Subchapter 9.200 Judicial Tenure Commission

Rule 9.200 Construction

An independent and honorable judiciary being indispensable to justice in our society, subchapter 9.200 shall be construed to preserve the integrity of the judicial system, to enhance public confidence in that system, and to protect the public, the courts, and the rights of the judges who are governed by these rules in the most expeditious manner that is practicable and fair.

(Current as of 1/1/2006)

Rule 9.201 Definitions

As used in this chapter, unless the context or subject matter otherwise requires

(A) "commission" means the Judicial Tenure Commission;

(B) "judge" means:

(1) a person who is serving as a judge of an appellate or trial court by virtue of election, appointment, or assignment;

(2) a magistrate or a referee; or

(3) a person who formerly held such office and is named in a request for investigation that was filed during the person's tenure, except that with respect to conduct that is related to the office, it is not necessary that the request for investigation be filed during the person's tenure; nothing in this paragraph deprives the attorney grievance commission of its authority to proceed against a former judge;

(C) "respondent" is a judge against whom a complaint has been filed;

(D) "chairperson" is the commission chairperson and includes the acting chairperson;

(E) "master" means one or more judges or former judges appointed by the Supreme Court at the commission's request to hold hearings on a complaint against a judge filed by the commission;

(F) "examiner" means the executive director or equivalent staff member or other attorney appointed by the commission to present evidence at a hearing before a master or the commission, or in proceedings in the Supreme Court;

(G) "request for investigation" is an allegation of judicial misconduct, physical or mental disability, or other circumstance that the commission may undertake to investigate under Const 1963, art 6, § 30, and MCR 9.207;

(H) "complaint" is a written document filed at the direction of the commission, recommending action against a judge and alleging specific charges of misconduct in office, mental or physical disability, or some other ground that warrants commission action under Const 1963, art 6, § 30.

(Current as of 1/1/2006)

Rule 9.202 Judicial Tenure Commission; Organization

(A) Appointment of Commissioners. As provided by Const 1963, art 6, § 30, the Judicial Tenure Commission consists of 9 persons. The commissioners selected by the judges shall be chosen by mail vote conducted by the state court administrator. The commissioners selected by the state bar members shall be chosen by mail vote conducted by the State Bar of Michigan. Both mail elections must be conducted in accordance with nomination and election procedures approved by the Supreme Court. Immediately after a commissioner's selection, the selecting authority shall notify the Supreme Court and the Judicial Tenure Commission.

(B) Term of Office. A commissioner's term of office shall be 3 years. To achieve staggered terms, the following terms shall expire in consecutive years:

(1) one of the appointments of the Governor, the judge of a court of limited jurisdiction, and one of the attorneys selected by the state bar;

(2) the other appointment of the Governor, the probate judge, and the other attorney selected by the state bar;

(3) the Court of Appeals judge, the circuit judge, and the judge selected by the state bar.

(C) Vacancy.

(1) A vacancy in the office of a commissioner occurs:

(a) when a commissioner resigns or is incapable of serving as a member of the commission;

(b) when a judge who is a member of the commission no longer holds the office held when selected;

(c) when an attorney selected by state bar members is no longer entitled to practice in the courts of this state; and

(d) when an appointee of the Governor becomes an attorney.

(2) Vacancies must be filled by selection of a successor in the same manner required for the selection of the predecessor. The commissioner selected shall hold office for the unexpired term of the predecessor. Vacancies must be filled within 3 months after the vacancy occurs. If a vacancy occurs after the

selection of a new commissioner but before that commissioner's term officially begins, the commissioner-elect shall fill that vacancy and serve the remainder of the unexpired term.

(3) A member may retire by submitting a resignation in writing to the commission, which must certify the vacancy to the selecting authority.

(D) Commission Expenses.

(1) The commission's budget must be submitted to the Supreme Court for approval.

(2) The commission's expenses must be included in and paid from the appropriation for the Supreme Court.

(3) A commissioner may not receive compensation for services but shall be paid reasonable and necessary expenses.

(E) Quorum and Chairperson.

(1) The commission shall elect from among its members a chairperson, a vice-chairperson, and a secretary, each to serve 2 years. The vice-chairperson shall act as chairperson when the chairperson is absent. If both are absent, the members present may select one among them to act as temporary chairperson.

(2) A quorum for the transaction of business by the commission is 5.

(3) The vote of a majority of the members constitutes the adoption or rejection of a motion or resolution before the commission. The chairperson is entitled to cast a vote as a commissioner.

(F) Meetings of Commission. Meetings must be held at the call of the chairperson or the executive director, or upon the written request of 3 commission members.

(G) Commission Staff.

(1) The commission shall employ an executive director or equivalent person or persons, and such other staff members as the commission concludes are warranted, to perform the duties that the commission directs, subject to the availability of funds under its budget.

(2) The executive director or any other staff person who is involved in the investigation or prosecution of a judge

(a) shall not be present during the deliberations of the commission or participate in any other manner in the decision to file formal charges or to recommend action by the Supreme Court with regard to that judge, and

(b) shall have no substantive ex parte communication with the commission regarding a formal complaint that the commission has authorized.

(3) Commission employees are exempt from the operation of Const 1963, art 11, § 5, as are employees of courts of record.

(Current as of 1/1/2006)

Rule 9.203 Judicial Tenure Commission; Powers; Review

(A) Authority of Commission. The commission has all the powers provided for under Const 1963, art 6, § 30, and further powers provided by Supreme Court rule. Proceedings before the commission or a master are governed by these rules. The commission may adopt and publish administrative rules for its internal operation and the administration of its proceedings that do not conflict with this subchapter and shall submit them to the Supreme Court for approval.

(B) Review as an Appellate Court. The commission may not function as an appellate court to review the decision of a court or to exercise superintending or administrative control of a court, but may examine decisions incident to a complaint of judicial misconduct, disability, or other circumstance that the commission may undertake to investigate under Const 1963, art 6, § 30, and MCR 9.207. An erroneous decision by a judge made in good faith and with due diligence is not judicial misconduct.

(C) Control of Commission Action. Proceedings under these rules are subject to the direct and exclusive superintending control of the Supreme Court. No other court has jurisdiction to restrict, control, or review the orders of the master or the commission.

(D) Errors and Irregularities. An investigation or proceeding under this subchapter may not be held invalid by reason of a nonprejudicial irregularity or for an error not resulting in a miscarriage of justice.

(E) Jurisdiction Over Visiting Judges. Notwithstanding MCR 9.116(B), the Attorney Grievance Commission may take action immediately with regard to a visiting judge who currently holds no other judicial office if the allegations pertain to professional or personal activities unrelated to the judge's activities as a judge.

(Current as of 1/1/2006)

Rule 9.204 Disqualification of Commission Member or Employee

(A) Disqualification From Participation. A judge who is a member of the commission or of the Supreme Court is disqualified from participating in that capacity in proceedings involving the judge's own actions or for any reason set forth in MCR 2.003(B).

(B) Disqualification from Representation. A member or employee of the commission may not represent

(1) a respondent in proceedings before the commission, including preliminary discussions with employees of the commission before the filing of a request for investigation; or

(2) a judge in proceedings before the Attorney Grievance Commission, or the Attorney Discipline Board and its hearing panels, as to any matter that was pending before the Judicial Tenure Commission during the member's or the employee's tenure with the commission.

(Current as of 1/1/2006)

Rule 9.205 Standards of Judicial Conduct

(A) Responsibility of Judge. A judge is personally responsible for the judge's own behavior and for the proper conduct and administration of the court in which the judge presides.

(B) Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice. In addition to any other sanction imposed, a judge may be ordered to pay the costs, fees, and expenses incurred by the commission in prosecuting the complaint only if the judge engaged in conduct involving fraud, deceit, or intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court.

