

New Mexico Judicial Standard Commission Rules Effective February 10, 2020

SECTION I. GENERAL PROVISIONS.

RULE 1. AUTHORITY, APPLICATION, PURPOSES & OTHER RULES.

A. Authority. The Judicial Standards Commission Rules (“rules”) are promulgated pursuant to Article VI, Section 32 of the Constitution of the State of New Mexico and Sections 34-10-1 to 34-10-4 New Mexico Statutes Annotated 1978 (“NMSA”).

B. Application. The rules shall apply to all proceedings before the Judicial Standards Commission (“Commission”).

C. Purposes. The purposes of the Commission and these rules shall be:

(1) To protect the public from willful misconduct of judges, from persistent failure or inability of judges to perform the duties of office, from habitual intemperance of judges or disability of judges which is, or is likely to be, permanent and seriously interferes with a judge’s performance of the duties of office.

(2) To preserve the integrity of the judicial process; to maintain public confidence in the judiciary; and, to create a greater awareness among the judiciary and the public of proper judicial behavior.

(3) To provide for the expeditious and fair disposition of complaints alleging grounds for discipline, removal, or retirement of a judge.

D. Other Rules.

(1) The New Mexico Rules of Evidence, Rule 11-101, *et seq.* New Mexico Rules Annotated (“NMRA”) shall apply to all hearings on the merits conducted before the

Commission to determine if there is good cause to recommend to the New Mexico Supreme Court (“Supreme Court”) the discipline, removal, or retirement of a judge (“adjudicatory phase”). The New Mexico Rules of Evidence shall *not* apply to all hearings on the merits conducted before the Commission to determine recommendations to the Supreme Court regarding discipline, removal, or retirement of a judge (“recommendations phase”).

(2) The New Mexico Rules of Civil Procedure, Rule 1-001 *et seq.* NMRA, and the New Mexico Rules of Criminal Procedure, Rule 5-101, *et seq.* NMRA shall *not*, except as otherwise incorporated herein, apply to any portion of hearings on the merits or any other proceeding before the Commission.

(3) A presiding officer appointed as set forth herein may, however, refer to the New Mexico Rules of Civil Procedure and the New Mexico Rules of Criminal Procedure for guidance on matters not specifically covered by these rules.

RULE 2. DEFINITIONS.

As used in these rules:

A. “Chair” means a Governor-appointed member of the Commission who is elected by a majority of members.

B. “Code” means the Code of Judicial Conduct, Rule 21-001, *et seq.* NMRA.

C. “Commission” means the New Mexico Judicial Standards Commission, an independent administrative body of the judicial branch of government, as provided by Article VI, Section 32 of the New Mexico Constitution and by Section 34-10-1, *et seq.* NMSA and any amendments.

D. “Complaint” means a statement of allegation(s) and any evidence submitted therewith alleging grounds for discipline, removal, or retirement of a judge for violations of the Code or for any other grounds as provided in the New Mexico Constitution. A complaint may be:

(1) “Third party complaint:” a verified (“notarized”) complaint, in substantially the form authorized by the Commission, made by a person or legal entity who is not a member of the Commission or an employee of the Commission.

(2) “General counsel complaint:” a complaint docketed by the executive director based upon information other than a third party complaint or upon information received from a third party that does not comply with the requirements to be a third party complaint.

(3) “Commission complaint:” a complaint made by the Commission upon its own motion.

E. “Docket,” “docketing,” or “docketed” means that an inquiry number has been assigned to the complaint.

F. “Executive Director” means the executive director employed by the Commission as authorized by Section 34-10-4 NMSA who also acts as general counsel.

G. “Hearing on the merits” means a hearing, as provided in Article VI, Section 32 of the Constitution, held to determine if there are grounds for discipline, removal, or retirement of a judge and, if so, to make recommendations to the Supreme Court.

H. “Investigative trial counsel” means attorney employees or contractors of the Commission who investigate complaints and other information coming to the Commission, make recommendations to the Commission for disposition of complaints, and prosecute charges against judges brought by the Commission to final disposition.

I. “Judge” means any full or part-time justice, judge, or magistrate of any New Mexico court as provided in the Constitution. Judge also includes others subject by law to the Commission’s jurisdiction including court appointed commissioners, hearing officers, administrative law judges, or special masters while acting in a judicial capacity. In the appropriate context, “judge” may mean the judge or the judge’s attorney.

J. “Majority of members” means a majority of members of the Commission as provided by the Constitution, the Statutes, and any amendments regardless of whether such authorized positions are filled.

K. “Masters” means justices or judges of courts of record, either sitting or who have retired therefrom in good standing, appointed by the Commission as authorized by Section 34-10-2.1A(3) NMSA.

L. “Member” or “members” means a member or members of the Commission appointed as provided in the Constitution, the Statutes, and any amendments.

M. “Notice of formal proceedings” means a notice, issued by the Commission, based upon a complaint and served upon a judge, that the Commission has authorized charges on specific allegations contained in the notice that could result in discipline, removal, or retirement of the judge and which requires a response from the judge.

N. “Notice of investigation” means a notice, issued by the Commission, based upon a complaint and served upon a judge, that the Commission has found that an investigation into specific allegations contained in a complaint is substantially complete and which requires a response from the judge.

O. “Oath” means a declaration, in a form approved by the Commission, required to be taken by each witness before testifying in any proceeding before the Commission or before testifying in any deposition authorized by these rules.

P. “Presiding officer” means a member who is a judge or a lawyer appointed by the chair to preside over a proceeding, or part of a proceeding, coming before the Commission.

Q. “Quorum” means a majority of members meeting in person or by any other means authorized by the Commission.

R. “Record” means a record of a meeting or any other proceeding of the Commission, or any deposition taken as authorized by these rules, that is recorded in a manner authorized by the Commission, including all pleadings, exhibits or attachments.

S. “Record of Proceedings” means a record of any Commission proceeding that complies with 27-302 NMRA.

T. “Vice-Chair” means a Governor-appointed member of the Commission who is elected by a majority of members.

U. Conventions of Use – As used in these rules:

(1) All terms defined in Rule 2 shall have the meanings set forth therein whenever used in these rules.

(2) “May” is permissive; “shall” is mandatory.

(3) References to “the Constitution,” “the Statutes,” “NMSA,” “NMRA,” and any of the various “rules” cited herein shall refer to the Constitution of the State of New Mexico, the New Mexico Statutes Annotated, and the New Mexico Rules Annotated as amended.

RULE 3. JURISDICTION.

The Commission has jurisdiction:

- A. Over a complaint upon receipt or issuance thereof.
- B. Over a judge upon service of either a notice of investigation or a notice of formal proceedings. Jurisdiction over a judge, and the Commission's exercise thereof, continues despite the subsequent retirement, removal, or resignation of the judge.
- C. To investigate any information concerning a judge that may constitute grounds for discipline, removal, or retirement of a judge.

RULE 4. ORGANIZATION AND ADMINISTRATION OF THE COMMISSION.

- A. Commission. The Commission consists of members as provided in the Constitution.
- B. Proceedings. Meetings or other proceedings of the Commission, including hearings on the merits, shall be held at the call of the chair or, in the absence of the chair, the vice-chair, acting chair, executive director, or at the request of a majority of members.
- C. Quorum. Any meeting, hearing on the merits, or any other proceeding of the full Commission requires a quorum. An action of the Commission that is authorized by the Constitution and the Statutes requires a quorum and an affirmative vote of a majority of members. In the case of a hearing on the merits, an action of the Commission requires that a quorum be present for the entire hearing and that the action is approved by a majority of members all of whom have been present in person for the entire hearing.
- D. Recusal and Resignation. Members shall recuse or, in the event of failure to recuse, shall be disqualified by the Commission, from being present at, or participating in, or

voting at all meetings, hearings on the merits, or other proceedings before the Commission and any actions of the Commission for the duration of the member's recusal or disqualification:

(1) For any of the causes set forth in the Code, Rule 21-211 NMRA.

(2) When formal charges have been filed against an attorney member by the Supreme Court Disciplinary Board. An attorney member who has been disbarred by the Supreme Court shall resign from the Commission.

(3) When formal charges have been filed or a notice of contemplated action has been served upon a Governor-appointed member regarding the member's professional license pending the disposition of such charges or notice of contemplated action. A Governor-appointed member who has had a professional license permanently revoked shall resign from the Commission.

(4) When a member is a judge:

(a) From all portions of any meeting, hearing on the merits, or other proceeding before the Commission involving the judge as the subject of a complaint or as a complainant or witness in a proceeding before the Commission.

