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SCOPE AND TITLE

These rules govern the procedures of the Committee on Professional Responsibility for Clerks of the Courts in the exercise of its jurisdiction pursuant to Supreme Judicial Court Rule 3:13. These rules shall be known and may be cited as the Rules of the Committee on Professional Responsibility for Clerks of the Courts. (R.C.P.R.C.)

Rule 1

DEFINITIONS

In these rules, unless the context or subject matter otherwise requires:

A. "Chairman" and "Vice Chairman" refer to members of the Committee elected as such by vote of the Committee. 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.

B. "Clerk" means anyone serving in the position of Clerk, Clerk-Magistrate, Register, Recorder, Assistant Clerk, Assistant Clerk-Magistrate, Assistant Register, or Deputy Recorder, in the Supreme Judicial Court, the Appeals Court, or a Department of the Trial Court of the Commonwealth, whether elected or appointed and whether serving in a permanent or temporary capacity.

C. "Committee" means the Committee on Professional Responsibility for Clerks of the Courts.

D. "Complainant" means a person or entity who has communicated to the Committee a complaint against a clerk.

E. "Complaint" means any oral or written statement which alleges misconduct by, or physical or mental disability of, a clerk.

F. "Hearing Officer" means a member of the Committee appointed by the Chairman or a person designated by the Supreme Judicial Court for the purpose of presiding over a hearing.

G. " Screener" means a member of the Committee or a person assigned to screen complaints in accordance with Rule 7.

H. "Shall" is mandatory; "may" is permissive.

I. "Special Counsel" means an attorney, appointed by the

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Supreme Judicial Court to conduct investigations, to make recommendations to the Committee, and to present evidence at a hearing, with respect to a complaint or charges against a clerk, and to take any other action related thereto which the Committee may direct.

J. As used herein, the masculine gender shall be deemed to include the feminine gender.

Rule 2

COMPOSITION OF COMMITTEE

A. The composition of the Committee is as provided in Supreme Judicial Court Rule 3:13 and the term of each of its members is as established by the Supreme Judicial Court at the time of appointment.

B. A member of the Committee shall not participate in any proceeding in which the impartiality of that member might reasonably be questioned. Disqualification pursuant to this section shall be by the member involved or by affirmative vote of at least three members of the Committee.

C. If a Committee member ceases to be qualified for the appointment to represent the category for which he was appointed, resigns or becomes permanently unable to serve for any reason, a vacancy shall occur. An appointment to fill a vacancy for the duration of the unexpired term shall be made by the Supreme Judicial Court.

D. If by reason of disqualification, resignation or inability to serve for any reason, one or more members of the Committee are not participating in a proceeding, then one or more of the remaining members may request the Supreme Judicial Court to appoint an alternate member or members to replace the disqualified member or members. An alternate member shall be eligible to vote only with respect to the proceeding for which he is appointed. Alternate members shall be appointed to maintain the same composition of the Committee with respect to clerks, lawyers, judges or other profession.

Rule 3

ORGANIZATION OF COMMITTEE

A. A Chairman and Vice Chairman shall be elected annually by the members of the Committee.

B. Meetings of the Committee shall be held upon the call of the Chairman or the written request of at least two members of the Committee. Meetings shall not be held on less than two days' notice; but this requirement may be waived by consent of all the members. The Chairman shall preside at meetings of the

Committee, and the Vice Chairman shall act in the absence or disqualification of the Chairman. In the absence or disqualification of both the Chairman and the Vice Chairman, the members shall select one among them as acting Chairman.

C. A quorum of the Committee shall consist of three members, including at least one member who is a clerk and one member who is not a clerk. An affirmative vote of at least three members of the Committee is required to dismiss, informally adjust, or otherwise dispose of a complaint; to issue formal charges against a clerk; or to make recommendations to the Supreme Judicial Court regarding disciplinary action. A meeting may be held and a vote may be taken by telephone unless any member objects.

Rule 4

JURISDICTION OF THE COMMITTEE

The Committee shall have the authority to receive information; conduct investigations and hearings; dismiss, informally adjust, issue formal charges or otherwise dispose of complaints; and make recommendations to the Supreme Judicial Court concerning allegations of misconduct or disability of a clerk.

Rule 5

CONFIDENTIALITY

A. Except as provided in Rules 6(E), 6(F) and 6(H), all proceedings prior to the filing of formal charges shall be confidential.

B. Records, files, and reports of the Committee shall be confidential, and no disclosure shall be made, except as follows:

1. Upon waiver in writing by the clerk at any stage of the proceedings;

2. Upon inquiry by an appointing authority or by a state or federal agency conducting an investigation on behalf of such authority, in which case the Committee may:

(a) divulge whatever information is a matter of public record;

(b) after obtaining the clerk's signed waiver, divulge other relevant information; and

(c) divulge other relevant information after giving written notice to the clerk affected of its intention to do so and allowing the clerk seven days to respond.

