

# Judicial Standards Commission Rules

## ANNOTATIONS

**Compiler's notes.** — The rules approved by the Judicial Standards Commission pursuant to the New Mexico Constitution have been recompiled from the New Mexico Administrative Code and published following the Rules Governing Review of Judicial Standards Commission Proceedings. The Judicial Standards Commission Rules have been reformatted and amended by the Commission effective September 1, 2000.

### **jsc-1. Scope, authority and purpose.**

A. **Scope.** These rules and regulations are promulgated pursuant to the Article 6, Section 32 of the constitution of the State of New Mexico. They apply to all proceedings before the Judicial Standards Commission involving the discipline, removal or retirement of justices, judges or magistrates.

B. **Statutory authority.** Article 6, Section 32 of the constitution of New Mexico and Sections 34-10-1 to 34-10-4 NMSA 1978 provide for the selection, terms and duties of the Judicial Standards Commission and its director.

C. **Purpose.** The purposes of the Judicial Standards Commission and these rules shall be to protect the public from any improper conduct and behavior of judges; to preserve the integrity of the judicial process; to maintain public confidence in the judiciary; to create a greater awareness of proper judicial behavior on the part of the judiciary and the public; and to provide for the expeditious and fair disposition of complaints of judicial misconduct.

[Approved, effective December 6, 1968; as amended, effective September 29, 1989; January 31, 1998; July 1, 1999.]

### **jsc-2. Definitions.**

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

- A. "commission" means the Judicial Standards Commission;
- B. "judge" means any justice, judge or magistrate of any court of this state;
- C. "chairperson" includes vice-chairperson and presiding officer;
- D. "masters" means any justices or judges of courts of record of this state who are appointed by the commission to hear and take evidence in any matter and to report their findings to the commission;

E. "presiding officer" means the member of the commission or master so designated by the chairperson;

F. "examiner" means any person appointed by the commission to gather and present evidence before masters or the commission;

G. "shall" is mandatory and "may" is permissive;

H. "registered mail" means either registered or certified mail, deposited with the United States post office, with postage prepaid and with a request for a return receipt;

I. the masculine gender includes the feminine gender;

J. "oath" is synonymous with "affirmation" and "swear" is synonymous with "affirm";

K. "formal proceeding" means those proceedings referred to in Rules 16 through 38 of these rules; and

L. "transcript" means a record of proceedings before the commission or masters taken in any manner the chairperson may determine, and may include a stenographic record, audio recording, video recording or other form of record which accurately relates the contents of the proceeding.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; January 1, 1998.]

### **jsc-3. Organization and administration.**

A. **Composition.** The commission shall consist of eleven (11) members as provided in the state constitution.

B. **Officers.** The commission shall elect from its membership appointed by the governor a chairperson and a vice-chairperson, each of whom may serve successive one-year terms.

(1) The chairperson may designate another member as a presiding officer to preside at specific hearings or other proceedings and may designate the vice-chairperson or executive director to sign or execute correspondence, orders and other documents on his behalf.

(2) The vice-chairperson shall act as chairperson in the absence of the chairperson and, in the absence of both, the members present may select an acting chairperson.

(3) The chairperson, vice-chairperson, and presiding officer are authorized to administer oaths or affirmations to all witnesses appearing before the commission.

C. **Executive director.** The commission shall employ an executive director who shall have duties and responsibilities as specified by the commission, including the authority to:

- (1) establish and maintain a permanent office;
- (2) receive information, allegations, and complaints;
- (3) make preliminary evaluations and screen complaints;
- (4) conduct investigations;
- (5) recommend dispositions;
- (6) maintain commission records;
- (7) maintain statistics concerning the operation of the commission and make them available to the commission and to the public;
- (8) prepare the commission's budget for approval by the commission and administer its funds;
- (9) employ and supervise other members of the commission's staff;
- (10) prepare an annual report of the commission's activities for presentation to the commission, the Supreme Court and to the public;
- (11) employ, with the approval of the commission, special counsel, private investigators and other experts as necessary to investigate and process matters before the commission and before the Supreme Court; and
- (12) make and issue public statements as authorized by these rules.

D. **Meetings.** Meetings of the commission shall be held at the call of the chairperson, the vice-chairperson, the executive director or at the request of a majority of the members of the commission, and all members of the commission shall be given notice. The commission may conduct meetings by telephone conference call.

