



State of New Mexico

**JUDICIAL STANDARDS COMMISSION**

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*Judicial Standards Commission Rules*  
*May 1, 2010*

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## **Rule 1. Scope, authority and purpose.**

- A. **Scope.** These rules and regulations are promulgated pursuant to the Article 6, Section 32 of the Constitution of the State of New Mexico. They apply to all proceedings before the Judicial Standards Commission involving the removal, retirement or discipline of justices, judges or magistrates.
- B. **Statutory authority.** Article 6, Section 32 of the Constitution of New Mexico and Sections 34-10-1 to 34-10-4 NMSA 1978 provide for the selection, terms and duties of the Judicial Standards Commission and its executive director.
- C. **Purpose.** The purposes of the Judicial Standards Commission and these rules shall be to protect the public from any improper conduct and behavior of judges; to preserve the integrity of the judicial process; to maintain public confidence in the judiciary; to create a greater awareness of proper judicial behavior on the part of the judiciary and the public; and to provide for the expeditious and fair disposition of complaints of judicial misconduct.

[Approved, effective December 6, 1968; as amended, effective September 29, 1989; January 31, 1998; July 1, 1999; as amended, effective May 1, 2010.]

## **Rule 2. Definitions.**

In these rules and regulations, unless the context or subject matter otherwise requires:

- A. "Commission" means the Judicial Standards Commission.
- B. "Judge" means any justice, judge, and all judicial candidates of the Supreme Court, Court of Appeals, district court, magistrate court, metropolitan court, probate court and municipal court, including judges acting pro tem, alternate, or by designation. Any person who serves as a full-time or part-time judge is a "judge" within the meaning of these rules.
- C. "Chairperson" includes vice-chairperson and presiding officer.
- D. "Masters" means any justices or judges of courts of record of this state who are appointed by the Commission to hear and take evidence in any matter and to report their findings to the Commission.
- E. "Presiding officer" means the member of the Commission or master so designated by the chairperson.
- F. "Examiner" means any person appointed by the Commission or the executive director to gather and present evidence before masters or the Commission.
- G. "Shall" is mandatory and "may" is permissive.
- H. "Registered mail" means either registered or certified mail, deposited with the United States post office, with postage prepaid and with a request for a return receipt.
- I. "Oath" is synonymous with "affirmation" and "swear" is synonymous with "affirm".
- J. "Formal proceeding" means those proceedings referred to in Rules 15 through 38 of these rules.
- K. "Transcript" means a record of proceedings before the Commission or masters taken in any manner the chairperson may determine, and may include a stenographic record, audio recording, video recording or other form of record which accurately relates the contents of the proceeding.
- L. "Discipline" may include removal and retirement of a judge. Removal and retirement may also be recommended or imposed as non-disciplinary measures.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; January 1, 1998; as amended, effective May 1, 2010.]

### **Rule 3. Organization and administration.**

A. The Commission shall consist of eleven (11) members as provided in the state constitution.

B. The Commission shall elect from its membership appointed by the governor a chairperson and a vice-chairperson, each of whom may serve successive one-year terms.

(1) The chairperson may designate the vice-chairperson or executive director to sign or execute correspondence, orders and other documents on the chairperson's behalf.

(2) The vice-chairperson shall act as chairperson in the absence of the chairperson and, in the absence of both, the members present may select an acting chairperson.

(3) The chairperson, vice-chairperson, and presiding officer, if one is designated for a specific hearing or other proceeding, are authorized to administer oaths or affirmations to all witnesses appearing before the Commission.

C. The chairperson may designate another member as a presiding officer to preside at specific hearings or other proceedings.

(1) The presiding officer may hold a prehearing conference in order to settle evidentiary questions, expedite the disposition of the action, and settle issues concerning the hearing before the commencement of the hearing, in accordance with Rule 18.

(2) After the response to the notice of formal proceedings is filed, the presiding officer shall hold an initial scheduling conference in accordance with Rule 19.

(3) Procedural and other interlocutory rulings shall be made by the presiding officer and shall be taken as consented to by the other members of the Commission, unless one or more calls for a vote, in which latter event such rulings shall be made by a majority of those present.

(4) Upon motion to the Commission by respondent judge or examiner, any order of the presiding officer is subject to review and change by the Commission.

D. The Commission shall employ an executive director who shall have duties and responsibilities as specified by the Commission, including the authority to:

(1) establish and maintain a permanent office;

(2) receive information, allegations, and complaints;

(3) make preliminary evaluations and screen complaints;

(4) conduct investigations;

(5) recommend dispositions;

(6) maintain Commission records;

(7) maintain statistics concerning the operation of the Commission and make them available to the Commission and to the public;

(8) prepare the Commission's budget for approval by the Commission and administer its funds;

(9) employ and supervise other members of the Commission's staff;

(10) prepare an annual report of the Commission's activities for presentation to the Commission, the Supreme Court and to the public;

(11) employ special counsel, private investigators and other experts as necessary to investigate and process matters before the Commission and before the Supreme Court; and

(12) make and issue public statements as authorized by the Commission.

E. Meetings of the Commission shall be held at the call of the chairperson, the vice-chairperson, the executive director or at the request of a majority of the members of the Commission, and all members of

the Commission shall be given notice. The Commission may conduct meetings by telephone conference call.

F. Minutes shall be kept of each meeting of the Commission. The minutes shall record the names of those present, the actions taken, and any other matter that the Commission may deem appropriate.

G. A quorum for the transaction of business by the Commission shall be six (6) members, and no act of the Commission shall be valid unless concurred in by no less than six (6) members.

[Approved, effective December 6, 1968, as amended, effective March 27, 1975; March 1, 1979; August 31, 1984; September 29, 1989; July 1, 1999; as amended, effective May 1, 2010.]

#### **Rule 4. Commission powers.**

A. Notwithstanding any other provision of law, the Commission shall have the power to receive information, investigate, conduct hearings, take informal remedial action, and make recommendations to the Supreme Court concerning allegations against judges of willful misconduct in office, persistent failure or inability to perform judicial duties, habitual intemperance, disability, and/or violations of the Code of Judicial Conduct.

