

## **SECTION I**

### **RULE 1. JUDICIAL INVESTIGATION COMMISSION.**

The ethical conduct of judges is of the highest importance to the people of the State of West Virginia and to the legal profession. Every judge shall observe the highest standards of judicial conduct. In furtherance of this goal, the Supreme Court of Appeals does hereby establish a Judicial Investigation Commission [Commission] to determine whether probable cause exists to formally charge a judge with a violation of the Code of Judicial Conduct promulgated by the Supreme Court of Appeals to govern the ethical conduct of judges or that a judge, because of advancing years and attendant physical and mental incapacity, should not continue to serve.

#### **RULE 1.1. MEMBERSHIP.**

The Commission shall consist of nine members: five members of the judiciary, including three circuit judges, one magistrate, one family court judge, provided that any members of the judiciary may be senior status; one from the following categories - mental hygiene commissioner, juvenile referee, special commissioner, special master, or former state or federal judge or justice; and three members of the public. Initially, the membership of the Commission shall consist of the current members of the Judicial Investigation Commission, except for the addition of one circuit judge and one mental hygiene commissioner, juvenile referee, special commissioner, or special master, and the deletion of two lawyers.

#### **RULE 1.2. TERMS.**

The members of the Commission shall serve staggered terms of three years. The appointment date of the terms shall be filed with the Clerk of the Supreme Court. All members of the Commission currently serving as members of the Judicial Investigation Commission, other than the lawyer members, shall serve the remainder of their terms. The term and authority of any member of the Commission shall be extended to allow such member to participate in any matter in which the member has participated prior to expiration of the member's term.

#### **RULE 1.3. APPOINTMENT.**

The members of the Commission, other than the Chairperson, shall be appointed by the Supreme Court of Appeals. Members of the Commission shall attend an orientation program conducted by the Office of Disciplinary Counsel within six months of appointment.

#### **RULE 1.4. ELIGIBILITY.**

When a circuit judge, magistrate, family court judge, mental hygiene commissioner, juvenile referee, special commissioner, or special master ceases to be a circuit judge, magistrate, family court judge, mental hygiene commissioner, juvenile referee, special commissioner, or special master, or whenever any member becomes otherwise ineligible

to hold office, their membership on the Commission shall terminate. A member of the Commission may be removed by the concurrence of a majority of the Commission for an unreasonable failure to perform the member's duties.

#### **RULE 1.5. VACANCIES.**

Whenever a vacancy is to occur due to the expiration of the term of a member of the Commission, the Chairperson shall notify the Supreme Court of Appeals sixty days prior to the expiration of the term. Whenever a vacancy occurs on the Commission for any other reason, the Chairperson shall notify the Supreme Court of Appeals within thirty days of the vacancy. A vacancy on the Commission shall be filled for the unexpired portion of the term for which the original appointment was made. All persons appointed shall continue to serve until their successors are appointed and qualified.

#### **RULE 1.6. REAPPOINTMENT.**

A member of the Commission, other than the Chairperson, who has completed one full term of service shall twice be eligible for reappointment after completion of the member's term. Any member appointed to fill a vacancy who has served less than one year shall be eligible for three reappointments. The Chairperson of the Commission is not subject to the term limits.

#### **RULE 1.7. ELECTION OF OFFICERS.**

The members of the Commission shall annually elect a Chairperson and a Vice-Chairperson. The Chairperson, and in the Chairperson's absence the Vice-Chairperson, shall perform the duties normally associated with that office and shall preside over all meetings of the full Commission. The appointment of the Chairperson and Vice-Chairperson shall be filed with the Clerk of the Supreme Court.

#### **RULE 1.8. QUORUM.**

Five members of the Commission shall constitute a quorum. The Commission shall act only with the concurrence of a majority of those present and voting.

#### **RULE 1.9. COMPENSATION AND EXPENSES.**

All members of the Commission shall be eligible for reimbursement for travel and other expenses incidental to the performance of their duties. Members of the Commission who are not judicial officers shall receive per diem compensation of one hundred dollars to be paid by the State from funds appropriated to the judiciary. ~~be considered temporary employees of the Supreme Court of Appeals only for the limited purpose of payment and shall receive W-2 compensation. The limited nature of the classification shall not subject the non-judicial members to any of the rules or requirements set forth in the West Virginia Judicial Personnel System Manual or the Code of Judicial Conduct.~~ Any lawyer member shall not be conflicted off any case or controversy before any court in West Virginia by virtue of his or her affiliation with and service on the Commission.

## **RULE 1.10 DISQUALIFICATION.**

A member of the Commission may not participate as such in any proceeding involving a charge against such member, such member's spouse, or a person within the third degree of relationship to either the member or the member's spouse. The Chief Justice of the Supreme Court of Appeals may make temporary appointments to fill a disqualified member's position in a given proceeding. A member of the Commission may not participate as such in any proceeding involving a charge against a judge over whom the member exercises supervisory authority. Commission members shall disqualify themselves in any proceeding in which a judge, similarly situated, would be required to disqualify himself or herself.

## **RULE 1.11. AUTHORITY.**

The Commission shall have the authority to (1) determine whether probable cause exists to formally charge a judge with a violation of the Code of Judicial Conduct or that a judge, because of advancing years and attendant physical and mental incapacity, should not continue to serve; (2) propose rules of procedure for judicial disciplinary proceedings for promulgation by the Supreme Court of Appeals; (3) file an annual report with the Supreme Court of Appeals on the operation of the Commission; (4) inform the public about the existence and operation of the judicial disciplinary system, the filing of public admonishments and formal charges, and the discipline imposed or recommended on formal charges; (5) delegate, in its discretion, to the Chairperson or Vice-Chairperson, the authority to act for the Commission on administrative and procedural matters; (6) nominate, for selection by the Supreme Court of Appeals, candidates for the position of Judicial Disciplinary Counsel; (7) render in writing advisory opinions as it may deem appropriate and (78) engage in such other activities related to judicial discipline as it deems appropriate.

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## **RULE 2. JUDICIAL DISCIPLINARY COMPLAINTS.**

Any person may file a complaint against a "judge" with the Office of Disciplinary Counsel regarding a violation of the Code of Judicial Conduct. The term "judge" is defined in the Code of Judicial Conduct as "Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including but not limited to Justices of the Supreme Court of Appeals, Intermediate Court of Appeals Judges, Circuit Judges, family court judges, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Masters."

### **RULE 2.1. FORM OF COMPLAINTS.**

The form of complaints shall be determined by the Commission. It may require that complaints other than those initiated by the Office of Disciplinary Counsel or the Commission shall be in writing and verified by the complainant. Notarized and signed complaints may be received by U.S. mail or email.

## **RULE 2.2. INVESTIGATION OF COMPLAINTS.**

The Office of Disciplinary Counsel shall investigate all complaints of violation of the Code of Judicial Conduct made against judges. The resignation of a judge shall not relieve the obligation of the Office of Disciplinary Counsel to investigate a complaint that the judge violated the Code of Judicial Conduct and to fully proceed in accordance with these rules. The Office of Disciplinary Counsel shall also conduct such investigations as may be directed by the Commission. The Office of Disciplinary Counsel may initiate investigations on its own. The Office of Disciplinary Counsel may obtain from a Chairperson of the Commission or the Clerk of the Supreme Court of Appeals a subpoena for evidence and the testimony of witnesses and the production of documents. The Chairperson of the Commission or the Clerk of the Supreme Court of Appeals shall issue a subpoena requiring such person to appear before the Office of Disciplinary Counsel to produce all documents and give evidence on the matters in question. Any failure to obey such subpoena, may be punished by contempt.