(1) Misconduct in office includes, but is not limited to:

(a) persistent incompetence in the performance of judicial duties;

(b) persistent neglect in the timely performance of judicial duties;

(c) persistent failure to treat persons fairly and courteously;

(d) treatment of a person unfairly or discourteously because of the person's race, gender, or other protected personal characteristic;

(e) misuse of judicial office for personal advantage or gain, or for the advantage or gain of another; and

(f) failure to cooperate with a reasonable request made by the commission in its investigation of a judge.

(2) Conduct in violation of the Code of Judicial Conduct or the Rules of Professional Conduct may constitute a ground for action with regard to a judge, whether the conduct occurred before or after the respondent became a judge or was related to judicial office.

(3) In deciding whether action with regard to a judge is warranted, the commission shall consider all the circumstances, including the age of the allegations and the possibility of unfair prejudice to the judge because of the staleness of the allegations or unreasonable delay in pursuing the matter.

(Current as of 1/1/2006)

Rule 9.206 Service

(A) Judge. When provision is made under these rules for serving a complaint or other document on a judge, the service must be made in person or by registered or certified mail to the judge's judicial office or last known residence. If an attorney has appeared for a judge, service may be on the attorney in lieu of service on the judge.

(B) Commission. Service on the commission must be made by personal delivery or by registered or certified mail to the executive director at the commission's office.

(Current as of 1/1/2006)

Rule 9.207 Investigation; Notice

(A) Request for Investigation. A request for investigation of a judge must be made in writing and verified on oath of the complainant. The commission also is authorized to act on its own initiative or at the request of the Supreme Court, the state court administrator, or the Attorney Grievance Commission.

(B) Investigation. Upon receiving a request for investigation that is not clearly unfounded or frivolous, the commission shall direct that an investigation be conducted to determine whether a complaint should be filed and a hearing held. If there is insufficient cause to warrant filing a complaint, the commission may:

(1) dismiss the matter,

(2) dismiss the matter with a letter of explanation or caution that addresses the respondent's conduct,

(3) dismiss the matter contingent upon the satisfaction of conditions imposed by the commission, which may include a period of monitoring,

(4) admonish the respondent, or

(5) recommend to the Supreme Court private censure, with a statement of reasons.

If a request for investigation is filed less than 90 days before an election in which the respondent is a candidate, and the request is not dismissed forthwith as clearly unfounded or frivolous, the commission shall postpone its investigation until after the election unless two-thirds of the commission members determine that the public interest and the interests of justice require otherwise.

(C) Notice to Judge.

(1) Before filing a complaint or taking action under subrule (B)(5), the commission must give written notice to the judge who is the subject of a request for investigation. The purpose of the notice is to afford the judge an opportunity to apprise the commission, in writing within 28 days, of such matters as the judge may choose, including information about the factual aspects of the allegations and other relevant issues. The notice shall specify the allegations and may include the date of the conduct, the location where the conduct occurred, and the name of the case or identification of the court proceeding relating to the conduct.

(a) For good cause shown, the commission may grant a reasonable extension of the 28-day period.

(b) The Supreme Court may shorten the time periods prescribed in this and other provisions of this subchapter at its own initiative or at the request of the commission.

(2) Before taking action under subrule (B)(2)-(4), the commission must give written notice to the judge of the nature of the allegations in the request for investigation and afford the judge a reasonable opportunity to respond in writing.

(3) If a judge so requests in response to a written notice from the commission under this subrule, the commission may offer the judge an opportunity to appear informally before the commission to present such information as the judge may choose, including information about the factual aspects of the allegations and other relevant issues.

(4) On final disposition of a request for investigation without the filing of a formal complaint, the commission shall give written notice of the disposition to the judge who was the subject of the request. The commission also shall provide written notice to the complainant that the matter has been resolved without the filing of a formal complaint.

(D) Physical or Mental Examination. In the course of an investigation, the commission may request the judge to submit to a physical or mental examination. Failure of the judge to submit to the examination may constitute judicial misconduct. MCR 2.311(B) is applicable to the examination.

(E) Expediting Matters. When the integrity of the judicial system requires, the Supreme Court may direct that the commission expedite its consideration of any investigation, and may set a deadline for the commission to submit any recommendation to the Court, notwithstanding any other provision in this subchapter.

(Current as of 1/1/2006)

Rule 9.208 Evidence

(A) Taking of Evidence During Preliminary Investigation. Before filing a complaint, the commission may take evidence before it or an individual member of the commission, or before the executive director or other member of the staff for purposes of the preliminary investigation.

(B) Cooperation With Investigation. A judge, clerk, court employee, member of the bar, or other officer of a court must comply with a reasonable request made by the commission in its investigation.

(C) Discovery.

(1) Pretrial or discovery proceedings are not permitted, except as follows:

(a) At least 21 days before a scheduled public hearing,

(i) the parties shall provide to one another, in writing, the names and addresses of all persons whom they intend to call at the hearing, and a copy of all statements and affidavits given by those persons; and

(ii) the commission shall make available to the respondent for inspection or copying all exculpatory material in its possession, as well as any other material in its possession that it intends to introduce as evidence at the hearing.

(b) The parties shall give supplemental notice to one another within 5 days after any additional witness has been identified and at least 10 days before a scheduled hearing.

(2) A deposition may be taken of a witness who is living outside the state or who is physically unable to attend a hearing.

(3) The commission or the master may order a prehearing conference to obtain admissions or otherwise narrow the issues presented by the pleadings.

If a party fails to comply with subrules (C)(1) or (2), the master may, on motion and showing of material prejudice as a result of the failure, impose one or more of the sanctions set forth in MCR 2.313(B)(2)(a)-(c).

(Current as of 1/1/2006)

Rule 9.209 Pleadings

The complaint and answer are the only pleadings allowed.

(A) Complaint.

(1) Filing; Service. A complaint may not be filed before the completion of a preliminary investigation. Upon concluding that there is sufficient evidence to

warrant the filing of a complaint, the commission shall direct the executive director or equivalent staff member to do the following:

(a) enter the complaint in the commission docket, which is a public record;

(b) retain the complaint in the commission office; and

(c) promptly serve a copy of the complaint on the respondent.

(2) Form of Complaint. A complaint must be entitled:

"Complaint Against _____, Judge. No. _____."

A complaint must be in form similar to a complaint filed in a civil action in the circuit court.

(B) Answer.

(1) Filing. Within 14 days after service of the complaint, the respondent must file with the commission the original and 9 copies of an answer verified by the respondent.

(2) Form. The answer must be in form similar to an answer in a civil action in the circuit court, and must contain a full and fair disclosure of all facts and circumstances pertaining to the allegations regarding the respondent. Wilful concealment, misrepresentation, or failure to file an answer and disclosure are additional grounds for disciplinary action under the complaint.

(3) Affirmative defenses, including the defense of laches, must be asserted in the answer or they will not be considered.

(Current as of 1/1/2006)

Rule 9.210 Notice of Public Hearing; Appointment of Master and Examiners

(A) Notice of Public Hearing. Upon the filing of a complaint, the commission must set a time and a place of hearing before the commission and notify the respondent at least 21 days in advance, or request in writing that the Supreme Court appoint a master to hold the hearing. Such a request must be accompanied by a copy of the complaint.

(B) Appointment of Master.

(1) If the commission requests that the Supreme Court appoint a master to conduct the hearing, the Court shall do so within a reasonable period.

(2) The master shall set a time and a place for the hearing and shall notify the respondent and the examiner at least 28 days in advance. The master shall rule on all motions and other procedural matters incident to the complaint, answer, and hearing. Recommendations on dispositive motions shall not be

announced until the conclusion of the hearing, except that the master may refer to the commission on an interlocutory basis a recommendation regarding a dispositive motion.

(3) MCR 2.003(B) shall govern all matters concerning the disqualification of a master.

(C) Appointment of Examiners. The executive director shall act as the examiner in a case in which a formal complaint is filed, unless the commission appoints another attorney to act as examiner.

