of the Hearing Panel.

(12) “Member” means a member of the Commission.

(13) “Supreme Court” means the Supreme Court of Florida.

RULE 3. MEMBERSHIP AND JURISDICTION

(a) The membership of the Commission shall be as prescribed in Article V, Section 12 of the Constitution of the State of Florida and for such term as prescribed by general law. When a member ceases to be member of the appointing body from which that member was appointed or whenever any member becomes otherwise ineligible to hold office, that person's membership on the Commission shall terminate. The Chair shall promptly notify the appointing authority of the vacancy. In the event of a vacancy the Chair of the Commission shall appoint a temporary replacement as provided in Rule 25.

(b) The Commission shall have such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or hearing, including the power to compel the attendance of witnesses, to take or to cause to be taken the deposition of witnesses, to order the production of books, records or other documentary evidence, and the power of contempt. In any matter within the jurisdiction of the Commission requiring the appearance of any person before the Commission or any member, any member shall have the power to issue subpoenas and to administer oaths and affirmations to such persons.

RULE 4. OFFICERS OF THE COMMISSION

The Commission shall elect a Chair and a Vice-Chair, each of whom shall serve for a term of two years. The Vice-Chair shall act as the chair of the Commission in the absence of the Chair. If both the Chair and the Vice-Chair are absent, then a majority of the members present may appoint a Chair Pro Tempore. The Commission may employ staff, including an Executive Director and General

Counsel, and such other staff as necessary to carry out its duties. The Commission will consider and decide matters relating to budget and other business of the Commission not specifically assigned to its panels. The Chair shall appoint Counsel to the Hearing Panel to serve as its legal advisor.

RULE 5. QUORUM OF COMMISSION

(a) A quorum for the transaction of the Commission's executive business shall be eight members except as otherwise provided in these rules.

(b) A quorum of the Investigative Panel shall be not less than five members of that Panel.

(c) A quorum of the Hearing Panel shall be not less than five of the members of that Panel.

RULE 6. INVESTIGATIVE PANEL RULES

(a) The Investigative Panel of the Commission, upon receiving factual information, not obviously unfounded or frivolous, or an individual complaint made under oath, indicating that a judge is guilty of willful or persistent failure to perform judicial duties, or conduct unbecoming a member of the judiciary demonstrating a present unfitness to hold office, or conduct violative of the Code of Judicial Conduct, or that the judge has a disability seriously interfering with the performance of the judge's duties, which is, or is likely to become, permanent in nature, may make an investigation to determine whether formal charges should be instituted.

(b) The judge has no right to be present or to be heard during an investigation, but before the Investigative Panel determines that there is probable cause to initiate formal charges, the judge shall be notified of the investigation, the general nature of the subject matter of the investigation, and shall be afforded reasonable opportunity to make a statement before the Investigative Panel,

personally or by the judge's attorney(s), verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct or disability, and to respond to questions from the Panel. The judge shall not have the right to present other oral testimony or evidence, nor the right of confrontation or cross-examination of any person interviewed, called or interrogated by the Investigative Panel; provided that the Investigative Panel in its sole discretion may receive and consider documentary evidence, including affidavits submitted by a judge. Such notification shall be given personally, by registered or certified mail, or by delivery by a commercial service, addressed to the judge at the judge's chambers or, if returned undelivered, at the judge's last known residence.

(c) The Investigative Panel shall have the right to require a judge to meet with it on an informal basis in reference to matters that relate to the judge's duties.

(d) When a judge has received a notice of investigation, or a notice to appear before the Investigative Panel, or has requested such notification, the judge shall be promptly notified in writing if the investigation does not disclose probable cause to warrant further proceedings.

(e) The Investigative Panel shall have access to all information from all executive, legislative and judicial agencies, including grand juries. At any time, on request of the Speaker of the House of Representatives, the Commission shall make available all information in possession of the Commission for use in consideration of impeachment.