(b) From all meetings, hearings on the merits, or other proceeding before the Commission and from all actions of the Commission during the pendency of any actions following a notice of formal proceedings against the judge.

(c) Who has been disciplined, removed or retired shall resign permanently or, failing resignation, the Commission shall recommend to the Supreme Court that the judge be removed from the Commission.

(5) A member who is charged with violation of a statute punishable by incarceration or fine of \$300.00 or more shall promptly report such charge to the chair and,

pending resolution of such charge, shall recuse or, failing recusal, shall be disqualified, from participating in all Commission proceedings. A member who is convicted of, or pleads guilty or no contest to, a crime shall resign or, failing resignation, the Commission shall recommend to the appointing authority that the member be removed from the Commission.

(6) If a member's participation in a proceeding before the Commission is challenged by any other member, the member's continued participation shall be decided by a majority of the members with the challenged member not voting.

(7) The minutes or record of any Commission meeting, hearing on the merits, or other proceeding shall record the names of any member not participating or voting in a proceeding by reason of disqualification or recusal.

E. Chair, Vice-Chair. The Commission shall elect a chair and vice-chair, each of whom shall serve one-year terms and who may be reelected to those positions without limit.

(1) Except as otherwise set forth in these rules, the chair shall call and shall preside over meetings of the Commission.

(2) The vice-chair shall act as chair in the absence of the chair and, in the absence of both, the members may select an acting chair from its Governor-appointed members.

(3) The chair may delegate to the vice-chair or to the executive director authority to sign correspondence, orders, and other documents approved by the Commission.

F. Presiding Officers.

(1) District Judge Presiding Officers. At the time the Commission issues a notice of formal proceedings, the chair shall appoint a district judge as presiding officer to preside at a hearing on the merits. A district judge presiding officer shall also preside over all contempt hearings as set forth in Rule 10 and at all hearings for presentment of stipulations as

set forth in Rule 34(B). District judge presiding officers may also preside at other hearings or conferences as described in these rules.

(2) Other Presiding Officers. Except for proceedings for which a district judge must be appointed as a presiding officer as set forth above, the chair may appoint other judge members and lawyer members as presiding officers for other hearings or conferences as described in these rules.

(3) Presiding officers shall administer oaths when required by these rules.

G. Masters.

(1) Pursuant to the Constitution and Section 34-10-2.1A(3) NMSA, at any time the Commission deems it necessary or convenient, it may appoint three (3) masters to conduct any hearing, including a hearing on the merits, which the Commission could conduct, to hear testimony and receive other evidence, and to report their findings of fact, conclusions of law, and recommendations, including recommendations for discipline, removal, or retirement of a judge, to the Commission.

(2) The chair shall appoint one of the masters as presiding officer for all proceedings for which the masters have been appointed.

(3) The masters shall, to the extent applicable, conduct their hearings in accordance with these rules.

(4) The masters shall provide the Commission with their findings of fact, conclusions of law, recommendations, and with a record of any hearing within twenty-one (21) days of the conclusion thereof. The parties shall be served with a copy of the masters' findings of fact, conclusions of law, recommendations, and a copy of the transcript of the hearing.

(5) Within fifteen (15) days of service of the masters' findings of fact, conclusions of law, recommendations, and a copy of the record of the hearing, the parties may file with the Commission objections to the masters' findings of fact, conclusions of law, or recommendations. The Commission may conduct a hearing on the objections.

(6) Following resolution of objections, the Commission shall accept the masters' findings of fact but may accept, reject, or modify the masters' conclusions of law and recommendations for discipline, removal, or retirement of a judge.

(7) If the Commission accepts the masters' conclusions of law and recommendations, with or without modifications, and if it finds good cause, it may file a petition for approval of the findings of fact, conclusions of law, and recommendations with the Supreme Court.

H. Oaths. The chair, vice-chair, acting chair or, if designated, presiding officer, shall administer oaths approved by the Commission to all witnesses appearing in all proceedings before the Commission. All witnesses shall be given an oath to tell the truth. Except as otherwise set forth herein, all witnesses shall be given an oath as set forth in Rule 6(I). Masters shall administer the same oaths to all witnesses appearing in all proceedings before masters.

I. Executive Director. The Commission shall employ an executive director who shall have duties and authority as set forth in Sections 34-10-3 and 4 NMSA, and as delegated by the Commission, including, without limitation, the duty and authority to:

- (1) Establish and maintain a permanent Commission office.
- (2) Enter into contracts as necessary to carry out the responsibilities of the Commission.

(3) Act as general counsel to receive all complaints or other information coming before the Commission which could result in the discipline, removal, or retirement of a judge.

(4) Conduct investigations of complaints and other information which could result in the discipline, removal, or retirement of a judge.

(5) Recommend to the Commission disposition of information, allegations, and complaints.

(6) Make general counsel complaints.

(7) Maintain Commission records.

(8) Maintain statistics concerning the operation of the Commission and provide them to the Commission and, when not required to be kept confidential by the Constitution, the Statutes and these rules, to the public.

(9) Prepare the Commission's budget for approval by the chair.

(10) Administer and account for Commission funds.

(11) Employ and supervise staff to carry out the duties of executive director and general counsel.

(12) Prepare an annual report of the Commission's activities for presentation to the Commission, Supreme Court, Governor, Legislature, sitting judges, and the public.

(13) Employ private investigators, experts, court reporters, and other persons as necessary to investigate, prepare, and present matters before the Commission and before the Supreme Court.

(14) Employ masters and special counsel with the approval of the Commission.

(15) Make public statements as authorized by the Commission.

(16) Perform such other duties as may be assigned or delegated by the Commission.

J. Notice. All members shall be given reasonable notice of all meetings, hearings on the merits, or other proceedings of the Commission.

K. Means of Conducting Proceedings. The Commission may conduct meetings or other proceedings in person or by any other means authorized by the Commission. All hearings on the merits shall be conducted in person.

L. Record. A record shall be made of each meeting, hearing on the merits, or proceeding of the Commission. The record shall document the names of members and others present, votes of members, actions taken, and any other matter the Commission deems appropriate.

RULE 5. AUTHORITY OF THE COMMISSION.

The Commission shall have the authority to:

A. Process Complaints. Receive, investigate, and dispose of complaints and any other information that might be relevant to possible discipline, removal, or retirement of a judge.

B. Issue Subpoenas. At the request of investigative trial counsel, a judge, or at the Commission's discretion, a member who is a district judge acting for the Commission may issue subpoenas to compel the attendance of witnesses and the production of documents and things in connection with a Commission proceeding.

C. Order Medical Examinations, Evaluations, and Drug and Alcohol Testing. Order a judge, as set forth in Rule 23, below, to undergo medical examinations, evaluations, drug and alcohol testing, and any other examination or testing that might be relevant to possible discipline, removal, or retirement of a judge.

D. Petition for Immediate Temporary Suspension or Other Interim Relief. Petition the Supreme Court, as set forth in Rule 24 below, for immediate temporary suspension or other interim relief of a judge.

E. Conduct Hearings on Motions and on the Merits. Conduct hearings on motions and on the merits, take testimony, and receive other relevant evidence regarding complaints and any other information that might be relevant to possible discipline, removal, or retirement of a judge.

F. Dismiss Complaints. At any time following docketing of a complaint, dismiss the complaint or any portion thereof.

G. Cite for Contempt. Cite persons, including judges, for contempt, hold evidentiary hearings, and make recommendations to the Supreme Court for disposition as set forth in Rule 10, below.

H. Take Other Actions. Take all other actions reasonably necessary to discharge the Commission's duties as provided in the Constitution and Statutes.

RULE 6. CONFIDENTIALITY AND PRIVILEGE.

A. Requirements of the Constitution. As provided in Article VI, Section 32 of the Constitution:

(1) All meetings of the Commission and all hearings on the merits and all other proceedings before the Commission, presiding officers, and masters are confidential.

(2) All pleadings and other documents filed with the Commission, or with presiding officers and masters appointed by the Commission, or by the chair, are confidential.

(3) All testimony given before the Commission, presiding officers, and masters is confidential.

(4) All testimony given in depositions and recorded statements permitted by these rules is confidential.

(5) A record of proceedings filed by the Commission with the Supreme Court remains privileged but, upon filing, is no longer confidential.

(6) A writing which was privileged before it was filed with the Commission or its masters does not lose its privilege by filing with the Supreme Court.

(7) Promptly upon their appointment, masters shall be informed of the confidentiality of all proceedings undertaken by them and shall agree to keep such proceedings confidential.

