



SUPREME COURT OF GEORGIA

Atlanta

FILED
Administrative Minutes
February 3, 2023

Thérèse S. Barnes
Clerk/Court Executive
SUPREME COURT OF GEORGIA

Thérèse S. Barnes

The Honorable Supreme Court met pursuant to adjournment.
The following order was passed.

The Court hereby adopts the following amendments to the Rules of the Judicial Qualifications Commission of Georgia, Terminology, Rule 3(A) (regarding virtual attendance), Rule 3(E)(4) (regarding Hearing Panel authority), Rule 3(F)(3) (regarding judge member recusal), Rule 4(A) (regarding Director recusal), Rule 9 (regarding the right to counsel), Rule 11(B)(2) (regarding confidentiality), Rule 18 (regarding the use of dismissed complaints), Rule 20 (regarding failure to answer), Rule 21 (regarding failure to appear), Rule 22(F) (regarding discovery), Rule 23 (regarding discipline by consent), Rule 24 (regarding hearings), and Rule 25 (regarding review by the Supreme Court). These amendments effective February 3, 2023, shall read as follows:

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Terminology

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Director means the lawyer working for the Investigative Panel who is in charge of screening and investigating complaints, prosecuting formal charges, drafting reports, handling administrative matters, and performing other duties assigned by the Commission. This also includes special counsel selected to fill the role of Director for specific cases in which the Director recuses himself or herself. See Rule 4.

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Special Counsel means any member(s) of the Georgia Bar designated by the Investigative Panel to assist in the investigation

and prosecution of disciplinary or incapacity matters before the Investigative Panel, Hearing Panel, or Supreme Court.

Section I. Organization and Structure

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Rule 3. Organization and Authority of the Commission

A. Panels and Meetings. The Commission is divided into an Investigative Panel of seven members and a Hearing Panel of three members. See Rule 2.C; OCGA § 15-1-21 (e) (1). The Investigative Panel shall meet periodically as determined by the panel. Meetings of the Investigative Panel other than periodic meetings may be called by the chairperson upon the written request of three members of that panel. Meetings of the Hearing Panel may be called by the presiding officer upon the presiding officer’s own motion and shall be called by the presiding officer upon the written request of the other two members of the panel. Meetings may be conducted in person, by conference call, or electronically, except that members of the Investigative Panel must be present in person for a meeting with a judge pursuant to Rule 17.C (4) and members of the Hearing Panel must be present in person for a hearing pursuant to Rule 24. Further, except in situations in which the chairperson declares an emergency in his or her sole discretion, members of the Investigative Panel must be present in person or remotely using video technology at a meeting in order to vote to authorize a full investigation under Rule 17.B (3) or to vote on any action under the provisions of Rule 17.C or 17.D.

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E. Powers and Duties.

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- (4) The Hearing Panel shall have the duty and authority to:
 - (a) adjudicate formal charges filed by the Investigative Panel, including ruling on pre-hearing motions, conducting hearings on formal charges and making findings, conclusions, and recommendations to the Supreme Court for sanctions or

dismissing the case, pursuant to Rule 23 and Rule 24; and

(b) issue formal advisory opinions on its own initiative or on the recommendation of the Investigative Panel, subject to review by the Supreme Court, regarding the Georgia Code of Judicial Conduct. See OCGA § 15-1-21 (e) (3).

F. Recusal.

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(3) A judge member of either panel shall recuse himself or herself from any matter involving the judge member and from any matter involving a judge of a court in the same judicial circuit as the judge member if the judge serves on the same court as the judge member.

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Rule 4. Director

A. Selection. The Investigative Panel shall select a Director, who shall be an active status member of the State Bar of Georgia and shall not engage in the practice of law, other than to represent the Commission, and shall not serve in a judicial capacity. See OCGA §15-1-21 (e) (2) (C). The Director shall not be removed from office except by majority vote of the Investigative Panel. In the event of a vacancy, the Investigative Panel may delegate the Director's powers and duties to another of its staff or to one or more of its members until a new Director is selected. In the event the Director recuses from a specific matter, an individual shall be selected by the Investigative Panel to serve as special counsel to fill the role of Director for that specific matter. An individual selected to serve as special counsel in the event of the Director's recusal shall be an active status member of the State Bar of Georgia and shall not simultaneously serve in a judicial capacity but shall be allowed to engage in the practice of law outside of representing the Commission.

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Section II. General Provisions

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Rule 9. Right to Counsel

The judge shall be entitled to retain counsel and to have the assistance of said counsel at every stage of these proceedings.

