

## **Amendment to Delaware Court on the Judiciary Rules**

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For a long time, Delaware has been unique in having as an aspect of its system of judicial discipline, a process in which a sole judicial officer, the Chief Justice, is expected to review incoming complaints and dismiss those that do not state a proper claim. In many bigger states, more elaborate procedures exist, consistent with the greater resources available to them to address claims. Delaware's approach has generally served it well, especially because our Judiciary is appointed, after screening by a bipartisan Judicial Nominating Commission. For these reasons, the concerns about interest group influence and politicization of judicial decision-making that exist in many other states are either non-existent in Delaware, or at the very least, far less prevalent. Not only that, but Delaware Judicial officers serve 12 year-terms and must face the scrutiny of the JNC before re-nomination by the Governor and confirmation by the Senate to another term.

Nonetheless, some have raised concerns about having an individual judicial officer act to screen complaints in Delaware, and those concerns have been taken seriously. Because a single judicial officer is by definition single, actions by a single judge do not reflect the bipartisan composition of our Judiciary. Although there is no basis to conclude that the political party of any Chief Justice has influenced the Court on the Judiciary dismissal process in any case, ever, a perception problem could be thought to exist. More important, though, is the pressure that the single judge approach places on the judge and the staff who advise him to be accurate, while lacking the benefit of input and review by other judicial colleagues.

For these reasons, an evolution of the Court on the Judiciary's dismissal practice was thought useful. Instead of having complaints be subject to dismissal by the Chief Justice alone, complaints will be subject to dismissal by a panel of three Justices. By this means, the bipartisan composition of the Delaware Judiciary will be brought to bear at all stages of the proceeding. And, as important, this collaborative approach will ensure that the judgment of three Justices is brought to bear on the important question of whether a complaint against a judicial officer states a claim under the Delaware Judges' Code of Judicial Conduct. This evolution is a useful step that increases the accuracy and reliability of the Court on the Judiciary process without adding undue cost.

This change combines with other recent actions — such as improving public access to the Court on the Judiciary and its decisions through the creation of a website that includes the Court’s Rules, procedures, forms, and summaries of important decisions — to improve the Court on the Judiciary’s ability to serve its critical function and to provide the public with more up-to-date and complete information about its decisions and way of doing business.

Consistent with the objective of providing full disclosure of important policies, the specific changes to the Court on the Judiciary Rules are as follows:

- Rule 5.1(b) was amended to require the unanimous approval of the Chief Justice and two other Justices of the Supreme Court before a petitioner’s complaint against a judicial officer can be dismissed without further proceedings.
- Rule 6(a) was amended to reflect that a judicial officer does not have a right to counsel until a complaint is referred to a panel of the Preliminary Investigatory Committee.
- Rule 6(b) was amended to state that a lawyer who represents a judicial officer in a disciplinary action may, but is not required to, serve as counsel on a pro bono basis if the Court does not have funds available to pay the lawyer.
- Rule 8 was amended to allow the Court on the Judiciary to consider a complaint that previously was dismissed but only to determine if the judicial officer has engaged in a pattern of misconduct

The Court on the Judiciary Rule Amendments are available on the [Rules of the Delaware State Courts website](#). Any questions may be directed to William S. Montgomery, Supreme Court Administrator, at [William.Montgomery@state.de.us](mailto:William.Montgomery@state.de.us).