B. Applicability. This rule about confidentiality applies to:

(1) Witnesses in an investigation and witnesses at a hearing on the merits.

(2) The Commission, general counsel, investigative trial counsel, staff, expert witnesses, and consultants retained by general counsel.

(3) A judge and judge's counsel and staff, expert witnesses, consultants retained by the judge, and *guardians ad litem* appointed pursuant to Rule 25.

(4) The record of proceedings of a hearing on the merits loses confidentiality upon filing with the Supreme Court, but only to the extent of the filing. The record of any other

Commission proceeding filed with the Supreme Court loses confidentiality only upon order of the Supreme Court and then only to the extent of the filing.

C. Third Party Complainant Exempt. A person filing a third party complaint is not prohibited from communicating to others about the filing of the third party complaint, its contents, or complainant's testimony related thereto.

D. Confidentiality During Investigation. In connection with the investigation of allegations in a notice of investigation or charges in a notice of formal proceedings, the parties may disclose to third parties the existence of a notice of investigation or a notice of formal proceedings, but only to the extent necessary to conduct the investigation.

E. Waiver Under Certain Circumstances. A judge applying for a position that requires a background check may, in a sworn, written document filed with the Commission, waive confidentiality regarding the judge's disciplinary history. Upon approval by the Commission, the general counsel shall issue a letter of certification as applicable:

(1) That the judge has no history of non-disciplinary or disciplinary action.

(2) That the judge has a history of docketed complaints with the Commission that resulted in either non-disciplinary or disciplinary action against the judge.

(3) If the judge has a history of docketed complaints with the Commission that resulted in disciplinary action by the Supreme Court, the background investigators shall be referred to the Supreme Court for the public portion of the record.

F. Commission Exceptions. For good cause, the Commission may disclose otherwise confidential information to the Supreme Court, law enforcement agencies, State Auditor, Attorney General, Supreme Court Disciplinary Board, or others.

G. Third Party Support. The parties may disclose otherwise confidential information to third parties necessary to perform the work to prepare cases for investigation and hearing on the merits including, without limitation, to court reporters and videographers, investigators, consultants, expert witnesses, and special counsel; provided, however, except at a hearing on the merits, and subject to the Rules of Evidence, that neither investigative trial counsel nor a judge shall disclose to a witness information provided either orally or in writing by another witness. All such persons to whom such otherwise confidential information is to be disclosed shall be informed in advance of the confidentiality of such information and shall agree in a writing approved by the Commission to keep such information confidential upon penalty of contempt of the Commission.

H. Disclosure of Third Party Complainant and Complaint. Notwithstanding any other provisions of this rule, neither the identity of a third party complainant, nor a third party complaint shall be provided to a judge; provided, however, that if investigative trial counsel intends to call a third party complainant as a witness at a hearing on the merits, the identity of a third party complainant shall be disclosed to the judge as a witness as provided by Rule 17, below, and the third party complaint shall be produced to the judge.

I. Witnesses. Except for a third party complainant, all witnesses giving testimony, either in deposition or in a hearing on the merits, shall take an oath approved by the Commission to keep the existence of any proceeding against a judge and the identity of such judge confidential until the proceeding is no longer confidential under these rules.

J. Privilege. The filing of papers and giving of testimony before the Commission or its masters is privileged in any action for defamation, except that the record filed by the Commission in the Supreme Court continues privileged but, upon its filing, loses its

confidential character, and a writing that was privileged prior to its filing with the Commission or its masters does not lose its privilege by the filing.

RULE 7. SERVICE.

A. General Method of Service. Except as otherwise set forth herein, all pleadings and documents required or permitted to be served upon a judge shall be served by U.S. Mail, facsimile, e-mail, or any other method approved by the Commission to the most current available address provided to the Commission by the judge or, if the judge has retained counsel, upon counsel at the address provided by counsel.

B. Service of Notice of Investigation and Notice of Formal Proceedings.
Except as otherwise set forth herein, a notice of investigation or a notice of formal proceedings shall be served upon a judge either by U.S. Mail, Certified/Return Receipt Requested or by acceptance of service.

C. Acceptance of Service. A judge, personally or through counsel, may, in a writing served upon the Commission, accept service of a notice of investigation or a notice of formal proceedings by any agreed upon method.

D. Service by Judge. Except as otherwise set forth herein, all pleadings and documents required or permitted to be served by a judge upon the Commission, general counsel, or investigative trial counsel, shall be served upon the Commission by U.S. Mail, facsimile, e-mail, or any other method approved by the Commission.

E. Service by Investigative Trial Counsel. Except as otherwise set forth herein, all pleadings and documents required or permitted to be served by Investigative Trial Counsel

upon the judge shall be served by U.S. Mail, facsimile, e-mail, or any other method approved by the Commission.

RULE 8. COMPUTATION AND EXTENSION OF TIME.

A. A period of time prescribed or allowed by these rules shall be calculated in calendar days including weekend and legal holidays beginning on the day following the day from which the time is to be calculated and ending on the last day of the period.

B. If the last day of the prescribed period is a Saturday, Sunday, or legal holiday observed by the New Mexico Supreme Court, the prescribed period shall end on the next regular business day. If the last day of the prescribed period is on a day on which the Commission offices are closed for inclement weather or for other reasons, the end of the period shall be the next regular business day on which the Commission offices are open.

C. Motions for extensions of time up to thirty (30) days may be granted by the chair or by a presiding officer upon good cause shown.

RULE 9. MOTIONS, FILINGS WITH THE COMMISSION AND COMMUNICATIONS WITH THE COMMISSION OR PRESIDING OFFICER.

A. Written Motion Required. Except as otherwise set forth in these rules, any application to the Commission or presiding officer for an order shall be made by motion, which shall state with particularity the grounds therefore, shall cite applicable authority, if any, shall set forth the order or relief sought, and unless made during a hearing on the merits, shall be in writing and shall be filed with the Commission and served upon the non-moving party.

B. Presiding Officer Decides. Except as set forth below, the presiding officer shall rule on all prehearing motions.

C. Commission Decides. Motions requiring the determination of factual issues, motions to amend or dismiss all or any part of a notice of formal proceedings, and motions appealing any order of a presiding officer must be decided by the Commission.

D. No Motions for Summary Judgment. Motions for summary judgment are not permitted in Commission proceedings.

E. Determine if Opposed. Before filing a motion allowed by these rules, a party shall determine if the motion will be opposed.

(1) If the motion is unopposed, an order approved by all parties shall be submitted with the motion.

(2) If the motion is opposed, the movant shall recite that concurrence of the other party was requested, but denied.

(3) If concurrence of opposing party is not sought, the movant shall recite the reasons.

(4) If concurrence of opposing party is sought but no response is received, movant shall recite the dates and means by which concurrence was sought.

F. Request for Hearing. A request for hearing shall be filed with each opposed motion.

G. Response. The non-moving party may file and serve a response within seven (7) days of service of the motion. A reply may be filed and served by the moving party within seven (7) days of service of the response.

H. Copy to Presiding Officer. The Commission shall, upon receipt, promptly provide the presiding officer with a copy of a motion, any response, and any reply.

I. Filings. All filings required by these rules shall be made with the Commission. All filings shall conform to policies promulgated by the Commission.

RULE 10. CONTEMPT.

A. Any person, including a judge, may, following notice and opportunity to be heard, be cited for contempt for:

(1) Failure to obey a Commission order, failure to follow a Commission rule, or obstruction of any lawful process of the Commission; and/or

(2) Actions which affect the safety or decorum of Commission proceedings.

B. If the alleged contempt occurs during a Commission hearing, a presiding officer shall hold a separate hearing before the same Commissioners regarding the alleged contempt. If the alleged contempt does not occur during a Commission hearing, then a separate hearing before a quorum of the Commission shall be held.

C. The presiding officer for all contempt hearings shall be a district judge.

D. Upon a finding that contempt has occurred, the Commission may make findings of fact, conclusions of law, and recommendations for sanctions, which shall be filed along with the record of the proceeding, with the Supreme Court.

RULE 11. DUTY TO COOPERATE.

A. A judge has a duty to cooperate in proceedings before the Commission on complaints against the judge. The failure of a judge to cooperate, as set forth in the Code, Rule

21-216 NMRA, in investigations and proceedings before the Commission may be evidence of misconduct and may be grounds for discipline, removal, or retirement of the judge. Failure of a judge to cooperate may include, but not be limited to:

(1) Failure to Comply With Requests or Orders. The failure to comply with reasonable requests or orders of the Commission.