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Rule 11. Confidentiality

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B. After Filing and Service of Formal Charges.

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(2) With respect to a disciplinary matter of a judge, once formal charges are filed and served, all filings before the Hearing Panel or Supreme Court shall be subject to disclosure to the public and all hearings and proceedings shall be open and available to the public except to the extent that such filings or hearings and proceedings could be properly sealed or closed by a court as provided by law. See OCGA § 15-1-21 (k) (2).

Commentary

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[4] Disclosures that the Investigative Panel or the Hearing Panel may determine to be necessary under Rule 11.E (2) (a) or (b) include disclosures to law enforcement authorities and potential victims of substantial evidence that a judge has committed, is committing, or is intending to commit a serious crime, and similar disclosures to attorney disciplinary authorities regarding serious violations of the Georgia Rules of Professional Conduct by judges who are lawyers. The timing and extent of such disclosures is at the discretion of the Investigative Panel or the Hearing Panel, depending on the procedural status of the case.

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Section III. Disciplinary Proceedings

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Rule 18. Use of Allegations from Dismissed Cases

If a complaint has been dismissed due to insufficient evidence, the allegations made in that complaint shall not be used for any purpose in any judicial or lawyer disciplinary proceeding against the judge. If, however, additional information becomes known to the Director regarding a complaint that has been dismissed due to insufficient evidence before the filing of formal charges, the allegations may be reconsidered with the permission of the Investigative Panel.

Commentary

[1] A judge should not be subject forever to possible disciplinary action based on a complaint that has been investigated and dismissed due to insufficient evidence. It is unfair to use these inadequately supported complaints to establish a pattern or practice of misconduct. If, however, additional evidence is discovered that adds substance to the allegations of a complaint previously dismissed due to insufficient evidence, it is appropriate to reconsider the allegations of the original complaint. In determining whether to consider such allegations, the Investigative Panel may wish to consider factors such as length of time elapsed, the alleged harm caused, possible disruption to the judicial system, the extent of the original investigation, the good faith of the complainant, and other appropriate factors.

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Rule 20. Answer

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D. Failure to Answer. Failure to answer the formal charges, or any amendments thereto, shall constitute an admission of the factual allegations contained therein.

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Rule 21. Failure to Appear

If the respondent should fail to appear when specifically so ordered by the Hearing Panel or the Supreme Court, the respondent shall be deemed to have admitted the factual allegations in the formal charges. Absent good cause, the Hearing Panel or Supreme Court shall not continue or delay proceedings because of the respondent's failure to appear.

Rule 22. Discovery

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F. Failure to Disclose. The Hearing Panel may preclude either party from calling a witness at the hearing if the party has not provided the opposing party with the witness's name and address or any statements taken from the witness.

Rule 23. Discipline by Consent

A. Contents. At any time after the filing of formal charges and before final disposition, the respondent may agree with the Director in writing that a stated sanction should be imposed in exchange for the judge's admission of some or all of the formal charges or the judge's admission that evidence exists with which the Director could properly prove some or all of the formal charges. If the judge admits to only some of the counts in the formal charges, or admits that evidence exists with which the Director could prove only some of the formal charges, the Director shall provide an explanation in the written agreement as to why the Director is not proceeding on the counts for which there is no admission. The written agreement shall include a signed affidavit from respondent stating that:

(1) the respondent consents to the sanction;

(2) the consent is freely and voluntarily rendered;

(3) there is presently pending a proceeding involving allegations of misconduct; and

(4) the facts set forth in the affidavit are true.

B. Submission to Hearing Panel. The agreement and affidavit shall be submitted to the Hearing Panel, which shall either:

(1) reject the agreement; or

(2) file the agreement with the Supreme Court for approval.

C. Rejection of Sanction. If the recommended sanction is rejected by the Hearing Panel or the Supreme Court, the admission shall be withdrawn and cannot be used against the respondent in any proceedings.

D. Confidentiality. The agreement and affidavit shall remain confidential until accepted by the Supreme Court.

E. Order of Discipline. The Supreme Court shall either reject the agreement or enter an order disciplining the respondent as agreed upon in the written agreement. The final order of discipline shall be based upon the formal charges and the conditional admission.

F. Notice. If the Supreme Court's final order of discipline orders a public reprimand, the judge selected to impose such shall issue and file with the Clerk of the Supreme Court an order setting the date, time, and place for the imposition of the public reprimand and shall serve such order on the Director and the respondent or respondent's counsel at least 10 days prior to the date set. Such notice shall also be given in the event of any rescheduling of a public reprimand.

