

Section 7000.5 is repealed

Section 7000.1 is amended to read as follows

(a) *Administrator* means the person appointed by the commission [as administrator] pursuant to section 41, subdivision 7, of the Judiciary Law.

(b) *Administrator's complaint* means a complaint signed by the administrator at the direction of the commission, which is filed as part of the commission's records.

(c) *Answer* means a verified response, in writing, to a formal written complaint.

(d) Clerk of the commission means the person appointed by the commission pursuant to Section 7000.13 of these operating procedures and rules.

[(d)](e) *Complaint* means a written communication to the commission signed by the complainant, making allegations against a judge as to [his] the judge's qualifications, conduct, fitness to perform, or the performance of [his] the judge's official duties, or an administrator's complaint.

[(e)](f) *Commission* means the New York State Commission on Judicial Conduct.

[(f)](g) *Dismissal* means a decision at any stage not to proceed further.

(h) Electronic copy means a digital document in word processor, portable document format (PDF) or other similar format permitted by the commission that is readable on a computer. The commission may, in its discretion, issue technical specifications and procedures for submission of electronic documents. Wherever these rules provide for the commission or the administrator to serve, file, furnish, or make available an electronic copy, the judge may request a paper copy in lieu of, but not in addition to, an electronic copy.

[(g)](i) *Formal written complaint* means a writing, signed and verified by the administrator of the commission, containing allegations of judicial misconduct against a judge for determination at a hearing.

[(h)] (j) *Hearing* means an adversary proceeding at which testimony of witnesses may be taken and evidentiary data and material relevant to the formal written complaint may be received, and at which the respondent judge is entitled to call and cross-examine witnesses and present evidentiary data and material relevant to the formal written complaint.

[(i)](k) *Initial review and inquiry* means the preliminary analysis and clarification of the matters set forth in a complaint, and the preliminary fact-finding activities of commission staff intended to aid the commission in determining whether or not to authorize an investigation with respect to such complaint.

[(j)](l) *Investigation*, which may be undertaken only at the direction of the commission, means the activities of the commission or its staff intended to ascertain facts relating to the

accuracy, truthfulness or reliability of the matters alleged in a complaint. An investigation includes the examination of witnesses under oath or affirmation, requiring the production of books, records, documents or other evidence that the commission or its staff may deem relevant or material to an investigation, and the examination under oath or affirmation of the judge involved before the commission or any of its members.

[(k)](m) *Judge* means a judge or justice of any court in the unified court system of the State of New York.

[(l)](n) *Letter of dismissal and caution* means the written confidential comments, suggestions and recommendations referred to in sections 7000.3(c) and 7000.4 of this Part and issued by the Commission to a judge in lieu of a formal written complaint.

[(m)](o) *Letter of caution* means the written confidential comments, suggestions and recommendations referred to in section 7000.7 of this [part] Part and issued by the commission to a judge at the conclusion of proceedings pursuant to a formal written complaint, upon a finding that the judge's misconduct is established.

[(n)](p) *Retirement* means a retirement for physical or mental disability preventing the proper performance of judicial duties.

[(o)](q) *Referee* means any person designated by the commission pursuant to section 43, subdivision 2, of the Judiciary Law to hear and report on any matter in accordance with the provisions of section 44 [subdivision 4] of the Judiciary Law.

(r) *Respondent* means the judge named in a formal written complaint.

(s) *Virtual or virtually, when describing a commission proceeding, means that the proceeding shall be conducted with two-way videoconferencing or similar technology that permits all parties simultaneously to hear and observe the participants and, where appropriate, to examine and cross-examine all witnesses, using such procedures as the commission may direct to ensure the fairness and confidentiality of the proceeding.*

Section 7000.2 is amended to read as follows:

The commission shall receive, initiate, investigate and hear complaints against any judge with respect to [his] the judge's qualifications, conduct, fitness to perform, or the performance of [his] the judge's official duties. Prior to commencing an investigation of a complaint initiated by the commission, the commission shall file as part of its records an administrator's complaint.

Section 7000.3, subdivisions (c), (d), (e), (f), and (g) are amended to read as follows:

(c) During the course of, or after, an investigation, the commission may dismiss the complaint, direct further investigation, request a written response from the judge who is

the subject of the complaint, direct the filing of a formal written complaint or take any other action authorized by section 22 of article [6]VI of the Constitution or article 2-A of the Judiciary Law. Notwithstanding the dismissal of a complaint, the commission, in connection with such dismissal, may issue to the judge a letter of dismissal and caution containing confidential comments, suggestions and recommendations with respect to the complaint, the commission's initial review and inquiry, or the commission's investigation as they pertain to the judge.

