

**THE COURT OF APPEALS OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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May 9, 2019

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Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this Supplement to its One Hundred Ninety-Ninth Report, which presented a substantial rewriting of the Rules governing the Commission on Judicial Disabilities and the processing of complaints filed against Maryland judges.

Three Comments were filed by or on behalf of judges to that Report. Many more were filed jointly by the Commission, the Judicial Inquiry Board, and Investigative Counsel, which, collectively, we shall refer to as the Commission. On April 16, 2019, the Court held a hearing on the proposed Rules and Comments that lasted nearly four hours. Given the lateness of the hour when the presentations ended, the Court was unable to discuss and vote on the proposals, in part because further drafting would need to be done to many of the Rules if the Court were inclined to find merit in some of the Comments.

The next day, the Chair and staff of the Committee met with representatives of the Commission, the Judicial Inquiry Board, Investigative Counsel, and the Maryland Circuit Judges Association in an effort to reach a consensus with respect to the lingering disputes and to agree on language to implement any consensus. The recollection of the Committee participants,

based on notes taken at the conference, is that a consensus was reached with respect to most of the matters in dispute, so we drafted a Supplement and changes to some of the language in the text of the Rules submitted with the 199th Report to implement those compromises and sent those documents in draft form, to the other participants for their review. At approximately 5:15 p.m. on Friday, May 3, we received a written response from the Commission, a copy of which is attached to this Supplement as Appendix A. That response indicates that the Commission has not only disavowed some of the most important compromises that were reached but added additional requests that the Committee cannot support, so those items remain in dispute.

This Supplement is in four parts:

First, a list of the Rules to which no amendments other than a few non-substantive style changes are proposed;

Second, a list of the Rules in which changes are proposed for the Court's consideration in order to implement agreements that were reached and remain unrevoked, along with a brief explanation of the changes;

Third, a list of the Rules as to which no consensus remains in place or, with or without a consensus, will require the Court to make certain basic policy or Constitutional decisions.

Fourth, a redraft of the Rules, with all proposed changes to the text as presented in the 199th Report shown in bolded form with strikeouts and underlining. The bolding is for the convenience of the Court, so the Court may better focus on them. The bolding will be eliminated in the Rules that will accompany the Rules Order.

RULES WITH NO RECOMMENDED CHANGE (OTHER THAN STYLE)

No further changes, (other than non-substantive style corrections) are recommended to Rules 18-401, 18-402, 18-403, 18-404, 18-406, 18-409, 18-426, 18-427, 18-428, 18-431, 18-432, and 18-442 as submitted in the 199th Report.

RULES IN WHICH AGREED CHANGES ARE PROPOSED
IN RESOLUTION OF DISPUTES

Rule 18-405 - *Ex Parte* Communications

It is the Committee's understanding that the Commission is no longer contesting this Rule. New language is proposed in the Committee Note on page 28 to further clarify the Rule.

Rule 18-407 - Confidentiality

Four changes are proposed to Rule 18-407.

In subsection (a)(4) on page 31, with one exception, language is added to protect reports prepared by Investigative Counsel that are not submitted to the Commission. The exception is in the reference to Rule 18-433 (c), to make clear that any exculpatory material in those reports must be disclosed to the judge.

In subsection (b)(1) on page 32, which allows the Commission to release confidential material upon a waiver by the judge, an exception is added that maintains the confidentiality of items listed in subsection (a)(4) notwithstanding any waiver by the judge.

In subsection (b)(5) on page 33, the word "final" is added to clarify that only final dispositions in impairment and disability cases may be disclosed to applicable administrative judges.

Finally, in section (c) on page 35, a purely clarifying amendment is proposed.

Rule 18-408 - Costs

The disagreement over Rule 18-408 largely, though not entirely, concerned the cost of transcripts - both deposition transcripts and transcripts of proceedings before the Commission - and centered on (1) whether the Commission should be required to provide a copy of the hearing transcript to the judge free of charge, and (2) the ability of the Court to shift the cost of transcripts to the non-prevailing party.

The issue with respect to hearing transcripts has largely been rendered moot by the requirements that (1) the Commission obtain the hearing transcript and include it as part of the record submitted to the Court, and (2) the transmission of the

record be through MDEC. Thus, as a party, the judge would have free remote access to the electronic version of the transcript upon its filing with the Court. After much discussion, the consensus of the work group with respect to deposition transcripts and daily transcripts of Commission hearings was that whichever party ordered those transcripts would pay for them, without reassessment. Those agreements are reflected in the proposed deletion of subsections (b)(4) and (5) on pages 36 and 37 and the addition of a Committee Note on page 37.¹

Rule 18-409.1 - Subpoenas

The only proposed change is essentially a style one, of moving language contained in Rule 18-424, as proposed in the 199th Report, to this Rule. That is shown through strikeouts in both Rules and the new language added to Rule 18-409.1 on pages 41-42. The Commission had proposed another change, which the Committee rejected. That may remain in dispute.

Rule 18-411 - Commission on Judicial Disabilities

The major disagreement with respect to this Rule was over the Committee's recommendation that the Court designate the Chair and Vice-Chair of the Commission from among the three judicial members. The Committee's recollection was that the Commission agreed to drop its opposition to that recommendation in consideration of the addition of language in section (a) of Rule 18-412 permitting the Court to consider recommendations from the Commission with respect to those designations.

The Committee agreed to the Commission's request to add language to subsection (d)(3) on page 46 permitting the Commission to employ additional persons to assist the Executive Secretary, to the extent funds are available in the Commission's budget.

¹ As an aside, we were informed that, whenever possible, Commission hearings are held in a courtroom of the Circuit Court for Anne Arundel County or the Court of Special Appeals, where recording equipment is available and the proceeding can be and is electronically recorded. It should be possible then for Investigative Counsel or the judge to obtain a disk of the proceeding at minimal cost if either wants a daily record of what occurred. See Rule 16-504 (h). When a courtroom is not available, hearings have been held at JECC, where recording equipment is not available. With the impending expiration of the JECC lease, that will need to change.

The Committee also has agreed, with one exception, to add a continuity of service provision on page 49. As noted at the Court hearing, that kind of provision can be helpful where there are vacancies due to term limits if the Governor does not make new appointments promptly but will be of little assistance where incumbent members recuse themselves, which is where the problem has been. As noted in Part 3 of this Supplement, the Court will need to address the Committee's recommendations in subsections (f)(1) and (f)(2) on page 48.

Under current Rule 18-403(g), which is carried over in proposed Rule 18-411 (d)(2), the Executive Secretary to the Commission keeps and retains the minutes of Inquiry Board proceedings. We have added a Committee note to Rule 18-411 (d), noting that, under Rule 18-407, proceedings before the Board are confidential and making clear that the minutes of its meetings taken by the Executive Secretary are not to be shared with Commission members unless the cloak of confidentiality is properly lifted.