Commentary

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[5] If rejecting a proposed discipline by consent, the Hearing Panel should consider providing a written explanation for its decision. An explanation of the rejection may provide valuable guidance both moving forward with the matter underlying the rejected discipline by consent and in crafting future discipline by consent agreements.

Rule 24. Hearing

A. Scheduling. Upon receipt of the respondent's answer or upon expiration of the time to answer, the presiding officer of the Hearing Panel shall confer with the Director and respondent about scheduling discovery, motions, and a public hearing. The presiding officer shall issue and file an order with the Clerk of the Supreme Court setting the date, time, and place of the hearing and shall serve such order on the Director, the respondent or respondent's counsel, and other members of the Hearing Panel at least 20 days prior to the date set. The presiding officer may also conduct status and pre-hearing conferences and, in consultation with the other members of the Hearing Panel, may issue pre-hearing orders and other orders necessary for the just and efficient conduct of the hearing.

B. Withdrawal or Dismissal of Formal Charges by the Director Prior to Hearing.

(1) **Withdrawal of Formal Charges.** At any point prior to beginning the public hearing, the Director, with authorization from the Investigative Panel, may file a notice withdrawing the formal charges from the Hearing Panel based upon newly discovered information or evidence.

(2) **Dismissal of Formal Charges Without Prejudice.** At any point prior to beginning the public hearing, the Director, with authorization from the Investigative Panel and with the approval of the Hearing

Panel, may file a notice dismissing the formal charges without prejudice for reasons of judicial economy or other good cause shown. A dismissal under this section shall be without prejudice, and the Director may reinstate a disciplinary matter by re-filing formal charges should the circumstances that warranted the dismissal of formal charges change.

(3) Confidentiality. After formal charges have been withdrawn or dismissed as described above, any filings before the Hearing Panel or Supreme Court prior to the withdrawal or dismissal of the formal charges shall remain subject to disclosure to the public. Any proceedings before the Investigative Panel after a withdrawal or dismissal of formal charges shall remain confidential, until or unless formal charges are again filed on the same matter, in which case Rule 11.B (2) will again apply.

C. Conduct of Hearing.

(1) The hearing shall be conducted by the Hearing Panel, the members of which shall be present in person. See Rule 3.A.

(2) The Director shall present evidence on the formal charges. All testimony shall be under oath.

(3) The Director may call the respondent as a witness.

(4) Both parties shall be permitted to present evidence and produce and cross-examine witnesses.

(5) The hearing shall be recorded verbatim. Whenever a transcript is requested by the respondent, the Director, the Hearing Panel, or the Supreme Court, a transcript of the hearing shall be produced promptly.

(6) The Hearing Panel may request from the Director and the respondent proposed findings, conclusions, and recommendations for

sanctions or dismissal.

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Rule 25. Review by the Supreme Court

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B. Briefs, Oral Argument, and Supplemental Filings.

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(4) Where the Hearing Panel in rendering an order, decision, or judgment, not otherwise subject to direct appeal, certifies within ten days of entry thereof that the order, decision, or judgment is of such importance to the case that immediate review should be had, the Supreme Court, in their respective discretion, may permit an appeal to be taken from the order, decision, or judgment if application is made thereto within ten days after such certificate is granted. The application shall be in the nature of a petition and shall set forth the need for such an appeal and the issue or issues involved therein. The applicant shall include citations to such parts of the record as he or she deems appropriate, and the Supreme Court shall take notice of the record of the Hearing Panel maintained by the Clerk of the Supreme Court. The application shall be filed with the Clerk of the Supreme Court and shall be served upon the opposing party or parties in the manner prescribed by Code Section 5-6-32, except that such service shall be perfected at or before the filing of the application. The opposing party or parties shall have ten days from the date on which the application is filed in which to file a response. The Supreme Court shall issue an order granting or denying such an appeal. An order granting the appeal shall suffice to docket the matter at the Supreme Court, and no notice of appeal shall be necessary. The appeal shall proceed as ordered by the Supreme Court and consistent with its rules.

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E. Notice. If the Supreme Court orders a public reprimand, the judge selected to impose such shall issue and file with the Clerk of the Supreme Court an order setting the date, time, and place for the

imposition of the public reprimand and shall serve such order on the Director and the respondent or respondent's counsel at least 10 days prior to the date set.

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**SUPREME COURT OF THE STATE OF
GEORGIA**

Clerk's Office, Atlanta

I certify that the above is a true extract from
the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court
hereto affixed the day and year last above written.

Theresa A. Barnes