(Current as of 1/1/2006)

Rule 9.211 Public Hearing

(A) Procedure. The public hearing must conform as nearly as possible to the rules of procedure and evidence governing the trial of civil actions in the circuit court. The hearing must be held whether or not the respondent has filed an answer or appears at the hearing. The examiner shall present the evidence in support of the charges set forth in the complaint, and at all times shall have the burden of proving the allegations by a preponderance of the evidence. A respondent is entitled to be represented by an attorney. Any employee, officer, or agent of the respondent's court, law enforcement officer, public officer or employee, or attorney who testifies as a witness in the hearing, whether called by the examiner or by the judge, is subject to cross-examination by either party as an opposite party under MCL 600.2161.

(B) Effect of Failure to Comply.

(1) The respondent's failure to answer or to appear at the hearing may not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for commission action.

(2) The respondent's failure to answer, to testify in his or her own behalf, or to submit to a medical examination requested by the commission or the master, may be considered as an evidentiary fact, unless the failure was due to circumstances unrelated to the facts in issue at the hearing.

(C) Record. The proceedings at the hearing must be recorded by stenographic or mechanical means. A separate record must be made if the master or the commission declines to admit evidence.

(D) Rulings. When the hearing is before the commission, at least 5 members must be present while the hearing is in active progress. Procedural and other interlocutory rulings must be made by the chairperson and are taken as consented to by the other members of the commission unless a member calls for a vote, in which event a ruling must be made by a majority vote of those present.

(Current as of 1/1/2006)

Rule 9.212 Subpoenas

(A) Issuance of Subpoenas.

(1) Before the filing of a complaint, the commission may issue subpoenas for the attendance of witnesses to provide statements or produce documents or other tangible evidence exclusively for consideration by the commission and its staff during the preliminary investigation. Before the filing of a complaint, the entitlement appearing on the subpoena shall not disclose the name of a judge under investigation.

(2) After the filing of a complaint, the commission may issue subpoenas either to secure evidence for testing before the hearing or for the attendance of witnesses and the production of documents or other tangible evidence at the hearing.

(B) Sanctions for Contempt; Disobedience by Respondent.

(1) Contempt proceedings against a nonparty for failure to obey a subpoena issued pursuant to this rule may be brought pursuant to MCR 2.506(E) in the circuit court for the county in which the individual resides, where the individual is found, where the contempt occurred, or where the hearing is to be held.

(2) If a respondent disobeys a subpoena or other lawful order of the commission or the master, whether before or during the hearing, the commission or the master may order such sanctions as are just, including, but not limited to, those set forth in MCR 2.313(B)(2)(a)-(e).

(Current as of 1/1/2006)

Rule 9.213 Amendments of Complaint or Answer

The master, before the conclusion of the hearing, or the commission, before its determination, may allow or require amendments of the complaint or the answer. The complaint may be amended to conform to the proofs or to set forth additional facts, whether occurring before or after the commencement of the hearing. If an amendment is made, the respondent must be given reasonable time to answer the amendment and to prepare and present a defense against the matters charged in the amendment.

(Current as of 1/1/2006)

Rule 9.214 Report of Master

Within 21 days after a transcript of the proceedings is provided, the master shall prepare and transmit to the commission in duplicate a report that contains a brief statement of the proceedings and findings of fact and conclusions of law with respect to the issues presented by the complaint and the answer. The report must be accompanied by three copies of the transcript of the proceedings before the master.

On receiving the report and the transcript, the commission must promptly send a copy of each to the respondent.

(Current as of 1/1/2006)

Rule 9.215 Objections to Report of Master

Within 28 days after copies of the master's report and the transcript are mailed to the respondent, the examiner or the respondent may file with the commission an original and 9 copies of a statement of objections to the report of the master, along with a supporting brief. A copy of a statement and brief must be served on the opposite party, who shall have 14 days to respond.

(Current as of 1/1/2006)

Rule 9.216 Appearance Before Commission

When the master files the report, the commission shall set a date for hearing objections to the report. The respondent and the examiner must file written briefs at least 7 days before the hearing date. The briefs must include a discussion of possible sanctions and, except as otherwise permitted by the Judicial Tenure Commission, are limited to 50 pages in length. Both the respondent and the examiner may present oral argument at the hearing.

MCR 9.216 retained 5.31.05

(Current as of 1/1/2006)

Rule 9.217 Extension of Time

The commission or its chairperson may extend for periods not to exceed 28 days the time for the filing of an answer, for the commencement of a hearing before the commission, for the filing of the master's report, and for the filing of a statement of objections to the report of a master. A master may similarly extend the time for the commencement of a hearing.

(Current as of 1/1/2006)

Rule 9.218 Hearing Additional Evidence

The commission may order a hearing before itself or the master for the taking of additional evidence at any time while the complaint is pending before it. The order must set the time and place of hearing and indicate the matters about which evidence is to be taken. A copy of the order must be sent to the respondent at least 14 days before the hearing.

(Current as of 1/1/2006)

Rule 9.219 Interim Suspension

(A) Petition.

(1) After a complaint is filed, the commission may petition the Supreme Court for an order suspending a judge from acting as a judge until final adjudication of the complaint.

(2) In extraordinary circumstances, the commission may petition the Supreme Court for an order suspending a judge from acting as a judge in response to a request for investigation, pending a decision by the commission regarding the filing of a complaint. In such a circumstance, the documents filed with the Court must be kept under seal unless the petition is granted.

Whenever a petition for interim suspension is granted, the processing of the case shall be expedited in the commission and in the Supreme Court. The commission shall set forth in the petition an approximate date for submitting a final recommendation to the Court.

(B) Contents; Affidavit or Transcript. The petition must be accompanied by a sworn affidavit or court transcript, and state facts in support of the allegations and the assertion that immediate suspension is necessary for the proper administration of justice.

(C) Service; Answer. A copy of the petition and supporting documents must be served on the respondent, who may file an answer to the petition within 14 days after service of the petition. The commission must be served with a copy of the answer.

(Current as of 1/1/2006)

Rule 9.220 Commission Decision

(A) Majority Decision.

(1) The affirmative vote of 5 commission members who have considered the report of the master and any objections, and who were present at an oral hearing provided for in MCR 9.216, or have read the transcript of that hearing, is required for a recommendation of action with regard to a judge. A commissioner may file a written dissent.

(2) If the hearing was held without a master, the affirmative vote of 5 commission members who were present when the evidence was taken or who have read the transcript of that proceeding is required for such a recommendation. A commissioner may file a written dissent.

(3) It is not necessary that a majority agree on the specific conduct that warrants a recommendation of action with regard to a judge, or on the specific action that is warranted, only that there was some conduct that warrants such a recommendation.

(B) Record of Decision.

(1) The commission must make written findings of fact and conclusions of law along with its recommendations for action with respect to the issues of fact and law in the proceedings, but may adopt the findings of the master, in whole or in part, by reference.

(2) The commission shall undertake to ensure that the action it is recommending in individual cases is reasonably proportionate to the conduct of the respondent, and reasonably equivalent to the action that has been taken previously in equivalent cases.

(C) Action With Respondent's Consent. With the consent of the respondent and the commission, the Supreme Court may impose a sanction or take other action at any stage of the proceedings under these rules.

(Current as of 1/1/2006)

Rule 9.221 Confidentiality; Disclosure

(A) Scope of Rule. Except as provided in this rule, all papers filed with the commission and all proceedings before it are confidential in nature and are absolutely privileged from disclosure by the commission or its staff, including former members and employees, in any other matter, including but not limited to civil, criminal, legislative, or administrative proceedings. All the commission's investigative files and commission-generated documents are likewise confidential and privileged from disclosure. Nothing in this rule prohibits the respondent judge from making statements regarding the judge's conduct.

(B) Before Filing a Formal Complaint.

(1) Before a complaint is filed, neither a commissioner nor a member of the commission staff may disclose the existence or contents of an investigation, testimony taken, or papers filed in it, except as needed for investigative purposes.