(f) When the Investigative Panel finds probable cause that formal charges should be filed against the judge, the Investigative Panel shall file a Notice of Formal Charges with the Clerk of the Supreme Court. The Investigative Panel shall designate one or more Special Counsel who shall prepare appropriate papers and pleadings, gather and present evidence before the Hearing Panel with respect to the charges against the judge, and otherwise act as counsel in connection with the prosecution of the charges against the judge, including the representation of the Commission in connection with any Commission or judicial proceedings. The Investigative Panel shall cause to be served on the judge a copy of the Notice of Formal Charges. Such proceedings shall be styled:

“BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION”

“Inquiry Concerning a Judge, The Honorable _____, No. _____”

(g) The notice shall be issued in the name of the Commission and specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based, and shall advise the judge of the judge’s right to file a written answer to the charges against within 20 days after service of the notice upon the judge.

(h) Service of the notice shall be made personally, by registered or certified mail or by commercial delivery service, addressed to the judge at the judge’s chambers or, if returned undelivered, at the judge’s last known residence.

(i) After the notice has been filed, any notice or other material shall be mailed to the judge at the judge’s chambers or residence address, or to the judge’s attorney(s), if any.

(j) The notice may also include the judge’s prior relevant judicial disciplinary history with the Commission and the record will be made available to the Hearing Panel to establish a pattern of conduct or to assist the Hearing Panel in recommending the appropriate sanction to the Supreme Court.

(k) The Investigative Panel may reach agreement with a judge on discipline or disability, and such stipulation shall be transmitted directly to the Supreme Court to accept or reject. If rejected, such agreement shall be without prejudice to any party thereto.

RULE 7. HEARING PANEL RULES

(a) The Hearing Panel shall receive, hear and determine formal charges from the Investigative Panel. The Chair of the Commission shall select one of its members as Chair.

(b) The Chair of the Hearing Panel shall dispose of all pretrial motions.

These motions may be heard by teleconference or be determined with or without hearings. The Chair's disposition of motions shall be subject to review by the full Hearing Panel.

RULE 8. SUSPENSION OF JUDGE

Before or after the filing of a Notice of Formal Charges, the Investigative Panel may, in its discretion, issue its order directed to the judge ordering the judge to show cause before it why that panel should not recommend to the Supreme Court that the judge be suspended from office, either with compensation or without compensation, while the inquiry is pending. The order to show cause shall be returnable before the Investigative Panel at a designated place and at a time certain, at which place and time the Investigative Panel shall consider the question of suspension and any action thereto. Factors to be considered include: the seriousness of the allegation of misconduct, the preservation of public confidence in the judicial system, the responsiveness of the judge to the disciplinary process, or whether the judge has engaged in conduct that demonstrates a present unfitness to hold office. The arrest or conviction of a crime constitutes a sufficient basis for the recommendation for suspension under this rule. Thereafter, and upon the filing of a Notice of Formal Charges with the Supreme Court, the Investigative Panel, not less than two-thirds of its members concurring, may recommend to the Supreme Court that the judge be suspended from performing the duties of office, either with or without compensation, pending final determination of the inquiry. If the Investigative Panel recommends suspension, such recommendation shall have incorporated the factual basis for the recommendation.

RULE 9. ANSWER

Within 20 days after service of the Notice of Formal Charges, the judge may serve and file an Answer, a copy of which shall be served on the Chair of the Hearing Panel and the original of which shall be filed with the Clerk of the Supreme Court. If the judge desires that the final hearing be heard in the county of the judge's residence, the judge shall so demand in writing at the time the initial Answer is filed.

RULE 10. FILING

(a) Upon the filing of the Notice of Formal Charges against a judge with the Clerk of the Supreme Court of Florida, the Notice of Formal Charges and all subsequent proceedings before the Hearing Panel shall be public.

(b) The original of all pleadings subsequent to the Notice of Formal Charges shall be filed with the Clerk of the Supreme Court of Florida, which office is designated by the Commission for receiving, docketing, filing and making such records available for public inspection. A duplicate original of all pleadings filed in the proceedings shall be served on each party, with a copy to the Chair of the Hearing Panel.

