

1 **Rule 3-201.02. Court Commissioner Conduct Committee.**

2 **Intent:**

3 To establish a procedure for the review of complaints filed against court commissioners.

4 **Applicability:**

5 This rule shall apply to all trial courts of record.

6 **Statement of the Rule:**

7 (1) **Court Commissioner Conduct Committee.**

8 (1)(A) The Court Commissioner Conduct Committee is established to:

9 (1)(A)(i) receive, review, and investigate any complaint filed against a court
10 commissioner;

11 (1)(A)(ii) conduct any hearing related to a complaint, and

12 (1)(A)(iii) make recommendations to the Council and the presiding judge(s) of
13 the district(s) the commissioner serves regarding corrective actions or
14 removal of the commissioner pursuant to CJA 3-201, where the
15 Committee finds misconduct by a preponderance of the evidence. For
16 purposes of this rule, "misconduct" means:

17 (1)(A)(iii)(a) action that constitutes willful misconduct in office;

18 (1)(A)(iii)(b) final conviction of a crime punishable as a felony under
19 state or federal law;

20 (1)(A)(iii)(c) willful and persistent failure to perform commissioner
21 duties; or

22 (1)(A)(iii)(d) violations of the Code of Judicial Conduct.

23 ~~(1)(A)(1)(B)~~ The ~~Court Commissioner Conduct~~ Committee shall consist of the
24 following members:

25 ~~(1)(A)(i)(1)(B)(i)~~ as chair, the Court of Appeals member of the Ethics
26 Advisory Committee, who shall serve as chair of the Committee;

27 ~~(1)(A)(ii)(1)(B)(ii)~~ two presiding judges from judicial districts with a court
28 commissioner, which presiding judges shall be from districts other than
29 the district the commissioner primarily serves;

30 ~~(1)(A)(iii)(1)(B)(iii)~~ the immediate past Bar Commissioner member of the
31 ~~Judicial~~ Council; and

~~(1)(A)(iv)~~~~(1)(B)(iv)~~ the chair of the Supreme Court Advisory Committee on the
Rules of Professional Conduct.

(1)(C) Circumstances which require recusal of a judge shall require recusal of a
Committee member from participation in Committee action.

(1)(C)(i) If the chair is recused, a majority of the remaining members shall
select from among themselves a chair pro tempore.

(1)(C)(ii) If a presiding judge is recused, the chair shall temporarily appoint a
presiding judge of another judicial district with a commissioner.

(1)(C)(iii) If the immediate past Bar Commissioner member of~~an~~ the ~~Judicial~~
Council is recused or otherwise unable to serve, the chair shall
temporarily appoint another past Bar Commissioner member ~~or of~~ the
~~Judicial~~-Council.

(1)(C)(iv) If the chair of the Supreme Court Advisory Committee on the Rules of
Professional Conduct is recused or otherwise unable to serve, the
chair shall temporarily appoint another member of the Supreme Court
Advisory Committee on the Rules of Professional Conduct.

(1)(D) Three members of the Committee constitute a quorum. Any action of a majority
of the quorum constitutes the action of the Committee. The chair shall vote only
as necessary to break a tie vote. The Committee shall be organized and meet
only as often as necessary to resolve a complaint not previously dismissed by
the chair pursuant to paragraph (2)(C) below. Committee members may attend
meetings in person, by telephone, by videoconference, or by other means
approved in advance by the chair.

~~(1)(B)~~(1)(E) The confidentiality of all actions and materials related to a complaint,
hearing, appeal, and Council review are governed by Rule 4-202.02, other than
any public censure by the Council.

(2) Complaint submission and initial review.

(2)(A) A person who has a complaint against a commissioner shall submit a copy of the
complaint to the Committee chair.

(2)(B) Each complaint shall be in writing and shall contain:

(2)(B)(i) the complainant's name;

(2)(B)(ii) the complainant's preferred contact information;

(2)(B)(iii) the name of the involved commissioner;

(2)(B)(iv) a description of the commissioner's actions in sufficient detail to inform the Committee of the nature and date of the alleged misconduct; and

(2)(B)(v) when possible, supporting documentation.

