

Last amended effective March 6, 2018

## **COURT ON THE JUDICIARY**

### **RULES OF PROCEDURE**

#### **RULE 1. SCOPE OF RULES**

These Rules of Procedure implement the purpose and powers of the Court on the Judiciary as stated in the Delaware Constitution, Article IV, § 37.

#### **RULE 2. CLERK**

The Court shall designate a Clerk of the Court and may designate one or more Deputy Clerks, who shall have the authority to administer oaths or affirmations and such additional powers as the Court shall prescribe.

#### **RULE 3. PRELIMINARY INVESTIGATORY COMMITTEE**

##### **(a) Membership.**

(1) There shall be a Preliminary Investigatory Committee consisting of 12 members who shall be appointed by the Chief Justice with the concurrence of a majority of the members of the Court. At least 8 members of the Committee shall be members of the Bar of the State of Delaware and 4 members shall be non-lawyer residents of the State. The powers of the Committee may be exercised by a panel consisting of one, two or three members as the Chief Justice shall determine in each case; provided, however, if the Chief Justice shall designate a panel of more than one person, that panel shall have at least one person who is not a member of the Delaware Bar. A panel may engage in such investigative assistance as it deems necessary, with the prior approval of the Chief Justice.

(2) Members of the Committee shall be appointed for a term of up to four years. No member shall be appointed to serve for more than two (2) consecutive terms.

(3) If a member of a Panel shall be disqualified or unable to act promptly in a specific case because of illness, absence from the State, or other reason, the Chief Justice may replace the member with another Committee member or may appoint a member of the Delaware Bar or a non-lawyer resident of the State as a substitute member pro tempore.

Last amended effective March 6, 2018

**(b) Purpose and Function.** The Panel shall investigate any matter within the jurisdiction of the Court that is referred to it in writing by the Chief Justice. A judicial officer whose conduct has been called into question may request such a referral by the Chief Justice.

**(c) Panel Assignments.** Panels shall be selected on a rotating basis whenever possible. Panels shall be designated by the Chief Justice to investigate and report on any charge of misconduct or disability involving any judicial officer within the jurisdiction of the Court. The Chief Justice shall appoint a member of each Panel as Chair of that Panel.

#### **RULE 4. GROUNDS FOR DISCIPLINE AND SANCTIONS**

The grounds for discipline and sanctions are as set forth in Article IV, § 37 of the Delaware Constitution.

#### **RULE 5. COMPLAINT**

**(a) Contents.** A complaint shall (i) bear the complainant's original signature, (ii) set forth the complainant's address, and (iii) name the judicial officer involved. A complaint shall also state with particularity the facts upon which the complainant relies for the complainant's charge that a judicial officer has engaged in (i) wilful misconduct in office; (ii) wilful and persistent failure to perform duties; (iii) the commission after appointment of an offense involving moral turpitude, or (iv) other persistent misconduct in violation of the Delaware Judges' Code of Judicial Conduct. The complainant shall attach to the complaint any transcript or other documentation from the court record that is necessary to give the Court on the Judiciary a fair and accurate account of the context in which the alleged misconduct or disability occurred.

**(b) Verification.** The complaint shall be executed by oath or affirmation under penalty of perjury before a notary public or other person authorized to administer such oath or affirmation.

#### **RULE 5.1. INITIAL REVIEW BY CLERK AND REVIEW BY THE CHIEF JUSTICE**

**(a) Initial Review.** Each complaint shall be received by the Clerk for initial review of its conformity with Rule 5. A complaint that the Clerk

Last amended effective March 6, 2018

determines does not comply with the requirements of Rule 5(a) or (b) shall be returned by the Clerk to the complainant with a letter of explanation. A copy of the letter of explanation and the nonconforming complaint shall be maintained by the Clerk. The original of each conforming complaint shall be docketed by the Clerk who shall provide written acknowledgement of docketing to the complainant. The Clerk shall provide the Chief Justice with a copy of each conforming complaint.