3. In cases in which the subject matter has become public, the Committee may issue such statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the clerk to a fair hearing, or to state that the clerk denies the allegations.

4. Formal charges become public ten days after the date of issuance or upon the filing of the clerk's response, whichever first occurs. In the case of formal proceedings, only the formal charges, the answer thereto, the evidentiary hearings thereon, and the final recommendation by the Committee as to disposition shall become public, except as provided in paragraph D below.

C. Where the circumstances necessitating the initiation of an inquiry or the conduct in question is a matter of public record, information concerning the lack of cause to proceed may be released by the Committee.

D. Proceedings may remain confidential, even after the filing of formal charges, if the clerk, the Committee, and the complainant, if any, all concur.

E. If, in the course of its proceedings, the Committee becomes aware of credible evidence that any person has committed a crime, the Committee may report such evidence to the appropriate law enforcement agency.

F. The Committee may, from time to time, issue press releases and other public statements explaining the nature of its jurisdiction, the procedure for filing complaints, limitations upon its powers and authority, and reports on the conduct of the affairs of the Committee, provided that such releases and reports shall not identify by name, position, address or otherwise any person involved in any proceedings before the Committee.

G. The Committee may issue public statements and release information concerning its proceedings and reports at the direction of the Supreme Judicial Court. At any time, the Committee may request that the Supreme Judicial Court release appropriate information concerning the proceedings of the Committee.

H. Nothing in this Rule shall preclude the Committee from taking such action as may be necessary to investigate complaints and conduct preliminary proceedings in accordance with Rule 7.

Rule 6

GENERAL PROCEDURES

A. A proceeding is initiated when the Committee receives a written or oral complaint, or when the Committee by motion

creates its own complaint on the basis of reasonable information. In its discretion, the Committee may require an oral complaint to be confirmed in writing before initiating a proceeding.

B. Except when required by these Rules, upon the initiation of a proceeding, or at any time thereafter as it deems appropriate, the Committee may notify the clerk concerned.

C. Upon request for good cause, or on its own motion, the Committee may extend any time limit set forth herein.

D. Members and staff of the Committee, Hearing Officers, and Special Counsel shall be absolutely immune from suit for all conduct in the course of their official duties. A complaint submitted to the Committee and communications related to the complaint shall be absolutely privileged, and no civil action predicated on the complaint or on such a communication may be instituted against any complainant or witness or his counsel; provided, however, such immunity from suit shall apply only to communications to the Committee and shall not apply to public disclosure of information contained in or relating to the complaint.

E. At any stage of the proceeding, the Committee may recommend to the Supreme Judicial Court, or to the Chief Administrative Justice and the appropriate Chief Justice, the non-assignment or special assignment of a clerk, pending the final disposition of a proceeding. The Committee shall state the reasons for its recommendation. The Committee shall send a copy of any such recommendation to the clerk.

F. At any stage of the proceeding, the Committee may consult with any appropriate judicial or administrative officer. At any time, the Committee itself may informally resolve the complaint. The Committee shall promptly notify the complainant and the clerk of any informal resolution.

G. At any stage of the proceeding, the Committee may request the Supreme Judicial Court to appoint Special Counsel.

H. At any stage of the proceeding, the Committee may conduct interviews, whether or not under oath and whether or not such statements are memorialized, without the presence of other participants.

I. The Committee may assess the clerk all or any part of the costs of its investigation if the matter under consideration is disposed of pursuant to rule 7(E)(3) or after formal charges have been issued.

J. In the event that the clerk resigns after formal charges have been issued, the Committee may, upon a finding that the integrity of the judicial branch and the interest of the administration of justice would be served, continue its

investigation in order to make a report and recommendation to the Supreme Judicial Court.

K. The Committee shall keep a record of all proceedings concerning a clerk. The Committee's findings, conclusions and recommendations shall be entered in the record.

Rule 7

PRELIMINARY PROCEEDINGS

A. A screener shall screen each complaint immediately upon its receipt.

1. If the screener determines that a complaint does not set forth facts which, if true, would constitute misconduct or disability as defined by Supreme Judicial Court Rule 3:12, the screener shall recommend that the complaint be dismissed. Prior to making that determination, the screener may undertake a discreet and confidential investigation and evaluation. If the Committee accepts the screener's recommendation, the complaint shall be dismissed and the complainant, if known, shall be so notified.

2. If the screener, after an initial investigation and evaluation, determines that a complaint sets forth facts which, if true, would constitute misconduct and recommends to the Committee that it proceed further, the Committee shall decide whether there is adequate reason to proceed to the preparation of a sworn complaint or statement of allegations.