RULE 11. SETTING FOR HEARING

After the filing of an Answer or the expiration of the time for its filing, the Hearing Panel shall set a time and place for a hearing and shall give notice of such hearing at least 20 days prior to the date set. If the judge timely requests that the hearing be held in the county of the judge's residence, it shall be so held unless the Hearing Panel, by an affirmative vote of two-thirds of its members, determines otherwise. Hearings before the Commission should be accorded precedence over most other proceedings due to the extraordinary nature of the hearing.

RULE 12. PROCEDURE

(a) **Settlement Negotiations.** Prior to commencement of the hearing to determine formal charges against a judge, the Investigative Panel retains the authority to enter into stipulations for proposed discipline with the judge or judge's representatives. After the commencement of the hearing to determine formal charges against a judge, the Hearing Panel shall have the authority to enter into stipulations for proposed discipline with the judge or judge's representative, which it shall incorporate into its recommendation to the Supreme Court.

(b) In all proceedings before the Hearing Panel, the Florida Rules of Civil Procedure shall be applicable except where inappropriate or as otherwise provided by these rules.

(c) Summary Judgment is not available to either party.

(d) Special Counsel shall, upon written demand of a party or counsel of record, promptly furnish the following:

The names and addresses of all witnesses whose testimony the Special Counsel expects to offer at the hearing, together with copies of all written statements and transcripts of testimony of such witnesses in the possession of the counsel or the Investigative Panel which are relevant to the subject matter of the hearing and which have not previously been furnished, except those documents confidential under the Constitution of the State. When good cause is shown this rule may be waived.

(e) At the time and place set for hearing, the Hearing Panel may proceed with the hearing whether or not the judge has filed an Answer or appears at the hearing.

RULE 13. DISABILITY

Upon receiving information that a judge is suffering a possible physical or mental disability which seriously interferes with the performance of the judge's duties, the Investigative Panel, upon a majority vote, may order the judge to submit to a physical and/or mental examination and/or may give notice of formal charges pursuant to Rule 6, supra. If the judge fails to submit to such examination within the time ordered, the Investigative Panel may recommend to the Supreme Court that the judge be suspended without compensation until such time as the judge complies with the Panel's order.

RULE 14. EVIDENCE

(a) The Hearing Panel has wide latitude to admit or exclude evidence and is not bound by the technical rules of evidence. It may admit evidence that

is relevant and reliable as described in *The Florida Bar v. Tobkin*, 944 So. 2d 219 (Fla. 2006).

(b) Past disciplinary actions by the Commission may be admitted by the Hearing Panel to demonstrate a relevant factual matter such as a pattern of conduct, or, upon a finding of guilt, to properly assess the appropriate sanction to recommend to the Supreme Court.

RULE 15. PROCEDURAL RIGHTS OF THE JUDGE BEFORE THE HEARING PANEL

(a) In all hearings before the Hearing Panel, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by attorney(s), and to examine and cross-examine witnesses. The judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(b) When a transcript of the trial proceedings has been prepared at the expense of the Commission, a copy thereof shall be furnished without cost to the judge. The judge shall also have the right, without any order or approval, to have all or any portion of the proceedings transcribed at the judge's expense.

(c) If the judge is adjudicated to be incapacitated, the panel with jurisdiction shall appoint an attorney ad litem unless there is a duly appointed legal guardian authorized to represent the judge, or to appoint counsel to represent the judge. The guardian or attorney ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, with capacity, and whenever these rules provide for the serving or giving notice or sending any matter to the judge, a copy of such notice or matter also shall be served, given or sent to the guardian or attorney ad litem.

RULE 16. AMENDMENTS TO NOTICE OR ANSWER

The Hearing Panel may in the interest of justice allow or require amendments to the Notice of Formal Charges and may allow amendments to the Answer. In case such amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present a defense against the matters charged. If requested by the judge, the Hearing Panel may refer to the Investigative Panel any new matter presented or alleged in such amendment, as to which there has been no previous finding of probable cause by the Investigative Panel.