**(b) Sua Sponte Dismissal.** The Chief Justice, with the unanimous agreement of a Panel of the Supreme Court, may decline to refer to a Panel of the Preliminary Investigatory Committee, and may dismiss by written order, sua sponte, any complaint that fails to comply with Rule 5(a) or (b) or that, upon consideration of its contents and the attachments required by Rule 5(a), is (1) frivolous, (2) lacking in good faith, (3) based upon a litigant's disagreement with the ruling of a judge, or (4) properly a matter subject to appellate review. A copy of the dismissal order shall be provided to the complainant, the judicial officer, and to the Court.

**(c) Referral to Panel.** If the complaint is not dismissed under subsection (b), the Chief Justice shall enter a referral order designating the members of the Panel. The Clerk shall transmit a copy of the referral order to the Panel, the judicial officer involved, and the complainant.

## **RULE 6. RIGHT TO COUNSEL**

(a) The judicial officer shall be entitled to retain counsel and to have the assistance of counsel upon the referral of a complaint to a Panel of the Preliminary Investigatory Committee. The right to counsel at public expense is governed by subpart (b) of this rule.

(b) The fees and reasonable expenses of counsel for the judicial officer shall be compensated in the discretion of the Court, but only to the extent that funds are available for that purpose. In the absence of funds, counsel may serve on a pro bono basis where counsel is willing and able to serve in that capacity.

## **RULE 7. PANEL REVIEW AND INVESTIGATION**

**(a) Finding of No Jurisdiction.** If the Panel concludes that the complaint does not allege misconduct or disability of a judicial officer of the kind stated

Last amended effective March 6, 2018

in the Constitution, the Panel shall so notify the Clerk, in writing, within 20 days after the Clerk's referral of the complaint to the designated Panel.

**(b) Investigation.** If the Panel determines that the complaint does allege misconduct or disability of a judicial officer of the kind stated in the Constitution, the Panel shall so notify the Clerk, in writing, within 20 days after the Clerk's referral of the complaint to the Panel, which shall then preliminarily investigate the allegations to determine the essential facts of the matter prima facie. The Panel shall notify the judicial officer of the investigation and shall afford the judicial officer a reasonable opportunity to appear informally or to otherwise present to the Panel such matters as the judicial officer may choose. The Panel shall afford the complainant a reasonable opportunity to appear informally before a member of members of the Panel and to present orally or in writing such evidence as is relevant to the subject matter of the complaint. Except for good cause shown to the Chief Justice, no stenographic or electronic record will be made of the Panel proceedings. The Panel may direct the judicial officer to file a written response to the complaint. The response must be detailed, alleging all defenses and explanations with particularity, and containing specific references to pertinent court rules, practices, or provisions of the Delaware Judges' Code of Judicial Conduct. The Panel may deem failure to comply with the Panel's direction within 15 days to be an admission of the facts alleged in the complaint.

**(c) Report.** The Panel shall, within 40 days of referral under Rule 5(c), file a written report as to each complaint within the Court's jurisdiction. The report shall find whether there is probable cause to believe that the judicial officer may be subject to sanction or retirement or shall recommend discipline by consent under Rule 12. If the Panel finds that there is probable cause, it shall indicate the provision of the Delaware Judges' Code of Judicial Conduct found to have been violated and the factual basis for the charge. This requirement shall be fulfilled in every case, including any case in which the complaint has been withdrawn.

## **RULE 8. DISPOSITION OF PANEL REPORT**

**(a) Dismissal by Chief Justice.** If the Panel report concludes that the complaint does not allege misconduct or disability of the kind stated in the Constitution or, after investigation, does not find probable cause to proceed, a copy of the report shall be delivered by the Clerk to the Chief Justice within

Last amended effective March 6, 2018

10 days for review and action. The Chief Justice shall either dismiss the complaint or shall take further action, *sua sponte*, as outlined in paragraph (b) hereof. If the Chief Justice dismisses the complaint, the Clerk shall promptly deliver a copy of the order of dismissal and the Panel's report to the complainant, to the judicial officer, to the Panel, and to the Court. If a complaint has been dismissed, the allegations made in that complaint shall not be used for any purpose in any judicial or lawyer disciplinary proceeding against the judicial officer, except that a dismissed complaint (whether dismissed *sua sponte* or dismissed after a Panel report) may be considered to determine if the judicial officer has engaged in a pattern of misconduct. If additional information becomes known regarding a complaint that has been dismissed, the allegations may, upon referral by the Chief Justice, be reinvestigated by a newly designated Panel.