(2) Failure to Appear and Participate. The failure to appear and participate in Commission proceeding.

(3) Intentional Misrepresentation. The intentional misrepresentation of a material fact during any stage of a proceeding.

(4) Interference. The intentional interference with an investigation into the allegations of a notice of investigation or charges in a notice of formal proceedings.

(5) Retaliation. Direct or indirect retaliation against a person known or suspected to have filed a complaint, assisted or cooperated in the investigation of a judge, or testified at a Commission proceeding.

(6) Disclosure. The intentional disclosure to a third party of the existence of a Commission proceeding, of any allegation against a judge, or of information obtained in an investigation against a judge beyond the extent necessary for the judge to conduct an investigation.

B. The failure of a judge to cooperate as set forth herein may also be grounds for a finding of contempt as set forth in Rule 10.

RULE 12. NO STAY PENDING COLLATERAL PROCEEDINGS.

Unless the Commission finds there is good cause, no proceedings before the Commission which could result in the discipline, removal, or retirement of a judge shall be stayed during the pendency of any other civil, criminal, or administrative proceedings in other venues involving the same judge or the same third party complainant.

RULE 13. COSTS AND ATTORNEY'S FEES.

Except as otherwise set forth in these Rules, the parties shall each bear their own costs and attorney's fees.

RULE 14. IMMUNITY.

Members, executive director, all other Commission staff, and all persons retained by any of these in connection with any investigation, meeting, hearing on the merits, or any other proceeding of the Commission, are immune from claims and suits in connection with the performance of their official duties as provided by law.

SECTION II. COMMENCEMENT OF PROCEEDINGS, SERVICE, TIME.

RULE 15. COMMENCEMENT OF PROCEEDINGS.

A. Docket. A complaint shall be docketed which shall commence a proceeding before the Commission.

B. Initial Actions. The executive director shall conduct an investigation of the allegations of a complaint, or of other information upon which a complaint could be based, or recommend dismissal to the Commission.

C. Notice of Investigation. Upon finding that the investigation of a complaint is substantially complete and that there is sufficient evidence to require a judge to respond to the allegations of a complaint, the Commission may issue a notice of investigation.

D. Notice of Formal Proceedings. Upon finding that good cause may exist to recommend to the Supreme Court the discipline, removal, or retirement of a judge, the Commission may issue a notice of formal proceedings.

E. Interim Actions. At any time during the pendency of a proceeding, the Commission may take interim actions as set forth in Section III, Rules 23, 24 and 25, below.

F. Dismissal. At any time during the pendency of a proceeding, the Commission may dismiss the action as set forth in Section VI, Rules 33, 34, 35 and 36, below.

G. Report to the Commission.

(1) Before Issuance of a Notice of Formal Proceedings. After docketing a complaint and until issuance of a notice of formal proceedings, investigative trial counsel shall report to the Commission at each regular meeting on the progress of an investigation and the response to a notice of investigation. The Commission may monitor reports, direct the nature and extent of the investigation, or dispose of the complaint as set forth in Section VI, below.

(2) After Issuance of a Notice of Formal Proceedings. After issuance of a notice of formal proceedings, investigative trial counsel shall only report to the Commission at each regular meeting that the proceedings continue and shall inform the Commission of the date of an expected hearing on the merits.

H. The judge may be represented by counsel throughout these proceedings. The judge shall be responsible for any fees and costs associated therewith.

RULE 16. SERVICE UPON A JUDGE AND RESPONSE BY A JUDGE.

A. Promptly upon issuance of a notice of investigation or notice of formal proceedings, a copy thereof shall be served upon the judge.

B. Within twenty-one (21) days of service as set forth above, a judge shall serve a response upon the Commission.

(1) A response to a notice of investigation shall contain an explanation of the incident described in the notice and the factual and legal bases for the judge's conduct.

(2) A response to a notice of formal proceedings shall contain the judge's responses to each of the charges contained therein.

C. Upon motion and for good cause shown, the time for the judge's responses may be extended.

RULE 17. INITIAL DISCLOSURES.

A. Disclosures Made.

(1) Investigative Trial Counsel's Disclosures. Except as set forth below, investigative trial counsel shall serve the judge with initial disclosures as follows:

(a) Invitation to Conference with the Commission. If, after a judge's response to a notice of investigation is received, and the Commission does not dismiss the complaint or order additional investigation, then it shall invite the judge to a conference with the

Commission as set forth in Rule 19, and initial disclosures shall be served upon the judge with the invitation.

(b) Notice of Formal Proceedings in Lieu of Notice of Investigation. If the Commission, in lieu of a notice of investigation, issues a notice of formal proceedings, initial disclosures shall be served with the notice of formal proceedings.

(c) Petition for Immediate Temporary Suspension. If the Commission, along with a notice of investigation or a notice of formal proceedings, also authorizes a petition to the Supreme Court for an order of immediate temporary suspension, initial disclosures shall be served upon the judge along with the petition.

(d) No Disclosures. If, following the judge's response to a notice of investigation, the Commission dismisses the complaint, no disclosures are required.

(2) Judge's Disclosures.

(a) If investigative trial counsel's initial disclosures were served with an invitation to a conference with the Commission, then the judge's initial disclosures shall be due within ten (10) days of such service.

(b) If investigative trial counsel's initial disclosures were served with a notice of formal proceedings, then the judge's initial disclosures shall be due with the judge's response to the notice of formal proceedings.

(c) If investigative trial counsel's initial disclosures were served with a petition for immediate temporary suspension, then the judge's initial disclosures shall be due within twenty-one (21) days of such service.

(d) Upon motion and good cause shown, the time for the judge's initial disclosures may be extended.

B. Required Disclosures. The parties shall each provide to the other initial disclosures containing:

(1) The name, address, telephone number, and other information sufficient to identify and contact each witness likely to have information relevant to the allegations contained in a notice of investigation or charges in a notice of formal proceedings and the defenses thereto along with the subject matter of that information.

(2) All documents, electronically-stored information, and tangible things relevant to the allegations in the notice of investigation or charges in a notice of formal proceedings and the defenses thereto. Copies of all documents and electronically-stored information in the possession or control of the disclosing party shall be provided to the other party. The location of all documents and electronically-stored information and the location of tangible things not in the possession and control of the disclosing party shall be disclosed to the other party.

C. Continuing Obligation. The parties shall have a continuing obligation to promptly supplement initial disclosures as additional information required by Section A of this rule becomes known.

D. Privileges and Limitations. Except as otherwise set forth in Rule 23, below, the privileges set forth in Rule 11-501, *et seq.* NMRA and the limitations set forth in Rule 1-026 NMRA shall apply to these initial disclosures. Communications between investigative trial counsel and the Commission are excluded from production under this rule.

E. Third Party Complainant, Third Party Complaint Exempt. A third party complainant or third party complaint shall not be disclosed and produced by investigative trial counsel as required by Sections A and B, above; provided, however, that promptly after the

investigative trial counsel determines that a third party complainant may be called as a witness at a hearing on the merits, disclosures and production shall be made.

F. Delayed Disclosures. Investigative trial counsel may apply to a presiding officer for an order delaying disclosure of certain information required by Section A, above. The presiding officer shall issue an order delaying disclosure of certain information upon a particularized showing of good cause that disclosure at the time required by Rule 17 would likely impede or imperil the ongoing investigation of the allegations in a notice of investigation or charges in a notice of formal proceedings. The order shall specify a time for subsequent disclosure or a time for review of the continuing appropriateness of the order.

G. Notice of Withheld Disclosures.

(1) If investigative trial counsel's initial disclosures withhold the identity of the third party complainant and production of the third party complaint, the initial disclosures shall so state.

(2) If investigative trial counsel's initial disclosures withhold other information pursuant to an order of a presiding officer as set forth in Section F, above, the initial disclosures shall so state and shall instead contain a short and plain statement of the evidence expected to be adduced from withheld information sufficient to give the judge notice of what is alleged, but also shielding the protected information.

H. Motion for Disclosures. If either investigative trial counsel or the judge believes that additional disclosures should be made pursuant to this rule, then a motion shall be filed requesting such disclosures.

RULE 18. ADDITIONAL INVESTIGATION.

Following service of a notice of investigation and initial disclosures upon a judge, the parties may conduct additional investigation, but shall not conduct other discovery as set forth in Rule 28, below.

RULE 19. CONFERENCE WITH THE COMMISSION.

Following a judge's response to a notice of investigation, the Commission shall invite the judge to a conference with the Commission, except as set forth below.