B. The Commission shall be entitled, with the concurrence of a majority of members of the Commission, at any stage of an investigation, to subpoena witnesses, including the judge as witness, compel their attendance and examine them under oath or affirmation, and to require the production of documents, books, accounts, and other records, and for other discovery. Subpoenas shall be served in the manner provided by law for the service of subpoenas in a civil action.

(1) As part of an initial inquiry under Rule 14, the executive director may obtain subpoenas.

(a) The executive director shall report to the chair of the Commission as soon as practicable when a subpoena has been sought; and

(b) The executive director shall report to the Commission as a whole at the next scheduled meeting of any subpoenas that have been sought.

(2) After a respondent judge has been issued a notice of formal proceedings as required under these rules, respondent judge is entitled to the receipt of any subpoenas issued after the issuance of a notice of formal proceedings. Additionally, examiner is entitled to the receipt of any subpoenas issued by respondent judge after the issuance of a notice of formal proceedings.

(3) The subject of a subpoena may file a motion to quash the subpoena with the full Commission.

C. The Commission has the discretion to pay per diem and mileage to witnesses at the rate specified for non-salaried public officers as provided in the Per Diem and Mileage Act, Sections 10-8-1 to 10-8-8 NMSA 1978, for the time which attendance is required. Witnesses may apply to the Commission for reimbursement of per diem expense and mileage after completion of their participation in Commission proceedings. The Commission shall promptly determine whether its operating budget and legislative appropriations will permit payment of per diem expense and mileage. Expenses of witnesses shall be borne by the examiner for witnesses called by the examiner, and by the respondent judge for witnesses called by the respondent judge, subject to the Supreme Court's order assessing to the judge the costs incurred by the Commission.

D. The failure of any judge under investigation to comply with the reasonable requests or directives of the Commission may be considered willful misconduct in office by the Commission. The intentional misrepresentation of a material fact during any stage of a disciplinary proceeding may constitute willful misconduct in office.

[Approved, effective September 29, 1989; as amended, effective September 24, 1993; January 31, 1998; September 1, 2000; as amended, effective May 1, 2010.]

**Rule 5. Contempt powers.**

- A. The misconduct of any person in the presence of the Commission while it is performing official duties; resistance to or obstruction of any lawful process, order or rule of the Commission, including intimidation of witnesses in a Commission investigation, or withholding of discovery in an investigation; or violation of any rule of confidentiality pertaining to Commission proceedings shall constitute contempt. Any participant in a Commission proceeding may be cited for contempt of the Commission.
- B. If a person is cited for contempt of the Commission, there shall be an evidentiary hearing before the Commission to establish a record of the alleged contempt. The evidentiary hearing is to be held before a quorum of members of the Commission. At least six (6) Commissioners must concur that contempt had occurred.
- C. Only evidence admissible under the New Mexico Rules of Evidence shall be received at a contempt hearing.
- D. If the Commission determines that contempt of the Commission has occurred, the Commission shall advise the Supreme Court of its findings, conclusions, and recommendations with respect to the alleged contempt, and shall submit to the Supreme Court a record of any evidentiary proceedings. The Supreme Court may impose such penalty or discipline it deems appropriate.
- E. If the alleged contempt occurs during the course of a hearing before the Commission, the Commission may hold an evidentiary hearing on the contempt allegation as part of the underlying hearing, and findings and conclusions on the alleged contempt may be included in any findings and conclusions forwarded by the Commission to the Supreme Court at the conclusion of the hearing.

[Approved, effective May 1, 2010.]

**Rule 6. Commissioner disqualification or recusal.**

- A. A judge who is a member of the Commission shall not participate as such member in any proceedings involving the judge's own removal, retirement or discipline.
- B. A commissioner shall not participate in any matter if a judge similarly situated would be disqualified in a court proceeding.
- C. A commissioner may recuse from a particular matter.
- D. If the propriety of a commissioner's participation in a particular matter is questioned, the issue shall be decided by a majority of the other commissioners present and voting.
- E. A disqualified commissioner shall not participate in any proceedings with reference to the matter from which the commissioner is disqualified or recused, and he or she shall be excused from that portion of any meeting at which the matter is discussed.
- F. Minutes of Commission meetings shall record the names of any commissioner not voting on a matter by reason of disqualification or recusal.

[Approved, effective December 6, 1968; as amended, September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 7. Immunity.**

Members of the Commission, Commission staff and special counsel shall be immune from suit as provided by law for all conduct in the course of their official duties.

[Approved, effective September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 8. Confidentiality and privilege.**

A. Pursuant to Article VI, Section 32 of the New Mexico Constitution, all papers and pleadings filed with and proceedings before the Commission or its masters shall be confidential. Such papers include, but are not necessarily limited to, complaints against judges. Only when a record is filed by the Commission with the Supreme Court do the proceedings lose their confidential character. Commission staff cannot respond to requests for information regarding a complaint or a proceeding while the matter is confidential, whether from a complainant or the public.

B. Pursuant to Article 6, Section 32 of the New Mexico Constitution, the filing of papers with, or giving of testimony before the Commission or its masters, shall be privileged in any action for defamation. A writing which was privileged prior to its filing with the Commission or its masters does not lose its privilege by the filing. A record filed by the Commission in the Supreme Court continues to be privileged.

C. A complainant is not prohibited from disclosing that he or she has filed a complaint with the Commission, or from disclosing the details of that complaint.

D. Commission meetings and Commission hearings are closed to the public.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984, September 29, 1989; October 27, 1995; as amended, effective May 1, 2010.]

### **Rule 9. Applicable rules.**

Neither the New Mexico Rules of Civil Procedure (Rule 1-001 NMRA *et seq.*) nor the New Mexico Rules of Criminal Procedure (Rule 5-101 NMRA *et seq.*) govern proceedings before the Commission. The presiding officer may consult the New Mexico Rules of Civil Procedure or the New Mexico Rules of Criminal Procedure for appropriate guidance, where otherwise not provided by these rules.

[Approved, effective May 1, 2010.]