**(b) Finding of Probable Cause.** If the Panel finds that there is probable cause to believe that the judicial officer may be subject to sanction or retirement, or if the Chief Justice, *sua sponte*, determines that the record includes a basis for such action, the Clerk shall deliver a copy of the Panel's report and a copy of any such determination by the Chief Justice to the Court, to the judicial officer, and to the complainant.

**(c) Discipline by Consent.** If the Panel recommends discipline by consent under Rule 12, the proceeding shall be governed by Rule 12.

**(d) Action without Board.** If the judicial officer shall have admitted the misconduct or disability reported by the Panel but shall not agree to discipline by consent under Rule 12, the report of the Panel shall be considered directly by the Court under Rule 15.

## **RULE 9. BOARD OF EXAMINING OFFICERS**

**(a) Appointment.** Upon receipt of a Panel's report finding probable cause or a determination by the Chief Justice as provided in Rule 8(b), the Court shall appoint a Board of 1 or more Examining Officers for the case unless the case is presented directly to the Court under Rule 8 or Rule 12. Each Examining Officer shall be an active or retired State judge. If more than one Examining Officer is appointed, a member of the Board shall be designated by the Chief Justice as Chair. The Clerk shall deliver a copy of the Panel's report to each Board member.

Last amended effective March 6, 2018

(b) **Powers.** Except as otherwise provided herein, the Board shall have all the powers of a Master in the Court of Chancery as set forth in Court of Chancery Rules 136 and 137.

## **RULE 10. FORMULATION AND PRESENTATION OF CHARGES**

(a) **Show Cause Order.** After appointment under Rule 9, the Board shall issue a show cause order why the judicial officer should not be sanctioned or retired. The order shall include a copy of the Panel's report or of the Chief Justice's sua sponte determination, and shall state the time and place of the hearing. The hearing shall be held at the earliest practicable time within 90 days of the Board's appointment. The order shall be served upon the judicial officer promptly. A copy of the order shall be filed with the Court. The order shall be substantially in the form attached hereto as Exhibit A.

(b) **Service of Show Cause Order.** Service upon the judicial officer of the show cause order shall be made by personal service upon the judicial officer or the judicial officer's attorney by any person authorized by the Board, or by certified mail to the judicial officer.

(c) **Appointment of Presenting Counsel.** The Board shall promptly appoint a presenting counsel who shall conduct an investigation and present evidence on the formal charges. Presenting counsel shall maintain confidentiality insofar as practicable and shall advise all persons interviewed of the requirement of confidentiality.

(d) **Judicial Officer's Answer.** The judicial officer shall file with the Board an answer to the order within 15 days after service thereof. The response must be detailed, alleging all defenses and explanations with particularity and containing specific references to pertinent court rules, practices, or provisions of the Delaware Judges' Code of Judicial Conduct. A copy of the answer shall be filed with the Court.

## **RULE 11. SERVICE AND FILING OF PAPERS**

(a) **Filing of Papers with Court.** The original of every paper filed with the Court shall be filed with the Clerk or with a Deputy Clerk in any county. Filing by mail is permissible, provided that filing shall not be deemed complete until the paper has been received by the Clerk or Deputy Clerk. Whenever copies of a paper should be before the individual members of the

Last amended effective March 6, 2018

Court, the copies may be filed with the original paper or, upon notice to the Clerk, provided to each member of the Court at the member's office.

**(b) Filing of Papers with Board.** Every paper filed with the Board shall be filed directly with each member of the Board, with notice only of the filing provided to the Clerk, unless otherwise provided in these Rules. Filing by mail is permissible, provided that filing shall be complete when the paper is received by the Board.

**(c) Service of Papers.** Service of all papers may be by personal service or by mail. Personal service includes delivery to a clerk or other responsible person at the office of the attorney. Service by mail is complete upon mailing.