(d) The administrator or, when authorized by the commission, any [Any] member of the commission, [or the administrator] may administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation, and require the production of any books, records, documents or other evidence that may be deemed relevant or material to an investigation. The commission may, by resolution, delegate to staff attorneys and other [employees]persons designated by the commission the power to administer oaths and take testimony during investigations authorized by the commission. [If testimony is taken of a judge under investigation during the course of an investigation authorized by the commission, at least one member of the commission or referee designated by the commission, shall be present.]

(e) In the course of the investigation, the commission may require the appearance of the judge involved before the commission, or any of its members, or a referee designated by the commission, in which event the judge shall be notified in writing of [his] the judge's required appearance either (i) personally, at least three days prior to such appearance, or (ii) by certified mail, return receipt requested, at least five days prior to such appearance. If the judge consents in writing, service may be made by an alternative method. A copy of the complaint shall be served upon the judge at the time of such notification. A judge's appearance during an investigation shall take place at a commission office, or if the commission so directs, may be conducted virtually, and at least one member of the commission or referee designated by the commission, shall be physically or virtually present.

(f) The judge shall have the right to be represented by counsel during any and all stages of the investigation at which [his] the judge's appearance is required, and to present evidentiary data and material relevant to the complaint by submitting such data and material, including a written statement, or by making an oral statement which shall be transcribed. Counsel for the judge shall be permitted to advise [him] the judge of [his] the judge's rights and otherwise confer with [him] the judge, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the investigatory proceeding. [A] An electronic copy of the transcript of the judge's testimony shall be made available to the judge without cost.

(g) A [nonjudicial] witness required to appear before the commission shall have the right to be represented by [his or her] counsel who may be present with the witness and may advise the witness, but may not otherwise take any part in the proceeding.

Section 7000.6, subdivisions (b), (c), (d), (f)(1)(ii), (f)(1)(iii), (f)(1)(iv), (f)(1)(v), (f)(4), (f)(5), (f)(6), (g), (h), (h)(1), (h)(2), (i)(2), (i)(3), (j), (k), (l) are amended to read as follows:

(b) Answer. A judge who is served with a formal written complaint shall serve [his] a verified answer[, verified by him,] within 20 days of service [of the formal written complaint]. The answer shall contain denials of those factual allegations known or believed to be untrue. The answer shall also specify those factual allegations as to the truth of which the judge lacks knowledge or information sufficient to form a belief, and this shall have the effect of a denial. All other factual allegations in the charges are deemed admitted. The answer may also contain affirmative and other defenses[,] and may assert that the specified conduct alleged in the formal written complaint is not improper or unethical. Failure to answer the formal written complaint shall be deemed an admission of its allegations.

(c) Summary determination. Either party may move before the commission for a summary determination upon all or any part of the issues being adjudicated, if the pleadings, and any supplementary materials, show that there is no genuine issue as to any material fact and that the moving party is entitled to such decision as a matter of law. A motion for summary determination may be served in the same manner as a formal written complaint. If a summary determination is granted, the commission shall provide reasonable opportunity for the submission of briefs and oral argument with respect to possible sanctions.

(d) Agreed statement of facts. Subject to the approval of the commission, the administrator and the respondent may agree on a statement of facts, conclusions of law and a recommended sanction, and may stipulate in writing that the hearing shall be waived. In such a case, the commission shall make its determination upon the pleadings and the facts, conclusions and recommendation set forth in the agreed statement [of facts].

(f) Motions.

(1) The commission shall decide the following motions:

(ii) a motion to dismiss a formal written complaint or any portion thereof;

(iii) a motion to confirm or disaffirm the findings of the referee; [and]

(iv) a motion made prior to the appointment of the referee, except that the commission may refer such motion to the referee when such referral is not inconsistent with the other provisions of this section[.]; and

(v) a motion to alter an action taken or order issued by the commission.

(4) Motions to dismiss a formal written complaint must be made within 30 days of service of the formal written complaint upon the respondent.

(5) Motions for the disqualification of a referee are to be made to that referee within 10 days of the parties being notified of the designation of the referee. The opposing party must respond to the motion within 10 days of service of the motion. The referee must decide the motion within 10 days of final submission. The commission will hear appeals from the referee's decision on the motion [determinations made] within 10 days thereof. All proceedings will be stayed until the [Commission] commission has rendered its decision.

(6) Motions for reconsideration of a commission determination must be made within 30 days of service of the determination upon respondent. In a motion to reconsider on grounds of newly discovered evidence, the moving party must demonstrate that the proffered evidence, if introduced at the hearing before the referee or otherwise properly before the commission, (1) would probably have resulted in a different determination and (2) could not have been discovered in time to introduce at the hearing or otherwise be properly before the commission prior to the rendering of the determination. The commission reserves the authority to direct a hearing before a referee for the purpose of evaluating the newly discovered evidence.