~~(1)(C) Upon receiving a complaint, the chair shall conduct an initial review to determine if the allegations raise an issue that would be appropriately addressed by the full Committee. The chair shall dismiss frivolous complaints and complaints found to raise only issues of law or fact for which the remedy is the review of the case by the trial court judge or by an appellate court. If the chair dismisses a complaint following initial review, the chair shall provide notice of and basis for the dismissal to the complainant, the presiding judge(s) of the district(s) the commissioner serves, and the commissioner. The chair shall refer any complaint not dismissed following initial review to the full Committee. **Informal complaint.**~~

~~An informal complaint against a court commissioner may be filed with the presiding judge of the court the court commissioner serves. The presiding judge shall conduct such investigation and take such corrective action as warranted by the complaint.~~

~~(1)(D) **Formal complaint.**~~

~~(1)(E) A formal complaint against a court commissioner shall be in writing and filed with the presiding officer of the Council. The presiding officer shall refer the complaint to the committee and provide a copy of the complaint to the court commissioner and to the presiding judge of the court the commissioner serves.~~

~~(1)(F) All proceedings and materials related to a formal complaint shall be kept confidential.~~

~~(1)(G) The chair or the committee shall dismiss a frivolous complaint. The chair or the committee shall dismiss a complaint found to raise only issues of law or fact for which a remedy is the review of the case by the trial court judge or by an appellate court. The chair of the committee shall provide notice of and basis for the dismissal to the complainant, the presiding judge and the commissioner.~~

~~(1)(H) The committee may investigate a complaint that is not dismissed under paragraph (3)(C). This investigation shall be conducted to determine whether dismissal or a hearing is appropriate.~~

97 ~~(1)(l) The committee may request that the state court administrator appoint a staff~~
98 ~~person within the administrative office to perform any investigation and make any~~
99 ~~presentations to the Committee or the Council.~~

100 ~~(2)(C)~~

101 **(3) Committee examination**

102 ~~(3)(A) The Committee shall examine any complaint referred to it by the chair under~~
103 ~~paragraph (2)(C) to determine whether dismissal or a hearing is appropriate. In~~
104 ~~connection with this examination, the committee may conduct an investigation of~~
105 ~~the allegations made in the complaint, including review of any relevant court file,~~
106 ~~hearing transcripts, and related materials.~~

107 ~~(3)(B) If the Committee dismisses the complaint after examination, the chair shall~~
108 ~~provide notice of and basis for the dismissal to the complainant, the~~
109 ~~commissioner, and the presiding judge(s) of the district(s) the commissioner~~
110 ~~serves.~~

111 ~~(3)(C) If the Committee determines that the matter should proceed to a hearing, the~~
112 ~~chair shall send notice to the complainant, the commissioner, and the presiding~~
113 ~~judge(s) of the district(s) the commissioner serves. The notice shall:~~

114 ~~(3)(C)(i) inform the commissioner of the allegations and the canons allegedly~~
115 ~~violated;~~

116 ~~(3)(C)(ii) invite the commissioner to respond to the allegations in writing within~~
117 ~~30 days; and~~

118 ~~(3)(C)(iii) include a copy of the complaint.~~

119 ~~(3)(D) If the commissioner chooses to respond to the allegations, the commissioner~~
120 ~~shall send a copy of the response to the complainant, the Committee chair, and~~
121 ~~the presiding judge(s) of the district(s) the commissioner serves.~~

122 ~~(3)(E) At any time prior to a hearing, the complainant may request to withdraw his or~~
123 ~~her complaint. If such a request is made, the Committee may grant the request~~
124 ~~and dismiss the complaint, or it may deny the request and proceed with the~~
125 ~~hearing.~~

126 ~~(2)(4)~~ **Hearings of the Court Commissioner Conduct Committee.**

127 ~~(4)(A) If the Committee determines that a matter should proceed to a hearing under~~
128 ~~paragraph (3), a hearing shall be scheduled after receipt of the commissioner's~~
129 ~~response or expiration of the time to respond in paragraph (3)(C)(ii). Notice of the~~
130 ~~date, time, and place of the hearing shall be sent to the complainant, the~~

131 commissioner, and the presiding judge(s) of the district(s) the commissioner
132 serves.