### **Rule 10. Medical or psychological examination and waiver of privilege.**

A. When a complaint alleges, or where an initial inquiry or preliminary investigation reveals, that a judge is or may be incapacitated by reasons of psychological or physical disability, and the Commission

finds good cause to do so, the Commission may order the judge to undergo any physical or psychological examinations the Commission deems necessary to proceed with its investigation. The examination report shall be furnished to the Commission, the examiner, and the respondent judge.

B. A judge required to submit to drug testing shall do so in the manner set forth in Supreme Court Order No. 04-8200, dated June 16, 2004, as amended or revised.

C. At the Commission's request, a judge shall provide the Commission with all waivers and releases necessary to authorize the Commission to receive all medical records, reports, and information from any medical person, medical institution, or other facility regarding the judge's physical or psychological condition.

D. If the complaint involves the physical or psychological condition of the judge, a denial of the alleged condition shall constitute a waiver of any privilege the judge may have that would preclude the discovery of medical records or the requirement of a physical or psychological examination related to the allegations of the complaint.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; January 31, 1998; as amended, effective May 1, 2010.]

#### **Rule 11. Computation and extension of time.**

A. In computing any period of time prescribed or allowed by these rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included. If the act to be done is the filing of a paper with the Commission, and on that day the weather or other conditions have made the office of the clerk of the Commission inaccessible, the period runs until the end of the next day the office of the clerk of the Commission is accessible. Time shall always be computed in calendar days; Saturdays, Sundays and legal holidays are counted as days in the computation of time.

B. Whenever some action is required to be taken within a certain number of days, the respondent judge or the examiner may request an extension of time.

(1) Prior to the issuance of a notice of formal proceedings, the chairperson may extend the time for good cause shown for a reasonable period not to exceed thirty (30) days. A request to the chairperson shall be by letter to the chairperson. The Commission may extend time for a reasonable period over thirty (30) days upon good cause shown. A request to the full Commission shall be made by motion.

(2) Once the notice of formal proceedings has been issued, a request for extension of time shall be made by motion to the presiding officer or the full Commission. If a presiding officer has not been appointed, the request for extension of time shall be made by motion to the chairperson or the full Commission.

(3) If the respondent judge or the examiner wishes to seek an extension of time, respondent judge or examiner shall first seek the concurrence of opposing counsel.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; as amended, effective May 1, 2010.]

**Rule 12. Service.**

- A. All papers in Commission proceedings may be served on a judge in person or by registered or certified mail addressed to the judge at the judge’s chambers or the judge’s last known residence. If counsel has appeared for a judge, all papers may be served on counsel in lieu of service upon the judge.
- B. Service of papers on the Commission shall be given by delivering or mailing, or sending by facsimile the papers to the Commission's office. Receipt of an original is necessary if verification or original signature is required.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; as amended, effective May 1, 2010.]

**Rule 13. Complaint.**

- A. Any person or organization may file a complaint against a judge. The complaint shall be written on a form designated by the Commission. A complaint shall follow the instructions provided on the form in order to be filed. The complainant's signature shall be verified. Verification means the complainant signs the complaint and swears before a notary public that the information in the complaint, and any attachments provided with the complaint, are true and accurate. The complainant will be advised in writing of the outcome of the complaint, subject to the limits of confidentiality.
- B. The Commission on its own motion may initiate a complaint against a judge.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; January 31, 1998; September 1, 2000; as amended, effective May 1, 2010.]

**Rule 14. Preliminary investigation.**

- A. Upon receipt of a complaint, report or other information as to conduct that might constitute grounds for removal, retirement or discipline, the executive director or staff may conduct a prompt, discreet, and confidential initial inquiry and evaluation. The initial inquiry and evaluation may include conducting clarification interviews and review of pertinent documents, when necessary.
- B. Upon receipt of a verified complaint that comports with Rule 13, or upon the commission’s own motion, matters shall be docketed and assigned an inquiry number.
- C. Upon determination that there is insufficient cause to proceed, the Commission shall dispose of the case pursuant to Rule 33 and the complainant shall be notified of the Commission's action. If the judge has been informed of the proceeding, the judge shall also be notified of the Commission's action.
- D. If the results of the initial inquiry indicate that there is probable cause to find that misconduct has occurred, that there has been a persistent failure or inability to perform the judge’s duties, that a judge has demonstrated habitual intemperance, or that the judge manifests a disability that seriously interferes with the performance of the judge’s duties that is, or is likely to become, of a permanent character, the Commission may proceed to issue a notice of preliminary investigation.
- E. When the Commission receives information, not in the form of a verified statement, which may subject a judge to action by the Commission, it may on its own motion, authorize a preliminary investigation.

F. The judge shall be notified of the preliminary investigation by written communication, setting forth the nature of the complaint. The judge shall respond, completely and truthfully, in writing, to the notice of preliminary investigation within twenty-one (21) days of its service upon the judge. The judge may be required to submit copies of germane documents in response to the Commission's notice of preliminary investigation.

G. A notice of preliminary investigation must be authorized by the vote of a majority of the members of the Commission.

[Approved, effective May 1, 2010.]

#### **Rule 15. Notice of formal proceedings.**

If at least six (6) members of the Commission decide that formal proceedings should be instituted, the Commission shall issue to the judge a notice of formal proceedings. This notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based. The notice shall state the laws, canons and rules allegedly violated and specify the constitutional provisions under which the Commission invokes jurisdiction in the proceedings.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; July 1, 1999; as amended, effective May 1, 2010.]

#### **Rule 16. Response to notice of formal proceedings.**

A. Within twenty-one (21) days after service of the notice of formal proceedings, the judge shall file with the Commission a legible response to the notice of formal proceedings which shall be verified. Verification means the judge signs the response to the notice of formal proceedings and swears before a notary public that the information in the response, and any attachments provided with the response, are true and accurate.

B. The facts alleged in the notice of formal proceedings may be deemed admitted if not specifically denied by the response or if no response is filed within the prescribed time, in which event the sole issue to be determined by the Commission shall be the nature of the Commission's recommendation of removal, retirement or discipline after consideration of any facts in aggravation or mitigation of the respondent's fault.