**(d) Proof of Service.** Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and the name of the person served, certified by the person who made the service. Proof of service may appear on or be affixed to the papers filed.

## **RULE 12. DISCIPLINE BY CONSENT**

**(a) Approval.** At any time after the filing of a complaint or after a matter is referred to a Panel and before final disposition, the judicial officer may agree to admit to any or all of the allegations in exchange for a stated sanction. If the agreement is with the Panel or the Board, the agreement shall be submitted to the Court within 10 days.

**(b) Rejection of Sanction.** The Court shall accept or reject the stated sanction within 30 days. If the stated sanction is rejected by the Court, the admission shall be withdrawn and cannot be used against the judicial officer in any proceedings. The complaint or matter shall be referred back to the Panel or Board for further proceedings and no other stated sanction agreement shall be submitted to the Court.

**(c) Affidavit of Consent.** A judicial officer who consents to a stated sanction shall sign an affidavit stating that:

- (1) allegations of misconduct are pending;
- (2) the judicial officer consents to the stated sanction; and
- (3) the consent is freely and voluntarily rendered.

**(d) Order of Discipline.** The designated Panel or the Board shall file the affidavit with the Court. Any final order of discipline in such case shall be based upon the affidavit of consent.

### **RULE 13. HEARINGS BEFORE THE BOARD**

**(a) Quorum.** A quorum of the Board of Examining Officers shall consist of all its members.

**(b) Discovery.** Discovery shall not be taken except as the Board may allow for good cause shown.

**(c) Duty of Disclosure.** Presenting counsel shall disclose to the judicial officer any material evidence that the presenting counsel believes could be considered favorable to the judicial officer.

**(d) Subpoenas.** At the written request of either the judicial officer or presenting counsel, the Clerk shall issue a subpoena to compel the attendance of witnesses and the production of pertinent books, documents, or other tangible things at the hearing. A subpoena shall be substantially in the form attached hereto as Exhibit B.

**(e) Failure to Appear.** The Board shall not continue or delay the proceedings because of a judicial officer's failure to appear without good cause. The Board may deem the non-appearing judicial officer to have admitted the factual allegations which were to be the subject of such appearance, to have conceded the merits of any motion or recommendation to be considered at such appearance, and to have waived the right to contest any action taken by the Board in the judicial officer's absence.

**(f) Rules of Evidence.** The Delaware Uniform Rules of Evidence shall apply.

**(g) Proof and Confrontation.** Charges of misconduct, or charges of disability under Rule 16, shall be established by clear and convincing evidence. The burden of persuasion is on presenting counsel except where otherwise provided in these rules. The judicial officer shall have the right to examine and cross-examine all witnesses and shall have all other rights required by due process of law.



Last amended effective March 6, 2018

**(h) Oath or Affirmation.** All testimony shall be under oath or by affirmation.

**(i) Proposed Findings, Conclusions, and Recommendations.** The judicial officer and the presenting counsel may submit proposed findings, conclusions, and recommendations to the Board.

**(j) Transcript.** Subject to Rule 19(j), a transcript of the hearing shall be prepared and the judicial officer and presenting counsel shall be entitled to copies.

#### **RULE 14. REPORT OF THE BOARD OF EXAMINING OFFICERS**

**(a) Draft Report.** At the earliest practicable time, but not later than 30 days after submission, the Board shall prepare a draft report with proposed findings of fact and conclusions of law as to the alleged misconduct or disability and a proposed recommendation as to disposition by the Court.

**(b) Service of Draft Report.** A copy of the draft report shall be served upon the judicial officer and the presenting counsel. The draft report shall not be filed with the Court; however, proof of service of the draft report shall be filed with the Clerk.

**(c) Objections.** Within 10 days of service, the judicial officer and presenting counsel may file with the Board, and serve on each other, any statement or objection to the draft report. Any statement or objection should not be filed with the Court. Within 20 days of the service of the draft report, the Board shall file its final report with the Court, together with proof of service of the final report upon the judicial officer and presenting counsel.