(g) Hearings. Hearings shall be held at a commission office or such other place as the parties and referee may agree or the clerk of the commission shall direct. The commission may require that any hearing be conducted virtually and may publish protocols for determining when and how such a virtual hearing should be conducted. The referee shall set a prompt hearing date, regulate the course of the hearing, make appropriate rulings, set the time and place for adjourned or continued hearings and, consistent with paragraphs (k) and (l) of this section, fix the time for filing briefs and other documents, and shall have such other authority as specified by the commission, not inconsistent with the provisions of article 2-A of the Judiciary Law.

(h) Discovery. (1) Upon the written request of the respondent, the administrator shall, at least [ten] 10 days prior to the hearing or any adjourned date thereof, make available to the respondent without cost electronic copies of all documents which the administrator intends to present at such hearing, a list of the witnesses the administrator intends to call to give testimony, and any written statements [made by] of witnesses who will be called to give testimony by the administrator. The administrator shall, in any case, make available to the respondent at least [ten] 10 days prior to the hearing or any adjourned date thereof, any exculpatory evidentiary data[,], and material relevant to the formal written complaint. The failure of the commission to furnish timely any documents, statements and/or exculpatory evidentiary data and material provided for herein shall not affect the validity of any proceedings before the commission, provided that such failure is not substantially prejudicial to the [judge] respondent.

(2) Upon the written request of the administrator, respondent shall, at least five days prior to the hearing or any adjourned date thereof, make available to the administrator without cost electronic copies of all documents that respondent intends to present at such hearing, a list of the witnesses respondent intends to call to give testimony and any written statements of [made by] witnesses who will be called to give testimony by respondent.

(i) Burden of proof and rules of evidence at hearing.

(2) At the hearing, the testimony of witnesses may be taken and evidentiary data and material relevant to the formal written complaint may be received. The rules of evidence applicable to civil nonjury trials shall be followed.

(3) At a hearing, counsel for a witness may be present while [his or her client] the witness is testifying and may request permission of the referee to consult with the witness [client], but may not object to questions, examine or cross-examine witnesses or otherwise participate in the proceedings.

(j) Post-hearing procedures. Within a reasonable time following a hearing, the commission shall furnish to the respondent, without cost, [a] an electronic copy of the transcript of the hearing.

(k) The respondent [who is the subject of the hearing,]and the administrator[,] shall be afforded a reasonable opportunity to present to the referee written argument on issues of law and fact. The respondent and the administrator may file briefs and proposed findings with the referee no later than four weeks after their receipt of the transcript of the hearing. For good cause, the referee may grant a reasonable extension or may shorten the period. The referee shall set dates for service and filing of briefs and proposed findings and may, in the referee's discretion, require the parties to serve and file an electronic copy of such documents.

(l) The referee shall submit a report to the commission with proposed findings of fact and conclusions of law. No recommendation shall be made with respect to a sanction to be imposed by the commission. The referee shall endeavor to submit such report: (i) no later than 30 days after receipt of the briefs referred to in subdivision (k) of this section, or (ii) no later than 30 days after failure [to] of the respondent or the administrator to file such brief within the time prescribed in subdivision (k) of this section. The clerk of the commission may grant reasonable extensions of time for submission of the referee's report. [A] An electronic copy of the referee's report shall be sent to the administrator and the respondent.

Subdivisions (a)(1) and (a)(2) are added and subdivisions (a) and (c) are amended to read as follows:

(a) The commission shall consider the referee's report or agreed statement of facts and shall provide reasonable opportunity for the submission of briefs and oral argument with respect to such report or agreed statement of facts and with respect to possible sanctions. [The respondent judge shall file an original and 10 copies of any brief submitted to the commission]. The commission may require that the oral argument be conducted virtually.

(1) The administrator and respondent shall each serve and file an electronic copy of their brief to the commission via email or by such other means as the commission may direct.

(2) Either party may, with the consent of the clerk of the commission, file and serve an original and two paper copies, one of which shall be unbound, in lieu of an electronic copy.

(b) In making a determination following receipt of a referee's report, [or] an agreed statement of facts or a motion for summary determination, the commission members shall deliberate without the participation of staff except for the clerk of the commission and any assistants reporting to the clerk of the commission. [not have the aid or advice of the administrator or commission staff who has been or is engaged in the investigative or prosecutive functions in connection with the case under consideration or a factually related case.]