[Approved, effective December 6, 1968; as amended, effective June 27, 1986; September 29, 1989; as amended, effective May 1, 2010.]

#### **Rule 17. Resolution by stipulation.**

A. After issuance of a notice of preliminary investigation or a notice of formal proceedings, a matter may be resolved short of a formal hearing on the merits by way of a stipulated resolution. A stipulated resolution constitutes a voluntary, binding agreement between the Commission and the respondent judge, enforceable before the Commission or the Supreme Court.

- B. Stipulated agreements may contain, but are not limited to, the following:
- (1) Stipulations to facts, legal conclusions or disposition; or
  - (2) Stipulations to resignation or retirement in lieu of further disciplinary proceedings, with or without stipulations to facts or legal conclusions.
- C. After a stipulated agreement has been signed by the respondent judge and the examiner, the Commission may, upon the vote of a majority of the Commission:
- (1) Accept the stipulated agreement.
  - (2) Reject the stipulated agreement.
  - (3) Require a presentment hearing by the respondent judge and the examiner on the substance and content of the stipulated agreement before the full Commission. The presentment hearing will be on the record, and the respondent judge and the examiner will be placed under oath. After the presentment hearing, the Commission members present will vote on whether to accept or reject the stipulated agreement. In order for the stipulation agreement to be accepted after a presentment hearing, a majority of Commission members are required to vote to accept it.
- D. Upon acceptance of a stipulated agreement that stipulates to removal, retirement or discipline, the Commission will file a petition with the Supreme Court recommending approval of the stipulated agreement. If a stipulated agreement does not contain stipulations to facts or legal conclusions, upon filing with the Supreme Court the petition seeking approval of the stipulated agreement shall include as a sealed exhibit a copy of the underlying notice(s) of formal proceedings, or if none, the notice(s) of preliminary investigation to provide the Supreme Court with the pending factual allegations. Stipulated agreements filed with the Supreme Court for approval are only enforceable upon order of the Supreme Court.
- E. If the Commission requires a presentment hearing in any matter resolved by stipulated agreement, and the agreement stipulates to removal, retirement or discipline by the Supreme Court, the record of the presentment hearing shall be filed with the Supreme Court.

[Approved, effective May 1, 2010.]

### **Rule 18. Prehearing motions.**

- A. All prehearing motions shall be submitted to the presiding officer at least twenty-one (21) days prior to a scheduled hearing, unless, upon good cause shown, the presiding officer waives the time requirement. The presiding officer may rule upon any prehearing motions, including motions for protective orders; provided, however, that any prehearing motions involving the determination of factual issues, or seeking the dismissal of a charge or charges, shall require the approval of a majority of the members of the Commission to be valid.
- B. All motions, except as may be permitted by the presiding officer, shall be in writing and shall state with particularity the grounds and the relief sought.
- C. The moving side shall determine whether or not a motion will be opposed. If the motion will not be opposed, an order approved by opposing counsel shall accompany the motion.
- D. The motion shall recite that concurrence of opposing counsel was requested or shall specify why no such request was made. The movant shall not assume that the nature of the motion obviates the need for concurrence from opposing counsel unless the motion is a motion to dismiss. Notwithstanding the provisions of any other rule, counsel may file with any opposed motion a brief or supporting points with citations or authorities. If the motion requires consideration of facts not of record, the moving side shall file copies of all affidavits, depositions or other documentary evidence to be presented in support of the motion.

- E. A motion for summary judgment is not permitted in Commission proceedings.
- F. A response and reply are permitted. Surreply is permitted upon the approval of the presiding officer in the matter.
- G. A request for hearing shall be filed at the time an opposed motion is filed, along with a notice of hearing to be completed by the presiding officer in the matter.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 19. Discovery.**

- A. The right of a respondent judge to discovery does not attach until formal charges have been filed. Discovery in this matter is governed by these rules and any discovery orders issued by the Commission. A respondent judge and the examiner shall exercise due diligence to obtain any needed discovery on their own. Prior to filing motions related to discovery, a respondent judge and the examiner shall confer in good faith to determine what discovery may be exchanged through stipulation. Any desired discovery that cannot be exchanged by stipulation and that cannot be obtained through the efforts of the respondent judge or examiner may then be requested through a motion to compel discovery filed with the Commission. A copy of the motion shall be mailed to the opposing side at the same time the motion to compel discovery is filed with the Commission. A response to the motion to compel is due within seven (7) calendar days. The motion to compel discovery shall be filed with the Commission at least thirty (30) days prior to the date of the hearing unless, upon good cause shown, the chairperson waives the time requirement. The Commission may allow appropriate discovery, including the taking of depositions. If a deposition is allowed, the side seeking the deposition will bear the expense of such proceedings, subject to the Supreme Court's order assessing to the judge the costs incurred by the Commission. Discovery such as requests for admissions or interrogatories shall not be permitted unless otherwise ordered by the Commission. Decisions concerning the motion to compel discovery shall be made as soon as practicable.
- B. After the response to the notice of formal proceedings is filed, the presiding officer shall hold an initial scheduling conference at which will be determined deadlines for producing lists of witnesses, producing lists of exhibits, objecting to proposed exhibits, conducting and exchanging discovery, filing pre-trial motions, and filing Findings of Fact and Conclusions of Law.
- C. The examiner shall make available to the respondent judge any statements, documents, photographs, tangible objects, reports of medical, physical, or psychological examinations, or other similar material which are in the possession of the examiner and are material to the preparation of the defense or are intended for use as evidence at trial. Additionally, respondent judge shall make available to the examiner any statements, documents, photographs, tangible objects, reports of medical, physical, or psychological examinations, or other similar material which are in the possession of the respondent judge and are material to the preparation of the case or are intended for use as evidence at trial.
- D. Information not subject to disclosure. Pursuant to Article VI, Section 32 of the New Mexico Constitution, the Commission is not obligated to provide the initial complaint to the respondent judge.
- E. If, subsequent to compliance with these rules, and prior to or during trial, the examiner or respondent judge discovers additional material or witnesses which the examiner or respondent judge would have been under a duty to produce or disclose at the time of such previous compliance if it were then known, the examiner or respondent judge shall promptly give written notice to the other side or opposing attorney of the existence of the additional material or witnesses.
- F. The respondent judge or the examiner may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; production of documents or things or

permission to enter upon land or other property for inspection and other purposes; or physical and psychological examinations.