Rule 18-412 - Judicial Inquiry Board

The Committee representatives' clear recollection of the April 17 meeting is that the Commission agreed to withdraw its opposition to the Court appointing the members of the Inquiry Board and designating the Chair and Vice Chair of the Board, in return for language permitting the Court to consider recommendations from the Commission and providing four-year terms and specific qualifications for the members.

The Commission's written response No. 3 indicates that the Commission has disavowed that compromise and maintains its insistence that the Commission appoint the members of the Board and designate the Chair and Vice Chair. The Committee also was advised that, through an internal by-law of some kind, the Commission had awarded the current Board members four-year terms with a two-term maximum, notwithstanding current Rule 18-403 (d), which appears to have Board members serve at the pleasure of the Commission. We have not seen the by-law, and we do not know whether it was approved in conformance with the Open Meetings law or whether, in fact, it was approved by a majority of the Commission.

The Committee agrees with the Commission's recommendations regarding the composition of the Board and qualifications for its members, and has added language to the proposed Rule in those regards. See subsection (a)(1) on page 51. The Committee

continues to believe, however, for the reasons noted on page 22 of the 199th Report, that the members of the Board should appointed, and the Chair and Vice Chair designated, by the Court. The Committee has drafted a provision providing terms for Board members but recommends that provision only if the Court makes the appointments. See page 52.

Rule 18-421 - Complaints; Procedure on Receipt

Three changes are proposed in section (f) on pages 58-59. They were recommended by Investigative Counsel, and we regard them as clarifying in nature.

Rule 18-422 - Investigation by Investigative Counsel

The major disputes regarding this Rule concerned (1) when the judge would get notice that a complaint has been filed, and (2) the nature and content of Investigative Counsel's Report to the Board, which embodies issues of exculpatory evidence and confidentiality. Agreement has been reached with respect to those matters.

The Commission and the Circuit Judges Association agree with the proposal in the 199th Report to give judges the option of requesting and, subject to any protective order, receiving notice of a complaint when Investigative Counsel actually opens a file on the complaint or pursuant to Rule 18-421 (f). There is one clarification in subsection (a)(4)(A) on page 61.

The major change to this Rule is the proposed insertion of language on pages 64-65 to deal with issues regarding exculpatory evidence and confidentiality that arise from Investigative Counsel's Report to the Board. Under the proposed new language, agreed to by the Commission and the Circuit Judges Association, Investigative Counsel's Report would be in three distinct parts. Part 1 would contain the factual information obtained during or as a result of Investigative Counsel's investigation, including witness statements and relevant documents. Part 2 would contain Investigative Counsel's analysis and evaluation of that information, which is in the nature of work product. Part 3 would contain Investigative Counsel's recommendations. The full Report would go to the Board, but the judge and the Commission would see only Parts 1 and 3, thereby preserving the confidentiality of Part 2. The intent is that any exculpatory information would be in Part 1.

A conforming amendment is proposed in the Committee Note on page 66.

Rule 18-423 - Proceedings Before Board; Review by Commission

The Commission had proposed an amendment to subsection (d)(2)(A) to extend the time for the Board to render its report to the Commission to 45 days after the Board finalized its recommendation. The Committee had proposed to keep the current requirement in Rule 18-404 (j)(3) of 45 days after receipt of Investigative Counsel's Report. The Commission accepted the Committee's language, so that is no longer an issue. The only change is in section (e), to allow 15 days for the judge's response to the Board's Report if the recommendation is a dismissal, with or without a letter of cautionary advice, and 30 days in all other cases. The Circuit Judges Association agreed with that change.

Rule 18-424 - Further Investigation

Three changes are proposed. The first is a style amendment on page 73. The second is to delete subsections (b)(2) through (b)(5), the text of which is being moved to Rule 18-409.1, and the third, at the request of the Commission, is to require Investigative Counsel's Report to be in the three-part form required by Rule 18-422 (b)(2). See page 76.

Rule 18-425 - Dismissal of Complaint

Concern had been expressed by Judge Reese regarding the ability of the Commission to dismiss a complaint with a letter of cautionary advice without the judge's consent and a further concern about the ability of the Commission to retain a copy of the letter and consider it if relevant in any subsequent proceeding. Judge Reese was not present at our conference, so her concern is still extant. The Committee opposes her requested change.

We thought that there was agreement by the participants that, where a dismissal with a cautionary letter was proposed, the judge would have the right, within 15 days after receipt of the notice of that proposal, to file a response, that, before issuing the dismissal with the letter, the Commission would consider the response, and that, if the Commission issued the dismissal and letter, it would retain the letter and the judge's response and could consider both if relevant in any subsequent

proceeding. It appears from the Commission's Response No. 6 that it now opposes that provision. That is an issue the Court will need to resolve.

Rule 18-426 - Conditional Diversion Agreement

Several concerns were expressed by the Commission with respect to Conditional Diversion Agreements ("CDA"). One involved monitors - whether, if not Investigative Counsel, the monitor would have to be another Maryland attorney. The Commission has modified its position in that regard. A more significant concern was to preclude the involvement of the Commission in negotiations with the judge over a CDA until such time as it directed that charges be filed. The Committee agrees with the Commission, but has dealt with the issue in Rule 18-436 (Consent to Disposition) because that concern affects other dispositions by consent as well. At the request of the Commission, a clarifying change is proposed in section (b) on page 81. No other change to the text of Rule 18-426 is recommended.

Rule 18-427 - Reprimand

The Commission opposed the text of Rule 18-427 and recommended an alternative. After much discussion on April 17, the Commission agreed to accept the Rule as presented in the 199th Report. In its May 3 response, however, the Commission disavowed its acceptance and presses its opposition to the entire Rule. No further change is recommended by the Committee. It will be an issue for the Court to resolve.

Rule 18-433 - Discovery

The Commission's opposition to this Rule centered on the requirement in section (c) that Investigative Counsel disclose exculpatory information. The Committee's view was that exculpatory evidence known to Investigative Counsel must be disclosed to the judge as a matter of fundamental fairness, even if included in his or her Report to the Inquiry Board and even if not included in Investigative Counsel's file. In order to give some guidance and narrow areas of dispute, the participants agreed to the requirement in Rule 18-423 that Investigative Counsel's Report be in three parts, that any exculpatory material be part of the factual information included in Part 1 of the Report, which would be disclosable to the judge, and that any evaluative work product be in Part 2, which would not be disclosable to the judge or the Commission. Other than a

clarifying amendment to section (b) on page 94, no further change is proposed to Rule 18-433. Our recollection is that the Commission agreed to this approach.

Rule 18-434 - Hearing on Charges

The only Comment to this Rule was from the Circuit Judges Association, which advocated for a presumptive right to produce expert testimony on the "standard of care." In discussion regarding that issue, another issue arose, namely who would be authorized to rule on objections to evidence generally.

