

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.