G. Unless otherwise limited by order of the Commission in accordance with these rules, the scope of discovery is as follows:

(1) The respondent judge or the examiner may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the one seeking discovery or to the claim or defense of any other, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) The frequency or extent of use of discovery methods set forth in this rule shall be limited by the presiding officer if he or she determines that:

(a) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(b) the one seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(c) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on either the respondent judge's or the examiner's resources, and the importance of the issues at stake in the litigation.

(3) Discovery of facts known and opinions held by experts may be obtained only as follows:

(a) The respondent judge or the examiner may require the opposing side to identify each person who is expected to be called as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(b) Upon motion the Commission may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to Subparagraph G(5) of this rule, concerning fees and expenses as the Commission may deem appropriate.

(4) The respondent judge or the examiner may discover facts known or opinions held by an expert who has been retained or specially employed by the opposing side in preparation for trial and who is not expected to be called as a witness at trial, only as provided in these rules or upon a showing of exceptional circumstances under which it is impracticable for the one seeking discovery to obtain facts or opinions on the same subject by other means.

(5) Unless manifest injustice would result, fees for experts can only be claimed as delineated in Rule 1-054 NMRA (*see In re Rodella*, 2008-NMSC-050, ¶¶ 39-40).

H. Upon motion by the respondent judge or the examiner, or by the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order, including, but not limited to, the issuance of a protective order, which justice requires to protect the respondent judge, the examiner or person from annoyance, embarrassment, oppression or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the side seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the Commission; and

(6) that a trade secret or other confidential research, development or commercial information not be revealed or be revealed only in a designated way.

If a motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that the respondent judge, the examiner or person provide or permit discovery.

A motion filed pursuant to Paragraph H of this rule shall set forth or have attached a copy of the discovery at issue.

[Approved, effective May 1, 2010.]

### **Rule 20. Setting.**

The Commission shall set a time and place for the hearing, and shall give notice of such hearing to the judge at least thirty (30) days prior to the date set, which shall be at least sixty (60) days after service of notice of formal proceedings. Unless circumstances warrant a special setting, the hearing shall be set on the Commission's trailing docket following the sixty (60) day period.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 21. Counsel to the Commission.**

A. Counsel to the Commission for a given inquiry may be assigned by the Executive Director or the Commission may request such assignment from the Executive Director upon the issuance of a notice of formal proceedings in that inquiry, if not earlier.

B. The role of the counsel to the Commission is to provide advice to the presiding officer or other Commissioners during formal proceedings on an inquiry. The responsibilities of the counsel to the Commission include, but are not necessarily limited to, the following:

- (1) providing legal advice and assistance to the presiding officer during proceedings prior to a hearing;
- (2) drafting any orders necessary during the pre-trial proceedings;
- (3) ensuring the preparation of hearing facilities;
- (4) providing legal advice to the Commission during a hearing; and
- (5) drafting the Commission's findings of fact and conclusions of law upon the conclusion of a hearing, where necessary.

C. The counsel to the Commission shall have no involvement in the formal investigation of a particular matter, in the development or adjudication of formal charges, or in the development of trial strategy. The counsel to the Commission shall not provide substantive advice to the examiner or respondent judge, or otherwise engage in *ex parte* communications.

D. The counsel to the Commission shall not participate in the Commission's deliberations, determination of factual findings, or determination of removal, retirement or discipline, other than providing advice or research on Commission policies and procedures, prior disciplinary history, Supreme Court rules, or legal matters.

[Approved, effective May 1, 2010.]

## **Rule 22. Number of Commission members required at hearing.**

No less than six (6) members of the Commission shall be present at the hearing.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; July 1, 1999; as amended, effective May 1, 2010.]

## **Rule 23. Admissible evidence and depositions.**

### **A. Evidence.**

(1) At a hearing before the Commission, only evidence admissible under the rules of evidence shall be received, and oral evidence shall be taken only on oath or affirmation.

(2) The Commission may take notice of judicially cognizable facts and, in addition, may take notice of facts within the Commission's specialized knowledge.

### **B. Depositions.**

(1) Depositions shall be taken before an officer authorized to administer oaths by the laws of the place where the examination is held.

(2) Counsel must make reasonable efforts to confer in good faith regarding scheduling of a deposition before serving a notice of deposition. The attendance of witnesses at depositions may be compelled by subpoena as provided in these rules.

(3) The respondent judge or the examiner taking the deposition of any person upon oral examination shall give at least fourteen (14) days notice in writing to the opposing side. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined.

(4) The respondent judge or the examiner taking the deposition shall state in the notice the method by which the testimony shall be recorded. The deposition may be recorded by sound, sound-and-visual or stenographic means, and the side taking the deposition shall bear the cost of the recording. The opposing side may arrange for a transcription or copy of the deposition or statement to be made from the recording of a deposition or statement at that side's expense.

(5) With prior notice to the deponent and the opposing side, the respondent judge or the examiner may designate another method to record the deponent's testimony in addition to the method specified by the person taking the deposition. The additional record or transcript shall be made at the requesting side's expense unless the Commission otherwise orders. If the deposition is taken by an official court reporter, the official transcript shall be the transcript prepared by the official court reporter.

(6) Unless otherwise agreed by the respondent judge or the examiner, a deposition shall be conducted before an officer appointed or designated under this rule and shall begin with a statement on the record by the officer that includes:

- (a) the officer's name and business address;
- (b) the date, time, and place of the deposition;
- (c) the name of the deponent;
- (d) the administration of the oath or affirmation to the deponent; and
- (e) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (a) through (c) at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted through camera or sound-recording techniques. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel

concerning the custody of the transcript or recording and the exhibits, or concerning other pertinent matters.