The proposed solution to that issue is a Committee Note to section (f) of the Rule making clear that the Chair of the Commission would make rulings on evidence after considering any views expressed by other members of the Commission.² To address the Comment regarding expert testimony, the agreement was to add that "[w]hether expert testimony may be allowed in a Commission hearing is governed by Rules 5-701 through 5-706, with the Commission exercising the authority of a court." That not only expresses a truism but leaves Rule 18-434 neutral on how the Commission should apply Rules 5-701 through 5-706.

The participants agreed to that approach. Aside from the new Committee Note, no further change is proposed to the Rule.

Rule 18-435 - Commission Findings and Action

Three changes are proposed to this Rule. One is essentially a housekeeping one - to include a Conditional Diversion Agreement in section (c) on page 99. The second is to clarify that, if a reprimand is offered and the judge intends to dispute the underlying facts and desires an evidentiary hearing before the Commission, the reprimand is effectively rejected because it would no longer remain private, and, if the

² That provision is stated, alternatively, as a "shall" or a "may." The Commission prefers "may." We suggest that technical rulings on evidence - hearsay, authentication objections, for example - are not likely to engender disputes among Commission members, and, to the extent they do, can easily and quickly be resolved by the Chair calling for a vote. Disagreements may arise regarding other, more substantive, objections - whether to allow expert testimony, for example. The Chair may initially deny the request, but suppose the five public members indicate that they would be helped by hearing the testimony, and one lawyer member agrees. In any case, the Chair should not be able to make a ruling with which a majority of the members disagree.

Commission were to find sanctionable conduct, the least onerous option available (other than dismissal) would be a recommended censure by the Court. That clarification, on pages 99-100, would make the Rule consistent with Rule 18-427. The third change is to add a cross-reference on page 100.

Rule 18-436 - Consent to Disposition

The only change is noted above with respect to Rule 18-426.

Rule 18-437 - Proceedings in Court of Appeals

Two changes are proposed to this Rule. The first, in section (d) on page 108 implements a suggestion from a member of the Court made at the April 16 hearing. The second, in section (f) on pages 108-109 implements a suggestion from the Commission requesting additional specificity in a Court Order that suspends a judge.

Rule 18-438 - Suspension of Execution of Discipline

The Commission raised the question of what kind of hearing should be held when the Court imposes discipline on a judge but suspends execution of that discipline subject to compliance by the judge with certain conditions and the judge is accused of noncompliance. It was agreed that the hearing would be in the nature of a violation of probation hearing set forth in Rule 4-347, and that a Committee Note to that effect would suffice. See page 111. In its response No. 10, the Commission now asks whether such a hearing would be public. Our view is that it would be in a case of sanctionable conduct but not in a case of impairment or disability.

Rule 18-441 - Cases of Alleged or Apparent Disability or Impairment

The Committee acquiesces in the Commission's suggested changes to this Rule, which are set forth on pages 115 and 116.

RULES THAT REQUIRE POLICY DECISIONS BY THE COURT

Rule 18-404 - Service of Documents

No change to Rule 18-404 was requested at our April 17 conference. The Commission belatedly has requested that it be able to serve charges on the judge by ordinary first-class mail

and to regard the charges as having been served upon mailing. See Commission Response No.1. The Committee opposes that request and urges that the Rule be approved as submitted in the 199th Report. Charges are in the nature of an indictment, and the Committee believes that, absent consent from the judge, they should be served by certified mail, restricted delivery **and** by first-class mail. The Court will need to resolve that issue.

Other Issues

All of the changes to the current Rules set forth in the 199th Report and this Supplement require approval by the Court and thus involve policy decisions, large or small. Some, even in the absence of a dispute, are significant. They include:

- The six issues noted on page 6 of the 199th Report;
- Allowing the Court to designate the Chair and Vice Chair of the Commission and the Inquiry Board, appoint the members of the Inquiry Board and give them terms consistent with those of Commission members, and approve the appointment of Investigative Counsel;
- Recommended changes to Rule 18-408 on transcript costs;
- Recommended changes dealing with dismissals with a cautionary letter and reprimands;
- The new Rules dealing with impairment situations; and
- Any other issues left unresolved, as noted above.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cmp
cc: Suzanne C. Johnson, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

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MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

Rule 18-401. PREAMBLE; FUNCTION OF THIS CHAPTER

(a) Code of Judicial Conduct

The Code of Judicial Conduct, set forth in Chapter 100 of this Title, directs that judges maintain the dignity of judicial office at all times and avoid both impropriety and the appearance of impropriety in their professional and personal lives. The purpose of the Code is to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct.

The Code makes clear that, although it is binding and enforceable, not every transgression will result in the imposition of discipline, that the imposition of discipline should be determined through a reasonable and reasoned application of the Rules and depend upon such factors as the seriousness of the transgression, the facts and circumstances at the time, any pattern of improper activity, whether there have been previous violations, and the effect of the misconduct on the judicial system and others.

Cross reference: See Rule 18-100.4.

(b) Function of This Chapter

(1) The Commission on Judicial Disabilities was created by the Maryland Constitution to maintain public confidence in the integrity, independence, and impartiality of judges and the judicial system by:

(A) enforcing standards of judicial conduct;

(B) assisting the Judiciary in maintaining the necessary balance between independence and accountability;

(C) assuring the public that the Judiciary does not condone misconduct by judges;

(D) creating a greater public awareness of what constitutes proper and improper judicial conduct;

(E) providing a forum for receiving and investigating citizen complaints against judges;

(F) determining whether a judge has committed sanctionable conduct or is disabled or impaired and, if so, imposing or recommending an appropriate remedy;

(G) assisting judges who have committed minor and perhaps unintended violations to appreciate that fact so as to avoid a repetition of it; and

(H) protecting judges from false, unfounded, and inaccurate accusations that can damage their reputations.

(2) In carrying out their respective functions under this Chapter, Investigative Counsel, the Board, and the Commission should keep in mind each of these purposes and principles, as should all judges.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

Rule 18-402. DEFINITIONS

The following definitions apply in this Chapter except as otherwise expressly provided or as necessary implication requires:

(a) Address of Record

"Address of record" means a judge's current home address or another address designated in writing by the judge.

Cross reference: See Rule 18-407 (a)(1) concerning confidentiality of a judge's home address.

(b) Board

"Board" means the Judicial Inquiry Board appointed pursuant to Rule 18-412.

(c) Censure

"Censure" means a formal public sanction by the Court of Appeals based on a finding that the judge committed sanctionable conduct that justifies more than a reprimand but was not so egregious as to justify suspension or removal.

(d) Charges

"Charges" means the charges filed with the Commission by Investigative Counsel pursuant to Rule 18-431.

(e) Commission

"Commission" means the Commission on Judicial Disabilities created by Art. IV, §4A of the Maryland Constitution.

(f) Commission Record

"Commission record" means all documents pertaining to the judge who is the subject of charges that are filed with the Commission or made available to any member of the Commission and the record of all proceedings conducted by the Commission with respect to that judge.