E. **Minutes.** Minutes shall be kept of each meeting of the commission. The minutes shall record the names of those present, the actions taken, and any other matter that the commission may deem appropriate.

F. **Quorum of commission.** A quorum for the transaction of business by the commission shall be six (6) members, and no act of the commission shall be valid unless concurred in by no less than six (6) members.

[Approved, effective December 6, 1968, as amended, effective March 27, 1975; March 1, 1979; August 31, 1984; September 29, 1989; July 1, 1999.]

#### **jsc-4. Commission powers.**

A. **General powers.** Notwithstanding any other provision of law, the commission shall have the power to receive information, investigate, conduct hearings, take informal remedial action, and make recommendations to the Supreme Court concerning allegations against judges of willful misconduct in office, persistent failure or inability to perform judicial duties, habitual intemperance, disability, and/or violations of the Code of Judicial Conduct.

B. **Subpoena and inspection.** The commission shall be entitled, with the concurrence of a majority of members of the commission, to petition a district court to subpoena witnesses, including the judge as witness, compel their attendance and examine them under oath or affirmation, and to require the production of documents, books, accounts, and other records, and for other discovery. Subpoenas shall be served in the manner provided by law for the service of subpoenas in a civil action.

C. **Witness expenses.** The commission has the discretion to pay per diem and mileage to witnesses at the rate specified for non-salaried public officers as provided in the Per Diem and Mileage Act, Sections 10-8-1 to 10-8-8 NMSA 1978, for the time which attendance is required. Witnesses may apply to the commission for reimbursement of per diem expense and mileage after completion of their participation in commission proceedings. The commission shall promptly determine whether its operating budget and legislative appropriations will permit payment of per diem expense and mileage. Expenses of witnesses shall be borne by the party calling them, subject to the Supreme Court's order assessing to the judge the costs incurred by the commission.

D. **Failure to comply.** The failure of any judge under investigation to comply with the reasonable requests or directives of the commission may be considered willful misconduct in office by the commission. The intentional misrepresentation of a material fact during any stage of a disciplinary proceeding may constitute willful misconduct in office.

E. **Contempt powers.** The misconduct of any person in the presence of the commission while it is performing official duties, resistance to or obstruction of any lawful process, order or rule of the commission, or violation of any rule of confidentiality pertaining to commission proceedings shall constitute contempt. Any participant in a commission proceeding may be cited for contempt of the commission. Contempt hearings shall be conducted before the commission which shall advise the Supreme Court of its findings, conclusions, and recommendations with respect to the alleged

contempt, and the Supreme Court may impose such penalties or sanctions it deems appropriate.

[Approved, effective September 29, 1989; as amended, effective September 24, 1993; January 31, 1998; September 1, 2000.]

### **jsc-5. Commissioner disqualification.**

A. A judge, who is a member of the commission, shall not participate as such member in any proceedings involving his own discipline, removal or retirement.

B. A commissioner shall not participate in any matter if a judge similarly situated would be disqualified in a court proceeding.

C. A commissioner may disqualify himself or herself in a particular matter stating the reason for the disqualification.

D. If the propriety of a commissioner's participation in a particular matter is questioned, the issue shall be decided by a majority of the other commissioners present and voting.

E. A disqualified commissioner shall not participate in any proceedings with reference to the matter from which the commissioner is disqualified, and he or she shall be excused from that portion of any meeting at which the matter is discussed.

F. Minutes of commission meetings shall record the names of any commissioner not voting on a matter by reason of disqualification.

[Approved, effective December 6, 1968; as amended, September 29, 1989.]

### **jsc-6. Immunity.**

Members of the commission, commission staff and special counsel shall be immune from suit as provided by law for all conduct in the course of their official duties.

[Approved, effective September 29, 1989.]

### **jsc-7. Confidentiality, privilege and oath.**

A. **Proceedings confidential.** All papers and pleadings filed with and proceedings before the commission or its masters shall be confidential. Only when a record is filed by the commission with the Supreme Court do the proceedings lose their confidential character.

B. **Privileged material.** Pursuant to Article 6, Section 32 of the New Mexico constitution, the filing of papers with, or giving of testimony before the commission or its

masters, shall be privileged in any action for defamation. A writing which was privileged prior to its filing with the commission or its masters does not lose its privilege by the filing. A record filed by the commission in the Supreme Court continues to be privileged.