A. Purpose. The purpose of the conference with the Commission shall be to give the judge an opportunity to discuss and explain to the Commission the response to a notice of investigation, to give the Commission an opportunity to ask the judge questions and further discuss the allegations and the judge's response, and to explore options for early disposition.

B. Consent. No conference with the judge and the Commission will be held without the judge's consent. The judge shall respond to an invitation to a conference with the Commission either accepting or declining the invitation, within fifteen (15) days of service of thereof.

C. In-Person Participation. Participation of the judge in a conference with the Commission shall be in person.

D. Closed Conference. The conference shall not be open to the public.

E. Confidential. The conference is confidential as set forth in Rule 6, above, and pursuant to the Constitution Article VI, Section 32.

F. Schedule. The conference with the Commission will be at a regularly scheduled meeting of the Commission.

G. Presiding Officer. A presiding officer shall preside over the conference with the Commission. If no presiding officer has been appointed, the chair shall appoint one for the conference.

H. No Oath. The judge shall not be placed under oath.

I. Role of Investigative Trial Counsel. Investigative trial counsel shall be present for the conference. The presiding officer may request investigative trial counsel make a brief statement of the allegations of the notice of investigation. Investigative trial counsel may continue to be present, but shall not otherwise participate in the discussions or ask questions unless the Commission permits.

J. Right to Terminate. The judge or the Commission may terminate the conference at any time.

K. Failure to Participate, Not Failure to Cooperate. If a judge does not consent to a conference with the Commission or, during participation in a conference with the Commission, terminates the conference, it shall not be deemed a failure to cooperate with the Commission and shall not be a violation of Rule 11 or the Code, Rule 21-216.

L. Use of Disclosed Facts. Facts disclosed by a judge in a conference with the Commission may be used in further proceedings before the Commission and may be, if otherwise admissible, admitted at a hearing on the merits or in any other evidentiary hearing before the Commission.

M. No Invitation to Conference with the Commission. No invitation to participate in a conference with the Commission shall be made to the judge if:

(1) Following the judge's response to a notice of investigation the Commission dismisses the complaint.

(2) In lieu of a notice of investigation, the Commission issues a notice of formal proceedings.

(3) Along with the notice of investigation, the Commission authorizes a petition to the Supreme Court for an order of immediate, temporary suspension.

N. Conference with Third Party Complainant. The Commission may request that a third party complainant participate in a conference with the Commission. If the third party complainant consents, the conference shall be conducted according to this rule. The judge does not have the right to be present during a conference with the Commission with a third party complainant.

O. Record. The Commission shall record all conferences conducted pursuant to this Rule. Copies of such recordings shall be released to the parties upon service of a Notice of Formal Proceedings. No other recordings shall be made.

P. Further Commission Actions. Following a conference with the Commission with either a judge or a third party complainant, the Commission shall take the matter under advisement and then shall discuss and vote on further action as part of a continuation of that meeting.

RULE 20. RECOMMENDED DISPOSITION.

At any time in the proceeding after service of the judge's response to a notice of investigation, but before issuance of a notice of formal proceedings, the Commission may serve a judge with a recommended disposition as set forth in Rule 35 or Rule 36(C) and (D). If, at the time of service of a recommended disposition, initial disclosures have not been served on the judge, then they shall be served with the recommended disposition.

A. Judge Agrees. If the judge agrees to a recommended disposition, the Commission may require that the judge appear at the Commission's next regularly scheduled meeting to confirm the judge's understanding of, and consent to, the recommended disposition.

B. Judge Does Not Agree. If the judge does not agree to the recommended disposition, the Commission may proceed as otherwise authorized by these rules.

RULE 21. AMENDMENTS TO NOTICES OF FORMAL PROCEEDINGS AND RESPONSES.

A. Amendments. At any time after a notice of formal proceedings is served upon a judge, upon motion of Investigative Trial Counsel or an order to show cause from the Commission, and the opportunity for the judge to respond thereto, the Commission may approve an amended notice of formal proceedings which shall be served upon a judge. At any time after a judge has responded to a notice of formal proceedings, a judge may move to file an amended response. The Commission shall promptly provide the presiding officer with a copy of the amendments.

B. Response to Amended Notice of Formal Proceedings. Following service of an amended notice of formal proceedings, unless a shorter time is ordered by a presiding officer, a judge shall respond within the time for response as set forth in the amended notice of formal proceedings.

C. Effect on Scheduling Order. If the parties agree that an amended notice of formal proceedings or an amended response will have no effect on the scheduling order, then they shall promptly notify the presiding officer. If either party believes that an amended notice

of formal proceedings or an amended response will affect the scheduling order, then they shall file a motion to amend the scheduling order.

RULE 22. CONSOLIDATION.

If a judge has multiple complaints pending, the proceedings on those complaints may be consolidated for efficiency and in the interests of justice. Proceedings for which notices of formal proceedings have not been issued may be consolidated by order of the Commission. Proceedings for which notices of formal proceedings have been issued may be consolidated by order of the presiding officer either upon motion by one of the parties or at the presiding officer's discretion. Consolidation procedures shall conform to policies promulgated by the Commission.

SECTION III. INTERIM ACTIONS.

RULE 23. MEDICAL EXAMINATIONS, PSYCHOLOGICAL EVALUATIONS, AND DRUG AND ALCOHOL TESTING.

A. Requirement to Undergo Examination. If, at any stage of a proceeding, it appears that a judge has, or may have, a disability seriously interfering with the performance of the duties of office, the Commission may, upon issuance and service of a notice of investigation, and receipt of the judge's response to a notice of investigation, order the judge to undergo a medical examination or a psychological evaluation by an appropriate, licensed medical or mental health provider of the Commission's choice. If the Commission is seeking the judge's temporary suspension or other interim relief pursuant to Rule 24, receipt of the

judge's response to a notice of investigation is not required before issuance of a Rule 23 Order. The provider shall report findings to the Commission, investigative trial counsel, and the judge.

B. Drug and Alcohol Tests. A judge may be ordered to submit to drug/alcohol testing for any of the reasons set forth in the New Mexico Judicial Branch drug/alcohol testing policy. Testing shall be conducted in accordance with the Commission's drug/alcohol testing protocols published on the Commission's website, a copy of which shall be served upon the judge along with the order.

C. Examination or Test at Judge's Election. A judge may submit to a medical examination, a psychological evaluation, or a drug/alcohol test with a qualified provider of the judge's choice.

D. Payment. Any examination, evaluation or test conducted pursuant to paragraphs A or B, or C above, shall be paid by the party initiating the examination, evaluation, or test.

E. Judge to Provide Waivers and Releases. The judge shall provide the Commission with:

(1) All waivers and releases necessary to authorize the Commission to obtain all records, reports, test results, and other information from any medical or mental health provider or drug/alcohol testing facility to which the judge is ordered to submit, or which is selected by the judge.

(2) Names and contact information for all medical and mental health providers from which the judge has received medical or mental health treatment and waivers and releases for each provider so identified.

(3) Notices of all medical examinations, psychological evaluations, and drug/alcohol tests by providers of the judge's choice.

F. Subpoenas. If the judge fails to provide the Commission with all waivers and releases necessary to authorize the Commission to receive all records, reports, test results, and information from any medical or mental health provider regarding the judge's physical or psychological condition or drug/alcohol testing facility regarding testing, the Commission may issue a subpoena or may otherwise order the medical and mental health provider or drug/alcohol testing facility to provide it with such records, reports, results, and information. The Commission shall promptly provide the judge with a copy of each subpoena or order served on a provider. The Commission shall promptly inform each provider that a judge has been provided a copy of the subpoena or order served on that provider.

G. Other Records. Pursuant to this Rule, the Commission may obtain medical and mental health records from the judge's treating providers, and may obtain the results of alcohol and drug testing conducted, other than in accordance with this Rule. The judge is required to provide releases and waivers therefore as set forth herein. The Commission may issue subpoenas for such records as set forth herein.

H. Confidentiality of Records. All medical, mental health, and alcohol and drug testing records obtained by the Commission pursuant to this Rule shall be kept confidential. The Commission shall notify all consultants who are provided access to these records that these records shall be protected by the requirements of the Health Insurance Portability and Accountability Act, Public Law No. 104-191, 110 Stat. 2936 ("HIPAA") The Commission shall require all persons who have access to these records to keep them confidential pursuant to HIPAA.

I. Limit in Scope and Time. All waivers and releases as set forth in Section 23(E), all subpoenas as set forth in Section 23(F) and all other records as set forth in Section 23(G) shall be limited in scope and time to issues relevant to the proceedings before the Commission.