(2) The commission may at any time make public statements as to matters pending before it on its determination by a majority vote that it is in the public interest to do so, limited to statements

(a) that there is an investigation pending,

(b) that the investigation is complete and there is insufficient evidence for the commission to file a complaint, or

(c) with the consent of the respondent, that the investigation is complete and some specified disciplinary action has been taken.

(C) Discretionary Waiver of Confidentiality or Privilege. The commission may waive the confidentiality or privilege protections if:

(1) the respondent waives, in writing, the right to confidentiality or privilege;

(2) the grievant waives, in writing, the right to confidentiality or privilege;

(3) the witness whose statement, testimony, or other evidentiary item will be disclosed waives, in writing, the right to confidentiality or privilege; and

(4) a majority of the commission determines that the public interest will be served by doing so.

(D) After Filing of Formal Complaint

(1) When the commission issues a complaint, the following shall not be confidential or privileged:

(a) the complaint and all subsequent pleadings filed with the commission or master, all stipulations entered, all findings of fact made by the master or commission, and all reports of the master or commission; however, all papers filed with and proceedings before the commission during the period preceding the issuance of a complaint remain confidential and privileged except where offered into evidence in a formal hearing; and

(b) the formal hearing before the master or commission, and the public hearing provided for in MCR 9.216.

(2) This subrule neither limits nor expands a respondent's right to discovery under MCR 9.208(C).

(3) The confidentiality or privilege of any otherwise nonpublic disciplinary action is waived in any proceeding on a concurrent or subsequent formal complaint.

(E) Disclosure to Grievant.

(1) Upon completion of an investigation or proceeding on a complaint, the commission shall disclose to the grievant that the commission

(a) has found no basis for action against the judge or determined not to proceed further in the matter,

(b) has taken an appropriate corrective action, the nature of which shall not be disclosed, or

(c) has recommended that the respondent be publicly censured, suspended, removed, or retired from office.

(F) Public Safety Exception. When the commission receives information concerning a threat to the safety of any person or persons, information concerning such person may be provided to the person threatened, to persons or organizations responsible for the safety of the person threatened, and to law enforcement or any appropriate prosecutorial agency.

(G) Disclosure to State Court Administrator.

> (1) The commission may refer to the state court administrator requests for investigation and other communications received by the commission concerning the conduct of a judge if, in the opinion of the commission, the communications are properly within the scope of the duties of the administrator. The commission may provide the administrator with files, records, investigations, and reports of the commission relating to the matter. Such a referral does not preclude action by the commission if the judge's conduct is of such a nature as to constitute grounds for action by the commission, or cannot be adequately resolved or corrected by action of the administrator.
>
> (2) The commission may disclose to the administrator, upon request, the substance of files and records of the commission concerning a former judge who has been or may be assigned judicial duties by the administrator; a copy of the information disclosed must be furnished to the judge.

(H) Disclosure to Attorney Grievance Commission. Notwithstanding the prohibition against disclosure in this rule, the commission shall disclose information concerning a judge's misconduct in office, mental or physical disability, or some other ground that warrants commission action under Const 1963, art 6, § 30, to the Attorney Grievance Commission, upon request. Absent a request, the commission may make such disclosure to the Attorney Grievance Commission. In the event of a dispute concerning the release of information, either the Attorney Grievance Commission or the Judicial Tenure Commission may petition the Supreme Court for an order resolving the dispute.

By order dated June 8, 2005, this Court amended Rule 9.221 of the Michigan Court Rules, effective immediately. 472 Mich ciii-cvi (2005). Notice and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the amendment of Rule 9.221 is retained.

On order of the Court, the proposed amendment of Rule 9.221(I) of the Michigan Court Rules having been published for comment at 472 Mich 1251 (2005), and an opportunity having been provided for comment in writing and at a public hearing, the Court declines to adopt the proposed amendment. This administrative file is closed without further action.

(Current as of 1/1/2006)

Rule 9.222 Record Retention

The commission shall develop a record-retention policy, which shall include a description of the materials that are to be stored, a list of the time for which specific materials must be maintained, and procedures for the disposal of records.

(Current as of 1/1/2006)

Rule 9.223 Certification to Supreme Court

(A) Filing and Service of Documents by Commission. Within 21 days after entering an order recommending action with regard to a respondent, the commission must

(1) file in the Supreme Court:

(a) the original record arranged in chronological order and indexed and certified;

(b) 24 copies of the order;

(c) 24 copies of an appendix; and

(d) a proof of service on the respondent;

(2) serve the respondent with:

(a) notice of the filing under MCR 9.223(A)(1);

(b) 2 copies of the order and appendix;

(c) 2 copies of the index to the original record; and

(d) a copy of a portion of the original record not submitted by or previously furnished to the respondent.

(B) Contents of Appendix. The appendix must include, in chronological order:

(1) an index;

(2) all pleadings, including those filed with a master;

(3) all orders, including those issued by a master;

(4) all reports, findings of fact, and conclusions of law made by the commission or a master; and

(5) other material necessary to fairly judge the issues.

(Current as of 1/1/2006)

Rule 9.224 Review by Supreme Court

(A) Petition by Respondent. Within 28 days after being served, a respondent may file in the Supreme Court 24 copies of

(1) a petition to reject or modify the commission's recommendation, which must:

(a) be based on the record,

(b) specify the grounds relied on,

(c) be verified, and

(d) include a brief in support; and

(2) an appendix presenting portions of the record not included in the commission's appendix that the respondent believes necessary to fairly judge the issues.

The respondent must serve the commission with 3 copies of the petition and 2 copies of the appendix and file proof of that service.

(B) Brief of Commission. Within 21 days after respondent's petition is served, the commission must file

(1) 24 copies of a brief supporting its finding, and

(2) proof that the respondent was served with 2 copies of the brief.

(C) Review in Absence of Petition by Respondent. If the respondent does not file a petition, the Supreme Court will review the commission's recommendation on the record file. The Supreme Court may order that briefs be filed or arguments be presented.

(D) Form of Briefs. A brief filed under this subrule is to be similar to a brief filed in an appeal to the Supreme Court.

(E) Additional Evidence. The Supreme Court may, if cause is shown, order that further evidence be taken and added to the original record.

(F) Submission. The clerk will place the case on a session calendar under MCR 7.312. Oral argument may be requested.

(Current as of 1/1/2006)

Rule 9.225 Decision by Supreme Court

The Supreme Court shall review the record of the proceedings and file a written opinion and judgment, which may accept or reject the recommendations of the commission, or modify the recommendations by imposing a greater, lesser, or entirely different sanction. When appropriate, the Court may remand the matter to the commission for further proceedings, findings, or explication. If the respondent and the commission have consented to a course of action under subrule 9.220(C) and the Court determines to impose a greater, lesser, or entirely different sanction, the respondent shall be afforded the opportunity to withdraw the consent and the matter shall be remanded to the commission for further proceedings.

(Current as of 1/1/2006)

Rule 9.226 Motion for Rehearing

Unless the Supreme Court directs otherwise, the respondent may file a motion for rehearing within 14 days after the filing of the decision. If the Supreme Court directs in the decision that a motion for rehearing may not be filed, the decision is final on filing.

(Current as of 1/1/2006)

Rule 9.227 Immunity

A person is absolutely immune from civil suit for statements and communications transmitted solely to the commission or its employees, or given in an investigation or proceeding on allegations regarding a judge, and no civil action predicated upon the statements or communications may be instituted against a complainant, a witness, or their counsel. Members of the commission and their employees, masters, and examiners are absolutely immune from civil suit for all conduct in the course of their official duties.

(Current as of 1/1/2006)

Rule 9.228 Ethics Materials and Programs

The commission shall work with other groups and organizations, including the State Bar of Michigan, to develop educational materials and programs that are designed to assist judges in maintaining an awareness and understanding of their ethical obligations.

