

Rule 3-201.02. Court Commissioner Conduct Committee.**Intent:**

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

Applicability:

This rule ~~shall~~ apply to court commissioners and Division Commissioners in all trial courts of record.

Statement of the Rule:(1) Definitions.

(1)(A) “District Chair” is as defined in Rule 3-201.01.

(1)(B) “Division Commissioner” is as defined in Rule 3-201.01.

(24) Court Commissioner Conduct Committee.

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

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

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

(24)(A)(iii) make recommendations to the Council and the presiding judge(s) of the district(s) the commissioner serves, or to the District Chair for Division Commissioners, regarding corrective actions or removal of the commissioner pursuant to CJA-Rules 3-201 or 3-201.01, where the Committee finds misconduct by a preponderance of the evidence. For purposes of this rule, “misconduct” means:

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

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

(24)(A)(iii)(c) willful and persistent failure to perform commissioner duties; or

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

(24)(B) The Committee consists of the following members:

(24)(B)(i) the Court of Appeals member of the Ethics Advisory Committee, who ~~shall~~ will serve as chair of the Committee;

(24)(B)(ii) two presiding judges from judicial districts with a court commissioner, which presiding judges ~~shall~~ will be from districts other than the district the commissioner primarily serves, except for Division Commissioners, in which case

the Committee chair may select any district court judge not a member of the District Board.”;

(24)(B)(iii) the immediate past Bar Commissioner member of the Council; and

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

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

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

(24)(C)(ii) If a presiding judge or district court judge for a Division Commissioner is recused, the chair ~~will shall~~ temporarily appoint a presiding judge of another judicial district with a commissioner or another district court judge for a Division Commissioner.

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

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

(24)(D) Three members of the Committee constitute a quorum. Any action of a majority of the quorum constitutes the action of the Committee. The chair ~~shall will~~ vote only as necessary to break a tie vote. The Committee ~~shall will~~ be organized and meet only as often as necessary to resolve a complaint not previously dismissed by the chair pursuant to paragraph (32)(C) below. Committee members may attend meetings in person, by telephone, by videoconference, or by other means approved in advance by the chair.

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

(32) Complaint submission and initial review.

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

(32)(B) Each complaint ~~shall must~~ be in writing and ~~shall~~ contain:

(32)(B)(i) the complainant’s name;

(32)(B)(ii) the complainant’s preferred contact information;

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

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

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

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

(43) Committee examination

(43)(A) The Committee ~~shall~~will examine any complaint referred to it by the chair under paragraph (32)(C) to determine whether dismissal or a hearing is appropriate. In connection with this examination, the ~~C~~committee may conduct an investigation of the allegations made in the complaint, including review of any relevant court file, hearing transcripts, and related materials. The Committee may, as part of its investigation under this paragraph, provide the commissioner with the opportunity to submit a written response to the allegations within 30 days.

(43)(B) If the Committee dismisses the complaint after examination, the chair ~~shall~~will provide notice of and basis for the dismissal to the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners. In dismissing the complaint, after providing the commissioner the opportunity to submit a written response, the Committee may issue a private warning to the commissioner regarding the conduct alleged. A private warning does not constitute a corrective action or formal finding of misconduct. The private warning will be in writing and a copy provided to the commissioner and the presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners.

(43)(C) If the Committee determines that the matter should proceed to a hearing, the chair ~~will~~shall send notice to the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners. The notice ~~must~~shall:

(43)(C)(i) inform the commissioner of the allegations and the canons allegedly violated;

(43)(C)(ii) invite the commissioner to respond to the allegations in writing within 30 days; and

(43)(C)(iii) include a copy of the complaint.

(43)(D) If the commissioner chooses to respond to the allegations, the commissioner ~~must~~shall send a copy of the response to the complainant, the Committee chair, and the presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners.

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

(54) Hearings of the Court Commissioner Conduct Committee.

(54)(A) If the Committee determines that a matter should proceed to a hearing under paragraph (43), a hearing ~~will~~shall be scheduled after receipt of the commissioner's response or expiration of the time to respond in paragraph (43)(C)(ii). Notice of the date, time, and place of the hearing ~~shall~~will be sent to the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners.

(54)(B) Hearings ~~shall be~~are closed to the public.