(g) Complainant

"Complainant" means a person who has filed a complaint, and in Rule 18-421 (a), "complainant" also includes a person who has filed a written allegation of misconduct by, or disability or impairment of, a judge that is not under oath or supported by an affidavit.

(h) Complaint

"Complaint" means a written communication under oath or supported by an affidavit alleging that a judge has a disability or impairment or has committed sanctionable conduct.

Committee note: The complainant may comply with the affidavit requirement of this section by signing a statement in the following form: "I solemnly affirm under the penalties of perjury

that the contents of the foregoing paper are true to the best of my knowledge, information, and belief." It is not required that the complainant appear before a notary public.

(i) Disability

"Disability" means a mental or physical disability that seriously interferes with the performance of a judge's duties and is, or is likely to become, permanent.

Cross reference: See Md. Const., Art. IV, §4B.

(j) Impairment; Impaired

"Impairment" or "impaired" means a mental or physical condition, including an addiction, that has seriously interfered with the performance of a judge's duties but may be remediable and, if remedied, is not likely to become permanent.

(k) Judge

"Judge" means (1) a judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court, and (2) includes a senior judge.

Cross reference: See Md. Const., Art. IV, §3A and Code, Courts Article, §1-302.

(l) Reprimand

"Reprimand" means an informal private sanction imposed by the Commission pursuant to Rule 18-427 for sanctionable conduct that does not justify either dismissal of a complaint or censure, suspension or removal.

(m) Sanctionable Conduct

(1) "Sanctionable conduct" means misconduct while in office, the persistent failure by a judge to perform the duties of the judge's office, or conduct prejudicial to the proper administration of justice. A judge's violation of any of the provisions of the Maryland Code of Judicial Conduct promulgated by Title 18, Chapter 100 may constitute sanctionable conduct.

(2) Unless the conduct is occasioned by fraud or corrupt motive or raises a substantial question as to the judge's fitness for office, "sanctionable conduct" does not include:

(A) making an erroneous finding of fact, reaching an incorrect legal conclusion, or misapplying the law; or

(B) failure to decide a matter in a timely fashion unless such failure is habitual.

Committee note: Sanctionable conduct does not include a judge's simply making legally erroneous decisions in particular cases.

Cross reference: Md. Const., Art. IV, §4B (b)(1). For powers of the Commission in regard to any investigation or proceeding under §4B of Article IV of the Constitution, see Code, Courts Article, §§13-401 through 13-403.

Source: This Rule is derived from former Rule 16-803 (2016).

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

Rule 18-403. RIGHT TO ATTORNEY

Subject to Rule 18-422, a judge against whom a complaint has been filed is entitled to retain and have the assistance of an attorney at every stage of proceedings under the Rules in this Chapter.

Cross reference: Rule 18-422 specifies when Investigative Counsel is required to notify the judge of the filing of a complaint.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

Rule 18-404. SERVICE OF DOCUMENTS

Charges filed against a judge shall be served on the judge at the judge's address of record by certified mail, restricted delivery, and by first class mail. Unless otherwise directed by a Rule in this Chapter or agreed to in writing between the serving party and the party to be served, all other documents to be served on the judge, Investigative Counsel, the Board, or the Commission shall be served electronically at an address furnished by each of them to the other.

Cross reference: See Rule 18-422 (a)(4).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

Rule 18-405. *EX PARTE* COMMUNICATIONS

(a) The Commission and Executive Secretary

Except as otherwise permitted by the Rules in this Chapter, directly or by necessary implication, members of the Commission, and the Executive Secretary to the Commission, ~~and members of the Board~~ shall not engage in *ex parte* communications with Investigative Counsel, members of the Board, a judge against whom a complaint has been filed, or an attorney for that judge, that pertain to the substance of a complaint against that judge.

(b) The Board

Except as otherwise permitted by the Rules in this Chapter, directly or by necessary implication, members of the Board shall not engage in *ex parte* communications with members of the Commission, the Executive Secretary to the Commission, Investigative Counsel, a judge against whom a complaint has been filed, or an attorney for that judge that pertain to the substance of a complaint against that judge.

Committee note: The Rules in this Chapter give the Executive

Secretary to the Commission and the Chairs of the Commission and the Board certain administrative functions that anticipate some *ex parte* communications with each other or with Investigative Counsel, the judge, or the judge's attorney that are necessary for them to perform their duties. See, for example, Rules 18-409.1 and 18-434, regarding applications for a subpoena; Rule 18-422 (a)(3), regarding a request for immunity; Rule 18-422 (a)(6), regarding an extension of time to complete an investigation; Rule 18-423 (b), permitting the Board to meet informally with the judge; and Rule 18-423 (d)(1)(B), allowing consultation between the Chair of the Commission and the Chair of the Board regarding the evidence to be produced before the Commission. The intent of this Rule is not to preclude those kinds of *ex parte* communications or any other *ex parte* communications permitted or anticipated by these Rules but only those that reasonably could leave the impression, intended or unintended, of an improper attempt to influence the nature, scope, or conduct of an investigation by Investigative Counsel, a recommendation by Investigative Counsel, or a proceeding or decision by the Commission or the Board. Commission and Board members should be guided by relevant provisions of Rule 18-202.9. This Rule also is not intended to preclude general supervision of Investigative Counsel, who is appointed by and serves at the pleasure of the Commission.

Source: This Rule is new and is based in part on ABA Model Rules for Judicial Disciplinary Enforcement, Rule 10.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

Rule 18-406. STANDARD OF PROOF

The burden shall be on Investigative Counsel to prove charges of sanctionable conduct, impairment, or disability by clear and convincing evidence.

Source: This Rule is based on former Rule 18-407 (j) and ABA Model Rules for Judicial Disciplinary Enforcement, Rule 7.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

RULE 18-407. CONFIDENTIALITY

(a) Generally

Except as otherwise expressly provided by these Rules, proceedings and information relating to a complaint or charges shall be open to the public or confidential and not open to the public, as follows:

(1) Judge's Address and Identifying Information

The judge's current home address and personal identifying information not otherwise public shall remain confidential at all stages of proceedings under these Rules. Any other address of record shall be open to the public if the charges and proceedings are open to the public.

(2) Complaints; Investigations; Disposition Without Charges

Except as otherwise required by Rules 18-425, 18-426, and 18-427, all proceedings under Rules 18-421, 18-428, and 18-441 shall be confidential.

(3) Upon Resignation, Voluntary Retirement, Filing of a Response, or Expiration of the Time for Filing a Response

Charges alleging sanctionable conduct and all subsequent proceedings before the Commission on those charges shall be open to the public upon the first to occur of (A) the resignation or voluntary retirement of the judge, (B) the filing of a response by the judge to the charges, or (C) expiration of the time for filing a response. Charges alleging disability or impairment and all proceedings before the Commission on them shall be confidential.

