

SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

Kimberly S. Budd
Chief Justice

-
1. Court Submitting Rules for Approval:
Commission on Judicial Conduct
 2. Date Rules Submitted for Approval:
May 25, 2023
 3. Date Approved & Promulgated by the Supreme Judicial Court:
August 3, 2023
 4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:
Amendments to Rules 1, 6 and 13 of the Rules of the Commission on Judicial Conduct, as described in the attached letter dated May 25, 2023.
 5. Effective Date:
September 1, 2023

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)



THE COMMONWEALTH OF MASSACHUSETTS COMMISSION ON JUDICIAL CONDUCT

11 BEACON STREET, SUITE 525
BOSTON, MASSACHUSETTS 02108
WWW.MASS.GOV/CJC

Telephone: (617) 725-8050
Fax: (617) 248-9938

May 25, 2023

BY FIRST CLASS MAIL AND EMAIL

The Honorable Frank Gaziano
Associate Justice of the Supreme Judicial Court
Chair of the Supreme Judicial Court Rules Committee
John Adams Courthouse
One Pemberton Square, Suite 2200
Boston, MA 02108

Re: Amendments to the Rules of the Commission on Judicial Conduct

Dear Justice Gaziano:

Pursuant to M.G.L. c. 211C, sec. 3(1), the Commission on Judicial Conduct respectfully submits the enclosed proposed amendments to Rules 1, 6, and 13 of the Rules of the Commission on Judicial Conduct for the Court's consideration.

The proposed amendment to Rule 1 would define the term, "impounded," as it is used in the Commission's Rules. This amendment would adopt the same definition as "impoundment" in Supreme Judicial Court Rule 1:15, Section 1(a)(i): "the act of keeping some or all of the papers, documents, or exhibits, or portions thereof, in a case separate and unavailable for public inspection."

The proposed amendments to Rule 6 would eliminate the requirement that a judge be notified of a complaint against him or her, by certified or registered mail, and would instead require that the Commission notify a judge of a complaint, by regular mail and by email, addressing regular mail to the judge's last known place of residence and email to the judge's last known official judicial email address.

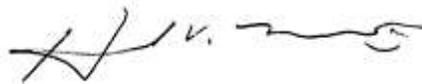
The proposed amendments to Rule 13 would call for a Rule 13A Direct Submission to the Supreme Judicial Court to be impounded upon filing, rather than submitted under seal. The proposed amendments to Rule 13 would also clarify that submissions made to the SJC under both Rule 13A and Rule 13B are immediately impounded until further order of the SJC.

The Commission invited public comments on these proposed amendments by issuing the enclosed January 25, 2021 press release. This press release included a copy of a public notice inviting comment and was distributed to major Massachusetts newspapers including the *Boston Globe*, the *Boston Herald*, and *Massachusetts Lawyers Weekly*. This press release was also distributed to the Chief Justice of each court department. The Commission also posted a public notice inviting comments in the January 25, 2021 edition of *Massachusetts Lawyers Weekly* (copy enclosed). The Commission's press release and public notice both directed readers to the enclosed description of the proposed amendments and provided readers with instructions regarding how to make comments on the proposed amendments. The press release and the public notice both indicated that any comments regarding the amendments were due on or before March 5, 2021. In response, the Commission received the enclosed comments regarding these proposed amendments.

The Commission then invited public comment again, following the same above-described procedure. The Commission issued the enclosed press release inviting comment on April 3, 2023. A public notice was also posted in the April 3, 2023 edition of *Massachusetts Lawyers Weekly*. The press release and the public notice both indicated that any comments regarding the amendments were due on or before May 12, 2023. The Commission did not receive any further comments during this second comment period.

The Commission on Judicial Conduct respectfully recommends that the Court adopt these proposed amendments. If you have any questions or comments, please feel free to contact me.

Very truly yours,



Howard V. Neff, III
Executive Director

Enclosures

cc: Chief Justice Kimberly S. Budd, Supreme Judicial Court (with enclosures)
Ms. Christine P. Burak, Esq., Legal Counsel to the Chief Justice of the SJC (with enclosures)