#### **RULE 15. PROCEEDINGS IN THE COURT ON THE JUDICIARY**

**(a) Finding of No Misconduct.** If the final report of the Board or Panel does not report misconduct or disability, filing of the report shall conclude the matter, and an order shall be entered thereupon dismissing the complaint unless the Court, *sua sponte*, shall require further proceedings.

**(b) Finding of Misconduct.** If the final report of the Board or Panel reports misconduct or disability, or if the Court determines, *sua sponte*, to proceed further, the following procedures shall apply:

(1) *Appointment of Attorney to Uphold Report.* The Court shall designate an attorney to uphold the report or the Court's determination to proceed sua sponte; the attorney shall be the attorney, if any, who presented the case before the Board, unless the Court, sua sponte, or upon motion for good cause shown, orders another member of the Delaware Bar to uphold the report.

(2) *Exceptions to Final Report.* Within 10 days of service, the judicial officer and presenting counsel may file exceptions to the final report, whether or not such exceptions were filed with the Board.

(3) *Briefing and Argument.* If the exceptions raise no material issues of disputed fact, and raise only issues of law, the Court shall enter an order scheduling briefing and argument on the report under the practices and procedures of the Delaware Supreme Court.

(4) *Hearing.* The Court shall hold a hearing and take evidence with respect to all disputed issues of material fact identified in the exceptions to the report. The parties may present any relevant evidence at the hearing, regardless of whether that evidence was presented to the Board or Panel, and the procedures established in Rule 13 shall control the conduct of the hearing. The Chief Justice, or in his absence or disqualification, the Senior Justice, shall be the presiding judge and shall make all evidentiary rulings. The Court shall consider the evidence *de novo* as to all disputed issues of material fact and shall make its own findings of fact and conclusions of law.

(5) *Final Disposition.* At the earliest practicable time, the Court shall file a written opinion and order disposing of the case. The affirmative concurrence of not less than two-thirds of the members of the Court shall be necessary for the imposition of any sanction. If the Court finds that the judicial officer has violated the Delaware Judges' Code of Judicial Conduct, but that the violation was not wilful or persistent, the Court's finding may be considered in later disciplinary proceedings on the issue of whether other alleged misconduct by the judicial officer was wilful or persistent and on the issue of sanction.

(6) *Transmission of Opinion and Order.* Copies of the Court's written opinion and order shall be transmitted forthwith, and in no event later than 10 days, to the judicial officer, the presenting counsel, the complainant, the Panel, and the Board. A certified copy of an order of suspension, removal or

Last amended effective March 6, 2018

retirement shall be transmitted by the Court to the Governor, the State Treasurer, the Office of Disciplinary Counsel of the Delaware Supreme Court and any other official the Court may deem to be directly concerned.

## **RULE 16. PROCEEDINGS INVOLVING ALLEGED DISABILITY**

### **(a) Inability to Properly Defend.**

(1) If a judicial officer claims, in the course of a disciplinary proceeding, that the judicial officer is unable to assist in the judicial officer's defense due to mental or physical disability, the Court shall immediately suspend the judicial officer pending determination of the claim. The validity of the claim shall be initially determined by the Board, and if a Board has not already been appointed, the Court shall appoint a Board under Rule 9(a) to hear and report on the claim. The Court shall finally determine the validity of the claim after briefing, argument and any factual hearing, if necessary, pursuant to Rule 15.

(2) If the Court determines that the claim of inability to defend is valid, the disciplinary proceedings shall be deferred and the judicial officer shall remain suspended until further order of the Court.

(3) If the Court determines that the claim of disability to defend is invalid, the disciplinary proceedings shall resume and the judicial officer shall remain suspended until otherwise ordered by the Court.

**(b) Commitment or Adjudication.** If a judicial officer has been judicially declared mentally disabled or is committed on the grounds of mental disability, the Court, upon proper proof of the fact, may enter an order immediately suspending the judicial officer until further order of the Court. A copy of the order shall be served upon the judicial officer, the judicial officer's guardian, and the director of the institution to which the officer has been committed.