(a) If the Committee decides that further investigation is necessary before making this determination, the Committee may continue the investigation.

(b) If the Committee finds that there is insufficient cause to proceed, the complaint shall be dismissed and the complainant, if any, shall be notified.

(c) If the Committee finds that there is sufficient cause to proceed, the complainant, if any, shall be asked to file a detailed, signed, sworn complaint against the clerk. The sworn complaint shall state the facts constituting the alleged misconduct. If a sworn complaint is not obtained, the Committee shall prepare a clear statement of the allegations against the clerk and the alleged facts forming their basis. Where more than one act of misconduct is alleged, each act should be clearly set forth in the sworn complaint, or in the statement of allegations, as the case may be.

B. The clerk shall immediately be served with a copy of the sworn complaint or statement of allegations. Within twenty-one days after the service of the sworn complaint or the statement of allegations, the clerk may file a written answer

with the Committee and may request a personal appearance before the Committee. If the clerk elects to appear personally, his statement shall be recorded. The clerk shall be entitled to be represented by counsel of his own choice.

C. After the clerk's answer and personal appearance, if any, the Committee may terminate the proceeding and dismiss the complaint and, in that event, shall give notice to the clerk and the complainant, if any, that it has found insufficient cause to proceed.

D. At any stage of the proceeding, the Committee or a Hearing Officer may hold a hearing at which oaths or affirmations may be administered. The Committee or Hearing Officer shall be entitled to compel the attendance and testimony of witnesses, including the clerk, and the production of papers, books, accounts, documents, electronic recordings, other tangible things, and any other relevant evidence or testimony. At any such hearing, the clerk may compel by subpoena the attendance and testimony of witnesses and shall be entitled to inspect documents, books, accounts, written or electronically-recorded statements, and other records.

E. If the proceeding has not been dismissed or otherwise adjusted pursuant to Rules 7(C) or 6(F), the Committee shall thereafter dispose of the proceeding in one of the following ways:

1. If it finds that there has been no misconduct, written notice of dismissal shall be sent to the clerk and the complainant.

2. If it finds that there has been misconduct for which a private reprimand is adequate discipline, and if the clerk consents, it shall issue the reprimand. The complainant shall be notified that the matter has been so resolved.

3. If it finds that there has been conduct that is or might be cause for discipline but for which an informal adjustment is appropriate, it may so inform the clerk and, with the agreement of the clerk, it may admonish the clerk, direct professional counseling or assistance for the clerk, or impose conditions on the clerk's future conduct. The complainant shall be notified that the matter has been so resolved. When either conditions are imposed, or treatment is prescribed pursuant to Rule 9, the Committee shall provide for enforcement of such conditions and supervision of such treatment.

4. If it finds by a preponderance of the credible evidence that there is sufficient cause to believe that there has been misconduct of a nature requiring a formal disciplinary proceeding, the Committee shall issue formal charges against the clerk. A copy of the formal charges shall be served promptly upon the clerk, and the clerk shall have ten days to respond.

The complainant, if any, shall be notified of the filing of formal charges.

F. Notwithstanding the procedures set forth in this Rule 7, the Committee may issue formal charges against the clerk at any stage in the proceeding if the Committee finds there is clear and convincing evidence of misconduct of a clerk of a nature requiring a formal disciplinary proceeding. The clerk may, subject to the Committee's approval, waive the preliminary proceedings and request that formal charges be issued at any stage in the proceeding.

Rule 8

FORMAL PROCEEDINGS

A. Upon the filing of the clerk's written response to the formal charges or the expiration of the time for its filing, the Committee shall, subject to Rule 5(D), file the formal charges and the response, if any, in the Office of the Clerk of the Supreme Judicial Court for the Commonwealth, and shall request that the Supreme Judicial Court designate both a Hearing Officer to take evidence and report thereon to the Committee and Special Counsel to prepare and present the case. Special Counsel who has been designated at an earlier stage of the proceeding shall continue to serve in that capacity.

B. The Committee shall schedule a hearing to take place in not less than thirty nor more than sixty days from the designation of a Hearing Officer and Special Counsel. The Committee shall immediately notify the clerk and all counsel of the time and place for the hearing.

C. Attached to the notice required by Rule 7(E)(4) shall be further notice that the Committee shall, within a reasonable time, make available for inspection upon the written request of the clerk all books, papers, records, documents, electronic recordings, and other tangible things within the custody and control of the Committee relevant to any issues in the disciplinary proceeding, and any written or electronically recorded statement within the custody and control of the Committee that is relevant to the issues in the disciplinary proceeding. The failure of the Committee to furnish timely any such materials shall not affect the validity of any proceedings before the Committee, provided that such failure is not substantially prejudicial to the clerk.