(7) Examination and cross-examination of witnesses in depositions may proceed as permitted at trial under the New Mexico Rules of Evidence, except Rule 11-103 NMRA and Rule 11-615 NMRA. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by this rule. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any side, or to any other aspect of the proceedings, shall be noted by the officer upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections.

(8) If requested by the deponent, the respondent judge or the examiner before completion of the deposition, the deponent shall have thirty (30) days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by this rule whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

(9) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. If the deposition is transcribed, the officer shall provide the original of the deposition or statement to the side ordering the transcription and shall give notice thereof to the opposing side. The side receiving the original shall maintain it, without alteration, until final disposition of the case in which it was taken or other order of the court. Documents and things produced for inspection during the examination of the witness shall, upon the request of either the respondent judge or the examiner, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by the respondent judge or the examiner, except that if the person producing the materials desires to retain them the person may:

(a) offer copies to be marked for identification and annexed to the deposition or statement and to serve thereafter as originals, if the person affords to the opposing side fair opportunity to verify the copies by comparison with the originals; or

(b) offer the originals to be marked for identification, after giving to the opposing side an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. The respondent judge or the examiner may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(10) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the transcript or other recording of the deposition to the respondent judge, the examiner or to the deponent.

(11) Depositions, either on oral examination or on written interrogatories, of witnesses who reside out of the state or whose personal attendance at the hearing cannot, for good reason, be procured, may be taken and used in evidence upon application to and order of the presiding officer. Such order may be made on stipulation of the respondent judge and the examiner, or after hearing on seven (7) days' notice.

C. If circumstances are such that it is not possible for a witness to appear at trial, provision may be made for the witness to testify telephonically upon application to and order of the presiding officer. Such order may be made on stipulation of the respondent judge and the examiner, or after hearing on seven (7) days' notice.

**D. Use of closed file.**

(1) A "closed file" is one involving a prior complaint received by or initiated by the Commission.

(2) A closed file may be used by the Commission or the examiner in establishing a course of conduct or pattern of violations by a judge or in making a recommendation for removal, retirement or discipline to the Supreme Court.

(3) When the Commission or examiner intends to use a closed file, the Commission or examiner shall give the judge notice. The Commission shall thereafter provide the judge with an opportunity to be heard. If no investigation was undertaken or charges were not brought regarding the allegations contained in the closed file, it may be reopened and handled as if it had just been initiated.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; January 31, 1998; September 1, 2000; as amended, effective May 1, 2010.]

#### **Rule 24. Conduct of hearing.**

A. The hearing shall be a closed hearing.

B. At the time and place set for the hearing, the Commission shall proceed with the hearing whether or not the judge has filed a response to the notice of formal proceedings or appears at the hearing.

C. The examiner shall present the case in support of the charges set forth in the notice of formal proceedings. The failure of the judge to appear at the hearing, after timely filing a response to the notice of formal proceedings specifically denying the facts alleged in the notice of formal proceedings, may be taken as an admission of the truth of the facts alleged to constitute grounds for removal, retirement or discipline.

D. The rules of privilege shall be applicable in a hearing to the same extent as in proceedings before the courts of the State.

E. The hearing shall be conducted in two phases, in the following manner:

##### ***Phase One***

(1) The examiner and the respondent judge will have the opportunity to make an opening statement.

(2) The examiner will present his or her case.

(3) When the examiner has rested, the respondent judge will present his or her case.

(4) Cross-examination and re-direct examinations of witnesses are permitted. Further examination will be permitted at the discretion of the Commission. After examiner and respondent have finished questioning a witness, the Commission shall have the opportunity to ask questions of the witness. Examiner and respondent may pose objections to the Commission's questions, if necessary.

(5) At the conclusion of examiner's case, respondent judge has the opportunity to make any motions that respondent may have.

(6) At the conclusion of the proceedings, the examiner and the respondent judge will have the opportunity to make a closing statement.

(7) After hearing closing arguments, the Commission will retire to deliberate whether there will be any finding that will result in the Commission recommending removal, retirement, or discipline to the Supreme Court. The Commission then reconvenes with the respondent judge and the examiner to announce its decision.

##### ***Phase Two***

(8) If the Commission makes a finding that results in the Commission recommending removal, retirement, or discipline to the Supreme Court, the hearing proceeds to the penalty phase, at which the respondent judge and the examiner may present witnesses, evidence, or argument. The rules of evidence do not apply to the penalty phase of the proceedings.

F. All witnesses shall be placed under oath and advised of the confidentiality of proceedings before the Commission.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; August 28, 1987; September 29, 1989; as amended, effective May 1, 2010.]

**Rule 25. Procedural rights of judges.**

A. A respondent judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel and to examine and cross-examine witnesses.

B. The respondent judge is entitled to a copy of the transcript of any hearing or testimony, to be procured at the respondent judge's own expense.

C. If the judge is adjudged incompetent, or if it appears to the Commission at any time during the proceedings that the judge is not competent to act for him- or herself, the Commission shall appoint a guardian ad litem unless the judge has a guardian who will represent the judge. In the appointment of such guardian ad litem, consideration shall be given to the wishes of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given or sent to the guardian or guardian ad litem.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; September 24, 1993; January 31, 1998; September 1, 2000; as amended, effective May 1, 2010.]