(4) Work Product, Proceedings, and Deliberations

Except to the extent admitted into evidence before the Commission, the following matters shall be confidential: (A) Investigative Counsel's work product **and, subject to Rule 18-433 (c), reports prepared by Investigative Counsel not submitted to the Commission**; (B) proceedings before the Board, including any peer review proceeding; (C) any materials reviewed by the Board during its proceedings that were not submitted to the Commission; (D) deliberations of the Board and Commission; and (E) records of the Board's and Commission's deliberations.

(5) Proceedings in the Court of Appeals

Unless otherwise ordered by the Court of Appeals, the record of Commission proceedings filed with that Court and any proceedings before that Court on charges of sanctionable conduct shall be open to the public. The record of Commission

proceedings filed with that Court and any proceedings before that Court on charges of disability or impairment shall be confidential. An order of retirement by the Court shall be public.

(b) Permitted Release of Information by Commission

(1) Written Waiver

The Commission may release confidential information upon receipt of a written waiver by the subject judge, except that those matters listed in subsection (a)(4) shall remain confidential notwithstanding a waiver by the judge.

(2) Explanatory Statement

The Commission may issue a brief explanatory statement necessary to correct any inaccurate or misleading information from any source about the Commission's process or procedures.

(3) To Chief Judge of Court of Appeals

(A) Upon request by the Chief Judge of the Court of Appeals, the Commission shall disclose to the Chief Judge:

(i) whether a complaint is pending against the judge who is the subject of the request; and

(ii) the disposition of each complaint that has been filed against the judge within the preceding five years.

(B) The Chief Judge may disclose this information to the incumbent judges of the Court of Appeals in connection with the

exercise of any administrative matter over which the Court has jurisdiction. Each judge who receives information pursuant to subsection (b)(3) of this Rule shall maintain the applicable level of confidentiality of the information otherwise required by the Rules in this Chapter.

(4) Information Involving Criminal Activity, Health, and Safety

The Commission may provide (A) information involving criminal activity, including information requested by subpoena from a grand jury, to applicable law enforcement and prosecuting officials, and (B) information regarding health and safety concerns to applicable health agencies and law enforcement officials, and to any individual who is the subject of or may be affected by any such health or safety concern.

(5) Finding of Disability or Impairment

The Commission may disclose any **final** disposition imposed against a judge related to charges of disability or impairment to the applicable administrative judge or Chief Judge of the disabled or impaired judge's court or, if the disabled or impaired judge is a recalled senior judge, to the Court of Appeals.

(6) Nominations; Appointments; Approvals

(A) Permitted Disclosures

Upon a written application made by a judicial nominating commission, a Bar Admission authority, the President of the United States, the Governor of a state, territory, district, or possession of the United States, or a committee of the General Assembly of Maryland or of the United States Senate which asserts that the applicant is considering the nomination, appointment, confirmation, or approval of a judge or former judge, the Commission shall disclose to the applicant:

(i) Information about any completed proceedings that did not result either in dismissal of the complaint or in a conditional diversion agreement that has been satisfied; and

(ii) Whether a complaint against the judge is pending.

Committee note: A reprimand issued by the Commission is disclosed under subsection (b)(6)(A)(i). An unsatisfied conditional diversion agreement is disclosed under subsection (b)(6)(A)(ii) as a pending complaint against the judge.

(B) Restrictions

Unless the judge waives the restrictions set forth in this subsection, when the Commission furnishes information to an applicant under this section, the Commission shall furnish only one copy of the material, which shall be furnished under seal. As a condition to receiving the material, the applicant shall agree that (i) the applicant will not copy the material or permit it to be copied; (ii) when inspection of the material has been

completed, the applicant will seal and return the material to the Commission; and (iii) the applicant will not disclose the contents of the material or any information contained in it to anyone other than another member of the applicant.

(C) Copy to Judge

The Commission shall send the judge a copy of all documents disclosed under this subsection.

Cross reference: For the powers of the Commission in an investigation or proceeding under Md. Const., Art. IV, § 4B, see Code, Courts Article, §§ 13-401 through 13-403.

(c) Statistical or Annual Report

The Commission may include in a publicly available statistical or annual report the number of complaints received, investigations undertaken, and dispositions made within each category of disposition during a fiscal or calendar year, provided that, if a disposition has not been made public, the identity of the judge involved is not disclosed or readily discernible.

Source: This Rule is in part derived from former Rule 18-409 (2018) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

Rule 18-408. COSTS

(a) Generally

The Court of Appeals may assess reasonable and necessary costs in favor of the prevailing party in proceedings under this Chapter. If the Court assesses costs, the Court shall determine who is the prevailing party.

(b) Costs defined

Costs include:

(1) court costs;

(2) reasonable and necessary fees and expenses paid to an expert witness who testified in a proceeding before the Commission pursuant to Rule 18-434;

(3) reasonable and necessary travel expenses of a witness who (A) is not an expert witness, and (B) testified in a proceeding before the Commission pursuant to Rule 18-434;

(4) ~~reasonable and necessary costs of a transcript of proceedings before the Commission pursuant to Rule 18-434;~~

~~(5) reasonable and necessary fees and expenses paid to a court reporter or reporting service for attendance at a deposition and for preparing a transcript, audio recording, or audio-video recording of the deposition;~~

(6) (5) reasonable and necessary costs of a physical or mental examination and written report ordered pursuant to Rule 18-441 (f)(1)(B); and

~~(7)~~ (6) other reasonable and necessary expenses, excluding attorneys' fees, incurred in prosecuting or defending against charges filed in proceedings before the Commission pursuant to Rule 18-434.

Committee note: No provision is made in this Rule for assessing the cost of transcripts. Rule 18-435 (e)(2) requires the Commission to cause a transcript of all proceedings at Commission hearings to be prepared and included in the record submitted to the Court of Appeals. Pursuant to an Administrative Order of the Chief Judge of the Court of Appeals, the record from the Commission must be submitted through MDEC. As a party, the judge would have free remote access to the electronic version of the transcript. The Rule contemplates that the cost of deposition transcripts and the cost of ordering daily transcripts of Commission hearings would be paid by the party who orders those transcripts and not be subject to assessment.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

Rule 18-409. USE OF ALLEGATIONS FROM DISMISSED CASE

If a complaint has been dismissed without a letter of cautionary advice, allegations made in the complaint may not be used in any disciplinary proceeding against the judge, either as a judge or as an attorney. If additional information becomes known to Investigative Counsel regarding a complaint that was dismissed before the filing of charges, the earlier allegations may be reinvestigated.

Source: This Rule is new and is derived in part from ABA Model Rules for Judicial Disciplinary Enforcement, Rule 18.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 1. GENERAL PROVISIONS

Rule 18-409.1. SUBPOENAS

(a) Investigative Subpoenas

(1) Authorization; Issuance

(A) Upon application by Investigative Counsel, the Chair of the Board, on behalf of the Commission, may authorize Investigative Counsel to issue a subpoena to compel the attendance of witnesses and the production of designated documents or other tangible things at a time and place specified in the subpoena if the Chair finds that the subpoena is necessary to and in furtherance of an investigation being conducted by Investigative Counsel pursuant to Rule 18-422 or 18-424.