## **RULE 2.3. RESPONSE TO COMPLAINTS.**

Prior to filing a report with the Commission, the Office of Disciplinary Counsel shall notify the judge involved in writing of the nature of the complaint. The judge shall have ten days after the date of the written notice to file a written response to the complaint. The judge may be represented by a lawyer at any stage of the proceedings but shall not be entitled to reasonable attorney fees incurred prior to the filing of a formal charge by the Commission except in extraordinary circumstances where prior approval is granted by the Administrative Director of the Courts.

## **RULE 2.4. CONFIDENTIALITY.**

~~The details of complaints filed or investigations conducted by the Office of Disciplinary Counsel shall be confidential, except that when a complaint has been filed or an investigation has been initiated, the Office of Disciplinary Counsel may release information confirming or denying the existence of a complaint or investigation, explaining the procedural aspects of the complaint or investigation, or defending the right of the judge to a fair hearing. Prior to the release of information confirming or denying the existence of a complaint or investigation, reasonable notice shall be provided to the judge.~~

All information relating to a complaint shall be held confidential by the Judicial Investigation Commission and Disciplinary Counsel and their staffs during the pendency of an investigation. All information relating to a complaint that has been dismissed without formal charges being filed or an admonishment being issued pursuant to Rule 2.7 shall be held confidential by the Commission and Disciplinary Counsel and their staffs. Disciplinary Counsel's work product, commission deliberations and records of the commission's deliberations shall not be disclosed. Exceptions: The Commission may disclose information only when it has determined that there is a need to notify another person to protect that person from physical harm or to notify a government agency in

order to protect the public from physical harm. The Commission and Disciplinary Counsel may also make such disclosures as are necessary pursuant to Rule 6 referrals.

#### **RULE 2.5. PRIVILEGE AND IMMUNITY.**

All information provided, documents filed or testimony given with respect to any investigation or proceeding under these rules shall be privileged in any action for defamation. All members of the Commission, the Judicial Committee on Assistance and Intervention, the Office of Disciplinary Counsel, and their employees, shall be absolutely immune from civil suit in the same manner as members of the judiciary in this State for any conduct in the course of their official duties.

#### **RULE 2.6. REPORT ON COMPLAINTS.**

As to each complaint received and investigation conducted by the Office of Disciplinary Counsel, a written report shall be filed with the Commission. The report shall recommend whether the Office of Disciplinary Counsel believes there is probable cause to formally charge the judge with a violation of the Code of Judicial Conduct or that the judge, because of advancing years and attendant physical and mental incapacity, should not continue to serve. The report shall include a copy of any written response by the judge, together with a list of documents, affidavits, or other material that has been collected or submitted in connection with the complaint or investigation.

#### **RULE 2.7. REVIEW OF COMPLAINTS.**

(a) Within sixty days after the date of a report by the Office of Disciplinary Counsel, the Commission shall file a written decision regarding whether it believes there is probable cause to formally charge the judge with a violation of the Code of Judicial Conduct or that the judge, because of advancing years and attendant physical or mental incapacity, should not continue to serve, or whether the matter should be investigated further by the Office of Disciplinary Counsel.

(b) When it has been determined that probable cause does not exist, the Commission shall issue an brief explanatory statement in support of its decision to close the complaint.

(c) When it has been determined that probable cause does exist, but that formal discipline is not appropriate under the circumstances, the Commission shall issue a written admonishment to the respondent, who has fourteen days after its receipt to object. The written admonishment shall be available to the public. If the Office of Disciplinary Counsel or the respondent files a timely objection to the written admonishment, the Commission shall file a formal charge with the Clerk of the Supreme Court of Appeals. Admonishment shall not be administered if (1) the misconduct involves the misappropriation of funds; (2) the misconduct resulted or will likely result in substantial prejudice to a litigant or other person; (3) ~~the respondent has been disciplined in the last three years;~~ (4) the misconduct is of the same nature as misconduct for which the respondent has been disciplined in the last five years; (54) the misconduct involves dishonesty, deceit, fraud, or misrepresentation by the respondent; (65) the misconduct constitutes a crime that

adversely reflects on the respondent's honesty, trustworthiness, or fitness as a judge; or (76) the misconduct is part of a pattern of similar misconduct.

(d) When it has been determined that probable cause does exist, and that formal discipline is appropriate, the Commission shall file a formal charge with the Clerk of the Supreme Court of Appeals. After the filing and service of formal charges, all documents filed with the Clerk of the Supreme Court of Appeals and the Judicial Hearing Board shall be available to the public.

#### **RULE 2.8. FILING OF FORMAL CHARGES.**

After reasonable notice to the Office of Disciplinary Counsel and the judge, the formal charge shall be filed by the Commission with the Clerk of the Supreme Court of Appeals. The formal charge shall inform the judge of the right to file a written response within thirty days of the date of the charge.

#### **RULE 2.9. SERVICE OF FORMAL CHARGES.**

Service of a formal charge shall be made by the Clerk of the Supreme Court by certified mail, return receipt requested, to the judge at the judge's chambers, or at the judge's last known address or, in the alternative, service may be made in a manner consistent with the rules for service of process under the West Virginia Rules of Civil Procedure. Return of Service shall be directed to the Clerk of the Supreme Court of Appeals.

#### **RULE 2.10. RESPONSE TO FORMAL CHARGES.**

The judge may file responsive pleadings as provided in the West Virginia Rules of Civil Procedure. Any such pleadings shall be filed by the judge with the Clerk of the Supreme Court of Appeals and the Office of Disciplinary Counsel not more than thirty days after the date of the formal charges. For good cause shown, the Office of Disciplinary Counsel may extend the time for filing such pleadings.

#### **RULE 2.11. FAILURE TO FILE RESPONSE.**

Notwithstanding the failure of the judge to file a responsive pleading, the Judicial Hearing Board may proceed with a hearing, provided that all evidence in support of the charge shall be heard by the Hearing Board in a public hearing or filed in the course of a public hearing. The failure to file a response to the complaint shall be deemed an admission of the factual allegations contained therein.

#### **RULE 2.12. LIMITATION OF COMPLAINTS.**

Any complaint filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of a violation of the Code of Judicial Conduct, shall be dismissed by the Commission.

#### **RULE 2.13. ADVISORY OPINIONS.**



(a) The Administrative Director of the Courts or a judge may by written request of Disciplinary Counsel seek an advisory opinion as to whether certain specific actions contemplated may constitute a violation of the Code of Judicial Conduct.

(b) Disciplinary Counsel shall file a report on each request for an advisory opinion with the Commission.

(c) The Commission may render in writing such advisory opinion as it may deem appropriate or may return the report to Disciplinary Counsel for further review. The Commission shall forward a copy of every advisory opinion to the Chairperson of the Judicial Hearing Board, the Office of Disciplinary Counsel, the Administrative Director of the Courts, and the requesting judge.

(d) An advisory opinion is not binding on the Judicial Hearing Board or the Court, but shall be admissible in any subsequent disciplinary proceeding involving the requesting judge.

(e) No member of the Commission rendering an advisory opinion may serve on the Judicial Hearing Board in a proceeding involving a complaint or charge arising from conduct which was the subject of the advisory opinion.

#### **RULE 2.14. EXTRAORDINARY PROCEEDINGS.**

(a) When the Administrative Director of the Courts, the Commission, or Disciplinary Counsel has received information that a judge (1) has been convicted of a serious offense, (2) has been indicted or otherwise charged with a serious offense, (3) has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct, or (4) has become unable or unwilling to perform official duties, the Administrative Director may file a complaint with Disciplinary Counsel.

(b) Upon receipt of such complaint, Disciplinary Counsel shall conduct an immediate investigation and shall within ten days present to the ~~Chief Justice of the~~ Supreme Court a report indicating whether, in the opinion of Disciplinary Counsel, the integrity of the legal system has been placed into question by virtue of a judge's (1) having been convicted of a serious offense; (2) having been indicted or otherwise charged with a serious offense; (3) having engaged in or currently engaging in a serious violation of the Code of Judicial Conduct; or (4) inability or unwillingness to perform official duties. The Office of Disciplinary Counsel shall attempt to provide reasonable notice to the judge prior to the filing of this report. The Commission or Counsel may also present a report to the Supreme Court if, during the course of an investigation into a Rule 2.0 nonextraordinary complaint, it finds one of the factors set forth above.