**Rule 26. Amendments to notice of formal proceedings or the response to the notice of formal proceedings.**

The Commission, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the response to the notice of formal proceedings. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given a reasonable time both to respond to the amendment and to prepare and present the judge's defense against the matters charged thereby.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 27. Hearing additional evidence.**

The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before them. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent to the judge at least fourteen (14) days prior to the day of hearing.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 28. Masters.**

- A. The Commission, by a majority vote of its members, may appoint three (3) masters who are judges of courts of record to hear and take evidence in any hearing and to report their findings to the Commission. The Commission shall set the time and place for the hearing of the masters.
- B. A hearing by masters will use the same rules of discovery, procedure, evidence, and standard of proof as a hearing before the Commission.
- C. A hearing by masters shall utilize a counsel to the Commission as delineated in Rule 21.
- D. After the conclusion of the hearing before masters, they shall within a reasonable time, and not more than twenty-one (21) days after the hearing, prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings had and their findings of fact on the issue presented by the notice of formal proceedings and the response thereto, or, if there be no response, their findings of fact with respect to the allegations in the notice of formal proceedings. When the findings support the grounds alleged for removal, retirement, or discipline, the report shall be accompanied by an original of a transcript of proceedings before the masters. The executive director shall provide copies to the Commission.
- E. Upon receiving the report of the masters, the Commission shall provide a copy to the judge.
- F. Within twenty-one (21) days after mailing of the copy of the masters' report to the judge, the examiner or the judge may file with the Commission a statement of objections to the report of the masters, setting forth all objections to the report and all reasons in opposition to the findings as sufficient grounds for removal, retirement, or discipline. A copy of such statement, when filed by the examiner, shall be sent to the judge.
- G. If no statement of objections to the report of the masters is filed within the time provided, the Commission may adopt the findings of the masters without a hearing. If such statement of objections is filed, or if the Commission in the absence of such statement proposes to modify or reject the findings of the masters, the Commission shall give the judge and the examiner an opportunity to be heard orally before the Commission, and written notice of the time and place of such hearing shall be sent to the judge at least fourteen (14) days prior thereto.
- H. When a hearing is held before masters, the affirmative vote of at least six (6) members of the Commission is required for a finding of misconduct.
- I. When a hearing is held before masters, the affirmative vote of at least six (6) members of the Commission is required for a recommendation of removal, retirement, or discipline of a judge.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; as amended, effective May 1, 2010.]

**Rule 29. Standard of proof; Commission vote.**

- A. Formal charges shall be established by clear and convincing evidence.
- B. The affirmative vote of at least six (6) members of the Commission, including a majority of those who were present at the hearing or hearings when the evidence was produced, is required for a finding that a charge has been proven by clear and convincing evidence.
- C. The affirmative vote of at least six (6) members of the Commission, including a majority of those who were present at the hearing or hearings when the evidence was produced, is required for a recommendation of removal, retirement, or discipline of a judge.
- D. The Commission will not consider complaints against the judge that have been dismissed when considering a recommendation for removal, retirement or discipline.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; July 1, 1999; as amended, effective May 1, 2010.]

**Rule 30. Recommendation for removal, retirement or discipline.**

- A. A recommendation for removal, retirement, or discipline concurred in by at least six (6) members of the Commission shall be reported to the Supreme Court.
- B. The Commission may consider the following non-exclusive factors when determining a recommendation for removal, retirement or discipline:
  - (1) The extent of the misconduct, including:
    - (a) whether the misconduct is an isolated instance or a pattern of misconduct; and
    - (b) whether the judge committed multiple offenses.
  - (2) The nature of the misconduct, including:
    - (a) whether the misconduct occurred in the judge's official capacity or the judge's private life;
    - (b) whether the misconduct occurred in or out of the courtroom, the judge's chambers, or on court property;
    - (c) whether the judge exploited the judge's judicial position to satisfy personal desires; and
    - (d) whether the misconduct involved criminal or dishonest acts.
  - (3) The judge's conduct in response to the Commission's inquiry and disciplinary proceedings, including:
    - (a) whether the judge showed remorse and made an effort to change the proscribed conduct; and
    - (b) whether the judge was candid and truthful and cooperated with the Commission.
  - (4) The judge's record of prior discipline and reputation.
  - (5) The effect the misconduct had upon the integrity of and respect for the judiciary.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; July 1, 1999; as amended, effective May 1, 2010.]

### **Rule 31. Record of Commission proceedings.**

The Commission shall keep a record of all formal proceedings concerning a judge. The proceedings of every hearing shall be reported verbatim either stenographically or electronically. The Commission's determination shall be entered in the record, and notice thereof shall be sent to the judge. In all proceedings resulting in a recommendation to the Supreme Court for removal, retirement, or discipline, the Commission shall prepare a transcript of the evidence and of all formal proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings. It shall not be necessary that proceedings be transcribed or recordings preserved in any case in which findings are not forwarded to the Supreme Court for consideration.

[Approved, effective December 6, 1968; as amended, effective March 27, 1975; March 1, 1979; August 31, 1984; September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 32. Temporary suspension and other interim relief.**

A. Incident to a preliminary investigation or a formal proceeding conducted pursuant to these rules, the Commission may, upon its determination that the continued service of a judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice, and the judge's conduct appears to be violative of the Code of Judicial Conduct or the constitution of New Mexico, petition the Supreme Court for temporary suspension. Such petition shall be presented to the Supreme Court upon a majority vote of the members of the Commission, and shall include one of the following:

- (1) a certified copy of a judgment finding the judge guilty of a felony or other serious crime;
- (2) a certificate of the Commission that a judge has been convicted of or has pleaded guilty or no contest to a felony or serious crime;
- (3) a court order or judgment declaring the judge to be incompetent or incapacitated; or
- (4) a certificate of the Commission that immediate suspension of a judge is necessary pending disposition of:
  - (a) an investigation by the Commission for an alleged violation of the Code of Judicial Conduct, Rules of Professional Conduct or a violation of a court rule, statute or other law;
  - (b) a criminal complaint, information or indictment which has been filed against the judge; or
  - (c) a determination of the present competency of the judge.

B. A judge suspended under the provisions of this rule may be reinstated immediately upon the filing of a certificate with the Supreme Court by the Commission demonstrating that:

- (1) if the suspension was for conviction of a crime, the underlying conviction for the felony or other serious crime has been reversed and no further criminal or Commission proceedings are pending against the judge;
- (2) if the suspension was imposed because of incompetency or incapacity, that such incapacity or incompetency no longer exists; or
- (3) if the suspension was imposed pursuant to Subparagraph (4) of Paragraph A of this rule, that reinstatement of the judge will not result in a substantial loss of public confidence in the judiciary.