(B) Upon authorization, Investigative Counsel may issue the subpoena.

(2) Contents

A subpoena shall comply with the requirements of Rule 2-510 (c), except that to the extent practicable, a subpoena shall not identify the judge under investigation. A subpoena to compel attendance of a witness shall include or be accompanied by a

notice that the witness (A) has the right to consult with an attorney with respect to the assertion of a privilege or any other matter pertaining to the subpoena and (B) may file a motion for judicial relief under Rule 2-510.

(3) Service

A subpoena shall be served in accordance with Rule 2-510. Promptly after service of a subpoena on a person other than the judge under investigation and in addition to giving any notice required by law, Investigative Counsel shall serve a copy of the subpoena upon the judge under investigation pursuant to Rule 18-404.

Cross reference: For examples of other notice required by law, see Code, Financial Institutions Article, § 1-304, concerning notice to depositors of subpoenas for financial records; Code, Health General Article, § 4-306 concerning disclosure of medical records; and Code, Health General Article, § 4-307, concerning notice of a request for issuance of compulsory process seeking medical records related to mental health services.

~~(4) Objection~~

~~The person served with the subpoena or the judge under investigation may file a motion in the circuit court for the county in which the subpoena was served for any order permitted by Rule 2-510 (e). The motion shall be filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance.~~

~~(5) Enforcement~~

~~On the motion of Investigative Counsel, the Commission may enforce compliance with a subpoena by invoking the aid of the circuit court for the county where the person not complying with the subpoena resides or carries on a business.~~

~~—(6) Confidentiality~~

~~Any paper filed in court with respect to a subpoena shall be sealed upon filing and shall be open to inspection only by order of the court. A hearing before the court on any motion shall be on the record and shall be conducted out of the presence of all individuals other than Investigative Counsel, the judge, and those individuals whose presence the court deems necessary.~~

(4) Motion for Protective Order

The judge, a person named in the subpoena, or a person named or depicted in an item specified in the subpoena may file a motion for protective order pursuant to Rule 2-510 (e). The motion shall be filed in the circuit court for the county in which the subpoena was served or, if the judge under investigation serves on that court, another circuit court designated by the Commission. The court may enter any order permitted by Rule 2-510 (e).

(5) Failure to Comply

Upon a failure to comply with a subpoena pursuant to this Rule, the court, on motion of Investigative Counsel, may compel

compliance with the subpoena as provided in Rule 18-411 (g).

(6) Confidentiality

(A) Court Files and Records

Files and records of the court pertaining to any motion filed with respect to the subpoena shall be sealed and shall be open to inspection only upon order of the Court of Appeals.

(B) Hearings

A hearing before the circuit court on any motion filed with respect to a subpoena shall be on the record and shall be conducted out of the presence of all individuals except those whose presence is necessary.

Cross Reference: See Code, Courts Article, §§ 13-401-403.

(7) Recording of Statements

All statements by the subpoenaed witness shall be under oath and shall be contemporaneously recorded stenographically or electronically.

(b) Subpoenas issued pursuant to Rule 18-433 or 18-434

The Chair of the Commission, on behalf of the Commission, may authorize the Executive Secretary to issue a subpoena to compel the attendance of witnesses and the production of documents or other tangible things at a time and place specified in the subpoena. To the extent otherwise relevant, the provisions of Rule 2-510 (c), (d), (e), (f), (g), (h), (i), (j),

Rule 18-409.1

and (k) shall apply to subpoenas issued pursuant to this section. References to a court in those Rules shall mean the Chair of the Commission, on behalf of the Commission. If a subpoena was issued at the request of Investigative Counsel, promptly after service of the subpoena on a person other than the judge, Investigative Counsel shall serve a copy of it upon the judge pursuant to Rule 18-404.

Committee note: The intent of section (b) is that the Executive Secretary issues an authorized subpoena and provides it to the party who requested it for service.

Source: This Rule is new and is derived in part, from Rule 19-712.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 2. STRUCTURE

RULE 18-411. ~~JUDICIAL DISABILITIES~~ COMMISSION ON JUDICIAL
DISABILITIES

(a) Chair and Vice Chair

The Court of Appeals shall designate a judicial member to serve as a Chair of the Commission and another judicial member to serve as Vice Chair. In making those designations, the Court may consider recommendations from the Commission. The Vice Chair shall perform the duties of the Chair whenever the Chair is disqualified or otherwise unable to act. The Chair and Vice Chair shall serve in those capacities at the pleasure of the Court.

(b) Compensation

A member of the Commission may not receive compensation for serving in that capacity but is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations.

(c) Recusal

A member of the Commission shall not participate as a member in any discussion, disposition, or proceeding in which (1) the member is a complainant, (2) the member's disability, impairment, or sanctionable conduct is in issue, (3) the member's impartiality might reasonably be questioned, (4) the member has personal knowledge of disputed evidentiary facts involved in the proceeding, or (5) the recusal of a judicial member would otherwise be required by the Maryland Code of Judicial Conduct.

Cross reference: See Md. Const., Art. IV, § 4B (a), providing that the Governor shall appoint a substitute member of the Commission for the purpose of a proceeding against a member of the Commission.

(d) Executive Secretary

(1) Appointment; Compensation

The Commission may select an attorney as Executive Secretary. The Executive Secretary shall serve at the pleasure of the Commission and receive the compensation set forth in the budget of the Commission.

(2) Duties

The Executive Secretary shall: (A) receive documents that are filed with the Commission and maintain the records of the Commission; (B) prepare the agenda of meetings of the Commission and before each meeting send to each Commission member a copy of the agenda and meeting materials; (C) attend meetings of the

Commission and the Inquiry Board, keep minutes of those meetings, and retain the minutes, subject to the retention schedule approved by the Chief Judge of the Court of Appeals; (D) serve as attorney to the Commission; (E) serve as liaison to the Board and to Investigative Counsel; and (F) have such other administrative powers and duties assigned by the Commission, other than duties committed to Investigative Counsel by these Rules.

Committee note: Keeping minutes of Board meetings is purely a secretarial service. Under Rule 18-407, proceedings before the Board are confidential, and those minutes therefore are not to be shared with members of the Commission.

(3) Assistants and Other Staff

As the need arises and to the extent funds are available in the Commission's budget, the Commission may employ additional persons to assist the Executive Secretary. The Executive Secretary shall keep an accurate record of the time and expenses of additional persons employed and ensure that the cost does not exceed the amount allocated by the Commission.

