

Proposed Amendment to the Rules of the Commission on Judicial Conduct

Original Language = regular typeface

Strikethrough = removed

Bold = addition to rule

RULE 12: CASES INVOLVING ALLEGATIONS OF MENTAL OR PHYSICAL DISABILITY

In considering allegations of mental or physical disability, the Commission shall, insofar as applicable and except as provided below pursuant to Chapter 211C, section 10, follow procedures established by these rules.

- A. If, in a matter relating to mental or physical disability, ~~the judge is not represented by counsel, the Commission shall appoint an attorney to represent him at public expense.~~ **the Commission finds probable cause to believe that a judge has a mental or physical disability that may be affecting the judge's ability to perform judicial duties and the judge is not represented by counsel, the Commission may, in its discretion, ask the Supreme Judicial Court to appoint an attorney to represent the judge at Commission expense. Any such attorney appointed to represent the judge shall be compensated according to the guidelines and rates set forth for special masters by Superior Court Rule 49.**
- B. If a complaint or statement of allegations involves the **current or past** mental or physical health of a judge, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the judge shall be required to produce his medical records.
- C. In the event of a waiver of medical privilege, the judge shall be deemed to have consented to an examination by a qualified medical practitioner designated by the Commission **and at the cost of the Commission.** The report of the medical practitioner shall be furnished to the Commission and the judge.