(Current as of 1/1/2006)

Subchapter 9.200 Judicial Tenure Commission

Rule 9.200 Construction

An independent and honorable judiciary being indispensable to justice in our society, subchapter 9.200 shall be construed to preserve the integrity of the judicial system, to enhance public confidence in that system, and to protect the public, the courts, and the rights of the judges who are governed by these rules in the most expeditious manner that is practicable and fair.

(Current as of 1/1/2006)

Rule 9.201 Definitions

As used in this chapter, unless the context or subject matter otherwise requires

(A) "commission" means the Judicial Tenure Commission;

(B) "judge" means:

(1) a person who is serving as a judge of an appellate or trial court by virtue of election, appointment, or assignment;

(2) a magistrate or a referee; or

(3) a person who formerly held such office and is named in a request for investigation that was filed during the person's tenure, except that with respect to conduct that is related to the office, it is not necessary that the request for investigation be filed during the person's tenure; nothing in this paragraph deprives the attorney grievance commission of its authority to proceed against a former judge;

(C) "respondent" is a judge against whom a complaint has been filed;

(D) "chairperson" is the commission chairperson and includes the acting chairperson;

(E) "master" means one or more judges or former judges appointed by the Supreme Court at the commission's request to hold hearings on a complaint against a judge filed by the commission;

(F) "examiner" means the executive director or equivalent staff member or other attorney appointed by the commission to present evidence at a hearing before a master or the commission, or in proceedings in the Supreme Court;

(G) "request for investigation" is an allegation of judicial misconduct, physical or mental disability, or other circumstance that the commission may undertake to investigate under Const 1963, art 6, § 30, and MCR 9.207;

(H) "complaint" is a written document filed at the direction of the commission, recommending action against a judge and alleging specific charges of misconduct in office, mental or physical disability, or some other ground that warrants commission action under Const 1963, art 6, § 30.

(Current as of 1/1/2006)

Rule 9.202 Judicial Tenure Commission; Organization

(A) Appointment of Commissioners. As provided by Const 1963, art 6, § 30, the Judicial Tenure Commission consists of 9 persons. The commissioners selected by the judges shall be chosen by mail vote conducted by the state court administrator. The commissioners selected by the state bar members shall be chosen by mail vote conducted by the State Bar of Michigan. Both mail elections must be conducted in accordance with nomination and election procedures approved by the Supreme Court. Immediately after a commissioner's selection, the selecting authority shall notify the Supreme Court and the Judicial Tenure Commission.

(B) Term of Office. A commissioner's term of office shall be 3 years. To achieve staggered terms, the following terms shall expire in consecutive years:

(1) one of the appointments of the Governor, the judge of a court of limited jurisdiction, and one of the attorneys selected by the state bar;

(2) the other appointment of the Governor, the probate judge, and the other attorney selected by the state bar;

(3) the Court of Appeals judge, the circuit judge, and the judge selected by the state bar.

(C) Vacancy.

(1) A vacancy in the office of a commissioner occurs:

(a) when a commissioner resigns or is incapable of serving as a member of the commission;

(b) when a judge who is a member of the commission no longer holds the office held when selected;

(c) when an attorney selected by state bar members is no longer entitled to practice in the courts of this state; and

(d) when an appointee of the Governor becomes an attorney.

(2) Vacancies must be filled by selection of a successor in the same manner required for the selection of the predecessor. The commissioner selected shall hold office for the unexpired term of the predecessor. Vacancies must be filled within 3 months after the vacancy occurs. If a vacancy occurs after the

selection of a new commissioner but before that commissioner's term officially begins, the commissioner-elect shall fill that vacancy and serve the remainder of the unexpired term.

(3) A member may retire by submitting a resignation in writing to the commission, which must certify the vacancy to the selecting authority.

(D) Commission Expenses.

(1) The commission's budget must be submitted to the Supreme Court for approval.

(2) The commission's expenses must be included in and paid from the appropriation for the Supreme Court.

(3) A commissioner may not receive compensation for services but shall be paid reasonable and necessary expenses.

(E) Quorum and Chairperson.

(1) The commission shall elect from among its members a chairperson, a vice-chairperson, and a secretary, each to serve 2 years. The vice-chairperson shall act as chairperson when the chairperson is absent. If both are absent, the members present may select one among them to act as temporary chairperson.

(2) A quorum for the transaction of business by the commission is 5.

(3) The vote of a majority of the members constitutes the adoption or rejection of a motion or resolution before the commission. The chairperson is entitled to cast a vote as a commissioner.

(F) Meetings of Commission. Meetings must be held at the call of the chairperson or the executive director, or upon the written request of 3 commission members.

(G) Commission Staff.

(1) The commission shall employ an executive director or equivalent person or persons, and such other staff members as the commission concludes are warranted, to perform the duties that the commission directs, subject to the availability of funds under its budget.

(2) The executive director or any other staff person who is involved in the investigation or prosecution of a judge

(a) shall not be present during the deliberations of the commission or participate in any other manner in the decision to file formal charges or to recommend action by the Supreme Court with regard to that judge, and

(b) shall have no substantive ex parte communication with the commission regarding a formal complaint that the commission has authorized.

(3) Commission employees are exempt from the operation of Const 1963, art 11, § 5, as are employees of courts of record.

(Current as of 1/1/2006)

Rule 9.203 Judicial Tenure Commission; Powers; Review

(A) Authority of Commission. The commission has all the powers provided for under Const 1963, art 6, § 30, and further powers provided by Supreme Court rule. Proceedings before the commission or a master are governed by these rules. The commission may adopt and publish administrative rules for its internal operation and the administration of its proceedings that do not conflict with this subchapter and shall submit them to the Supreme Court for approval.

(B) Review as an Appellate Court. The commission may not function as an appellate court to review the decision of a court or to exercise superintending or administrative control of a court, but may examine decisions incident to a complaint of judicial misconduct, disability, or other circumstance that the commission may undertake to investigate under Const 1963, art 6, § 30, and MCR 9.207. An erroneous decision by a judge made in good faith and with due diligence is not judicial misconduct.

(C) Control of Commission Action. Proceedings under these rules are subject to the direct and exclusive superintending control of the Supreme Court. No other court has jurisdiction to restrict, control, or review the orders of the master or the commission.

(D) Errors and Irregularities. An investigation or proceeding under this subchapter may not be held invalid by reason of a nonprejudicial irregularity or for an error not resulting in a miscarriage of justice.

(E) Jurisdiction Over Visiting Judges. Notwithstanding MCR 9.116(B), the Attorney Grievance Commission may take action immediately with regard to a visiting judge who currently holds no other judicial office if the allegations pertain to professional or personal activities unrelated to the judge's activities as a judge.

(Current as of 1/1/2006)

Rule 9.204 Disqualification of Commission Member or Employee

(A) Disqualification From Participation. A judge who is a member of the commission or of the Supreme Court is disqualified from participating in that capacity in proceedings involving the judge's own actions or for any reason set forth in MCR 2.003(B).

(B) Disqualification from Representation. A member or employee of the commission may not represent

(1) a respondent in proceedings before the commission, including preliminary discussions with employees of the commission before the filing of a request for investigation; or

(2) a judge in proceedings before the Attorney Grievance Commission, or the Attorney Discipline Board and its hearing panels, as to any matter that was pending before the Judicial Tenure Commission during the member's or the employee's tenure with the commission.

(Current as of 1/1/2006)

Rule 9.205 Standards of Judicial Conduct

(A) Responsibility of Judge. A judge is personally responsible for the judge's own behavior and for the proper conduct and administration of the court in which the judge presides.

(B) Grounds for Action. A judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice. In addition to any other sanction imposed, a judge may be ordered to pay the costs, fees, and expenses incurred by the commission in prosecuting the complaint only if the judge engaged in conduct involving fraud, deceit, or intentional misrepresentation, or if the judge made misleading statements to the commission, the commission's investigators, the master, or the Supreme Court.