J. Copies to Judge. Copies of all records obtained by the Commission pursuant to this rule shall be provided to the judge.

K. Failure to Participate. Failure or refusal of a judge to submit to a medical examination, a psychological evaluation, or a drug/alcohol test, or to provide releases or waivers as set forth herein as requested, may be a failure to cooperate with the Commission in violation of Rule 11 of these rules and the Code, Rule 21-216 NMRA.

RULE 24. IMMEDIATE TEMPORARY SUSPENSION AND OTHER INTERIM RELIEF.

The Commission may petition the Supreme Court for immediate temporary suspension as follows:

- A. Good Cause. If a complaint alleges or an investigation reveals that:
- (1) Continued service of a judge is causing:
 - (a) Immediate and substantial harm to the public, to those with whom the judge interacts in an official capacity, or to the orderly administration of justice; and/or
 - (b) Erosion of public confidence in the independence, integrity or impartiality of the judiciary, or in the orderly administration of justice.
 - (2) Other good cause exists; and that the judge's conduct may violate the Code or otherwise may be grounds for discipline, removal, or retirement.

B. Petition. The Commission may petition the Supreme Court for immediate temporary suspension of the judge with or without pay or for other interim relief. The petition shall be filed under seal and shall set forth in full the factual and legal bases for the Supreme Court to issue a summary order, and shall contain all documents and other evidence supporting the allegations of the petition. The petition and accompanying evidence of factual and legal grounds shall, as appropriate, comply with the Supreme Court Rules Governing Review of Judicial Standards Commission Proceedings.

C. Service. The judge shall promptly be served with a copy of the petition.

D. Grounds Not Continuing. If, after filing of the petition, the grounds for an immediate temporary suspension or other interim relief no longer exist, the Commission shall promptly notify the Supreme Court and the judge.

E. Proceedings Continue. Proceedings before the Commission shall continue during any period of suspension or other interim relief, and following any subsequent reinstatement of a judge or vacation of other interim relief.

RULE 25. GUARDIAN AD LITEM.

If at any time after the commencement of a proceeding under these rules, either:

A. A judge is adjudicated by a court to require a *guardian ad litem* in any matter; or

B. Substantial evidence is presented to the Commission that a judge is, or may be, incapable, for any reason, to understand the proceedings before the Commission or to present a defense in such proceedings; then the Commission may appoint the *guardian ad litem* appointed by a court or may separately appoint a *guardian ad litem* to act on the judge's behalf during the proceedings. If the judge disputes the appointment of a *guardian ad litem* to act on the judge's

behalf, the Commission shall hold a hearing with a presiding officer who is a district court judge and may petition the Supreme Court for an order of appointment.

C. The Commission shall bear the costs, if any, associated with the appointment of a guardian ad litem.

SECTION IV. PRE-HEARING PROCEDURES AND DISCOVERY.

RULE 26. APPOINTMENT OF PRESIDING OFFICER.

Upon issuance of a notice of formal proceedings by the Commission, if a presiding officer who is a district court judge has not already been appointed in the case, the chair shall appoint a district court judge as presiding officer. The chair may appoint other presiding officers as set forth in Rule 4F.

RULE 27. SCHEDULING ORDER.

As soon as practicable following service of the judge’s response to a notice of formal proceedings or, if no response, after the time set for a response, the presiding officer appointed for the hearing on the merits shall hold a scheduling conference with the parties. At the scheduling conference, the presiding officer shall set case management dates and deadlines and issue a scheduling order in the form approved by the Commission, which shall contain:

A. A hearing on the merits to be held as soon as practicable after service of a notice of formal proceedings on a judge, but no sooner than thirty (30) days after the parties have been given notice thereof.

B. Completion of discovery.

- C. Filing amendments to notices of formal proceedings and responses.
- D. Filing motions, including motions that must be decided by the Commission.
- E. Exchanging of initial and final witness and exhibit lists for the adjudicatory phase and for the recommendations phase.
- F. Objections to witnesses and exhibits.
- G. Requests to the Commission for issuance of subpoenas.
- H. A pre-hearing conference.
- I. Such other matters as the presiding officer may deem appropriate to the management of the case.

RULE 28. DISCOVERY.

A. Commencement of Discovery. The parties may commence discovery permitted by this rule only following filing of the judge's response to a notice of formal proceedings. If the judge fails to respond to a notice of formal proceedings, investigative trial counsel may file a motion for leave to commence discovery.

B. Scope of Discovery. As otherwise permitted and not limited by these rules, either party may obtain discovery of any matter not privileged that is relevant to the charges in a notice of formal proceedings or the defense thereto, including the existence, description, nature, custody, condition and location of any documents, electronically-stored information, or tangible things, and the identity and location of persons having knowledge of any discoverable matter. The information sought need not be admissible at a hearing on the merits if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

C. Permissible Discovery. The following discovery is permitted:

(1) Depositions. The parties may each take one deposition. Additional depositions requested by either party may only be taken following an order of the presiding officer upon good cause shown. The party taking the deposition shall bear the cost of the original record thereof. The other party may obtain a copy of the record at that party's expense. A party taking the deposition of an expert witness shall pay all reasonable expert witness fees related thereto.

(2) Recorded Interviews. Either party may conduct recorded interviews, not under oath, of witnesses named by either party. The parties shall make their witnesses available and shall cooperate in scheduling recorded interviews. Both parties may ask the witnesses questions. The recording party shall provide the other party with a copy of the recordings. A party who has transcripts of recorded interviews prepared shall provide a copy of the transcripts to the other party no later than the time required for completion of discovery.

(3) Requests for Production of Documents. Either party may request documents, electronically-stored information, or the location of tangible things in the possession or control of the other party and not disclosed in initial or supplemental disclosures. Responses to requests for production of documents shall be made within thirty (30) days of service thereof.

(4) Entry onto Property. Either party may request entry onto property if entry is likely to produce information relevant to the charges of a notice of formal proceedings or to the defenses thereto.

(5) Expert Witnesses. A party disclosing that an expert witness may testify at a hearing on the merits shall provide the other party with a *curriculum vitae* or other evidence of the expert witness' qualifications; a list of the expert witness' publications for the

preceding ten (10) years; a history of depositions, trials, and other testimony of the expert witness for the preceding ten (10) years; and a copy of the expert witness' report, which shall set forth the subject matter of the testimony, the basis for such testimony and the substance thereof.

D. No Other Discovery Permitted. Except as permitted by this rule, or for good cause shown, no other discovery shall be permitted.

E. Objections to Discovery. Objections to requests for discovery shall be made in the responses to the discovery requests. A requesting party may file a motion to compel discovery.

RULE 29. PRE-HEARING MOTIONS.

A. At any time before the deadline set for such motions by the presiding officer, the parties may file pre-hearing motions.

B. The presiding officer shall decide all pre-hearing motions except motions that seek determination of a factual issue, motions that seek to amend or dismiss, in whole or in part, the charges of a notice of formal proceedings, or motions appealing any order of a presiding officer, which motions shall be decided by the Commission.

C. No motions for summary judgment shall be filed in proceedings before the Commission.

SECTION V. HEARING ON THE MERITS.

RULE 30. TIME AND PLACE OF HEARING.

All pending charges made against a judge in a notice of formal proceedings shall come before the Commission for a hearing on the merits at a time as set forth by Rule 27(A), above, and at a place as set by the presiding officer, all in consultation with the Commission.

RULE 31. FAILURE TO RESPOND OR APPEAR.

A. Failure to Respond.

(1) If a judge fails, in whole or in part, to respond to a notice of investigation, the Commission may direct that the investigation continue and may take further actions as permitted by these rules.

(2) If a judge fails, in whole or in part, to respond to a notice of formal proceedings, the charges of the notice of formal proceedings for which there has been no response may be deemed denied and the Commission may take further action as permitted by these rules.

B. Failure to Appear.

(1) If a judge fails to appear at any Commission proceeding, the Commission may issue an order to show cause.

(2) Following a hearing on an order to show cause, the Commission may go forward with the proceeding and may take further action as permitted by these rules, with or without the presence of the judge.

RULE 32. CONDUCT OF HEARING ON THE MERITS.

A. Closed Hearing. Hearings on the merits shall be conducted in secure venues closed to the public.

B. Phases of Hearing. A hearing on the merits shall be conducted in phases:

(1) Adjudicatory Phase. The Commission shall receive evidence, hear argument, deliberate, and decide whether there is clear and convincing evidence of the factual basis establishing grounds for discipline, removal, or retirement of a judge.