133 (4)(B) Hearings shall be closed to the public.

134 (4)(C) Not later than 20 days before the hearing, the commissioner and complainant
135 shall exchange all proposed exhibits and a list of all potential witnesses. The
136 commissioner and the complainant are not considered witnesses.

137 (4)(D) The commissioner and complainant may be present at the hearing and have the
138 assistance of counsel.

139 (4)(E) The Committee shall interview the complainant, the commissioner, and any
140 witnesses determined by the Committee to have relevant information. The
141 commissioner and complainant have the right to testify.

142 (4)(F) The complainant may ask the Committee to pose specific questions to the
143 commissioner, and the commissioner may ask the Committee to pose specific
144 questions to the complainant. But ordinarily, neither the complainant nor the
145 commissioner, whether acting on their own or through counsel, will be allowed to
146 cross-examine the other unless, upon request, the Committee chair determines
147 that cross-examination would materially assist the Committee in its deliberation.

148 (4)(G) The commissioner and complainant may present, examine, and cross-examine
149 witnesses.

150 (4)(H) Testimony shall be presented under oath and a record of the proceedings
151 maintained.

152 (4)(I) At any time before final decision by the Committee, the commissioner may admit
153 some or all of the allegations in the complaint, and may stipulate to findings and
154 recommendations by the Committee.

155 (4)(J) Within 30 days after the completion of the hearing, the Committee shall make
156 written findings and conclusions concerning the allegations in the complaint and
157 provide a copy to the complainant, the commissioner, the presiding judge(s) of
158 the district(s) the commissioner serves, and the Council.

159 (4)(K) If the Committee finds misconduct by a preponderance of the evidence, the
160 Committee shall recommend appropriate corrective actions under CJA Rule 3-
161 201.

162 (4)(L) In making recommendations for corrective actions, the Committee shall consider
163 the following non-exclusive factors:

164 (4)(L)(i) the nature of the misconduct;

- 165 (4)(L)(ii) the gravity of the misconduct;
- 166 (4)(L)(iii) the extent to which the misconduct has been reported to or is known
- 167 by the presiding judge(s) of the district(s) the commissioner serves or
- 168 the commissioner, and the source of the dissemination of information;
- 169 (4)(L)(iv) the extent to which the commissioner has accepted responsibility for
- 170 the misconduct;
- 171 (4)(L)(v) the extent to which the commissioner has made efforts to avoid
- 172 repeating the same or similar misconduct;
- 173 (4)(L)(vi) the length of the commissioner's service with the courts;
- 174 (4)(L)(vii) the effect the misconduct has had upon the confidence of court
- 175 employees, participants in the judicial system, or the public in the
- 176 integrity or impartiality of the judiciary;
- 177 (4)(L)(viii) the extent to which the commissioner profited or satisfied his or her
- 178 personal desires as a result of the misconduct; and
- 179 (4)(L)(ix) the number and type of previous corrective actions against the
- 180 commissioner.

181 (4)(M) At the conclusion of the Committee's work, a copy of the complete file shall be
182 delivered to the State Court Administrator or designee.

183 **(5) Council review of committee action.**

184 **(5)(A) Appeals from decisions without a hearing.**

185 (5)(A)(i) Complaints dismissed prior to hearing, either by the chair under
186 paragraph (2)(C) or by the Committee under paragraph (3)(B), may be
187 appealed by the complainant to the Judicial Council. All such appeals
188 must be submitted in writing to the Chair of the Council, and must be
189 received within 30 days of the notice of dismissal. In the appeal, the
190 complainant must set forth the specific grounds on which the appeal is
191 based. A copy of the appeal shall be provided to the Committee chair,
192 the commissioner, and the presiding judge(s) of the district(s) the
193 commissioner serves.