(1) Misconduct in office includes, but is not limited to:

(a) persistent incompetence in the performance of judicial duties;

(b) persistent neglect in the timely performance of judicial duties;

(c) persistent failure to treat persons fairly and courteously;

(d) treatment of a person unfairly or discourteously because of the person's race, gender, or other protected personal characteristic;

(e) misuse of judicial office for personal advantage or gain, or for the advantage or gain of another; and

(f) failure to cooperate with a reasonable request made by the commission in its investigation of a judge.

(2) Conduct in violation of the Code of Judicial Conduct or the Rules of Professional Conduct may constitute a ground for action with regard to a judge, whether the conduct occurred before or after the respondent became a judge or was related to judicial office.

(3) In deciding whether action with regard to a judge is warranted, the commission shall consider all the circumstances, including the age of the allegations and the possibility of unfair prejudice to the judge because of the staleness of the allegations or unreasonable delay in pursuing the matter.

(Current as of 1/1/2006)

Rule 9.206 Service

(A) Judge. When provision is made under these rules for serving a complaint or other document on a judge, the service must be made in person or by registered or certified mail to the judge's judicial office or last known residence. If an attorney has appeared for a judge, service may be on the attorney in lieu of service on the judge.

(B) Commission. Service on the commission must be made by personal delivery or by registered or certified mail to the executive director at the commission's office.

(Current as of 1/1/2006)

Rule 9.207 Investigation; Notice

(A) Request for Investigation. A request for investigation of a judge must be made in writing and verified on oath of the complainant. The commission also is authorized to act on its own initiative or at the request of the Supreme Court, the state court administrator, or the Attorney Grievance Commission.

(B) Investigation. Upon receiving a request for investigation that is not clearly unfounded or frivolous, the commission shall direct that an investigation be conducted to determine whether a complaint should be filed and a hearing held. If there is insufficient cause to warrant filing a complaint, the commission may:

(1) dismiss the matter,

(2) dismiss the matter with a letter of explanation or caution that addresses the respondent's conduct,

(3) dismiss the matter contingent upon the satisfaction of conditions imposed by the commission, which may include a period of monitoring,

(4) admonish the respondent, or

(5) recommend to the Supreme Court private censure, with a statement of reasons.

If a request for investigation is filed less than 90 days before an election in which the respondent is a candidate, and the request is not dismissed forthwith as clearly unfounded or frivolous, the commission shall postpone its investigation until after the election unless two-thirds of the commission members determine that the public interest and the interests of justice require otherwise.

(C) Notice to Judge.

(1) Before filing a complaint or taking action under subrule (B)(5), the commission must give written notice to the judge who is the subject of a request for investigation. The purpose of the notice is to afford the judge an opportunity to apprise the commission, in writing within 28 days, of such matters as the judge may choose, including information about the factual aspects of the allegations and other relevant issues. The notice shall specify the allegations and may include the date of the conduct, the location where the conduct occurred, and the name of the case or identification of the court proceeding relating to the conduct.

(a) For good cause shown, the commission may grant a reasonable extension of the 28-day period.

(b) The Supreme Court may shorten the time periods prescribed in this and other provisions of this subchapter at its own initiative or at the request of the commission.

(2) Before taking action under subrule (B)(2)-(4), the commission must give written notice to the judge of the nature of the allegations in the request for investigation and afford the judge a reasonable opportunity to respond in writing.

(3) If a judge so requests in response to a written notice from the commission under this subrule, the commission may offer the judge an opportunity to appear informally before the commission to present such information as the judge may choose, including information about the factual aspects of the allegations and other relevant issues.

(4) On final disposition of a request for investigation without the filing of a formal complaint, the commission shall give written notice of the disposition to the judge who was the subject of the request. The commission also shall provide written notice to the complainant that the matter has been resolved without the filing of a formal complaint.

(D) Physical or Mental Examination. In the course of an investigation, the commission may request the judge to submit to a physical or mental examination. Failure of the judge to submit to the examination may constitute judicial misconduct. MCR 2.311(B) is applicable to the examination.

(E) Expediting Matters. When the integrity of the judicial system requires, the Supreme Court may direct that the commission expedite its consideration of any investigation, and may set a deadline for the commission to submit any recommendation to the Court, notwithstanding any other provision in this subchapter.

(Current as of 1/1/2006)

Rule 9.208 Evidence

(A) Taking of Evidence During Preliminary Investigation. Before filing a complaint, the commission may take evidence before it or an individual member of the commission, or before the executive director or other member of the staff for purposes of the preliminary investigation.

(B) Cooperation With Investigation. A judge, clerk, court employee, member of the bar, or other officer of a court must comply with a reasonable request made by the commission in its investigation.

(C) Discovery.

(1) Pretrial or discovery proceedings are not permitted, except as follows:

(a) At least 21 days before a scheduled public hearing,

(i) the parties shall provide to one another, in writing, the names and addresses of all persons whom they intend to call at the hearing, and a copy of all statements and affidavits given by those persons; and

(ii) the commission shall make available to the respondent for inspection or copying all exculpatory material in its possession, as well as any other material in its possession that it intends to introduce as evidence at the hearing.

(b) The parties shall give supplemental notice to one another within 5 days after any additional witness has been identified and at least 10 days before a scheduled hearing.

(2) A deposition may be taken of a witness who is living outside the state or who is physically unable to attend a hearing.

(3) The commission or the master may order a prehearing conference to obtain admissions or otherwise narrow the issues presented by the pleadings.

If a party fails to comply with subrules (C)(1) or (2), the master may, on motion and showing of material prejudice as a result of the failure, impose one or more of the sanctions set forth in MCR 2.313(B)(2)(a)-(c).

(Current as of 1/1/2006)

Rule 9.209 Pleadings

The complaint and answer are the only pleadings allowed.

(A) Complaint.

(1) Filing; Service. A complaint may not be filed before the completion of a preliminary investigation. Upon concluding that there is sufficient evidence to

warrant the filing of a complaint, the commission shall direct the executive director or equivalent staff member to do the following:

(a) enter the complaint in the commission docket, which is a public record;

(b) retain the complaint in the commission office; and

(c) promptly serve a copy of the complaint on the respondent.

(2) Form of Complaint. A complaint must be entitled:

"Complaint Against _____, Judge. No. _____."

A complaint must be in form similar to a complaint filed in a civil action in the circuit court.

(B) Answer.

(1) Filing. Within 14 days after service of the complaint, the respondent must file with the commission the original and 9 copies of an answer verified by the respondent.

(2) Form. The answer must be in form similar to an answer in a civil action in the circuit court, and must contain a full and fair disclosure of all facts and circumstances pertaining to the allegations regarding the respondent. Wilful concealment, misrepresentation, or failure to file an answer and disclosure are additional grounds for disciplinary action under the complaint.

(3) Affirmative defenses, including the defense of laches, must be asserted in the answer or they will not be considered.

(Current as of 1/1/2006)

Rule 9.210 Notice of Public Hearing; Appointment of Master and Examiners

(A) Notice of Public Hearing. Upon the filing of a complaint, the commission must set a time and a place of hearing before the commission and notify the respondent at least 21 days in advance, or request in writing that the Supreme Court appoint a master to hold the hearing. Such a request must be accompanied by a copy of the complaint.

(B) Appointment of Master.

(1) If the commission requests that the Supreme Court appoint a master to conduct the hearing, the Court shall do so within a reasonable period.

(2) The master shall set a time and a place for the hearing and shall notify the respondent and the examiner at least 28 days in advance. The master shall rule on all motions and other procedural matters incident to the complaint, answer, and hearing. Recommendations on dispositive motions shall not be

announced until the conclusion of the hearing, except that the master may refer to the commission on an interlocutory basis a recommendation regarding a dispositive motion.

(3) MCR 2.003(B) shall govern all matters concerning the disqualification of a master.

(C) Appointment of Examiners. The executive director shall act as the examiner in a case in which a formal complaint is filed, unless the commission appoints another attorney to act as examiner.