(2) Recommendations Phase. If the Commission finds there are grounds for discipline, removal, or retirement of a judge, the Commission may receive evidence and hear argument, and shall deliberate and decide on recommendations to be made to the Supreme Court.

C. Admissible Evidence.

(1) Evidence During the Adjudicatory Phase. The presentation of evidence during the adjudicatory phase shall be governed by Rule 11-101, *et seq.* NMRA. Only the charges against the judge that have not been dismissed shall be admitted into evidence.

(2) Evidence During the Recommendations Phase.

(a) Rules of Evidence Inapplicable. The presentation of witnesses and evidence during the recommendations phase shall not be governed by Rule 11-101, *et seq.* NMRA. The presiding officer shall exercise reasonable control over the mode and order of the presentation of evidence.

(b) Judge as Character Witness. A judge may only testify as a character witness if the judge whose testimony is sought has been served with a subpoena for appearance.

(3) Privileges Preserved. Except as set forth in Rule 23, above, the privileges set forth in Rules 11-501 through 11-514 NMRA shall be preserved during the presentation of evidence during a hearing on the merits.

(4) Use of Closed Files. With notice and disclosure to the judge as required by the scheduling order, closed files of complaints against the judge, notices of investigation, responses to notices of investigation, notices of formal proceedings, responses to notices of formal proceedings, evidence presented before the Commission at hearings on the merits or at other hearings, and evidence provided to the judge by investigative trial counsel may be offered by investigative trial counsel as evidence in the recommendations phase, and only as follows:

(a) Disciplinary Disposition. A closed file may be used as evidence in the recommendations phase if the complaint resulted in discipline of the judge.

(b) Non-Disciplinary Disposition. A closed file may be used as evidence in the recommendations phase if the complaint resulted in non-disciplinary disposition and the alleged conduct resulting in non-disciplinary disposition is relevant in the present proceeding to show:

(i) That the judge had notice that the conduct alleged in the present matter could result in discipline, removal, or retirement; and/or

(ii) A pattern or practice of conduct by the judge.

D. Order of Hearing on the Merits – Adjudicatory Phase. Subject to the presiding officer’s authority to control the conduct of the hearing, the order of a hearing on the merits in the adjudicatory phase shall be as follows:

(1) Rulings on Motions Outside the Presence of the Commission. If there are pending motions to be heard and ruled upon by the presiding officer outside of the presence of the Commission, those shall be the first order of business at a hearing on the merits.

(2) Motions to be Decided by the Commission. If there are motions pending to be decided by the Commission, those motions shall be heard next.

(3) Statement of the Case to the Commission. Before the parties are given an opportunity to make opening statements, the presiding officer shall read to the Commission a brief statement of the case prepared by the presiding officer that shall contain the remaining charges of notices of formal proceedings, a statement that the judge admits or denies each charge and a brief statement of the judge's remaining legal defenses. If charges in a notice of formal proceedings have been dismissed, the presiding officer shall remind the Commission that the dismissed charges shall not be further considered by the Commission.

(4) Opening Statements. Investigative trial counsel may make an opening statement, after which the judge may make an opening statement. The judge may defer an opening statement until the beginning of the judge's case.

(5) Presentation of Evidence.

(a) Investigative Trial Counsel's Case. Investigative trial counsel shall have the burden of proceeding on the charges against the judge and shall first present evidence.

(i) Right to Cross Examine. The judge shall have the right to cross examine investigative trial counsel's witnesses.

(ii) Right to Redirect Examination. Investigative trial counsel shall have the right to conduct redirect examination of witnesses.

(b) Judge's Case. The judge shall have the opportunity to present evidence in defense of the charges.

(i) Right to Cross Examine. Investigative trial counsel shall have the right to cross examine the judge's witnesses.

(ii) Right to Redirect Examination. The judge shall have the right to conduct redirect examination of witnesses.

(c) Commission Questions. Following the direct, cross, and redirect examinations, the presiding officer and the Commissioners may ask questions of witnesses. Investigative trial counsel and the judge may object to questions asked by the presiding officer and by the Commissioners. Following questions by the presiding officer or the Commissioners, investigative trial counsel and the judge may each ask follow-up questions.

(d) Rebuttal. Investigative trial counsel shall have the right to present rebuttal evidence.

(e) Other Evidence. The presiding officer has the discretion to admit other evidence offered by either party at any time.

(f) Out of Order. The presiding officer may permit witnesses to testify and evidence to be introduced out of order.

(g) Motion to Dismiss. At the close of investigative trial counsel's case-in-chief and at the close of all of the evidence, the judge may move to dismiss the charges. Investigative trial counsel may respond to the motion to dismiss and the judge may reply to the response.

(h) Argument. At the close of all of the evidence and following rulings on any motions made by either party, investigative trial counsel may make a closing

argument followed by the judge's closing argument. Investigative trial counsel may make rebuttal argument.

E. Commission Deliberations - Adjudicatory Phase. At the completion of the adjudicatory phase of the hearing on the merits, the Commission shall deliberate in closed session.

(1) Vote. Upon completion of its deliberations in the adjudicatory phase, the Commission shall vote on its decision in the presence of the parties.

(2) Charges Not Proved. If the Commission finds that any charges contained in the notice of formal proceedings have not been proved by clear and convincing evidence, those charges shall be dismissed.

(3) Charges Proved. If the Commission finds that any charges in the notice of formal proceedings have been proved by clear and convincing evidence, the hearing on the merits shall continue to the recommendations phase for all such charges.

F. Order of Hearing on the Merits – Recommendations Phase. Subject to the presiding officer's authority to control the conduct of the hearing, the order in the recommendations phase shall be the same as during the adjudicatory phase except that there shall be no motions to dismiss.

G. Commission Deliberations – Recommendations Phase. At the completion of the recommendations phase, the Commission shall deliberate in closed session and shall decide what recommendation, if any, shall be made to the Supreme Court. The Commission may adopt or recommend any of the dispositions set forth in Section VI. The Commission shall vote on its decision in the presence of the parties.

H. Burden of Proof. In the adjudicatory phase of a hearing on the merits, investigative trial counsel shall have the burden of proving, by clear and convincing evidence, the charges against the judge contained in the notice of formal proceedings. In the recommendations phase of a hearing on the merits, the Commission must find that there is good cause shown for making recommendations to the Supreme Court for the discipline, removal, or retirement of a judge.

I. Record. As soon as practical following the completion of a hearing on the merits in which the Commission decides to make recommendations to the Supreme Court for the discipline, removal, or retirement of a judge, the Commission shall ensure the prompt preparation of the record of the hearing and ensure prompt service of the record on the parties.

J. Findings of Fact, Conclusions of Law, and Recommendations.

(1) Requested Findings of Fact, Conclusions of Law, and Recommendations.

Within fifteen (15) days of service of the record of a hearing on the merits, the parties shall file their requested findings of fact, conclusions of law, and recommendations with the Commission, which shall promptly provide them to the presiding officer.

(2) Presiding Officer's Draft of the Commission's Findings of Fact, Conclusions of Law, and Recommendations. Within forty-five (45) days of receipt of the

last of investigative trial counsel's and the judge's requested findings of fact, conclusions of law, and recommendations, the presiding officer shall present to the Commission a draft of the Commission's findings of fact, conclusions of law, and recommendations. The presiding officer may request of the Commission additional time to submit a draft of the Commission's findings of fact, conclusions of law, and recommendations. Failure of the presiding officer to complete a draft of the Commission's findings of fact, conclusions of law, and

recommendations within the time set forth herein shall not deprive the Commission of jurisdiction.

(3) Commission's Findings of Fact, Conclusions of Law, and Recommendations. The Commission shall issue its final findings of fact, conclusions of law, and recommendations no later than the earlier of the next regularly scheduled Commission meeting or thirty (30) days from receipt of the presiding officer's draft. The Commission's final findings of fact, conclusions of law, and recommendations shall be promptly served upon the parties.

(4) Within fifteen (15) days of service of the Commission's final findings of fact, conclusions of law, and recommendations, the parties may object to such final findings of fact, conclusions of law, and recommendations or may invite the Commission's attention to clerical errors therein. The presiding officer shall promptly correct clerical errors. The Commission shall promptly rule on objections.

SECTION VI. DISPOSITION.

RULE 33. DISMISSAL.

A. At any time following docketing of a complaint or service of a notice of investigation, the Commission may dismiss all or part of the allegations therein.

B. At any time after service of a notice of formal proceedings, the Commission may dismiss all or part of the charges therein.