**(c) Proceedings to Determine Disability.** Written complaints of disability as stated in the Constitution shall be investigated by the Panel as provided for in misconduct cases and shall be the subject of formal proceedings as provided in these rules. The Panel may take or direct whatever action it deems necessary or proper to determine whether the judicial officer is disabled, including the examination of the judicial officer by a qualified psychiatric or psychological expert designated by the Panel. Any pending

disciplinary proceedings against the judicial officer shall be held in abeyance. The judicial officer must be represented by counsel. If the judicial officer is not represented by counsel of the judicial officer's own choosing, the Court will appoint counsel for the judicial officer.

**(d) Stipulated Disposition.**

(1) At any stage of the proceedings after the receipt of one or more reports by qualified psychiatric or psychological experts, the Panel and the judicial officer may agree upon proposed findings of fact and conclusions of law. A stipulated disposition may then be submitted to the Court for approval.

(2) If the Court accepts the stipulated disposition, it shall enter an order in accordance with its terms. If the stipulated disposition is not approved by the Court, it shall be withdrawn and cannot be used against the judicial officer in any proceedings. If the Court does not approve the stipulated disposition, the Panel shall proceed to complete its investigation.

**(e) Relief from Disability Suspension.**

(1) Any judicial officer suspended under the above subdivisions by reason of disability shall be entitled to petition for relief from suspension. The petition shall be granted by the Court upon a showing by clear and convincing evidence that the judicial officer is able to perform properly the duties of the office.

(2) Upon the filing of a petition for relief from suspension, the Court may take or direct whatever action it deems necessary or proper, including a reference to a Panel for investigation and recommendation, and may order an examination of the judicial officer by qualified experts designated by the Court or by the Panel. In its discretion, the Court may direct that the expenses of the examination be paid by the judicial officer.

(3) If a judicial officer who has been suspended under subdivision (b) is judicially declared not to be disabled, the Court may terminate the suspension without further evidence under terms that the Court deems appropriate.

**(f) Waiver of Physician and Psychotherapist-Patient Privilege.** The filing of a petition for relief from suspension shall be deemed to constitute a waiver of any physician and psychotherapist-patient privilege with respect to

Last amended effective March 6, 2018

any treatment of the judicial officer during the treatment of the judicial officer's disability. The judicial officer shall be required to disclose the name of each psychiatrist, psychologist, physician, hospital or other institution by whom or in which the judicial officer has been examined or treated for such disability. The judicial officer shall furnish to the Panel and to the Court written consent to each doctor to release information and records relating to the disability if requested by the Panel or the Court or court-appointed medical experts.

**(g) Mental Illness as a Defense.** Mental illness is a complete defense to charges of misconduct of a judicial officer that otherwise would warrant disciplinary action if such conduct was the result or consequence of mental illness. The burden of persuasion of this defense, in all its aspects, is upon the judicial officer. If the judicial officer is able to sustain the burden of persuasion before the Board as to the judicial officer's mental illness as of the time of the conduct of which the complaint is made, but is unable to prove recovery, and the Board has reason to believe such recovery is probable within a reasonable time, the Board will recommend to the Court that the judicial officer be suspended until such time as the judicial officer can prove such recovery; otherwise the Board shall recommend the judicial officer's retirement.

## **RULE 17. CONFIDENTIALITY**

All records and proceedings of the Panels of the Preliminary Investigatory Committee shall be private and confidential and shall not be subject to production in any later proceedings before any tribunal except future proceedings involving the respondent in the Court on the Judiciary where such prior proceedings may be relevant. All hearings and proceedings of the Board and the Court shall be private and all records, except a final order of suspension, removal, or retirement shall be confidential, unless the Court shall otherwise order on request of the judicial officer involved.

## **RULE 18. JUDICIAL ETHICS ADVISORY COMMITTEE**

**(a) Membership.** The Chief Justice shall appoint a Judicial Ethics Advisory Committee consisting of seven members. One member shall be appointed from each of the following courts: Court of Chancery; Superior Court; Family Court; Court of Common Pleas; and Justice of the Peace Court. No member of the Court on the Judiciary shall be appointed. The Chief

Last amended effective March 6, 2018

Justice shall designate the chair, vice-chair and secretary. Members shall serve three-year terms; terms shall be staggered; and no individual shall serve for more than two consecutive terms. The Chief Justice shall designate a Justice of the Delaware Supreme Court to serve as the administrative liaison between the Court on the Judiciary and the Judicial Ethics Advisory Committee.