(Current as of 1/1/2006)

Rule 9.211 Public Hearing

(A) Procedure. The public hearing must conform as nearly as possible to the rules of procedure and evidence governing the trial of civil actions in the circuit court. The hearing must be held whether or not the respondent has filed an answer or appears at the hearing. The examiner shall present the evidence in support of the charges set forth in the complaint, and at all times shall have the burden of proving the allegations by a preponderance of the evidence. A respondent is entitled to be represented by an attorney. Any employee, officer, or agent of the respondent's court, law enforcement officer, public officer or employee, or attorney who testifies as a witness in the hearing, whether called by the examiner or by the judge, is subject to cross-examination by either party as an opposite party under MCL 600.2161.

(B) Effect of Failure to Comply.

(1) The respondent's failure to answer or to appear at the hearing may not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for commission action.

(2) The respondent's failure to answer, to testify in his or her own behalf, or to submit to a medical examination requested by the commission or the master, may be considered as an evidentiary fact, unless the failure was due to circumstances unrelated to the facts in issue at the hearing.

(C) Record. The proceedings at the hearing must be recorded by stenographic or mechanical means. A separate record must be made if the master or the commission declines to admit evidence.

(D) Rulings. When the hearing is before the commission, at least 5 members must be present while the hearing is in active progress. Procedural and other interlocutory rulings must be made by the chairperson and are taken as consented to by the other members of the commission unless a member calls for a vote, in which event a ruling must be made by a majority vote of those present.

(Current as of 1/1/2006)

Rule 9.212 Subpoenas

(A) Issuance of Subpoenas.

(1) Before the filing of a complaint, the commission may issue subpoenas for the attendance of witnesses to provide statements or produce documents or other tangible evidence exclusively for consideration by the commission and its staff during the preliminary investigation. Before the filing of a complaint, the entitlement appearing on the subpoena shall not disclose the name of a judge under investigation.

(2) After the filing of a complaint, the commission may issue subpoenas either to secure evidence for testing before the hearing or for the attendance of witnesses and the production of documents or other tangible evidence at the hearing.

(B) Sanctions for Contempt; Disobedience by Respondent.

(1) Contempt proceedings against a nonparty for failure to obey a subpoena issued pursuant to this rule may be brought pursuant to MCR 2.506(E) in the circuit court for the county in which the individual resides, where the individual is found, where the contempt occurred, or where the hearing is to be held.

(2) If a respondent disobeys a subpoena or other lawful order of the commission or the master, whether before or during the hearing, the commission or the master may order such sanctions as are just, including, but not limited to, those set forth in MCR 2.313(B)(2)(a)-(e).

(Current as of 1/1/2006)

Rule 9.213 Amendments of Complaint or Answer

The master, before the conclusion of the hearing, or the commission, before its determination, may allow or require amendments of the complaint or the answer. The complaint may be amended to conform to the proofs or to set forth additional facts, whether occurring before or after the commencement of the hearing. If an amendment is made, the respondent must be given reasonable time to answer the amendment and to prepare and present a defense against the matters charged in the amendment.

(Current as of 1/1/2006)

Rule 9.214 Report of Master

Within 21 days after a transcript of the proceedings is provided, the master shall prepare and transmit to the commission in duplicate a report that contains a brief statement of the proceedings and findings of fact and conclusions of law with respect to the issues presented by the complaint and the answer. The report must be accompanied by three copies of the transcript of the proceedings before the master.

On receiving the report and the transcript, the commission must promptly send a copy of each to the respondent.

(Current as of 1/1/2006)

Rule 9.215 Objections to Report of Master

Within 28 days after copies of the master's report and the transcript are mailed to the respondent, the examiner or the respondent may file with the commission an original and 9 copies of a statement of objections to the report of the master, along with a supporting brief. A copy of a statement and brief must be served on the opposite party, who shall have 14 days to respond.

(Current as of 1/1/2006)

Rule 9.216 Appearance Before Commission

When the master files the report, the commission shall set a date for hearing objections to the report. The respondent and the examiner must file written briefs at least 7 days before the hearing date. The briefs must include a discussion of possible sanctions and, except as otherwise permitted by the Judicial Tenure Commission, are limited to 50 pages in length. Both the respondent and the examiner may present oral argument at the hearing.

MCR 9.216 retained 5.31.05

(Current as of 1/1/2006)

Rule 9.217 Extension of Time

The commission or its chairperson may extend for periods not to exceed 28 days the time for the filing of an answer, for the commencement of a hearing before the commission, for the filing of the master's report, and for the filing of a statement of objections to the report of a master. A master may similarly extend the time for the commencement of a hearing.

(Current as of 1/1/2006)

Rule 9.218 Hearing Additional Evidence

The commission may order a hearing before itself or the master for the taking of additional evidence at any time while the complaint is pending before it. The order must set the time and place of hearing and indicate the matters about which evidence is to be taken. A copy of the order must be sent to the respondent at least 14 days before the hearing.

(Current as of 1/1/2006)

Rule 9.219 Interim Suspension

(A) Petition.

(1) After a complaint is filed, the commission may petition the Supreme Court for an order suspending a judge from acting as a judge until final adjudication of the complaint.

(2) In extraordinary circumstances, the commission may petition the Supreme Court for an order suspending a judge from acting as a judge in response to a request for investigation, pending a decision by the commission regarding the filing of a complaint. In such a circumstance, the documents filed with the Court must be kept under seal unless the petition is granted.

Whenever a petition for interim suspension is granted, the processing of the case shall be expedited in the commission and in the Supreme Court. The commission shall set forth in the petition an approximate date for submitting a final recommendation to the Court.

(B) Contents; Affidavit or Transcript. The petition must be accompanied by a sworn affidavit or court transcript, and state facts in support of the allegations and the assertion that immediate suspension is necessary for the proper administration of justice.

(C) Service; Answer. A copy of the petition and supporting documents must be served on the respondent, who may file an answer to the petition within 14 days after service of the petition. The commission must be served with a copy of the answer.

(Current as of 1/1/2006)

Rule 9.220 Commission Decision

(A) Majority Decision.

(1) The affirmative vote of 5 commission members who have considered the report of the master and any objections, and who were present at an oral hearing provided for in MCR 9.216, or have read the transcript of that hearing, is required for a recommendation of action with regard to a judge. A commissioner may file a written dissent.

(2) If the hearing was held without a master, the affirmative vote of 5 commission members who were present when the evidence was taken or who have read the transcript of that proceeding is required for such a recommendation. A commissioner may file a written dissent.

(3) It is not necessary that a majority agree on the specific conduct that warrants a recommendation of action with regard to a judge, or on the specific action that is warranted, only that there was some conduct that warrants such a recommendation.

(B) Record of Decision.

(1) The commission must make written findings of fact and conclusions of law along with its recommendations for action with respect to the issues of fact and law in the proceedings, but may adopt the findings of the master, in whole or in part, by reference.

(2) The commission shall undertake to ensure that the action it is recommending in individual cases is reasonably proportionate to the conduct of the respondent, and reasonably equivalent to the action that has been taken previously in equivalent cases.

(C) Action With Respondent's Consent. With the consent of the respondent and the commission, the Supreme Court may impose a sanction or take other action at any stage of the proceedings under these rules.

(Current as of 1/1/2006)

Rule 9.221 Confidentiality; Disclosure

(A) Scope of Rule. Except as provided in this rule, all papers filed with the commission and all proceedings before it are confidential in nature and are absolutely privileged from disclosure by the commission or its staff, including former members and employees, in any other matter, including but not limited to civil, criminal, legislative, or administrative proceedings. All the commission's investigative files and commission-generated documents are likewise confidential and privileged from disclosure. Nothing in this rule prohibits the respondent judge from making statements regarding the judge's conduct.

(B) Before Filing a Formal Complaint.

(1) Before a complaint is filed, neither a commissioner nor a member of the commission staff may disclose the existence or contents of an investigation, testimony taken, or papers filed in it, except as needed for investigative purposes.