RULE 17. EXTENSION OF TIME

The Chair of the Hearing Panel may extend the time for filing an Answer or for the commencement of a hearing before the Hearing Panel.

RULE 18. HEARING ADDITIONAL EVIDENCE

The Hearing Panel may order a hearing for the taking of additional evidence at any time while a matter is pending before it. The order shall set the time and place of the hearing and shall indicate matters on which the evidence is to be taken. A copy of such order shall be sent by mail at least ten days prior to the date of the hearing.

RULE 19. HEARING PANEL VOTE

After conclusion of the hearing and consideration of the issues presented for decision, the Hearing Panel shall determine by vote the judge's guilt or innocence of formal charges. If the Hearing Panel determines by a two-thirds vote that the judge is guilty of one or more of the charges so specified, it shall then proceed to determine the discipline to be recommended. The vote of four members of the Hearing Panel shall be required to recommend removal of the judge from office or for medical retirement of a judge. Upon a simple majority vote of a quorum of the Hearing Panel, the Panel may recommend to the Supreme Court that the justice or judge be subject to other appropriate discipline. Failure to recommend the imposition of any penalty by the prescribed affirmative vote of the Hearing Panel shall constitute a dismissal of the proceedings.

**RULE 20. CERTIFICATION OF HEARING PANEL
RECOMMENDATIONS TO SUPREME COURT**

(a) If the Hearing Panel dismisses the formal charges, the Hearing Panel shall promptly file a copy of the dismissal order certified by the Chair of the Hearing Panel with the Clerk of the Supreme Court. Upon making a determination recommending discipline, retirement or removal of a judge, the Hearing Panel shall file a copy of the recommendation certified by the Chair of the Hearing Panel, together with a transcript and the findings and conclusions, with the Clerk of the Supreme Court and shall mail to the judge and to the judge's attorney(s) notice of such filing, together with a copy of such recommendations, findings, and conclusions.

(b) If the Hearing Panel determines to recommend removal, it may also include in its findings and recommendations that the judge be suspended with or without pay pending the final determination of the inquiry.

RULE 21. REVIEW OF PROCEEDINGS

(a) Non-Final. Non-final orders of the Hearing Panel are subject to immediate review only where it can be demonstrated that an order departs from the essential requirements of law, causing material injury to the petitioner, and leaving no adequate remedy after issuance of the Hearing Panel's report and recommendations. Review of such orders shall be by appropriate extraordinary writ, directly to the Supreme Court. In the absence of a stay the hearing shall proceed to a conclusion.

(b) To the extent necessary to implement this rule, the Florida Rules of Appellate Procedure and Rule 2.310 of the Florida Rules of Judicial Administration shall be applicable to reviews of Investigative and Hearing Panel proceedings by the Supreme Court.

RULE 22. SUBPOENAS

Subpoenas for the attendance of witnesses and the production of documentary evidence shall be issued as follows:

(a) For investigative purposes, subpoenas may be issued for the attendance of witnesses and the production of documents before the General Counsel or Special Counsel with respect to any potential violation of the Code of Judicial Conduct, and counsel is empowered to administer oaths to all who are summonsed to testify or who may voluntarily appear before counsel to testify as to any potential violations of the Canons of the Code of Judicial Conduct.

(b) Subpoenas for the attendance of witnesses and the production of documentary evidence for discovery after formal charges are filed, and for the appearance of any person before the Hearing Panel of the Commission, may be issued by the General Counsel, Counsel to the Hearing Panel, Special Counsel, or counsel for the judge, and may be served in the manner provided by law for the service of witness subpoenas in a civil action, but without cost.

(c) Contempt. Any person who, without adequate excuse, fails to obey such a subpoena of the Commission or a panel of the Commission served upon that person may be cited for contempt of the Commission in the manner provided in these rules.

RULE 23. CONFIDENTIALITY OF PROCEEDINGS

(a) Until formal charges against a judge are filed by the Investigative Panel of the Commission with the Clerk of the Supreme Court, all proceedings by or before the Commission shall be confidential. Upon a finding of probable cause and the filing by the Investigative Panel of the Commission with the Clerk of such formal charges against a judge, such charges and all further proceedings before the Hearing Panel shall be public.