~~(c) Upon receipt of the report, from the Chief Justice, the Supreme Court shall determine whether probable cause exists. A finding of probable cause hereunder shall be in lieu of a probable cause finding made pursuant to Rule 2.7(c). If it is determined that probable cause exists, the Court may:—~~

~~(1) direct the Disciplinary Counsel to file formal charges with the Clerk of the Supreme Court; and,—~~

~~(2) provide notice to the judge of a right to a hearing on the issue of temporary~~

suspension, said hearing to be in not less than 30 days; with the judge provided notice of the hearing in not less than 20 days before the proceeding; or—

~~(3) in the alternative, remand the complaint for proceedings pursuant to Rules 2.7(d) and Rule 4.~~

~~(d) (1) If the judge has been convicted of a serious offense or has been indicted or otherwise charged with a serious offense, the Chief Justice may order that the judge not hear any further civil or criminal matters or perform other judicial functions while the matter is pending, with or without pay.~~

~~(2) If the Court finds probable cause pursuant to Rule 2.14(c) to believe that a judge has engaged or is currently engaging in a serious violation of the Code of Judicial Conduct or has become unable or unwilling to perform official duties, the Court may direct that the judge not hear any further civil or criminal matters or perform other judicial functions while the matter is pending, with or without pay.~~

~~(3) The provisions set forth in paragraph (d)(1) shall be construed as separate and in addition to the provisions of paragraph (c), above. Further, the provisions of paragraph (d)(1) shall be applicable only where a judge has been convicted of a serious offense or indicted or otherwise charged with a serious offense.~~

~~(e) After the hearing on the issue of suspension, the Court may temporarily suspend the judge with or without pay while the matter is pending before the Judicial Hearing Board and until the Court has disposed of the formal charges.~~

~~(f) Both the details of the complaint filed by the Administrative Director of the Courts and the investigation conducted by the Office of Disciplinary Counsel under this rule shall be confidential, except that when a formal charge has been filed with the Clerk of the Supreme Court, all documents filed with the Clerk and the Judicial Hearing Board shall be made available to the public.~~

~~However, Disciplinary Counsel may release information confirming or denying the existence of a complaint or investigation, explaining the procedural aspects of the complaint or investigation, or defending the right of the judge to a fair hearing. Prior to the release of information confirming or denying the existence of a complaint or investigation, reasonable notice shall be provided to the judge.~~

(c) Upon receipt of the report, the Supreme Court shall determine whether probable cause exists to suspend the judge with or without pay pending further judicial disciplinary proceedings. If it is determined that probable cause exists and the judge is suspended, the Court may: (1) direct Disciplinary Counsel to file formal charges with the Clerk of the Supreme Court; and (2) provide notice to the judge of a right to a hearing before the Court on the issue of temporary suspension. The hearing, which consists of the submission of briefs and oral argument, is to be held within 30 days and the judge is provided notice of the hearing not less than 20 days before the proceeding.



(d) After the hearing on the issue of temporary suspension, the Court may suspend the judge with or without pay while the matter is pending until it has been disposed of either by the Court or the Commission.

(e) If the Court does not temporarily suspend the judge it may: (a) order the judge not to hear any further civil or criminal matters or perform other judicial functions during the pendency of the judicial disciplinary matter; and/or (b) dismiss the request upon a finding that such a request for extraordinary relief is not required. A dismissal pursuant to (b) does not prevent the Commission from further consideration of the complaint consistent with Rules 2.2 and 2.7.

(f) Both the details of any complaint received or investigated pursuant to this Rule are bound by the same confidentiality provisions set forth in Rules 2.4 and 2.7.

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## **SECTION II**

### **RULE 3. JUDICIAL HEARING BOARD.**

The ethical conduct of judges is of the highest importance to the people of the State of West Virginia and to the legal profession. Every judge shall observe the highest standards of judicial conduct. In furtherance of this goal, the Supreme Court of Appeals does hereby establish a Judicial Hearing Board [Board] to conduct hearings on formal complaints filed by the Judicial Investigation Commission and to make recommendations to the Supreme Court of Appeals regarding disposition of those complaints. The Judicial Hearing Board is considered an entity that is separate from the Commission.

#### **RULE 3.1. MEMBERSHIP.**

The Board shall consist of nine members: five members of the judiciary including three circuit judges, one magistrate, one family court judge, provided that any members of the judiciary may be senior status; one from the following categories: one mental hygiene commissioner, juvenile referee, special commissioner, special master, or former state or federal judge or justice; ~~state or federal~~, and three members of the public. Initially, the membership of the Board shall consist of the current members of the Judicial Hearing Board, except for the addition of one circuit judge and one mental hygiene commissioner, juvenile referee, special commissioner, or special master, and the deletion of two lawyers.

#### **RULE 3.2. TERMS.**

The members of the Board shall serve staggered terms of three years. The appointment day of the terms shall be filed with the Clerk of the Supreme Court. All members of the Board currently serving as members of the Judicial Hearing Board, other than the lawyer members, shall serve the remainder of their terms. The term and authority of any member of the Board shall be extended to allow such member to participate in any matter in which the member has participated prior to expiration of the member's term.

#### **RULE 3.3. APPOINTMENT.**

The members of the Board shall be appointed by the Supreme Court of Appeals. Members of the Board shall attend an orientation program conducted by the Office of Disciplinary Counsel within six months of appointment.

#### **RULE 3.4. ELIGIBILITY.**

When a circuit judge, magistrate, family court judge, mental hygiene commissioner, juvenile referee, special commissioner, or special master ceases to be a circuit judge, magistrate, family court judge, mental hygiene commissioner, juvenile referee, special commissioner, or special master, or whenever any member becomes otherwise ineligible to hold office, their membership on the Board shall terminate. A member of the Board may be removed by the concurrence of a majority of the Board for an unreasonable failure to perform the member's duties.

#### **RULE 3.5. VACANCIES.**

Whenever a vacancy is to occur due to the expiration of the term of a member of the Board, the Chairperson shall notify the Supreme Court of Appeals sixty days prior to the expiration of the term. Whenever a vacancy occurs on the Board for any other reason, the Chairperson shall notify the Supreme Court of Appeals within thirty days of the vacancy. A vacancy on the Board shall be filled for the unexpired portion of the term for which the original appointment was made. All persons appointed shall continue to serve until their successors are appointed and qualified.

#### **RULE 3.6. REAPPOINTMENT.**

A member of the Board who has completed one full term of service shall twice be eligible for a single reappointment after completion of the member's term. Any member appointed to fill a vacancy who has served less than one year shall be eligible for two reappointments.

#### **RULE 3.7. ELECTION OF OFFICERS.**

The members of the Board shall annually elect a Chairperson and a Vice-Chairperson. The Chairperson, and in the Chairperson's absence the Vice-Chairperson, shall perform the duties normally associated with that office and shall preside over all meetings of the full Board, ruling on all motions, objections, and evidence.

#### **RULE 3.8. QUORUM.**

Five members of the Board shall constitute a quorum. The Board shall act only with the concurrence of a majority of those present and voting.

### **RULE 3.9. COMPENSATION AND EXPENSES.**

All Members of the Board shall be eligible for reimbursement for travel and other expenses incidental to the performance of their duties. Members of the Board who are not judicial officers shall receive per diem compensation of one hundred dollars to be paid by the State from funds appropriated to the judiciary. Any lawyer member shall not be conflicted off any case or controversy before any court in West Virginia by virtue of his or her affiliation with and service on the Board.