**(b) Functions.** The Judicial Ethics Advisory Committee shall have authority to:

(1) *Express Opinions.* At the request of a judicial officer, by the concurrence of a majority of its members, express its opinion on proper judicial conduct with respect to the provisions of the Delaware Judges' Code of Judicial Conduct, the Code of Conduct for Law Clerks, and other judicial branch codes of conduct adopted by the Delaware Supreme Court.

(2) *Adopt Rules.* Adopt rules relating to the procedures to be used in expressing opinions, including rules to assure a timely response to inquiries.

**(c) Effect of an Opinion.** A judicial officer who has requested and relied upon an opinion shall be entitled to introduce that opinion as evidence that conduct conforming to the opinion is *prima facie* permissible pursuant to the Delaware Judges' Code of Judicial Conduct.

**(d) Disclosure of Opinion.** Opinions issued by the Judicial Ethics Advisory Committee are confidential and not public information, unless the judicial officer who requested the opinions waives confidentiality in writing. Opinions that the chair of the Judicial Ethics Advisory Committee determines might have precedential value shall be distributed to members of the Judicial Conference and may otherwise be published. Unless confidentiality is waived, the chair shall cause an edited version preserving the opinion's confidentiality to be prepared for distribution or publication. All opinions issued by the Judicial Ethics Advisory Committee shall be filed with the Clerk of the Court on the Judiciary.

## **RULE 19. MISCELLANEOUS**

**(a) Privileges; Immunity from Civil Suits.** Communications to the Court, the Board of Examining Officers, the Preliminary Investigatory Committee and presenting counsel or their staffs relating to misconduct or

Last amended effective March 6, 2018

disability and testimony given in the proceedings shall be absolutely privileged, and no civil law suit predicated thereon may be instituted against any complainant or witness. Members of the Court, of the Board, of the Panel, presenting counsel and their staffs are agents of the Court on the Judiciary, and when acting in that capacity, shall be absolutely immune from civil suit for all conduct in the course of their official duties.

**(b) Time.** When by these Rules an act is required or allowed to be done at or within a specified time, the Chief Justice or the Board for cause shown may exercise its discretion, with or without motion, to order that the time period be enlarged or shortened. Time shall be calculated as provided in Supreme Court Rule 11.

**(c) Stenographic Assistance.** With the approval by the Chief Justice, a Board or a Panel shall employ such legal, stenographic, or other assistance as is deemed necessary.

**(d) Seal.** The Court's seal shall contain the words "SEAL OF THE COURT ON THE JUDICIARY" on the upper arc of the circle and the word "DELAWARE" on the lower arc. This language shall encircle arms similar to those appearing on the Great Seal of the State. The Clerk is directed to retain the seal in the Clerk's custody and is authorized to affix it to such documents as the Clerk deems appropriate.

**(e) Suspension of Rules.** Any of these Rules may be suspended for a specific case by order of the Court, provided the judicial officer is not materially prejudiced thereby.

**(f) Annual Report.** The Clerk of the Court on the Judiciary shall prepare an annual report of the Court's activities for distribution to appropriate governmental officials and the public.

**(g) Expenses.** Members of a Board or of a Panel, and presenting counsel shall be reimbursed for reasonable and necessary expenses incurred pursuant to their duties.

**(h) Procedure Not Provided.** Except as otherwise provided in these Rules, the Rules of the Court of Chancery shall apply.

Last amended effective March 6, 2018

(i) **Disqualification.** The judicial officer who is the subject of the complaint shall not serve on the Panel, the Board, or the Court which considers that complaint.

(j) **Costs.** The Court may direct that all or part of the costs arising under any proceedings under these Rule, including expert witness costs, court reporter costs and expenses under subdivision (g), be paid by the judicial officer.