C. If the complaint is a third party complaint, the complainant shall be notified if the entire complaint is dismissed. If the judge has been served with a notice of investigation or a notice of formal proceedings, the judge shall be notified of the dismissal.

RULE 34. STIPULATION.

A. Agreements.

(1) Agreements Requiring Supreme Court Approval. Stipulated agreements requiring Supreme Court approval shall include all notices of investigations, all notices of formal charges, all of the judge's responses, the factual and legal bases for the stipulation, and the record of any presentment hearing held before the Commission in connection with the stipulation.

(2) Agreements for Informal Disposition. Agreed informal disposition of allegations or formal charges may include:

- (a) Advisory letter.
- (b) Mentorship.
- (c) Professional counseling and other assistance.
- (d) Training.
- (e) Such other disposition as is appropriate under the circumstances.
- (f) Any combination of the above.

B. Presentment Hearing. A party may request, or the Commission may require, a presentment hearing on the record in which the Commission may hear testimony and receive exhibits on the factual and legal bases of the stipulation. If a presiding officer has not

already been appointed in the proceedings, the chair shall appoint one for the presentment hearing.

C. Modification. Subject to approval by the parties, the Commission may, as a condition of approval, modify a stipulation.

D. Rejection. The Commission may reject a stipulation for disposition of a complaint. If a stipulation is rejected, the proceedings shall continue.

E. Non-Disciplinary Disposition. If the Commission approves a stipulation for non-disciplinary disposition of a complaint, the Commission shall enter an order consistent therewith.

F. Disciplinary Disposition. If the Commission approves a stipulation for disciplinary disposition of a complaint, the Commission shall petition the Supreme Court for approval.

G. Enforceable. An approved stipulated resolution of a complaint is enforceable by the Commission before the Supreme Court.

RULE 35. NON-DISCIPLINARY DISPOSITION.

At any time in the proceedings after service of a notice of investigation, filing of the judge's response, and an invitation to a conference with the Commission, the Commission may close the proceedings with one or more of the following:

A. Advisory Letter. The Commission may issue a letter advising the judge that the matters alleged in a complaint may constitute grounds for discipline, removal, or retirement as follows:

(1) At least fifteen (15) days before the Commission issues an advisory letter, the Commission shall notify the judge of its intent to do so and shall provide the judge with a copy of the proposed advisory letter. The notice shall inform the judge that, if an advisory letter is issued, the advisory letter, the judge's response, and the record of any hearing thereon may be used in a subsequent proceeding pursuant to Rule 32(C)(4), above.

(2) If, within fifteen (15) days of service of notice of intent to issue an advisory letter, the judge does not object in writing to the Commission, the Commission may issue the letter as proposed.

(3) If, within fifteen (15) days of service of notice of intent to issue an advisory letter, the judge objects thereto, the judge may:

(a) File objections to the proposed advisory letter with the Commission in writing

(b) Request to be heard before the Commission on the objections.

(4) If the judge requests a hearing on objections to an advisory letter:

(a) The Chair shall appoint a presiding officer, who is a District Judge, to conduct the hearing.

(b) The hearing shall be limited to statements of the judge, the judge's counsel and investigative trial counsel, and documents which have been disclosed.

(c) No witnesses will be called.

(d) At the completion of the hearing, the Commission shall take the matter under advisement, shall decide on the objections in closed session, and then announce the decision in the presence of the judge and the investigative trial counsel.

(5) Following a hearing on the judge's objections or receipt of the judge's written objections, the Commission may take any of the following actions:

- (a) Issue the advisory letter as proposed.
- (b) Modify and issue the advisory letter.
- (c) Dismiss the complaint without issuing an advisory letter.
- (d) Order additional investigation.
- (e) Approve a notice of formal proceedings, if a notice of formal proceedings has not been issued.

(f) Set the complaint for a hearing on the merits, if a notice of formal proceedings has been served upon the judge.

(6) If the Commission issues an advisory letter and the judge has objected, the judge's objections and a record of any hearing held thereon shall be filed with the advisory letter and shall be provided to the Commission in any subsequent proceeding in which the advisory letter is used.

B. Other Remedial Measures. If the judge stipulates in a writing agreed to by investigative trial counsel and approved by the Commission, the Commission may order the judge to:

- (1) Enter a period of mentoring with a mentor assigned by the Commission.
- (2) Undertake training assigned by the Commission.
- (3) Undergo counseling as assigned by the Commission.
- (4) Participate in any other non-disciplinary action agreed to by the Commission and the judge.

(5) Enter a period of probation upon terms set forth by the Commission in conjunction with any of the measures set forth above.

(6) Participate and complete any combination of the above.

(7) Pay any third party costs associated with the stipulated remedial measures.

C. Other Non-Disciplinary Action. The Commission may order any other non-disciplinary action.

RULE 36. RECOMMENDATIONS FOR DISCIPLINE, REMOVAL, OR RETIREMENT.

A. Recommendations. Following a stipulation between the parties or a hearing on the merits and a finding of good cause, the Commission may recommend to the Supreme Court the discipline, removal, or retirement of a judge.

B. Factors for Recommending Discipline, Removal, or Retirement. The Commission shall consider the following non-exclusive factors among other information when recommending discipline, removal, or retirement of a judge.

(1) The extent of the misconduct.

(a) Whether it is an isolated incident or a pattern of misconduct.

(b) Whether there are multiple offenses.

(2) The nature of the misconduct.

(a) Whether the misconduct occurred during performance of the judge's official duties or in 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 judicial position to satisfy personal desires.

(d) Whether the misconduct involved criminal acts or acts of dishonesty.

(3) The judge's conduct in regard to the proceedings before the Commission.

(a) Whether the judge expressed remorse for the misconduct and made an effort to change the conduct.

(b) Whether the judge ceased the misconduct.

(c) Whether the judge cooperated with the Commission, including whether the judge was truthful in communications with the Commission and with investigative trial counsel and staff.

(4) The judge's record of prior discipline and, if relevant, non-disciplinary disposition of prior allegations or formal charges.

(5) The judge's reputation.

(6) The effect the misconduct has had, or will likely have, on the integrity of the judiciary and public respect therefore.

(7) Such other factors as are relevant to the recommendation for discipline, removal, or retirement.

C. Discipline. Recommendations for discipline of a judge may include:

(1) Suspension.

(2) Limitations or conditions on the performance of judicial duties.

(3) Appropriate training at the judge's expense.

(4) Professional counseling, mentorship, or other assistance for the judge at the judge's expense.

(5) Public censure to be published in the New Mexico Bar Bulletin or other appropriate publication.

(6) Fine.

(7) Any other discipline appropriate to the conduct either stipulated to have occurred or found, at a hearing on the merits, to have occurred.

(8) Any combination of the above.

D. Removal or Retirement. Recommendations may include removal or retirement of the judge.

E. Basis for Petition. The petition to the Supreme Court for approval of the Commission's recommendations for discipline, removal, or retirement of a judge, if based on a stipulation, shall comply with Rule 34(A) and, if based on a hearing on the merits, shall comply with Rule 37(A) and (B).

F. Petition for Immediate Temporary Suspension and Other Interim Relief. A petition to the Supreme Court for approval of the Commission's recommendations for discipline, removal, or retirement of a judge may, if appropriate, be filed with a request for immediate temporary suspension or other interim relief as set forth in Rule 24, above.

SECTION VII. REPORT TO THE SUPREME COURT.

RULE 37. PREPARATION AND FILING OF THE RECORD OF PROCEEDINGS.

A. Preparation of the Record of Proceedings. As soon as practical following the completion of a hearing on the merits in which the Commission decides to make recommendations to the Supreme Court for the discipline, removal, or retirement of a judge, the Commission shall ensure the prompt preparation of the record of proceedings and shall ensure prompt service of the record of the proceedings on the parties.

B. Certification and Filing of the Record of Proceedings and Service of Notice. Promptly upon completion of preparation of the record of proceedings, the Commission shall certify that the record is the complete, following which the record or proceedings shall be filed with the Clerk of the Supreme Court and notice of such filing shall be served on the parties.

C. Petition for Immediate Temporary Suspension. If, in its recommendations, the Commission finds that immediate temporary suspension of a judge or other interim relief is required pending the Supreme Court's action on the Commission's recommendations, the Commission shall direct investigative trial counsel to file a petition with the Supreme Court pursuant to the requirements of Rule 24.

D. No Longer Confidential. Upon filing of the record of proceedings with the Supreme Court, the proceedings, to the extent of the record filed, are no longer confidential.