(e) Investigative Counsel; Assistants

(1) Appointment; Compensation

Subject to approval by the Court of Appeals, the Commission shall appoint an attorney with substantial trial experience and familiarity with these Rules and the Code of Judicial Conduct as Investigative Counsel. Before appointing

Investigative Counsel, the Commission shall notify bar associations and the general public of the vacancy and shall consider any recommendations that are timely submitted. Investigative Counsel shall serve at the pleasure of the Commission and shall receive the compensation set forth in the budget of the Commission.

(2) **Powers and** Duties

Investigative Counsel shall have the powers and duties set forth in the Rules in this Chapter and shall report and make recommendations to the Board and the Commission as required under these Rules or directed by the Commission. All reports and recommendations shall be in writing and maintained as a record of Investigative Counsel and the recipient.

(3) Additional Attorneys and Staff

As the need arises and to the extent funds are available in the Commission's budget, the Commission may appoint additional attorneys or other persons, other than its Executive Secretary **and any persons employed pursuant to subsection (d)(3) of this Rule** to assist Investigative Counsel. Investigative Counsel shall keep an accurate record of the time and expenses of additional persons employed and ensure that the cost does not exceed the amount allocated by the Commission.

(f) Quorum

(1) Generally

The presence of a majority of the members of the Commission constitutes a quorum for the transaction of business, provided that at least one judge, one attorney, and one public member are present unless, by reason of vacancies or recusals, the presence of at least one judge, one attorney, and one public member is not possible. At a hearing on charges held pursuant to Rule 18-434, a Commission member is present only if the member is physically present. Under all other circumstances, a member may be physically present or present by telephone, video, or other electronic conferencing. Other than adjournment of a meeting for lack of a quorum, no action may be taken by the Commission without the concurrence of a majority of members of the Commission.

(2) Special Designation of Substitute Member

If, by reason of vacancies or recusals, the quorum in a particular proceeding would not include at least one judge, one attorney, and one public member, the Court of Appeals, with the written consent of the judge who is the subject of the proceeding, may designate a judge, including a senior judge, an attorney, or a member of the public, as needed, for the composition of a quorum in that proceeding, to serve as a substitute member of the Commission.

(3) Continuity of Service

Following the expiration of a member's term, other than pursuant to Article IV, Section 4A(e) of the Maryland Constitution, the Commission may conduct business in the ordinary course with that member continuing to serve, until such time as the Governor appoints a replacement.

(g) General Powers of Commission

In accordance with Md. Const., Art. IV, §4B and Code, Courts Article, §13-401 through 13-403, and in addition to any other powers provided in the Rules in this Chapter, the Commission may:

(1) administer oaths and affirmations;

(2) issue subpoenas and compel the attendance of witnesses and the production of evidence;

(3) require persons to testify and produce evidence by granting them immunity from prosecution, penalty, or forfeiture; and

(4) in case of contumacy by any person or refusal to obey a subpoena issued by the Commission, invoke the aid of the circuit court for the county where the person resides or carries on a business.

(h) Records

The Commission shall keep a record of all documents filed with the Commission and all proceedings conducted by the Commission concerning a judge, subject to a retention schedule approved by the Chief Judge of the Court of Appeals.

(i) Annual Report

Not later than September 1 of each year, the Commission shall submit an annual report to the Court of Appeals regarding its operations. The Report shall include statistical data with respect to complaints received and processed but shall not include material declared confidential under Rule 18-407.

(j) Request for Home Address

Upon request by the Commission or the Chair of the Commission, the Administrative Office of the Courts shall supply to the Commission the current home address of each judge.

Cross reference: See Rules 18-402 (a) and 18-407 (a).

Source: This Rule is derived from former Rule 18-402 (2018).

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 2. STRUCTURE

RULE 18-412. JUDICIAL INQUIRY BOARD

(a) ~~Creation~~ Appointment and Composition, Qualifications;

Terms

(1) Appointment; Composition

(A) The Court of Appeals shall appoint a Judicial Inquiry Board consisting of two judges, two attorneys, and three public members who are not attorneys or judges. ~~No member of the Commission may serve on the Board.~~ No individual may serve on the Commission and the Board concurrently.

(B) The composition of the Board shall reflect the racial, gender, and geographical diversity of the population of Maryland.

(2) Qualifications

(A) All members shall be residents of the State of Maryland;

(B) The judicial members shall be current active judges of the State of Maryland;

(C) The attorney members shall be (i) admitted to practice law in Maryland; (ii) engaged in the practice of law in Maryland for a minimum of seven years; and (iii) not be a judge of any

court;

(D) The public members shall not be (i) active or retired judges; (ii) admitted to practice law in Maryland; or (iii) persons who have a financial relationship with or receive compensation from a judge or person admitted to practice law in Maryland;

[(3) Terms

(A) Subject to subsection (d)(2) of this Rule, the term of each member is four years, commencing on July 1. A member may not serve for more than two full terms or more than a total of ten years if appointed to fill a vacancy.

(B) Membership automatically terminates on the date that (i) a member ceases to be a resident of Maryland; (ii) any judicial member ceases to be an active judge; (iii) an attorney member becomes a judge or is disbarred or suspended; or (iv) a public member becomes a judge, is admitted to practice law in Maryland, or has a financial relationship with or receives compensation from a judge or person admitted to practice law in Maryland.]

DRAFTER'S NOTE: The Committee recommends subsection (a)(3) only if the Court makes the appointments.

(b) Compensation

A member of the Board may not receive compensation for serving in that capacity but is entitled to reimbursement for expenses reasonably incurred in the performance of official duties in accordance with standard State travel regulations.

(c) Chair and Vice Chair

The Court of Appeals shall designate a judicial member of the Board to serve as Chair of the Board and the other judicial member to serve as Vice Chair. The Vice Chair shall perform the duties of the Chair whenever the Chair is disqualified or otherwise unable to act.

(d) Recusal, Removal, or Replacement

(1) A member of the Board may not participate as a member in any discussion or recommendation in which (A) the member is a complainant, (B) the member's disability, impairment, or sanctionable conduct is in issue, (C) the member's partiality reasonably might be questioned, (D) the member has personal knowledge of disputed material evidentiary facts involved in the discussion or recommendation, or (E) the recusal of a judicial member otherwise would be required by the Maryland Code of Judicial Conduct.

(2) The Court of Appeals may remove or replace members of the Board at any time, and may temporarily replace a member of the

Board with a former member of the Board or Commission for purposes of maintaining a quorum.

(e) Quorum

The presence of a majority of the members of the Board constitutes a quorum for the transaction of business, so long as at least one judge, one attorney, and one public member are present. A member of the Board may be physically present or present by telephone, video, or other electronic conferencing. Other than adjournment of a meeting for lack of a quorum, no action may be taken by the Board without the concurrence of a majority of the members of the Board.

(f) Records

Subject to a retention schedule approved by the Chief Judge of the Court of Appeals, the Board shall keep a record of all documents filed with the Board and all proceedings conducted by the Board concerning a judge.

Source: This Rule is derived from former Rule 18-403 (2018).