Section 7000.9, subdivisions (a), and (b)(2) are amended to read as follows:

(a) A judge may be admonished, censured or removed for cause, including but not limited to misconduct in office, persistent failure to perform [his] the judge's duties, habitual intemperance, and conduct on or off the bench, prejudicial to the administration of justice; or retired for mental or physical disability preventing the proper performance of [his] the judge's judicial duties.

(b) In evaluating the conduct of judges, the commission shall be guided by:

(2) the requirement that judges abide by the Code of Judicial Conduct, the rules of the Chief Administrator and any other duly promulgated rules applicable to judges or justices of the New York State unified court system [the rules of the respective Appellate Divisions governing judicial conduct].

Section 7000.14, subdivision (a) is amended to read as follows:

(a) Campaigns for judicial office. No commission member shall participate in or contribute to any campaign for judicial office in New York State, except where the member is a candidate for judicial office. When a commission member is associated with a bar association committee or other organization that endorses or rates candidates for judicial office, the member shall not participate in that process.

Addition of section headers for Part 7001 to read as follows:

7001.1 Definitions

7001.2 Purpose and Scope

7001.3 Designation of records access officer

7001.4 Location

7001.5 Hours for public inspection

7001.6 Requests for public access to records

7001.7 Subject matter list

7001.8 Denial of access to records

7001.9 Fees

7001.10 Public Notice

7001.11 Severability

Section 7001.1 subdivisions (a) and (b) are amended to read as follows:

(a) *Records* [shall mean] means a written determination filed in the Court of Appeals and served upon a judge in accordance with applicable provisions of law, and related findings of fact, conclusions of law and the record of proceedings upon which such a determination is based, and other documents which may, by law, be made public.

(b) *Information* [shall mean] means information which may, by law, be provided.

Section 7001.3, subdivisions (a), (b), (c)(6)(i) and (c)(6)(ii) are amended to read as follows:

(a) The [State Commission on Judicial Conduct] commission is responsible for insuring compliance with the regulations herein and authorizes its administrator to designate a records access officer. The administrator will delegate to a staff [employee in each office] member the functions of receiving requests for records and providing assistance to the public.

(b) The records access officer is responsible for insuring appropriate agency [response] responses to public requests for access to records.

(6) upon failure to locate records, certify that:

(i) the [State Commission on Judicial Conduct] commission is not the custodian for such records; or

(ii) the records of which the [State Commission on Judicial Conduct] commission is a custodian cannot be found after diligent search.

Section 7001.4 is amended to read as follows:

Records shall be available for public inspection at any of the commission's offices.[:]

[(a) 61 Broadway, New York, N.Y. 10006; ]

[(b) 400 Andrews Street, Rochester, N.Y. 14604; and]

[(c) Corning Tower (Suite 2301), Empire State Plaza, Albany, N.Y. 12223.]

Section 7001.5 is amended to read as follows:

Requests for public access to records shall be accepted and records produced upon reasonable notice during all hours regularly open for business. These hours are [9 a.m] 9:00 AM to 5:00 PM [p.m.], Monday through Friday[.], except for times when the office may be closed or visitor access may be restricted, such as due to legal holidays or public health advisories, or when confidential proceedings are being conducted.

Section 7001.8, subdivisions (a), (c), (d), (e), (f), and (g) are amended to read as follows:

(a) Denial of access to records shall be in writing, stating the reason therefor and advising the requester of the right to appeal to the commission [State Commission on Judicial Conduct].

(c) The [State Commission on Judicial Conduct] commission shall hear appeals for denial of access to records under the Freedom of Information Law.

(d) The time for deciding an appeal by the [State Commission on Judicial Conduct] commission shall commence upon receipt of a written appeal identifying:

(e) The [State Commission on Judicial Conduct] commission shall inform the requester of its decision in writing promptly following its first meeting after receipt of the appeal.

(f) The [State Commission on Judicial Conduct] commission shall transmit to the New York State Department of State Committee on [Public Access to Records] Open Government copies of all appeals upon receipt of appeals. [Such copies shall be addressed to:]

[Committee on Public Access to Records, Department of State, 162 Washington Avenue, Albany, N.Y. 12231]

(g) The [State Commission on Judicial Conduct] commission shall inform the appellant and the Committee on [Public Access to Records] Open Government of its determination in writing promptly, following its first meeting after receipt of an appeal. The determination shall be transmitted to the Committee on [Public Access to Records] Open Government in the same manner as set forth in subdivision (f) of this section.

Section 7001.9, subdivisions (a) and (b) are amended to read as follows:

(a) There shall be no fee charged for: (1) inspection of records; (2) search for records; [or] (3) any certification pursuant to this Part; or (4) copies of records in electronic format.

(b) Paper copies [Copies] of records shall be provided at a cost of 25 cents per photocopy page.