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

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

(54)(E) The Committee ~~will~~shall interview the complainant, the commissioner, and any witnesses determined by the Committee to have relevant information. The commissioner and complainant have the right to testify.

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

(54)(G) The commissioner and complainant may present, examine, and cross-examine witnesses.

(54)(H) Testimony ~~shall~~will be presented under oath and a record of the proceedings maintained.

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

(54)(J) Within 30 days after the completion of the hearing, the Committee ~~will~~shall make written findings and conclusions concerning the allegations in the complaint and provide a

copy to the complainant, the commissioner, the presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners, and the Council.

(54)(K) If the Committee finds misconduct by a preponderance of the evidence, the Committee ~~will~~shall recommend appropriate corrective actions under CJA Rule 3-201 or 3-201.01.

(54)(L) In making recommendations for corrective actions, the Committee ~~will~~shall consider the following non-exclusive factors:

(54)(L)(i) the nature of the misconduct;

(54)(L)(ii) the gravity of the misconduct;

(54)(L)(iii) the extent to which the misconduct has been reported to or is known by the presiding judge(s) of the district(s) the commissioner serves, the District Chair for Division Commissioners, or the commissioner, and the source of the dissemination of information;

(54)(L)(iv) the extent to which the commissioner has accepted responsibility for the misconduct;

(54)(L)(v) the extent to which the commissioner has made efforts to avoid repeating the same or similar misconduct;

(54)(L)(vi) the length of the commissioner's service with the courts;

(54)(L)(vii) the effect the misconduct has had upon the confidence of court employees, participants in the judicial system, or the public in the integrity or impartiality of the judiciary;

(54)(L)(viii) the extent to which the commissioner profited or satisfied his or her personal desires as a result of the misconduct; and

(54)(L)(ix) the number and type of previous corrective actions against the commissioner.

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

(65) Council review of committee action.

(65)(A) Appeals from decisions without a hearing.

(65)(A)(i) Complaints dismissed prior to hearing, either by the chair under paragraph (32)(C) or by the Committee under paragraph (43)(B), may be appealed by the complainant to the ~~Judicial~~ Council. All such appeals must be submitted in writing to the Presiding Officer/Chair of the Council, and must be received within 30 days of the notice of dismissal. In the appeal, the complainant must set forth the specific grounds on which the appeal is based. A copy of the appeal ~~will~~shall be provided to the Committee chair, the commissioner, and the presiding judge(s) of

the district(s) the commissioner serves, or the District Chair for Division Commissioners.

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

(65)(A)(iii) The Council's decision ~~will~~shall be in writing and a copy provided to the Committee chair, the complainant, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners.

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

(6)(A)(v) A commissioner may appeal a private warning issued by the Committee under subparagraph (4)(B) to the Council. The appeal must be submitted in writing to the Presiding Officer within 30 days of receiving notice of the warning, setting forth the specific grounds on which the appeal is based. A copy of the appeal must be provided to the Committee chair and the presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners.

(6)(A)(vi) In an appeal under subparagraph (6)(A)(v), the Council, a designated Council member, or a committee of the Council will conduct a de novo review of the file and affirm, modify, or vacate the private warning. The Council's decision will be in writing and final. A copy of the Council's decision will be provided to the Committee Chair, the commissioner, and the presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners.

(65)(B) Council review following a hearing.

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

(65)(B)(ii) The complainant, the commissioner, or presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners may file objections to the Committee's findings, conclusions or recommendations. Any such objections must be submitted in writing to the Council within 30 days of the date the Committee's findings, conclusions, and recommendations were issued.

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

(65)(B)(iv) In conducting its review, the Council ~~shall~~will review the record of the Committee's hearing, and ~~shall~~ determine whether to adopt, modify, or reject the Committee's findings, conclusions, and recommendations, including any recommendations for corrective action.

(65)(B)(v) The Council's decision ~~shall~~will be in writing and provided to the Committee chair, the commissioner, the complainant, and the presiding judge(s) of the district(s) the commissioner serves, or the District Chair for Division Commissioners.

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

(65)(C) **Annual Report.** The chair of the Committee ~~will~~shall report to the Council not less than annually on the Committee's work, including a general description of any complaint dismissed without a hearing.

Effective: ~~May 1, 2021~~November 1, 2026