

**Rule 3-201.02**

**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

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~~(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 ~~on~~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;

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

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

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

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

82 ~~(1)(D) — **Formal complaint.**~~

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

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

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

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

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

~~(2)(C)~~

**(3) Committee examination**

~~(3)(A) The Committee shall examine any complaint referred to it by the chair under paragraph (2)(C) to determine whether the allegations set forth therein, if true, could support a finding of misconduct by a commissioner. If no such finding is possible, even if the allegations are presumed true, the Committee shall dismiss the complaint, and the chair shall notify the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves of the dismissal in writing. If a finding of misconduct is possible, the matter should proceed to a hearing.~~

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

~~(3)(B)(i) inform the commissioner of the allegations and the canons allegedly violated;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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