C. **Oath of witnesses.** Every witness in every proceeding under these rules shall be sworn to tell the truth and not to disclose the existence of the proceeding or the identity of the judge until the proceeding is no longer confidential under these rules. Violation of the oath shall be an act of contempt of the commission.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984, September 29, 1989; October 27, 1995.]

### **jsc-8. Medical examination and waiver of privilege.**

A. **Medical examination.** When a complaint is received alleging, or where an initial inquiry or preliminary investigation reveals, that a judge is or may be incapacitated by reasons of mental or physical disability, and the commission finds good cause to do so, the commission may order the judge to undergo any physical or mental examinations the commission deems necessary to proceed with its investigation. The report of the medical practitioner shall be furnished to the commission and the judge.

B. **Waivers.** At the commission's request, a judge shall provide the commission with all waivers and releases necessary to authorize the commission to receive all medical records, reports, and information from any medical person, medical institution, or other facility regarding the judge's physical or mental condition.

C. **Effect of denial.** If the complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of any privilege the judge may have that would preclude the discovery of medical records or the requirement of a physical or mental examination related to the allegations of the complaint.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; January 31, 1998.]

### **jsc-9. Extension of time.**

Whenever some action is required to be taken within a certain number of days, the chairperson may extend the time for a reasonable period not to exceed fifteen days.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

### **jsc-10. Service.**

A. **Service on judge.** All papers in commission proceedings may be served on a judge in person or by registered or certified mail addressed to the judge at his chambers or his last known residence. If counsel has appeared for a judge, all papers may be served on counsel in lieu of service upon the judge.

B. **Service on commission.** Service of papers on the commission shall be given by delivering or mailing the papers to the commission's office.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

### **jsc-11. Complaint.**

A. **Filing a complaint.** Any person or organization may file a complaint against a judge. The complaint shall be written on a form provided by the commission. The complainant's signature shall be notarized or otherwise verified. The commission on its own motion may initiate a complaint against a judge.

B. **Screening of complaints.** The commission or, at its discretion, the executive director shall determine by examination of the complaint or by initial inquiry whether a complaint warrants further investigation and evaluation. Complaints that are frivolous, unfounded, solely appellate in nature, or outside the jurisdiction of the commission may be dismissed.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; January 31, 1998; September 1, 2000.]

### **jsc-12. Initial inquiry.**

A. Upon receipt of a complaint, report or other information as to conduct that might constitute grounds for sanctions, the executive director or staff may conduct a prompt, discreet, and confidential initial inquiry and evaluation.

B. As part of an initial inquiry, the commission may require a judge to submit, in writing, an explanation and disclosure of all pertinent facts, including germane documents, in answer to a request by the commission. The judge's answer shall be made within ten (10) days of receipt of said request. The request to the judge for an explanation shall be made by written communication.

C. Upon determination that there is insufficient cause to proceed, the commission shall dispose of the case pursuant to Rule 34, and the complainant shall be notified of the commission's action. If the judge has been informed of the proceeding, he shall also be notified of the commission's action.

[Approved, effective September 29, 1989; as amended, effective January 31, 1998.]

### **jsc-13. Preliminary investigation.**

A. **Upon receipt of complaint.** The commission, upon receiving a complaint, not obviously unfounded or frivolous, alleging facts indicating a disability or a violation, may make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held.

B. **On own motion.** When the commission receives information, not in the form of a verified statement, which may subject a judge to action by the commission, it may on its own motion, authorize a preliminary investigation.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; January 31, 1998.]

### **jsc-14. Notice of preliminary investigation.**

The judge shall be notified of the investigation by a notice of preliminary investigation, setting forth the nature of the complaint and the name of the person making the verified statement, if any, or that the investigation is on the commission's own motion. The judge shall respond, in writing, to the notice of preliminary investigation within fifteen (15) days of its service upon him.

[Approved, effective December 6, 1968; as amended, effective September 29, 1989.]

### **jsc-15. Dismissal notice.**

Upon determination that there is insufficient cause to proceed to a hearing, the commission shall dispose of the case pursuant to Rule 34. The complainant and the judge shall be notified of the commission's action.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; January 31, 1998.]