(2) The commission may at any time make public statements as to matters pending before it on its determination by a majority vote that it is in the public interest to do so, limited to statements

(a) that there is an investigation pending,

(b) that the investigation is complete and there is insufficient evidence for the commission to file a complaint, or

(c) with the consent of the respondent, that the investigation is complete and some specified disciplinary action has been taken.

(C) Discretionary Waiver of Confidentiality or Privilege. The commission may waive the confidentiality or privilege protections if:

(1) the respondent waives, in writing, the right to confidentiality or privilege;

(2) the grievant waives, in writing, the right to confidentiality or privilege;

(3) the witness whose statement, testimony, or other evidentiary item will be disclosed waives, in writing, the right to confidentiality or privilege; and

(4) a majority of the commission determines that the public interest will be served by doing so.

(D) After Filing of Formal Complaint

(1) When the commission issues a complaint, the following shall not be confidential or privileged:

(a) the complaint and all subsequent pleadings filed with the commission or master, all stipulations entered, all findings of fact made by the master or commission, and all reports of the master or commission; however, all papers filed with and proceedings before the commission during the period preceding the issuance of a complaint remain confidential and privileged except where offered into evidence in a formal hearing; and

(b) the formal hearing before the master or commission, and the public hearing provided for in MCR 9.216.

(2) This subrule neither limits nor expands a respondent's right to discovery under MCR 9.208(C).

(3) The confidentiality or privilege of any otherwise nonpublic disciplinary action is waived in any proceeding on a concurrent or subsequent formal complaint.

(E) Disclosure to Grievant.

(1) Upon completion of an investigation or proceeding on a complaint, the commission shall disclose to the grievant that the commission

(a) has found no basis for action against the judge or determined not to proceed further in the matter,

(b) has taken an appropriate corrective action, the nature of which shall not be disclosed, or

(c) has recommended that the respondent be publicly censured, suspended, removed, or retired from office.

(F) Public Safety Exception. When the commission receives information concerning a threat to the safety of any person or persons, information concerning such person may be provided to the person threatened, to persons or organizations responsible for the safety of the person threatened, and to law enforcement or any appropriate prosecutorial agency.

(G) Disclosure to State Court Administrator.

> (1) The commission may refer to the state court administrator requests for investigation and other communications received by the commission concerning the conduct of a judge if, in the opinion of the commission, the communications are properly within the scope of the duties of the administrator. The commission may provide the administrator with files, records, investigations, and reports of the commission relating to the matter. Such a referral does not preclude action by the commission if the judge's conduct is of such a nature as to constitute grounds for action by the commission, or cannot be adequately resolved or corrected by action of the administrator.
>
> (2) The commission may disclose to the administrator, upon request, the substance of files and records of the commission concerning a former judge who has been or may be assigned judicial duties by the administrator; a copy of the information disclosed must be furnished to the judge.

(H) Disclosure to Attorney Grievance Commission. Notwithstanding the prohibition against disclosure in this rule, the commission shall disclose information concerning a judge's misconduct in office, mental or physical disability, or some other ground that warrants commission action under Const 1963, art 6, § 30, to the Attorney Grievance Commission, upon request. Absent a request, the commission may make such disclosure to the Attorney Grievance Commission. In the event of a dispute concerning the release of information, either the Attorney Grievance Commission or the Judicial Tenure Commission may petition the Supreme Court for an order resolving the dispute.

By order dated June 8, 2005, this Court amended Rule 9.221 of the Michigan Court Rules, effective immediately. 472 Mich ciii-cvi (2005). Notice and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the amendment of Rule 9.221 is retained.

On order of the Court, the proposed amendment of Rule 9.221(I) of the Michigan Court Rules having been published for comment at 472 Mich 1251 (2005), and an opportunity having been provided for comment in writing and at a public hearing, the Court declines to adopt the proposed amendment. This administrative file is closed without further action.

(Current as of 1/1/2006)

Rule 9.222 Record Retention

The commission shall develop a record-retention policy, which shall include a description of the materials that are to be stored, a list of the time for which specific materials must be maintained, and procedures for the disposal of records.

(Current as of 1/1/2006)

Rule 9.223 Certification to Supreme Court

(A) Filing and Service of Documents by Commission. Within 21 days after entering an order recommending action with regard to a respondent, the commission must

(1) file in the Supreme Court:

(a) the original record arranged in chronological order and indexed and certified;

(b) 24 copies of the order;

(c) 24 copies of an appendix; and

(d) a proof of service on the respondent;

(2) serve the respondent with:

(a) notice of the filing under MCR 9.223(A)(1);

(b) 2 copies of the order and appendix;

(c) 2 copies of the index to the original record; and

(d) a copy of a portion of the original record not submitted by or previously furnished to the respondent.

(B) Contents of Appendix. The appendix must include, in chronological order:

(1) an index;

(2) all pleadings, including those filed with a master;

(3) all orders, including those issued by a master;

(4) all reports, findings of fact, and conclusions of law made by the commission or a master; and

(5) other material necessary to fairly judge the issues.

(Current as of 1/1/2006)

Rule 9.224 Review by Supreme Court

(A) Petition by Respondent. Within 28 days after being served, a respondent may file in the Supreme Court 24 copies of

(1) a petition to reject or modify the commission's recommendation, which must:

(a) be based on the record,

(b) specify the grounds relied on,

(c) be verified, and

(d) include a brief in support; and

(2) an appendix presenting portions of the record not included in the commission's appendix that the respondent believes necessary to fairly judge the issues.

The respondent must serve the commission with 3 copies of the petition and 2 copies of the appendix and file proof of that service.

(B) Brief of Commission. Within 21 days after respondent's petition is served, the commission must file

(1) 24 copies of a brief supporting its finding, and

(2) proof that the respondent was served with 2 copies of the brief.

(C) Review in Absence of Petition by Respondent. If the respondent does not file a petition, the Supreme Court will review the commission's recommendation on the record file. The Supreme Court may order that briefs be filed or arguments be presented.

(D) Form of Briefs. A brief filed under this subrule is to be similar to a brief filed in an appeal to the Supreme Court.

(E) Additional Evidence. The Supreme Court may, if cause is shown, order that further evidence be taken and added to the original record.

(F) Submission. The clerk will place the case on a session calendar under MCR 7.312. Oral argument may be requested.

(Current as of 1/1/2006)

Rule 9.225 Decision by Supreme Court

The Supreme Court shall review the record of the proceedings and file a written opinion and judgment, which may accept or reject the recommendations of the commission, or modify the recommendations by imposing a greater, lesser, or entirely different sanction. When appropriate, the Court may remand the matter to the commission for further proceedings, findings, or explication. If the respondent and the commission have consented to a course of action under subrule 9.220(C) and the Court determines to impose a greater, lesser, or entirely different sanction, the respondent shall be afforded the opportunity to withdraw the consent and the matter shall be remanded to the commission for further proceedings.

(Current as of 1/1/2006)

Rule 9.226 Motion for Rehearing

Unless the Supreme Court directs otherwise, the respondent may file a motion for rehearing within 14 days after the filing of the decision. If the Supreme Court directs in the decision that a motion for rehearing may not be filed, the decision is final on filing.

(Current as of 1/1/2006)

Rule 9.227 Immunity

A person is absolutely immune from civil suit for statements and communications transmitted solely to the commission or its employees, or given in an investigation or proceeding on allegations regarding a judge, and no civil action predicated upon the statements or communications may be instituted against a complainant, a witness, or their counsel. Members of the commission and their employees, masters, and examiners are absolutely immune from civil suit for all conduct in the course of their official duties.

(Current as of 1/1/2006)

Rule 9.228 Ethics Materials and Programs

The commission shall work with other groups and organizations, including the State Bar of Michigan, to develop educational materials and programs that are designed to assist judges in maintaining an awareness and understanding of their ethical obligations.

(Current as of 1/1/2006)