### **RULE 3.10. DISQUALIFICATION.**

A member of the Board may not participate as such in any proceeding involving a charge against such member, such member's spouse, or a person within the third degree of relationship to either the member or the member's spouse. The Chief Justice of the Supreme Court of Appeals may make temporary appointments to fill a disqualified member's position in a given proceeding. A member of the Board may not participate as such in any proceeding involving a charge against a judge over whom the member exercises supervisory authority. Board members shall disqualify themselves in any proceeding in which a judge, similarly situated, would be required to disqualify himself or herself.

### **RULE 3.11. AUTHORITY.**

The Board shall have the authority to (1) conduct hearings on formal complaints filed by the Judicial Investigation Commission and make recommendations to the Supreme Court of Appeals regarding disposition of those complaints; (2) propose rules of procedure for judicial disciplinary proceedings for promulgation by the Supreme Court of Appeals; (3) file an annual report with the Supreme Court of Appeals on the operation of the Board; (4) inform the public about the existence and operation of the judicial disciplinary system, the filing of formal charges, and the discipline imposed or recommended on formal charges; (5) delegate, in its discretion, to the Chairperson or Vice-Chairperson, the authority to act for the Commission on administrative and procedural matters; and (6) engage in such other activities related to judicial discipline as it deems appropriate.

### **RULE 3.12. EXCLUSIVE JURISDICTION.**

The Judicial Hearing Board may recommend or the Supreme Court of Appeals may consider the discipline of a judge for conduct that constitutes a violation of the Rules of Professional Conduct. If discipline of a judge for a violation of the Rules of Professional Conduct is deemed appropriate, the Judicial Hearing Board or the Supreme Court of Appeals shall notify the judge and the Lawyer Disciplinary Board and give them an opportunity to be heard on the issue of lawyer discipline, if any, to be imposed. The Judicial Hearing Board shall have exclusive jurisdiction to recommend discipline of a judge for conduct that constitutes a violation of the Rules of Professional Conduct for lawyers.

### **RULE 3.13. CONTRACT ATTORNEY.**

A contract attorney shall be retained to serve as a law clerk for the Judicial Hearing Board. The Board Attorney is not part of the Office of Disciplinary Counsel as set forth in Section III, Rules 5 through 5.6. The attorney shall retain the right to practice law but shall not represent any judge in a judicial disciplinary proceeding while serving as a law clerk to the Board.

#### **RULE 4. HEARINGS ON FORMAL CHARGES.**

Hearings on formal charges shall be conducted by the Judicial Hearing Board. The Judicial Hearing Board, the Office of Disciplinary Counsel, and the respondent may agree to designate a hearing examiner for purposes of conducting a hearing.

##### **RULE 4.1. TIME AND PLACE OF HEARING.**

All discovery matters shall be governed by the Rules of Civil Procedure and shall be completed within ninety days from the date of the filing of formal charges. The Clerk of the Supreme Court of Appeals shall set a hearing before the Judicial Hearing Board on formal charges to be conducted within one hundred twenty days of the filing of formal charges. The Chairperson of the Judicial Hearing Board may also set a prehearing conference prior to the hearing. The Chairperson of the Judicial Hearing Board may extend or shorten periods contained in this rule for good cause shown. Any motion for continuance, discovery material, amendment to pleadings, stipulations of fact, or other document shall be filed with the Clerk of the Supreme Court of Appeals and the Chairperson of the Judicial Hearing Board no later than fourteen days, other than in the case of emergency, prior to the date of the hearing. The Judicial Hearing Board, with the approval of the Administrative Director of the Courts, may conduct hearings at such place or places in the State as it shall be determined will best serve the public interest, not inconsistent with the interests of the complainant and the respondent.

##### **RULE 4.2. NOTICE OF HEARING.**

Within thirty days of the filing of formal charges, notice of the date, time, and place of the hearing shall be served by the Clerk of the Supreme Court of Appeals on the judge and any counsel designated by the judge unless otherwise agreed to by the parties and the Judicial Hearing Board.

##### **RULE 4.3. CONDUCT OF HEARING.**

Except where otherwise provided for by these rules, the provisions of the West Virginia Rules of Civil Procedure and West Virginia Rules of Evidence shall govern proceedings before the Judicial Hearing Board. Hearings conducted by the Judicial Hearing Board shall be open to the public.

##### **RULE 4.4. PRIVILEGE AND IMMUNITY.**

All information provided, documents filed or testimony given with respect to any investigation or proceeding under these rules shall be privileged in any action for defamation. All members of the Board, the Judicial Committee on Assistance and Intervention, The Office of Disciplinary Counsel, and their employees, shall be absolutely

immune from civil suit in the same manner as members of the judiciary in this State for any conduct in the course of their official duties.

#### **RULE 4.5. STANDARD OF PROOF.**

In order to recommend the imposition of discipline on any judge, the allegations of the formal charge must be proved by clear and convincing evidence.

#### **RULE 4.6. SUBPOENA AND CONTEMPT POWER.**

The Judicial Hearing Board shall have power to issue subpoenas or any other lawful process through its Chairperson or the Clerk of the Supreme Court of Appeals. The Chairperson of the Judicial Hearing Board and the Clerk of the Supreme Court of Appeals shall prepare and have available for issuance at the request of any party, subpoenas returnable before the Board for attendance of witnesses or for the production of documentary evidence. Subpoenas and other processes of the Judicial Hearing Board may be served in accordance with the West Virginia Rules of Civil Procedure. The failure of any person without adequate excuse to obey a subpoena or other process of the Judicial Hearing Board shall constitute contempt of the Board. All witnesses shall be entitled to such witness fees and expenses as in any civil proceeding in this State. The Judicial Hearing Board may punish breaches of order and unprofessional conduct in its presence by censure or exclusion from the hearing or may invoke the aid of any circuit court in keeping order. Such court, in case of refusal of any person to maintain order before the Judicial Hearing Board, shall issue an order requiring such person to maintain order. Any failure to obey such order of the court may be punished by such court as contempt thereof. The Judicial Hearing Board may, in its discretion, designate a person to serve as bailiff.

#### **RULE 4.7. RECORD OF HEARINGS.**

Hearings before the Judicial Hearing Board shall be recorded by stenographic, mechanical, or electronic means. Upon request, the judge shall be entitled to a copy of a videotape, audiotape, or transcript of the hearing.

#### **RULE 4.8. RECOMMENDED DISPOSITION BY BOARD.**

Within sixty days after the final hearing or the filing of post-hearing briefs, which shall in no case be permitted more than thirty days after the final hearing, whichever comes later, the Judicial Hearing Board shall file a written recommended decision with the Clerk of the Supreme Court of Appeals. If the hearing was conducted by agreement before a hearing examiner, the examiner shall file a written recommended decision with the Judicial Hearing Board within thirty days after the final hearing or the filing of post-hearing briefs, which shall in no case be permitted more than thirty days after the final hearing, whichever comes later, and the Judicial Hearing Board shall then, within thirty days after the date of the examiner's recommended decision, file its written recommended decision with the Clerk of the Supreme Court of Appeals. The decision shall contain findings of fact, conclusions of law, and a recommended disposition. Prior to the release of information

regarding the recommended disposition, the Clerk of the Supreme Court of Appeals or the Judicial Hearing Board shall provide reasonable notice to the Office of Disciplinary Counsel and the judge of the nature of the decision.

#### **RULE 4.9. RESPONSE TO RECOMMENDED DISPOSITION.**

The Office of Disciplinary Counsel and the judge shall have thirty days after the date of the report within which to file written consent or objection with the Clerk of the Supreme Court of Appeals to the disposition of the formal charge recommended by the Judicial Hearing Board.