194 (5)(A)(ii) The Council, a designated Council member, or a committee of the
195 Council shall conduct a de novo review of the file, and shall either
196 affirm the dismissal, or shall require the Court Commissioner Conduct
197 Committee to set the matter for hearing or re-hearing.

198 (5)(A)(iii) The Council's decision shall be in writing and a copy provided to the
199 Committee chair, the complainant, the commissioner, and the
200 presiding judge(s) of the district(s) the commissioner serves.

201 (5)(A)(iv) If the dismissal is affirmed, the complainant has no other right of
202 appeal.

203 (5)(B) Council review following a hearing.

204 (5)(B)(i) The Committee's findings, conclusions, and recommendations
205 following a hearing will be reviewed by the Council, and considered at
206 a meeting of the Council to be held at least 45 days after issuance of
207 the Committee's decision.

208 (5)(B)(ii) The complainant, the commissioner, or presiding judge(s) of the
209 district(s) the commissioner serves may file objections to the
210 Committee's findings, conclusions or recommendations. Any such
211 objections must be submitted in writing to the Council within 30 days
212 of the date the Committee's findings, conclusions, and
213 recommendations were issued.

214 (5)(B)(iii) No person other than the members of the Council are entitled to
215 attend the Council meeting at which the Committee's decision is
216 reviewed.

217 (5)(B)(iv) In conducting its review, the Council shall review the record of the
218 Committee's hearing, and shall determine whether to adopt, modify,
219 or reject the Committee's findings, conclusions, and
220 recommendations, including any recommendations for corrective
221 action.

222 (5)(B)(v) The Council's decision shall be in writing and provided to the
223 Committee chair, the commissioner, the complainant, and the
224 presiding judge(s) of the district(s) the commissioner serves.

225 (5)(B)(vi) The decision reached by the Council after review is final and is not
226 appealable.

227 (5)(C) Annual Report. The chair of the Committee shall report to the Council not less
228 than annually on the Committee's work including a general description of any
229 complaint dismissed without a hearing.

230 ~~(2)(A)(i) The hearings of the committee shall be closed to the public. The~~
231 ~~committee shall interview the complainant, the court commissioner,~~

232 and any witnesses determined to have relevant information. The
233 commissioner has the right to testify. The commissioner and
234 complainant may be present at any hearing of the committee and
235 have the assistance of counsel. The commissioner may present and
236 examine and cross-examine witnesses. Testimony shall be presented
237 under oath and a record of the proceedings maintained. The
238 commissioner may obtain a copy of the record upon payment of any
239 required fee.

240 ~~(2)(A)(ii) The committee shall make written findings concerning the merits of~~
241 ~~the complaint and provide a copy of the findings to the complainant,~~
242 ~~the court commissioner, and the presiding judges of the court the~~
243 ~~commissioner serves.~~

244 ~~(2)(B) If the committee finds the complaint to have merit, the committee shall~~
245 ~~recommend to the Council that a sanction be imposed under CJA Rule 3-201(6).~~
246 ~~The committee shall dismiss any complaint found to be without merit.~~

247 ~~(2)(C) **Council Review.**~~

248 ~~(2)(C)(i) **Complaints dismissed without a hearing.** The chair of the~~
249 ~~committee shall report to the Council not less than annually on the~~
250 ~~committee's work including a general description of any complaint~~
251 ~~dismissed without a hearing.~~

252 ~~(2)(C)(ii) **Complaints with a committee hearing.**~~

253 ~~(2)(C)(ii)(a) The Council shall review the record of the committee~~
254 ~~hearing to determine the correct application of~~
255 ~~procedures and to determine the sanction to be~~
256 ~~imposed.~~

257 ~~(2)(C)(ii)(b) The complainant, commissioner or presiding judges of~~
258 ~~the districts the commissioner serves shall file any~~
259 ~~objections to the committee's findings in writing with the~~
260 ~~Council. No person is entitled to attend the Council~~
261 ~~meeting at which the complaint is reviewed.~~