(b) All notices, papers and pleadings mailed to a judge prior to formal charges being instituted shall be enclosed in a cover marked "confidential."

(c) Every witness in every proceeding under these Rules shall swear or affirm to tell the truth and not to disclose the existence of the proceeding, the subject matter thereof, or the identity of the judge until the proceeding is no longer confidential under these Rules. Violation of this oath shall be an act of contempt of the Commission.

(d) Violation of this Rule by a member of the Commission shall subject that member, after written notice and hearing, to removal from office by an affirmative vote of eight members of the Commission and shall constitute contempt of the Commission which may be enforced by appropriate proceedings in the Supreme Court of Florida. (See Rule 26.)

RULE 24. INTERESTED PARTY

A judge who is a member of the Commission or of the Supreme Court shall be disqualified from participation in such capacity in any proceedings involving the judge's own discipline, retirement or removal.

RULE 25. DISQUALIFICATION OR VACANCY

(a) After the filing of formal charges, a judge may move to disqualify a member of the Hearing Panel. The motion shall be in writing, sworn to by the judge, and shall specifically allege the facts and reasons that establish a legally sufficient factual basis for disqualification.

(1) **Grounds.** A motion to disqualify shall show facts which would place a reasonably prudent person in fear of not receiving a fair and impartial hearing if the Hearing Panel member participates.

(2) **Time.** A motion to disqualify shall be filed within a reasonable time not to exceed 15 days after the Hearing Panel members are identified, or the discovery of the facts constituting the grounds for the motion and shall be promptly presented to the Hearing Panel for an immediate ruling. A motion made during hearing shall be ruled on immediately.

(3) Determination. The Hearing Panel shall determine whether the facts alleged are sufficient to support a motion to disqualify. The matter of disqualification shall be by a majority vote of the panel.

(4) Member's Initiative. If any member of the Hearing Panel voluntarily recuses him or herself, the member shall not participate in the hearing.

(b) The Executive Director of the Commission shall request from each of the appointing authorities a list of four persons who may temporarily serve in the absence of incapacitated or disqualified members. The appointing authorities are the Conference of District Court of Appeal Judges, the Conference of Circuit Court Judges, the Conference of County Court Judges, the Board of Governors of The Florida Bar, and the Governor of Florida. Upon the disqualification of or in the absence of a member of the Hearing Panel, the replacement shall be chosen by the Chair of the Commission from those listed by the appropriate appointing authority. Each such replacement shall be from the same category as the disqualified member(s) set forth in Section 12(a), Article V of the Constitution of the State of Florida.

RULE 26. CONTEMPT

Should any witness fail, without justification, to respond to the lawful subpoena of the Commission or, having responded, fail or refuse to answer all inquiries or to turn over evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly or contemptuous conduct before any proceeding of the Commission, or should any person violate the confidentiality of a proceeding conducted prior to the filing of formal charges, a motion may be filed in the name of the Commission before the Circuit Court of the County in which the contemptuous act was committed, alleging the specific failure on the part of the witness or the specific disorderly or contemptuous act of the person which forms the basis of an alleged contempt of the Commission. Such motion shall pray for the issuance of an order to show cause before the Circuit Court why the Circuit Court should not find the person in contempt of the Commission and why that person should not be punished by the Court therefore. The Circuit Court shall issue such orders and judgments therein as the Court deems appropriate.

RULE 27. APPOINTMENTS

The Chair of the Commission shall assign the members to the Investigative Panel and the Hearing Panel. The Chair shall appoint to the Investigative Panel four judges, two members of The Florida Bar and three non-lawyers. The Chair shall appoint to the Hearing Panel two judges, two members of the Bar of Florida and two non-lawyers. The membership on the panels may change at a time and in a manner determined by the Chair, provided that no member shall vote as a member of both the Investigative Panel and Hearing Panel in the same proceeding.