C. Reinstatement after a temporary suspension pursuant to Paragraph A of this rule shall not terminate any Commission proceedings pending against the judge.

D. Upon notification to the Supreme Court by the Commission that information regarding possible substance abuse warrants further review or investigation, an incumbent judge under investigation shall be placed on paid administrative leave pending completion of the investigation for a period not to exceed ninety (90) work days, unless otherwise ordered by the Supreme Court.

E. The Commission may, upon its determination that the continued service of a judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice, and the judge's conduct appears to be violative of the Code of Judicial Conduct or the Constitution of New Mexico, petition the Supreme Court for interim relief, including but not limited to reassignment of the judge. Such petition shall be presented to the Supreme Court upon a majority vote of the members of the Commission, and shall include a certificate of the Commission that immediate interim relief is necessary pending disposition of:

(1) an investigation by the Commission for an alleged violation of the Code of Judicial Conduct, Rules of Professional Conduct or a violation of a court rule, statute or other law; or

(2) a determination of the present competency or capacity of the judge.

F. Interim relief granted against a judge under the provisions of Paragraph E of this rule may be vacated upon the Commission filing a certificate with the Supreme Court demonstrating that:

(1) If interim relief was imposed pursuant to Subparagraph (E)(1) of this rule, that vacating such interim relief previously ordered against the judge will not result in a substantial loss of public confidence in the judiciary; or

(2) If interim relief was imposed pursuant to Subparagraph (E)(2) of this rule, that the incompetency or incapacity no longer exists.

G. Vacating an interim relief order pursuant to Paragraph E of this rule shall not terminate any Commission proceedings pending against the judge.

[Approved, effective September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 33. Non-disciplinary dispositions.**

The Commission may make any of the following dispositions:

A. Dismissal of complaint. Upon determination after the issuance of a notice of preliminary investigation that there is insufficient cause to proceed to a hearing, the Commission may dispose of the case. The complainant and the judge shall be notified of the Commission's action;

B. Privately informing the judge that the judge's conduct may be violative of the standards of judicial conduct.

C. Proposing professional counseling, mentorship, or other assistance for the judge.

D. Referral of the judge to appropriate training.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 34. Removal, retirement or discipline.**

Following a formal hearing or based on admissions by a judge, the Commission may recommend to the Supreme Court the following:

A. removal;

- B. retirement;
- C. discipline, including one or more of the following:
  - (1) suspension;
  - (2) imposition of limitations or conditions on the performance of judicial duties;
  - (3) referral to appropriate training;
  - (4) proposing professional counseling, mentorship, or other assistance for the judge;
  - (5) public censure, published in the New Mexico Bar Bulletin;
  - (6) fine; and
  - (7) assessment of costs and expenses.
- D. If, after a formal hearing, the Commission recommends that removal or retirement should be imposed, the Commission may file an emergency petition with the Supreme Court requesting that the judge be suspended, with pay, until such time as the Court makes a final determination as to the Commission's disciplinary recommendation.
- E. The Commission may recommend any combination of the above removal, retirement or discipline.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 35. Seizure of property.**

All remedies providing for seizure of property for the purpose of securing satisfaction of the removal, retirement or discipline ultimately entered in an action are available under the circumstances and in the manner provided by Rule 27-403(D) NMRA or as otherwise provided by law.

[Approved, effective May 1, 2010.]

### **Rule 36. Certification of Commission recommendation to Supreme Court.**

- A. Upon making a determination recommending removal, retirement, or discipline of a judge, the Commission shall promptly file with the clerk of the Supreme Court the original copy of its written decision containing its recommendations, findings, and conclusions, indicating that it was concurred in by at least six (6) members of the Commission and certified by the chairperson. The Commission shall immediately thereafter send to the judge and to the judge's counsel notice of such filing, together with a copy of its decision and findings and conclusions.
- B. Within a reasonable time after filing of the recommendation, the Commission shall file with the clerk of the Supreme Court the transcript of evidence and a memorandum of costs. The memorandum of costs shall be certified by the chairperson. The Commission shall send to the judge and the judge's counsel a notice of filing of the transcript and memorandum of costs. The Commission shall request an order of the court assessing to the judge the costs incurred by the Commission.
- C. The following costs are recoverable:
  - (1) fees for service of subpoenas, writs and other service of process;
  - (2) transcript fees including those for daily transcripts and transcripts of hearings prior or subsequent to trial, when requested or approved by the Commission;
  - (3) the cost of a deposition if any part is used at trial;

(4) witness mileage or travel fare and per diem expenses, when the witness testifies at trial or at a deposition which is deemed reasonable and necessary, and as limited by Section 38-6-4(A) NMSA 1978;

(5) expert witness fees for services, in addition to the per diem and mileage, for any witness who qualifies as an expert and who testifies in the cause in person or by deposition. The additional compensation shall include a reasonable fee to compensate the witness for the time required in preparation or investigation prior to the giving of the witness's testimony;

(6) translator fees, when the translated document is admitted into evidence;

(7) reasonable expenses involved in the production of exhibits which are admitted into evidence;

(8) official certification fees for documents admitted into evidence; and

(9) interpreter fees for judicial proceedings and depositions.

D. In special circumstances, the Commission may petition the Supreme Court for costs in addition to those listed above.

[Approved, effective December 6, 1968; as amended, effective March 27, 1975; August 31, 1984; September 29, 1989; January 31, 1998; July 1, 1999; as amended, effective May 1, 2010.]

### **Rule 37. Commission representation before the Supreme Court.**

Following the submission of any formal report to the Supreme Court of a recommendation of removal, retirement, or discipline, the Commission may designate or retain counsel to represent the Commission in any hearings or matters before the Supreme Court involving matters recommended by the Commission.

[Approved, effective August 31, 1984, as amended, effective September 29, 1989; as amended, effective May 1, 2010.]

### **Rule 38. Jurisdiction.**

The Judicial Standards Commission's jurisdiction is invoked when notice of formal proceedings is served upon the judge under investigation. The jurisdiction continues irrespective of the judge's subsequent resignation and/or termination from office.

[Approved, effective December 3, 1993.]