#### **RULE 4.10. CONSENT TO RECOMMENDED DISPOSITION.**

If the parties consent to the recommended disposition, the matter shall be filed with the Supreme Court of Appeals for entry of an order consistent with the recommended disposition. If the Court does not concur with the recommended disposition, the Clerk of the Supreme Court of Appeals shall promptly notify the parties, establish a briefing schedule, and notify the parties of the date and time of oral argument or submission of the case without oral argument before the Supreme Court of Appeals. Following oral argument or submission of the case without oral argument, the Court will file an opinion or order disposing of the case. Unless otherwise provided in the Court's opinion or order, any sanction will not take effect until after expiration of the rehearing period or the denial of any petition for rehearing.

#### **RULE 4.11. OBJECTION TO RECOMMENDED DISPOSITION.**

The filing of any objection to the report of the Judicial Hearing Board shall constitute commencement of proceedings to disposition before the Supreme Court of Appeals. The Clerk of the Supreme Court of Appeals shall promptly establish a briefing schedule and shall notify the parties of the date and time of oral argument or submission of the case without oral argument before the Supreme Court of Appeals. Following oral argument or submission of the case without oral argument, the Court will file an opinion or order disposing of the case. Unless otherwise provided in the Court's opinion or order, any sanction will not take effect until after expiration of the rehearing period or the denial of any petition for rehearing.

#### **RULE 4.12. PERMISSIBLE SANCTIONS.**

The Judicial Hearing Board may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a violation of the Code of Judicial Conduct: (1) admonishment; (2) reprimand; (3) censure; (4) suspension without pay for up to one year; (5) a fine of up to \$5,000; or (6) involuntary retirement for a judge because of advancing years and attendant physical or mental incapacity and who is eligible to receive retirement benefits under the judges' retirement system or public employees retirement system. An admonishment constitutes advice or caution to a judge to refrain from engaging in similar conduct which is deemed to constitute a violation of the Code of Judicial Conduct. A reprimand constitutes a severe reproof to a judge who has



engaged in conduct which violated the Code of Judicial Conduct. A censure constitutes formal condemnation of a judge who has engaged in conduct which violated the Code of Judicial Conduct. The extent to which the judge knew or should have reasonably known that the conduct involved violated the Code of Judicial Conduct may be considered in determining the appropriate sanction.

In addition, the Judicial Hearing Board may recommend or the Supreme Court of Appeals may impose any one or more of the following sanctions for a judge's violation of the Rules of Professional Conduct: (1) probation; (2) restitution; (3) limitation on the nature or extent of future practice; (4) supervised practice; (5) community service; (6) admonishment; (7) reprimand; (8) suspension; or (9) annulment.

#### **RULE 4.13. ATTORNEY FEES UPON DISMISSAL.**

Where a judge is exonerated for any reason and formal charges dismissed at any stage of the proceeding, the judge shall be entitled to reasonable attorney fees which shall be paid by the State. In order to be reimbursed for such fees, however, the attorney for the judge must have contacted the Administrative Director of the Courts prior to any services being rendered in order to obtain advance approval of the fee schedule.  
History:

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### **SECTION III**

#### **RULE 5. OFFICE OF DISCIPLINARY COUNSEL.**

The Supreme Court of Appeals does hereby establish an Office of Disciplinary Counsel to prosecute violations of the Code of Judicial Conduct and the Rules of Professional Conduct. The Office of Disciplinary Counsel shall consist of separate Lawyer Disciplinary Counsel and Judicial Disciplinary Counsel. Lawyer Disciplinary Counsel shall be primarily responsible for the investigation of complaints of ethical violations by lawyers. Judicial Disciplinary Counsel shall be primarily responsible for the investigation of complaints of ethical violations by judges. Notwithstanding these primary responsibilities, when circumstances warrant, Lawyer Disciplinary Counsel shall have the authority to investigate and prosecute complaints of ethical violations by judges and Judicial Disciplinary Counsel shall have the authority to investigate and prosecute complaints of ethical violations by lawyers.

##### **RULE 5.1. APPOINTMENT.**

Chief Lawyer Disciplinary Counsel and Assistant Lawyer Disciplinary Counsel employed on the effective date of these rules shall continue to serve in those positions. Judicial Investigation Commission Counsel employed on the effective date of these rules shall continue to serve as Judicial Disciplinary Counsel. The Lawyer Disciplinary Board shall nominate three candidates for selection by the Supreme Court of Appeals of any successor to the current Chief Lawyer Disciplinary Counsel. The Chief Lawyer Disciplinary Counsel shall select any successors to the current Assistant Lawyer Disciplinary Counsel.

The Judicial Investigation Commission shall nominate three candidates for selection by the Supreme Court of Appeals of any successor to the current Judicial Disciplinary Counsel. Judicial Disciplinary Counsel shall select any successors to the current Deputy Judicial Disciplinary Counsel with the concurrence of the Commission.

#### **RULE 5.2. REMOVAL.**

Chief Lawyer Disciplinary Counsel shall not be removed except upon concurrence of the Lawyer Disciplinary Board and the Supreme Court of Appeals. Assistant Lawyer Disciplinary Counsel may be removed by Chief Lawyer Disciplinary Counsel. Judicial Disciplinary Counsel shall not be removed except upon concurrence of the Judicial Investigation Commission and the Supreme Court of Appeals. Deputy Judicial Disciplinary Counsel may be removed by Judicial Disciplinary Counsel with the concurrence of the Commission.

#### **RULE 5.3. PRACTICE OF LAW.**

Disciplinary Counsel shall be admitted to the practice of law in the State of West Virginia upon the effective date of appointment. Disciplinary Counsel shall not engage in the private practice of law.

#### **RULE 5.4. AUTHORITY.**

Disciplinary Counsel shall perform all prosecutorial functions and have the authority to (1) receive complaints concerning violations of the Code of Judicial Conduct and the Rules of Professional Conduct; (2) review all complaints concerning violations of the Code of Judicial Conduct and the Rules of Professional Conduct; (3) investigate information concerning violations of the Code of Judicial Conduct and the Rules of Professional Conduct; (4) prosecute violations of the Code of Judicial Conduct and Rules of Professional Conduct before the Lawyer Disciplinary Board, the Judicial Investigation Commission, the Judicial Hearing Board, and the Supreme Court of Appeals; (5) employ and supervise staff necessary for the performance of prosecutorial functions; (6) notify promptly the complainant and the respondent of the disposition of each matter; (7) notify each jurisdiction in which a lawyer is admitted of the transfer to or from disability, reinstatement, or any public discipline imposed in the State of West Virginia; (8) seek reciprocal discipline when informed of any public discipline imposed in any other jurisdiction; (9) forward a certified copy of the order or judgment of conviction in each jurisdiction in which a lawyer is admitted when the lawyer is convicted of crime reflecting adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (10) maintain permanent records of discipline and disability matters and compile statistics to aid in the administration of the system, including but not limited to a single log of all complaints received, investigative files, statistical summaries of docket processing and case dispositions, transcripts of all proceedings or audiotapes if not transcribed, and other records as the Lawyer Disciplinary Board, Judicial Investigation Commission, Judicial Hearing Board or the Supreme Court of Appeals require to be maintained; and (11) undertake, pursuant to information provided by the Lawyer

Disciplinary Board, Judicial Investigation Commission or the Supreme Court of Appeals, whatever investigations are deemed appropriate.

#### **RULE 5.5. EXPENSES.**

The salaries of Disciplinary Counsel and staff, their expenses, administrative costs, and the expenses of the members of the Lawyer Disciplinary Board, Judicial Investigation Commission, and Judicial Hearing Board shall be paid from funds contributed by the Supreme Court of Appeals and the West Virginia State Bar. The proportion of funds contributed by the Supreme Court of Appeals and the West Virginia State Bar shall approximate the proportion of judicial disciplinary complaints to lawyer disciplinary complaints. The Office of Disciplinary Counsel shall submit an annual budget to the Administrative Director of the Courts detailing the projected revenues and expenses for approval by the Supreme Court of Appeals. An independent audit shall be conducted annually by a certified public accountant of the funds entrusted to the Office of Disciplinary Counsel and a copy of such audit shall be filed with the Administrative Director of the Courts.