### **jsc-16. Notice of formal proceedings.**

If at least six (6) members of the commission decide that formal proceedings should be instituted, the commission shall issue to the judge a notice of formal proceedings. This notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based. The notice shall state the laws, canons and rules allegedly violated and specify the constitutional provisions under which the commission invokes jurisdiction in the proceedings.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; July 1, 1999.]



### **jsc-17. Answer.**

A. Within fifteen (15) days after service of the notice of formal proceedings, the judge shall file with the commission a legible answer which shall be verified.

B. The facts alleged in the notice of formal proceedings may be deemed admitted if not specifically denied by answer or if no answer is filed within the prescribed time, in which event the sole issue to be determined by the commission shall be the nature of the commission's recommendation of discipline after consideration of any facts in aggravation or mitigation of the respondent's fault.

[Approved, effective December 6, 1968; as amended, effective June 27, 1986; September 29, 1989.]

### **jsc-18. Prehearing motions.**

All prehearing motions shall be submitted to the chairperson at least fifteen (15) days prior to a scheduled hearing, unless, upon good cause shown, the chairperson waives the time requirement. The chairperson may rule upon any prehearing motions, including motions for protective orders; provided, however, that any prehearing motions involving the determination of factual issues, or seeking the dismissal of a charge or charges, shall require the approval of a majority of the members of the commission to be valid.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989.]

### **jsc-19. Setting.**

The commission shall set a time and place for the hearing, and shall give notice of such hearing to the judge at least ten (10) days prior to the date set, which shall be at least twenty-five (25) days after service of notice of formal proceedings.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

### **jsc-20. Appointment of masters.**

The commission, by a majority vote of its members, may appoint three (3) masters who are judges of courts of record to hear and take evidence in any hearing and to report their findings to the commission. The commission shall set the time and place for the hearing of the masters.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

## **jsc-21. Number of commission members required at hearing.**

No less than six (6) members of the commission shall be present at the hearing.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; July 1, 1999.]

## **jsc-22. Evidence at hearing.**

**A. Admissible evidence.** At a hearing before the commission or masters, only evidence admissible under the rules of evidence shall be received, and oral evidence shall be taken only on oath or affirmation. When the hearing is before the commission, the chairperson or a member designated by the chairperson shall preside. Procedural and other interlocutory rulings shall be made by the person presiding and shall be taken as consented to by the other members, unless one or more calls for a vote, in which latter event such rulings shall be made by a majority of those present.

**B. Depositions; use as evidence.** Depositions, either on oral examination or on written interrogatories, of witnesses who reside out of the state or whose personal attendance at the hearing cannot, for good reason, be procured, may be taken and used in evidence upon application to and order of the chairperson or presiding officer. Such order may be made on stipulation of the parties or after hearing on five (5) days' notice. Any such order of the chairperson or presiding officer is subject to review and change by the commission or by the masters as the case may be.

### **C. Use of closed file.**

(1) A "closed file" is one involving a prior complaint received by or initiated by the commission.

(2) A closed file may be used by the commission or the examiner in establishing a course of conduct or pattern of violations by a judge or in making a recommendation for discipline to the Supreme Court.

(3) When the commission or examiner intends to use a closed file the commission or examiner shall give the judge notice. The commission shall thereafter provide the judge with an opportunity to be heard. If no investigation was undertaken or charges were not brought regarding the allegations contained in the closed file, it may be reopened and handled as if it had just been initiated.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989; January 31, 1998; September 1, 2000.]

## **jsc-23. Conduct of hearing.**

**A. Closed hearing.** The hearing shall be a closed hearing.

**B. Proceeding on time-absence of answer or appearance.** At the time and place set for the hearing, the commission, or the masters, when the hearing is before masters, shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

**C. Presentation of case-failure to appear or comply.** The examiner shall present the case in support of the charges set forth in the notice of formal proceedings. The failure of the judge to appear at the hearing, after timely filing an answer specifically denying the facts alleged in the notice of formal proceedings, may be taken as an admission of the truth of the facts alleged to constitute grounds for discipline, removal, or retirement. The commission may refuse to receive testimony of the judge who, having failed without good cause to file a timely answer, appears at the hearing, and may grant a continuance upon a showing by the examiner of prejudice arising from the failure to file a timely answer. The failure of the judge to testify in his own behalf may be considered against him, unless it appears that such failure was in the exercise of a constitutional privilege or due to circumstances beyond his control.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; August 28, 1987; September 29, 1989.]