D. Within thirty days after service of the formal charges, the Committee or the clerk

1. May, upon written request to the appropriate party prior to the hearing:

(a) Have made available for inspection and

copying within a reasonable period of time all books, papers, records, documents, electronic recordings, and other tangible things which the other party intends to present at a hearing.

(b) Obtain the names and addresses of witnesses to the extent known to a party in the proceeding, including an identification of those intended to be called to testify at the hearing.

(c) Have made available for inspection and copying within a reasonable period of time any written or electronically recorded statements made by witnesses who may be called to give testimony at the hearing.

2. May, upon such terms and conditions as the Committee may impose:

(a) Depose within or without the Commonwealth persons who may have relevant testimony. The complete record of the testimony so taken shall be made and preserved by stenographic record or electronic recording.

(i) The written application to the Committee shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, and the reason why such deposition should be taken.

(ii) Unless notice is waived, no deposition shall be taken except after at least seven days' notice to the other parties.

(iii) Unless otherwise directed by the Committee, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter of the proceedings. Parties shall have the right of cross-examination and objection. In making objections to questions or evidence, the grounds relied upon shall be stated briefly, but no transcript filed in the proceeding shall include argument or debate. Objections to questions or evidence shall be noted in the transcript, but the stenographer or recorder shall not have the power to decide on the competency, materiality or relevancy of evidence. Objections to the competency, relevancy, or materiality of the testimony are not waived by failure to make them before or during the taking of the deposition.

(b) Subpoena relevant witnesses and documents to the hearing.

(c) Seek any limitation or protection for any discovery permitted by this Rule.

E. Nothing in these Rules shall be construed to permit the

discovery of any report made to the Committee by Special Counsel or other person conducting an investigation for the Committee. Furthermore, in granting discovery the Committee shall protect against disclosure the mental impressions, conclusions, opinions and legal theories of an attorney or other representative of a witness or party in these proceedings.

F. Other issues relative to discovery which are not covered in these Rules shall be addressed or resolved in accordance with the comparable provisions of the Massachusetts Rules of Civil Procedure.

G. The formal hearing shall be conducted before a Hearing Officer appointed by the Supreme Judicial Court. The hearing shall be open to the public. The rules of evidence applicable to civil proceedings in Massachusetts shall apply, and all testimony shall be under oath. Special Counsel shall present the case on behalf of the Committee. The clerk whose conduct is in question shall be permitted to adduce evidence and produce and cross-examine witnesses. The Committee shall have the burden of proving the charges by clear and convincing evidence. Every hearing shall be transcribed.

H. The formal charges may be amended after commencement of the public hearing only if the amendment is technical in nature and if the clerk and his counsel are given adequate time to prepare a response.

I. Within thirty days after the conclusion of the hearing, the Hearing Officer shall submit to the Committee and to the clerk a report which shall contain proposed findings and recommendations, the transcripts of testimony and all exhibits. Upon receipt of the report of the Hearing Officer, the Committee shall send a copy of the report to the complainant forthwith.

J. Within twenty days after receipt of such report, counsel for the clerk and for the Committee shall each be allowed to submit to the Committee written objections to the proposed findings and recommendations. Any such objections shall become part of the record.

K. Within the same twenty-day period the clerk and the complainant, if any, may file a written request to be heard before the Committee regarding any recommended discipline. If either participant does so request, notice shall be given to both as to the scheduled time and place for such hearing, at least seven days in advance. Such hearing shall be public, but committee deliberations regarding such recommendation shall be conducted in executive session.

L. Unless there is good cause for delay, the Committee shall reach a decision on the basis of the full record within ninety days after the hearing concerning recommendation for discipline, if there is such a hearing, or otherwise within

ninety days after receipt of the Hearing Officer's report. Its conclusions may differ from those proposed by the Hearing Officer. Its decision shall state specific reasons for all conclusions and recommendations.

M. The Committee shall immediately forward its decision and recommendations to the Supreme Judicial Court and shall thereafter take such action as the Court may direct.

Rule 9

CASES INVOLVING ALLEGATIONS OF MENTAL OR PHYSICAL DISABILITY

In considering allegations of mental or physical disability, the Committee shall, insofar as applicable and except as provided below, follow procedures established by these Rules.

A. If in a matter relating to mental or physical disability the clerk is not represented by counsel, the Committee may appoint an attorney to represent him at public expense.

B. If a complaint or statement of allegations involves the mental or physical health of a clerk, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the clerk shall be required to produce his medical records.

C. In the event of a waiver of medical privilege, the clerk shall be deemed to have consented to an examination by a qualified medical practitioner designated by the Committee. The report of the medical practitioner shall be furnished to the Committee and the clerk.

Rule 10

AMENDMENT OF RULES

Subject to the approval of the Supreme Judicial Court, the Committee may adopt such additional rules or amendments to these Rules as it deems necessary in the performance of its duties.