#### **RULE 5.6. STATISTICAL REPORTING.**

Chief Lawyer Disciplinary Counsel and Judicial Disciplinary Counsel shall each make a separate ~~monthly~~ annual report to the Clerk of the Supreme Court of Appeals regarding (1) the number of complaints under investigation; (2) the number of complaints pending a probable cause decision; (3) the number of complaints pending a hearing; (4) the number of complaints pending a recommended decision; (5) the number of complaints pending before the Supreme Court of Appeals; (6) the number of complaints filed ~~to-date~~ during the in-the-current calendar year; (7) the number of complaints closed ~~to-date~~ in the ~~current~~ calendar year; (8) the number of complaints in which formal charges have been filed ~~to-date~~ in the ~~current~~ calendar year; (9) the number of complaints pending less than six months; (10) the number of complaints pending more than six months, but less than twelve months; (11) the number of complaints pending more than twelve months, but less than eighteen months; (12) the number of complaints pending more than eighteen months, but less than twenty-four months; and (13) the number of complaints pending more than twenty-four months.

#### **RULE 6. REFERRALS TO THE WEST VIRGINIA JUDICIAL AND LAWYER ASSISTANCE PROGRAM.**

The Judicial Investigation Commission, Judicial Disciplinary Counsel, and/or the Judicial Hearing Board may, ~~at the entity's discretion,~~ provide a referral to the West Virginia Judicial and Lawyer Assistance Program (WVJLAP) of any judge when ~~the Commission, Counsel, or Board has~~ there is a reasonable belief that the alleged misconduct of ~~a~~ the judge is the result of impairment by drugs or alcohol, or by a mental, emotional, or physical condition, including the attendant mental or physical incapacity as a result of advancing years. The Rules set forth herein apply only to: (1) judges referred to WVJLAP by the Commission, Disciplinary Counsel or the Board as permitted by these Rules; and (2) judges who have contacted WVJLAP after receiving notice from the Commission,

Disciplinary Counsel, or the Board of a pending disciplinary complaint but prior to a referral pursuant to these Rules.

#### **RULE 6.1. NOTIFICATION.**

(a) Whenever the Judicial Investigation Commission, Judicial Disciplinary Counsel and/or the Judicial Hearing Board has made the determination to refer a judge to ~~the~~ WVJLAP, it will provide notification in writing to the Executive Director that assistance and intervention have been recommended and will provide to ~~the~~ WVJLAP a copy of any agreement entered into by the Commission or Counsel and the judge or any recommended decision by the Board which concerns referral and treatment.

(b) Whenever the Supreme Court issues a decision that includes a provision that the judge "shall" comply with WVJLAP's recommendations and monitoring program, the Clerk of the Court shall forward a copy to the Executive Director.

#### **RULE 6.2. WVJLAP COMPLIANCE.**

The Executive Director of WVJLAP shall review any referral made pursuant to this Rule. If the Executive Director deems that assistance and intervention is appropriate, the Executive Director will make reasonable efforts to enter into a Monitoring Agreement with the judge and will shall provide a copy of the duly executed agreement to the Judicial Investigation Commission, Judicial Disciplinary Counsel and/or the Judicial Hearing Board. If the Executive Director determines that assistance and intervention is not appropriate, the Executive Director shall report that determination and the reasons therefore in writing to the Judicial Investigation Commission, Judicial Disciplinary Counsel, and/or the Judicial Hearing Board.

#### **RULE 6.3. AUTHORITY.**

The WVJLAP shall have the authority to: (1) receive information concerning any judge pursuant to Canon 2, Rule 2.14 of the Code of Judicial Conduct; (2) refer information not deemed by ~~the~~ WVJLAP as being subject to Canon 2, Rule 2.14 of the Code of Judicial Conduct to the Office of Judicial Disciplinary Counsel to conduct a full investigation; (3) interview the complainant concerning the information filed; (4) interview the judge concerning the information filed; (5) recommend a psychological and/or medical evaluation of the judge if determined by ~~the~~ WVJLAP that such examination is warranted by the information received; (6) recommend a program of rehabilitation based on information received from a psychological and/or medical evaluation; (7) recommend retirement in case of a judge's advancing years and attendant physical or mental incapacity to the Judicial Investigation Commission, Judicial Disciplinary Counsel, and/or the Judicial Hearing Board; (8) conduct a post-rehabilitation review if deemed necessary; or (9) recommend the dismissal of the information as having no basis.

#### **RULE 6.4. CONFIDENTIALITY.**

All information received pursuant to Canon 2, rule 2.14 of the Code of Judicial Conduct shall be filed with the Clerk of the Supreme Court of Appeals and kept confidential. The

Clerk shall serve notice upon the Executive Director of the WVJLAP upon receipt of information concerning a judge and may provide any necessary information to WVJLAP. In the event a judge has not been referred by the Judicial Investigation Commission, Judicial Disciplinary Counsel, or the Judicial Hearing Board, and the judge complies with the recommendations of ~~the~~ WVJLAP and rehabilitative intervention is successful, the WVJLAP shall take no further action and all records shall be sealed and kept confidential. Except as pursuant to Rules 6.5 and 6.6, ~~the~~ WVJLAP shall not release any information regarding its activities.

#### **RULE 6.5. REFUSAL TO COMPLY.**

Refusal by a judge to execute a waiver to grant ~~the~~ WVJLAP access to psychological/medical records shall constitute refusal to comply with ~~the~~ WVJLAP and the Judicial Investigation Commission, Judicial Disciplinary Counsel, and/or the Judicial Hearing Board. In the event a judge otherwise refuses to comply with recommendations of ~~the~~ WVJLAP, it shall be the duty of ~~the~~ WVJLAP to refer the original information received to the Office of Judicial Disciplinary Counsel to conduct a full investigation.

#### **RULE 6.6. FAILURE OF REHABILITATION.**

If after a period of rehabilitation and re-evaluation ~~the~~ WVJLAP finds that rehabilitative measures have not been effective, ~~the~~ WVJLAP shall forthwith file all information received with the Judicial Investigation Commission and/or Judicial Disciplinary Counsel who shall conduct further investigation.

#### **RULE 6.7. EVALUATION EXPENSES.**

All expenses incurred by the judge for psychological and/or medical evaluations not covered by the judge's health care plan shall be the responsibility of the judge.

#### **RULE 6.8. PROCEEDINGS AND PROCESS.**

All proceedings before ~~the~~ WVJLAP shall be nonadversarial. A form for the filing of information pursuant to Canon 2, Rule 2.14 of the Code of Judicial Conduct may be obtained from the Administrative Office of the Courts or Judicial Disciplinary Counsel. The evidence to be considered by the WVJLAP shall include the information filed, interview of complainant, interview of the judge, and psychological and/or medical evaluations. All proceedings shall be confidential. The observations of ~~the~~ WVJLAP shall be in the form of a recommendation only. A judge shall be given ten days within which to accept or reject ~~the~~ WVJLAP's recommendation. It shall be the responsibility of the judge to notify the WVJLAP Executive Director ~~on the WVJLAP~~ in the event of acceptance or rejection of the recommendation.

#### **RULE 6.9. INFORMATION PROVIDED TO DISCIPLINARY AUTHORITIES BY THE WVJLAP.**

The WVJLAP will immediately provide to the Judicial Investigation Commission the following information:

- (a) A referred judge's failure to establish contact with WVJLAP or to enter into a recommended Monitoring Agreement;
- (b) A referred judge's failure to substantially comply with the terms of the Monitoring Agreement entered ~~into~~ by the judge and ~~the~~ WVJLAP; and
- (c) Regular written status updates concerning the judge's compliance with the Monitoring Agreement, and at the successful completion of the Monitoring Agreement, a written recommendation ~~for from the~~ WVJLAP concerning the judge's overall compliance.