Proposed Amendment to the Rules of the Commission on Judicial Conduct

Original Language = regular typeface

Strikethrough = removed

Bold = addition to rule

RULE 1. DEFINITIONS

- A. “Anonymous Complaint” means a complaint, written or oral, received by the Commission, in which the identity of the complainant is not revealed.
- B. “Chairman” and “Vice Chairman” refer to members of the Commission elected as such by vote of the Commission. Whenever used in these rules, the word “Chairman” shall include, in the absence of the Chairman, the Vice Chairman or other member acting as Chairman.
- C. “Commission” means the Commission on Judicial Conduct.
- D. “Complainant” means a person or entity who has communicated to the Commission a complaint against a judge. The Commission may also, in its discretion, treat as a complainant, for purposes of notice and any other rights afforded to a complainant under these rules, a person or entity who has reported judicial conduct to a third party, although not directly to the Commission, provided that such person or entity is or was directly affected by the conduct.
- E. “Complaint” means any oral or written statement which alleges judicial misconduct or physical or mental disability of a judge.
- F. “Conditions on the Judge’s Conduct,” for purposes of G.L. c.211C, section 8(1)(c), shall include but not be limited to:
- (1) education;
 - (2) training;
 - (3) mentoring;
 - (4) foreclosing eligibility for recall;
 - (5) an agreed upon press release to be issued, with no other public comment on the matter by either party;
 - (6) requiring that a decision in a court case be issued by a certain date;
 - (7) periodic status reports;
 - (8) meeting with Commission members and/or staff;
 - (9) writing an apology to a person or to the public;
 - (10) requiring the judge to caution the judge’s family members regarding misuse of their relationship to the judge;
 - (11) agreeing never to mediate, hear or rule on any matters involving the attorneys who investigated and prosecuted the matter, or their firms;

(12) insuring that official audio equipment is recording at all times during court proceedings;

(13) holding conferences on the record;

(14) otherwise requiring a judge to comply with the law, the Code of Judicial Conduct and other rules, regulations, orders and procedures.

(15) If the Commission finds that a condition not specified herein would be appropriate, the Commission may file under seal a request with the Supreme Judicial Court to rule within fourteen days as to whether that condition is permissible in this category, without disclosing the identity of the judge.

(a) If the Court does not rule within fourteen days, the Commission may assume that the condition is permissible in this category.

G. “Executive Director” means the Executive Director of the Commission or a member of the Commission’s staff acting under the Executive Director’s supervision.

H. As used herein, “impounded” shall have the same definition as “impoundment” in Supreme Judicial Court Rule 1:15, Section 1(a)(i): **“the act of keeping some or all of the papers, documents, or exhibits, or portions thereof, in a case separate and unavailable for public inspection.”**

I. “Judge” means a judge or justice of any court of this Commonwealth.

J. “Notoriety” means broad public knowledge.

K. “Reasonable Information” means any information, including reports in the news media, which comes to the attention of the Commission and which contains credible allegations about a judge that, if true, would constitute misconduct or disability within the jurisdiction of the Commission under Chapter 211C.

L. “Shall” is mandatory; “may” is permissive.

M. “Special Counsel” means an attorney, appointed by the Supreme Judicial Court at the request of the Commission, to conduct investigations, to make recommendations to the Commission, and/or to present evidence at a hearing, with respect to a complaint or charges against a judge, or to take any other action related thereto which the Commission may direct.

N. “Statement of Allegations” means a clear statement of the allegations against a judge and the alleged facts forming their basis.

O. “Sworn Complaint” means a detailed written complaint which the complainant signs under oath and files, at the request of the Commission.

Proposed Amendments to the Rules of the Commission on Judicial Conduct

Original Language = regular typeface

Strikethrough = removed

Bold = addition to rule

RULE 6. COMMISSION PROCEEDINGS: INITIAL STAGES; GENERAL PROVISIONS

RULE 6.C. Docketing and Notification.

(1) If the Executive Director determines after screening that the complaint does not set forth facts concerning a judge's conduct which, if true, would constitute misconduct or disability within the Commission's jurisdiction, the Executive Director shall notify the complainant that the complaint will not be docketed or investigated by the Commission.

(2) If the Executive Director determines after screening a complaint that it alleges specific facts which, if true, would constitute misconduct or disability within the Commission's jurisdiction, the Executive Director shall docket the complaint.

(3) Except as provided in Rules 6(D), 6(E), 6(F) and 6(G), the Executive Director shall notify the judge of the complaint promptly after it is docketed. Notification shall be by **regular USPS** ~~certified mail or registered mail~~, addressed to the judge's last known place of residence, unless the judge has requested a different mailing address, **and to the judge's last known official judicial email address.** ~~or the use of regular mail.~~ Except where notice of the complaint is delayed or withheld pursuant to Rule 6(G), the Executive Director shall not conduct any inquiry into or investigation of the complaint until notice has been sent to the judge.