## **jsc-24. Procedural rights of judges.**

**A. Evidence; counsel; witnesses.** A respondent judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel and to examine and cross-examine witnesses.

**B. Transcript of testimony.** When a transcript of the testimony has been prepared at the expense of the commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to procure a copy at his expense. The judge shall have the right, without any order or approval, to have all or any testimony in the proceedings transcribed at his expense.

**C. Incompetency.** If the judge is adjudged incompetent, or if it appears to the commission at any time during the proceedings that he is not competent to act for himself, the commission shall appoint a guardian ad litem unless the judge has a guardian who will represent him. In the appointment of such guardian ad litem, consideration shall be given to the wishes of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given or sent to the guardian or guardian ad litem.

**D. Discovery.** A respondent judge and the examiner shall exercise due diligence to obtain any needed discovery on their own. Prior to filing motions related to discovery, a

respondent judge and the examiner shall confer in good faith to determine what discovery may be exchanged through stipulation. Any desired discovery that cannot be exchanged by stipulation and that cannot be obtained through the parties' own efforts may then be requested through a motion to compel discovery filed with the commission. Notice shall be mailed to the opposing party of such motion at the same time the motion to compel discovery is filed with the commission. The motion to compel discovery shall be filed with the commission at least 30 days prior to the date of the hearing unless, upon good cause shown, the Chairperson waives the time requirement. The commission may allow appropriate discovery, including the taking of depositions. If a deposition is allowed, the party seeking the deposition will bear the expense of such proceedings, subject to the Supreme Court's order assessing to the judge the costs incurred by the commission. Decisions concerning the motion to compel discovery shall be made as soon as practicable.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; September 24, 1993; January 31, 1998; September 1, 2000.]

### **jsc-25. Amendments to notice or answer.**

The commission or masters, at any time prior to the conclusion of the hearing, or the commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given a reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

### **jsc-26. Report of masters.**

**A. Preparation and transmittal to commission.** After the conclusion of the hearing before masters, they shall within a reasonable time, and not more than twenty (20) days after the hearing, prepare and transmit to the commission a report which shall contain a brief statement of the proceedings had and their findings of fact on the issue presented by the notice of formal proceedings and the answer thereto, or, if there be no answer, their findings of fact with respect to the allegations in the notice of formal proceedings. When the findings support the grounds alleged for discipline, removal, or retirement, the report shall be accompanied by an original of a transcript of proceedings before the masters. The executive director shall provide copies to the commission.

**B. Furnishing copy to judge.** Upon receiving the report of the masters, the commission shall provide a copy to the judge.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

### **jsc-27. Objections to report of masters.**

Within fifteen (15) days after mailing of the copy of the masters' report to the judge, the examiner or the judge may file with the commission a statement of objections to the report of the masters, setting forth all objections to the report and all reasons in opposition to the findings as sufficient grounds for discipline, removal or retirement. A copy of such statement, when filed by the examiner, shall be sent to the judge.

[Approved, effective December 6, 1968; as amended, effective September 29, 1989.]

### **jsc-28. Appearance before commission.**

If no statement of objections to the report of the masters is filed within the time provided, the commission may adopt the findings of the masters without a hearing. If such statement of objections is filed, or if the commission in the absence of such statement proposes to modify or reject the findings of the masters, the commission shall give the judge and the examiner an opportunity to be heard orally before the commission, and written notice of the time and place of such hearing shall be sent to the judge at least ten (10) days prior thereto.

[Approved, effective December 6, 1968; as amended, effective September 29, 1989.]

### **jsc-29. Hearing additional evidence.**

The commission or masters may order a hearing for the taking of additional evidence at any time while the matter is pending before them. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent to the judge at least ten (10) days prior to the day of hearing.

[Approved, effective December 6, 1968; as amended, effective August 31, 1984; September 29, 1989.]

### **jsc-30. Standard of proof-commission vote.**

A. **Standard of proof.** Formal charges shall be established by clear and convincing evidence.

B. **Majority vote required.** If the commission finds good cause, upon clear and convincing evidence, it shall recommend to the Supreme Court the discipline, removal or retirement of the judge. When the hearing is held before masters, the affirmative vote of at least six (6) members of the commission is required for a recommendation of

discipline, retirement or removal of a judge. When the hearing is held before the commission, the affirmative vote of at least six (6) members of the commission, including a majority of those who were present at the hearing or hearings when the evidence was produced, is required for a recommendation of discipline, removal or retirement of a judge.