#### **RULE 6.10. PERIOD OF LIMITATION FOR FILING INFORMATION.**

Any information filed more than two years after the complainant knew, or in the exercise of reasonable diligence should have known, of the existence of an impairment or incapacity of a judge shall not be considered unless it is determined by ~~the~~ WVJLAP that an impairment or incapacity exists at the time of filing.

#### **RULE 7. MANDATORY CONTINUING JUDICIAL EDUCATION.**

This rule establishes the minimum objective requirements, and the means by which such requirements shall be enforced, to satisfy the obligation of judges, which for purposes of these rules include Justices of the Supreme Court of Appeals, Intermediate Court of Appeals Judges, ~~and~~ Circuit Judges, and Family Court Judges (~~both~~ active, ~~and~~ senior status, and temporary), to continue their judicial education throughout the period of their judicial service.

##### **RULE 7.1. PROGRAM ADMINISTRATION.**

The Administrative Director of Courts is hereby designated as authority to administer the program of mandatory continuing judicial education established by these rules. The Administrative Director is authorized to delegate this authority to a subordinate.

##### **RULE 7.2. COURSE APPROVAL ACCREDITATION OF EDUCATION ACTIVITY.**

The Administrative Director shall have the authority to accredit education activity ~~individual courses and all or portions of the entire mandatory continuing judicial education program~~ which, in the judgment of the Administrative Director, will satisfy the educational objectives of these rules.

##### **RULE 7.3. CREDIT HOURS.**

The Administrative Director shall have the authority to determine the number of credit hours for each accredited course education activity.

##### **RULE 7.4. EXEMPTIONS.**

The Administrative Director shall have the authority to grant conditional, partial, or complete exemptions from the education requirements of these rules on an individual basis in cases of extreme hardship or extenuating circumstances.

##### **RULE 7.5. DISCIPLINARY ACTION.**



The Administrative Director shall initiate appropriate disciplinary action in the Supreme Court of Appeals with respect to any judge who fails to comply with the requirements of these rules.

#### **RULE 7.6. ANNUAL REPORT.**

The Administrative Director shall submit an annual report to the Supreme Court of Appeals of activities regarding mandatory continuing judicial education during the preceding fiscal year, including any recommendations for changes in these rules.

#### **RULE 7.7. PRESUMPTIVELY ~~APPROVED COURSES~~ ACCREDITED EDUCATION ACTIVITY.**

~~Judicial and legal education activities Courses, including videotapes and audiotapes, from the continuing judicial and legal education programs~~ sponsored by the following organizations, are presumptively accredited unless the Administrative Director determines otherwise: (a) the Supreme Court of Appeals; (b) the West Virginia Judicial Association; (c) the National Judicial College; (d) the American Academy of Judicial Education; (e) the National Council of Juvenile and Family Court Judges; (f) the National Center for State Courts; (g) the West Virginia State Bar; (h) the West Virginia University College of Law; (i) the West Virginia Trial Lawyers Association; (j) the West Virginia Bar Association; (k) the Mountain State Bar Association; (l) the West Virginia Tax Institute; (m) the Defense Trial Counsel of West Virginia; (n) the American Bar Association; (o) the Association of Trial Lawyers of America; (p) the American Law Institute - American Bar Association; (q) the Practicing Law Institute; (r) the Defense Research Institute; (s) the National Institute of Trial Advocacy; (t) the Eastern Mineral Law Foundation; and (u) any county bar association in the State of West Virginia.

#### **RULE 7.8. OBTAINING ~~COURSE APPROVAL~~ ACCREDITATION OF EDUCATION ACTIVITY.**

~~Courses~~(A) ~~Continuing judicial or legal education activities~~ sponsored by ~~other~~ organizations ~~other than those listed in Rule 7.7~~ may be accredited by the Administrative Director upon the request of an individual judge in accordance with these rules.

(B) Continuing judicial or legal education ~~programs—activities~~ sponsored by ~~other~~ organizations ~~other than those listed in Rule 7.7~~ may be accredited by the Administrative Director upon request of the organization in accordance with these rules.

#### **RULE 7.9. STANDARDS OF ACCREDITATION.**

To be accredited ~~by the Administrative Director, an course-education activity sponsored by organizations other than those listed in Rule 7.7,~~ shall have significant intellectual or practical content; it shall deal primarily with matter directly related to the performance of judicial duties and/or the practice of law, including judicial ethics and management; it shall be taught by persons who are qualified by practical or academic experience in the subjects covered; and ~~preferably should include the distribution of~~ good quality written

materials pertaining to the subjects covered must be distributed at or before the time the activity is offered.

#### **RULE 7.10. REVOCATION OF ACCREDITED STATUS.**

The Administrative Director may refuse to accredit or change or remove the accredited status of any sponsor which misrepresents the extent to which ~~an~~ course or program education activity is qualified under these rules.

#### **RULE 7.11. DELAYED ACCREDITATION.**

In cases where accreditation could not be reasonably obtained in advance for a given course education activity, an individual judge may request accreditation for a course after attendance has been completed.

#### **RULE 7.12. REIMBURSEMENT OF EXPENSES.**

The procedure for reimbursement of expenses for ~~course attendance~~ of an education activity shall be in accordance with the ~~provisions of the West Virginia Judicial System Personnel Manual relevant policies adopted by the Supreme Court of Appeals of West Virginia.~~

#### **RULE 7.13. FINALITY OF DECISIONS.**

All decisions of the Administrative Director concerning accreditation are final.

#### **RULE 7.14. MINIMUM CONTINUING JUDICIAL EDUCATION REQUIREMENTS FOR ACTIVE JUDGES.**

In order to fulfill the obligation under ~~Canon 3B(2) Rule 2.5 Competence, Diligence, and Cooperation~~ of the Code of Judicial Conduct, which provides, in part, that, ~~'A judge shall be faithful to the law and maintain professional competence in it; "[a] judge shall perform judicial and administrative duties, competently and diligently."~~ every 'judge,' as defined in these rules, shall satisfy the following minimum continuing judicial education requirements.

(A) Active Justices, Intermediate Court of Appeals Judges, and Ceircuit eCourt jJudges: During the period July 1, 1995, through June 30, 1997, and for every two fiscal years thereafter, every active judge shall complete a minimum of thirty credit hours of continuing judicial education, ~~and every senior status judge shall complete a minimum of fifteen credit hours of continuing judicial education, as defined in these rules and approved by the Administrative Director.~~ At least three of such thirty credit hours for active judges shall be taken in courses on education activities addressing judicial ethics and/or management and at least one and one-half credit hours per year or three credit hours per reporting period of such thirty credit hours for active judges shall be taken in courses on education activities addressing domestic relations matters. For purposes of this subsection, "domestic relations" matters include matters relating to child abuse and neglect. ~~and e~~ Every active judge shall attend at least one of the two conferences sponsored by the Supreme Court of Appeals and the West Virginia Judicial Association

~~each fiscal year. At least one and a half of such fifteen credit hours for senior status judges shall be taken in courses on judicial ethics and/or management and at least three-quarters credit hour per year or one and one-half credit hours per reporting period of such fifteen credit hours for senior status judges shall be taken in courses on domestic relations matters, and every senior status judge shall attend at least one of the four conferences sponsored by the Supreme Court of Appeals and the West Virginia Judicial Association each two-year reporting period.~~

