

IN THE COURT ON THE JUDICIARY
OF THE STATE OF DELAWARE

ORDER AMENDING RULES 5.1(b), 6, §
and 8(a) OF THE RULES OF THE §
COURT ON THE JUDICIARY §

Before **STRINE**, Chief Justice; **VALIHURA**, **VAUGHN**, **SEITZ**, and **TRAYNOR**, Justices; **BOUCHARD**, Chancellor; **JURDEN**, President Judge; **NEWELL**, Chief Judge; **SMALLS**, Chief Judge; and **DAVIS**, Chief Magistrate, constituting the Court on the Judiciary.

ORDER

This 6th day of March 2018, it appears to the Court that it is desirable to amend Rules 5.1(b), 6, and 8(a) of the Rules of the Court on the Judiciary. These amendments shall become effective immediately for all complaints filed after the date of this Order.

(1) Rule 5.1(b) shall be amended by adding the following underlined text:

Rule 5.1 Initial review by Clerk and review by the Chief Justice.

(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.

(2) Rule 6 shall be amended by adding the following underlined text and deleting the stricken-through text:

Rule 6. Right to counsel.

(a) The judicial officer shall be entitled to retain counsel and to have the assistance of counsel ~~at every stage of these proceedings~~ 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 shall ~~may~~ otherwise serve on a pro bono basis where counsel is willing and able to serve in that capacity.

(3) Rule 8(a) shall be amended by adding the following underlined text:

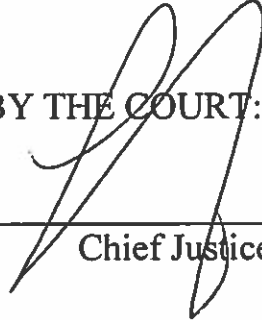
Rule 8. Disposition of panel report.

(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 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.

(4) With the exception of these amendments, the Rules shall otherwise remain unchanged. The Clerk of the Court on the Judiciary is directed to transmit forthwith a certified copy of this Order to the clerk of each trial court in each county.

BY THE COURT:



Chief Justice