[Approved, effective December 6, 1968; as amended, effective March 1, 1979; August 31, 1984; September 29, 1989; July 1, 1999.]

### **jsc-31. Recommendation for sanctions.**

The recommendation for sanctions concurred in by at least six (6) members of the commission shall be reported to the Supreme Court.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989; July 1, 1999.]

### **jsc-32. Record of commission proceedings.**

The commission shall keep a record of all formal proceedings concerning a judge. The proceedings of every hearing shall be reported verbatim either stenographically or electronically. The commission's determination shall be entered in the record, and notice thereof shall be sent to the judge. In all proceedings resulting in a recommendation to the Supreme Court for discipline, removal or retirement, the commission shall prepare a transcript of the evidence and of all formal proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings. It shall not be necessary that proceedings be transcribed or recordings preserved in any case in which findings are not forwarded to the Supreme Court for consideration.

[Approved, effective December 6, 1968; as amended, effective March 27, 1975; March 1, 1979; August 31, 1984; September 29, 1989.]

### **jsc-33. Emergency interim suspension.**

Incident to a preliminary investigation or a formal proceeding conducted pursuant to these rules, the commission may, upon its determination that the continued service of a judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice, and the judge's conduct appears to be violative of the Code of Judicial Conduct or the constitution of New Mexico, petition the Supreme Court for injunctive or other appropriate interim relief, including temporary suspension or reassignment of the judge.

[Approved, effective September 29, 1989.]

### **jsc-34. Dispositions.**

The commission may make any of the following dispositions:

- A. dismissal of complaint;
- B. privately informing the judge that his conduct may be violative of the standards of judicial conduct;
- C. proposing professional counseling or assistance for the judge.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989.]

### **jsc-35. Sanctions.**

Following a formal hearing or based on admissions by a judge, the commission may recommend to the Supreme Court the following formal sanctions:

- A. removal;
- B. retirement;
- C. discipline, including one or more of the following:
  - (1) suspension;
  - (2) imposition of limitations or conditions on the performance of judicial duties;
  - (3) reprimand or censure;
  - (4) fine; and
  - (5) assessment of costs and expenses; or
- D. imposition of any combination of the above sanctions.

[Approved, effective August 31, 1984; as amended, effective September 29, 1989.]

### **jsc-36. Certification of commission recommendation to Supreme Court.**

A. **Filing of findings and recommendations.** Upon making a determination recommending discipline, retirement or removal of a judge, the commission shall promptly file with the clerk of the Supreme Court the original copy of its written decision containing its recommendations, findings, and conclusions, indicating that it was

concurrent in by at least six (6) members of the commission and certified by the chairperson. The commission shall immediately thereafter send to the judge and to his counsel notice of such filing, together with a copy of its decision and findings and conclusions.

**B. Filing of transcript and costs.** Within a reasonable time after filing of the recommendation, the commission shall file with the clerk of the Supreme Court the transcript of evidence and a memorandum of costs of service of process, witness fees and expenses, mileage, depositions and investigation expenses. The memorandum of costs shall be certified by the chairperson. The commission shall send to the judge and his counsel a notice of filing of the transcript and memorandum of costs. The commission shall request an order of the court assessing to the judge the costs incurred by the commission.

[Approved, effective December 6, 1968; as amended, effective March 27, 1975; August 31, 1984; September 29, 1989; January 31, 1998; July 1, 1999.]

### **jsc-37. Commission representation before the Supreme Court.**

Following the submission of any formal report to the Supreme Court of a recommendation of discipline, retirement or removal, the commission may designate or retain counsel to represent the commission in any hearings or matters before the Supreme Court involving matters recommended by the commission.

[Approved, effective August 31, 1984, as amended, effective September 29, 1989.]

### **jsc-38. Jurisdiction.**

The judicial standards commission's jurisdiction is invoked when notice of formal proceeding is served upon the judge under investigation. The jurisdiction continues irrespective of the judge's subsequent resignation and/or termination from office.

[Approved, effective December 3, 1993.]