~~(B) Senior Status Justices, Intermediate Court of Appeals Judges, and Circuit Court Judges: During the period July 1, 1995, through June 30, 1997, and for every two fiscal years thereafter, every senior status judge shall complete a minimum of fifteen credit hours of continuing judicial education, as defined in these rules and approved by the Administrative Director. At least one and one half of such fifteen credit hours for senior status judges shall be taken in education activities addressing judicial ethics and/or management and at least three-quarters credit hour per year or one and one-half credit hours per reporting period of such fifteen credit hours for senior status judges shall be taken in education activities addressing domestic relations matters. For purposes of this subsection, "domestic relations" matters include matters relating to child abuse and neglect. Every senior status judge shall attend at least one of the four conferences sponsored by the Supreme Court of Appeals and the West Virginia Judicial Association each two-year reporting period. A senior status judge whose authority is limited to the performance of marriages and/or the administration of oaths is not subject to the requirements set forth in this subsection.~~

(C) Family court judges: During the period July 1, 2002, through June 30, 2004, and for every two fiscal years thereafter, every active family court judge shall complete a minimum of thirty credit hours of continuing judicial education, including but not limited to domestic relations matters, as defined in these rules and approved by the Administrative Director. At least three of such thirty credit hours for active family court judges shall be taken in ~~courses on education activities addressing~~ judicial ethics and/or management, and at least eighteen of such thirty credit hours for active family court judges shall be taken in ~~courses on education activities addressing~~ domestic relations law, and every active family court judge shall attend at least ~~one two~~ of the conferences/institutes sponsored by the Supreme Court of Appeals and the West Virginia Family Court Association ~~each fiscal year~~.

~~(D) Senior status family court judges: During the period of July 1, 2024, through June 30, 2026, and for every two fiscal years thereafter, every senior status family court judge shall complete a minimum of fifteen credit hours of continuing judicial education, including but not limited to domestic relations matters, as defined in these rules and approved by the Administrative Director. At least one and a half of such fifteen credit hours for senior status family court judges shall be taken in be taken in education activities addressing judicial ethics and/or management, and at least nine of such fifteen credit hours for active senior status family court judges shall be taken in be taken in education activities addressing domestic relations law, and every senior status family court judge shall attend~~

at least one of the conferences/institutes sponsored by the Supreme Court of Appeals and the West Virginia Family Court Association each two-year reporting period.

(E) Active circuit court judges, senior status judges and active family court judges must meet the minimum continuing judicial education requirements set forth in Rule 7.14 to be assigned to serve temporarily as family court judges, pursuant to W. Va. Code, 51-2A-19(a) and (b) [2001].

(F) Persons who previously served as family court judges must have completed a minimum of twenty-four continuing legal or judicial education credits, including at least four and one-half credit hours per year, or at least nine credit hours per reporting period in education activities addressing courses on domestic relations matters, and at least three credit hours in education activities addressing courses on legal ethics, office management, or substance abuse within The West Virginia State Bar's last twenty-four-month reporting period for continuing legal education, to be assigned to serve temporarily as family court judges, pursuant to W. Va. Code, 51-2A-19(c) [2001]."

#### **RULE 7.15. REPORTING.**

(A) On or before July 31, 1997, and every other July 31 thereafter, each ~~judge active and senior status Justice, Intermediate Court of Appeals Judge, and Circuit Court Judge~~ must file with the Administrative Director, a report of completion of minimum mandatory continuing judicial education. ~~The reporting form shall be developed and provided to judges by the Administrative Director.~~

(B) On or before July 31, 2004, and every other July 31 thereafter, each active and senior status family court judge must file with the Administrative Director, a report of completion of minimum mandatory continuing judicial education.

(C)

#### **RULE 7.16. MINIMUM CONTINUING JUDICIAL EDUCATION REQUIREMENTS FOR NEW JUDGES ~~AND TEMPORARY FAMILY COURT JUDGES.~~**

(A) ~~New judges:~~ Any judge who assumes office during the first twelve months of any twenty-four-month reporting period is required to complete fifteen credit hours in approved courses accredited education activities, including at least three credit hours in judicial ethics and/or management, before the end of the current reporting period. Any judge who assumes office during the second twelve months of any twenty-four-month reporting period is exempt for that entire reporting period.

(B) ~~Temporary family court judges:~~

#### **RULE 7.17. OBTAINING CREDITS.**

Judges may obtain credit for purposes of the mandatory continuing judicial education requirements established by these rules as follows:

~~(1A)~~ ~~One~~ credit hour for purposes of the mandatory continuing judicial education requirements established by these rules shall be given for each period of fifty minutes of instruction in an accredited course attendance to an accredited, live education activity or to an accredited education activity conducted via a simultaneous electronic synchronous broadcast during which attendees are able to have questions answers through synchronous or asynchronous digital media;

~~(2B)~~ ~~One~~ credit hour may be obtained for each period of fifty minutes of ~~videotape or audiotape pre-recorded~~ instruction, provided that such ~~videotape and/or audiotape recording~~ is accredited by the Administrative Director;

~~(3C)~~ ~~no~~ more than half of the mandatory continuing judicial education requirements may be satisfied by videotape and/or audiotape recorded instruction;

~~(4D)~~ ~~five~~ credit hours may be obtained during a reporting period for the teaching of an accredited course education activity, with one credit hour given for each twenty-five minutes of instruction or participation in a panel discussion; and

~~(5E)~~ thirty credit hours may be obtained during a reporting period for the following forms of publication, including, but not limited to, publishing an article in the law review of an ABA-accredited law school (including an online law review or journal), publishing an article in the official publication of the state bar, authorship or co-authorship of a book, contribution of a paper published in a judicial or legal society's annual, hardbound collection, publication of an article in a bar journal in another state, and contribution through either editing or authorship to periodic newsletters designed to serve the interests of specialists. Based upon these standards, sponsors of accredited ~~courses given education activities conducted~~ in West Virginia shall include with their ~~course~~ materials a statement that, "This course or program education activity qualifies for \_\_\_\_\_ credit hours under the Rules of Judicial Disciplinary Procedure or the Rules for Mandatory Continuing Judicial Education."

#### **RULE 7.18. RETROACTIVE CREDIT.**

A judge who has not complied with the mandatory continuing judicial education requirements by June 30 may thereafter obtain credits to be carried back to meet the requirements of the preceding two-year reporting period. Any credit obtained, however, may only be used to satisfy the mandatory continuing judicial education requirements for one reporting period.

#### **RULE 7.19. TRANSFER OF CREDIT.**

With the approval of the Administrative Director, a judge may transfer any accumulated credit within a reporting period under the West Virginia Rules to Govern Mandatory Continuing Legal Education State Bar Administrative Rules to satisfy the requirements of these rules.

#### **RULE 7.20. NONCOMPLIANCE AND SANCTIONS.**

Noncompliance with the reporting or minimum continuing judicial education requirements of these rules may be deemed a violation of ~~Canon 3B(2)~~ Rule 2.5 of the Code of Judicial Conduct and may result in the imposition of discipline in accordance with these rules. As soon as practicable after July 1, the Administrative Director shall notify all judges who are not in compliance with the reporting or minimum continuing judicial education requirements of these rules of the specific manner in which the judge has failed, or appears to have failed, to comply with these rules. Any judge shall have until October 31 to correct such noncompliance or provide the Administrative Director with proper and adequate information to establish that such member is in compliance with these rules. As soon as practicable after October 31, the Administrative Director shall give notice, by certified or registered mail, to any judge who has not established compliance with these rules for the preceding two year reporting period that after thirty days, the Administrative Director will notify the Supreme Court of Appeals of such fact and request the Court to impose such sanctions as are deemed appropriate.

#### **RULE 7.21. RIGHT TO HEARING.**

During the thirty~~-~~day period after the date of notice of the Administrative Director pursuant to Rule 7.20, any judge having received such notice may demand a hearing before the Supreme Court of Appeals. Any such hearing shall be conducted within a reasonable time after receipt of the demand. At such hearing, the judge shall have the burden of establishing that either (a) he or she is in compliance with the requirements of these rules or (b) he or she is entitled to an exemption. In the event such burden is not carried, the Supreme Court of Appeals may impose such sanctions, under these rules, as are deemed appropriate.