Proposed Amendments to the Rules of the Commission on Judicial Conduct

Original Language = regular typeface

Strikethrough = removed

Bold = addition to rule

RULE 13: DIRECT SUBMISSION TO THE SUPREME JUDICIAL COURT

At any stage of a proceeding the Commission may, with the agreement of the judge, elect one of the following methods for direct submission to the Supreme Judicial Court.

A. Final Submission Upon Agreed Facts.

(1) The Commission and the judge will prepare and sign an Agreement for Final Submission to the Supreme Judicial Court Upon Agreed Facts. The Agreement will contain:

- (a) A waiver by the judge of the right to a formal hearing.
- (b) A stipulation by the judge to facts sufficient, in the judgment of the Commission, to establish judicial misconduct.
- (c) A statement of the section(s) of the Code of Judicial Conduct which the Commission alleges, and the judge agrees, the judge has violated.
- (d) Statements by the Commission and by the judge of their joint or disparate recommendations for discipline by the Supreme Judicial Court.
- (e) Agreement by the Commission and the judge that the Supreme Judicial Court may accept or reject the recommendations of the Commission or the judge or may impose whatever discipline it deems appropriate.
- (f) Acknowledgment by the Commission and the judge that the decision of the Supreme Judicial Court will constitute the final disposition of the case.
- (g) A waiver by the judge of any confidentiality rights that would preclude submission of the matter to, or disclosure of the matter by, the Supreme Judicial Court, including the items to be submitted as specified herein, and the Supreme Judicial Court's disposition of the case.
- (h) Agreement by the Commission and the judge that the submission will be made on condition that it be impounded by the Supreme Judicial Court.**

(2) The Commission will submit to the Supreme Judicial Court ~~under seal~~ **the following, which shall be impounded upon filing until further order of the Supreme Judicial Court:**

- (a) The Agreement for Final Submission Upon Agreed Facts.
- (b) A copy of the complaint, statement of allegations and formal charges, if any, and all responses.
- (c) Any other information agreed to by the parties.

(3) The Supreme Judicial Court may accept or reject the recommendation of either the Commission or the judge or may impose whatever discipline it deems appropriate.

B. Conditional Submission Upon Acknowledged Evidence

(1) The Commission and the judge will prepare and sign an Agreement for Conditional Submission to the Supreme Judicial Court Upon Acknowledged Evidence. The Agreement will contain:

- (a) A waiver by the judge of the right to a formal hearing.
- (b) A Statement of Evidence which in the Commission's view provides a basis for a finding of misconduct. The Statement of Evidence will identify the section(s) of the Code of Judicial Conduct which the Commission alleges the judge to have violated.
- (c) An acknowledgment by the judge that the evidence set forth in the Statement of Evidence, if presented to and accepted by a Hearing Officer at a formal hearing as clear and convincing, would support a finding of such misconduct.
- (d) A recommendation to the Supreme Judicial Court, agreed to by both the Commission and the judge, regarding appropriate discipline.
- (e) Agreement by the Commission and the judge that (i) if the Supreme Judicial Court accepts their agreed recommendation for discipline, the decision of the Supreme Judicial Court will constitute the final disposition of the case; and (ii) if the Supreme Judicial Court does not accept their agreed recommendation, the Commission will proceed to consider and dispose of the complaint in accordance with these Rules, which disposition may include issuance of formal charges.

(f) A waiver by the judge of any confidentiality rights that would preclude submission of the matter to the Supreme Judicial Court, including the items to be submitted as specified herein.

(g) Agreement by the Commission and the judge that the submission will be made on condition that it be impounded by the Supreme Judicial Court.

(2) The Commission will submit to the Supreme Judicial Court **the following, which shall be impounded upon filing until further order of the Supreme Judicial Court:**

(a) The Agreement for Conditional Submission Upon Acknowledged Evidence.

(b) A copy of the complaint, statement of allegations and formal charges, if any, and all responses.

(c) Any other information agreed to by the parties.

(3) The Supreme Judicial Court may accept or reject the recommended discipline agreed to by the Commission and the judge but may not at this stage impose other discipline.

C. The Supreme Judicial Court may request additional information from the parties or schedule oral argument before acting on a final or conditional submission.

D. If the Commission and the judge fail to agree upon an Agreement for Final or Conditional Submission to the Supreme Judicial Court under either 13.A. or 13.B. above, the Commission will proceed to consider and dispose of the complaint in accordance with these Rules, which disposition may include issuance of formal charges.