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 3. ADMINISTRATIVE PROCEDURE

RULE 18-421. COMPLAINTS; PROCEDURE ON RECEIPT

(a) Referral to Investigative Counsel

The Commission shall refer all complaints and other written allegations of disability, impairment, or misconduct against a judge to Investigative Counsel.

(b) ~~Complaint~~ **Allegations** that ~~Fails~~ **Fail** to Allege Disability, Impairment, or Sanctionable Conduct

If Investigative Counsel concludes that ~~a complaint that~~ **the allegations**, liberally construed, ~~fails~~ **fail** to allege facts which, if true, would constitute a disability, impairment, or sanctionable conduct, **and therefore do not constitute a complaint, as defined in Rule 18-402 (h)**, Investigative Counsel shall ~~(1) dismiss the complaint, and (2) notify the Complainant and the Commission, in writing, that the complaint was filed and dismissed~~ **allegations were considered and found not to be a cognizable complaint** and the reasons for ~~the dismissal~~ **that conclusion**.

Committee note: Section (b) of this Rule does not preclude

Investigative Counsel from communicating with the complainant or making an inquiry under section (f) of this Rule in order to clarify general or ambiguous allegations that may suggest a disability, impairment, or sanctionable conduct. Outright dismissal is justified when the ~~complaint~~ allegations, on ~~its~~ their face, ~~complains~~ complain only of conduct that clearly does not constitute a disability, impairment, or sanctionable conduct or are not under oath.

(c) Written Allegation of Disability, Impairment, or Sanctionable Conduct Not Under Oath

(1) Except as provided by section (f) of this Rule, the Commission may not act upon a written allegation of disability, impairment, or misconduct, unless it is a complaint. If a written allegation, liberally construed, alleges facts indicating that a judge may have a disability or impairment or may have committed sanctionable conduct but is not under oath or supported by an affidavit, Investigative Counsel, if possible, shall (A) inform the complainant that the Commission acts only upon complaints under oath or supported by an affidavit, (B) provide the complainant with an appropriate form of affidavit, and (C) inform the complainant that unless a complaint under oath or supported by an affidavit is filed within 30 days after the date of the notice, the matter may be dismissed.

(2) If, after Investigative Counsel has given the notice provided for in subsection (c)(1) of this Rule or has been unable to do so, the complainant fails to file a timely complaint under

oath or supported by an affidavit, Investigative Counsel may dismiss the matter and notify the complainant and the Commission, in writing, that a written allegation of disability, impairment, or misconduct was filed and dismissed and the reasons for the dismissal.

(d) Stale Complaints

(1) Subject to subsection (d)(3), if a complaint alleges acts or omissions that all occurred more than three years prior to the date the complaint was filed, Investigative Counsel, after notice to the judge, if the judge has requested notice pursuant to Rule 18-422(A)(4)(a), may make a recommendation to the Board whether, in light of the staleness, there is good cause to investigate the complaint.

(2) If the Board concludes that there is no good cause for any further investigation, it shall direct that the complaint be dismissed. If the Board concludes otherwise, it shall direct Investigative Counsel to proceed in accordance with sections ~~(b)~~ and ~~(c)~~ (e) of this Rule. In making that determination, the Board shall weigh any prejudice to the judge against the seriousness of the conduct alleged in the complaint.

(3) Subsections (d)(1) and (d)(2) of this Rule do not apply to complaints that allege criminal conduct which, upon conviction, would subject the judge to imprisonment for more than

eighteen months.

Committee note: In contrast to dismissal of a complaint under Rule 18-423 (f)(3), which requires action by the Commission, Investigative Counsel may dismiss an allegation of disability, impairment, or sanctionable conduct under this Rule when, for the reasons noted, the allegation fails to constitute a complaint. Subject to sections (c) and (f) of this Rule, if there is no cognizable complaint, there is no basis for conducting an investigation.

(e) Opening File on Receipt of Complaint

Subject to section (f) of this Rule, Investigative Counsel shall docket each properly filed complaint by opening a numbered file on the complaint and promptly in writing (1) acknowledging receipt of the complaint and (2) explaining to the complainant the procedure for investigating and processing the complaint.

(f) Inquiry

Upon receiving information from any source indicating that a judge may have a disability or impairment or may have committed sanctionable conduct, Investigative Counsel may ~~open a file and~~ make an inquiry. An inquiry may include obtaining additional information from a complainant and any potential witnesses, reviewing public records, obtaining transcripts of court proceedings, and communicating informally with the judge. Following the inquiry, Investigative Counsel shall (1) ~~close the file~~ conclude the inquiry and dismiss any complaint in conformity with ~~subsection (a)(2)~~ section (b) of this Rule or (2) open a

file, proceed as if a complaint had been properly filed, and undertake an investigation in accordance with Rule 18-422.

Source: This Rule is derived from former Rule 18-404 (a) through (d).

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 3. ADMINISTRATIVE PROCEDURE

RULE 18-422. INVESTIGATION BY INVESTIGATIVE COUNSEL

(a) Conduct of Investigation

(1) Duty to Conduct; Notice to Board and Commission

If a complaint is not dismissed in accordance with Rule 18-421, Investigative Counsel shall conduct an investigation to determine whether there are reasonable grounds to believe that the judge may have a disability or impairment or may have committed sanctionable conduct. Investigative Counsel shall inform the Board and the Commission promptly that the investigation is being undertaken.

(2) Investigative Subpoena

The issuance of an investigative subpoena is governed by Rule 18-409.1 (a).

Cross reference: See Code, Courts Article, §§13-401 - 403.

(3) Grant of Immunity

Upon application by Investigative Counsel and for good cause, the Commission may grant immunity to any person from prosecution, or from any penalty or forfeiture, for or on account

of any transaction, matter, or thing concerning which that person testifies or produces evidence, documentary or otherwise.

Cross reference: See Md. Const., Art. IV §4B (a)(1)(ii) and Code, Courts Article, §13-403.

Committee note: The need for a grant of immunity in order to compel the production of evidence may arise at any stage. Placing a reference to it here is not intended to preclude an application to the Commission in a later stage of the proceeding.

(4) Notice to Judge

(A) Upon Opening of File

Judges may request the Commission to inform them in writing ~~immediately~~ promptly upon the opening of a file pertaining to them pursuant to Rule 18-421 (e) or (f). The request shall be in writing. If such a request is received, Investigative Counsel shall comply with that request unless the Board authorizes a delay in providing the notice upon a finding that there is a reasonable possibility that immediate notice may jeopardize an investigation by Investigative Counsel or cause harm to any person. The notice shall be accompanied by a copy of the complaint.

(B) Upon Service of Investigative Subpoena

Upon service of an investigative subpoena pursuant to Rule 18-409.1, Investigative Counsel shall (i) serve a copy of the subpoena upon the judge under investigation as required under Rule 18-409.1 (a)(3) and (ii) unless notice was given to the

judge pursuant to subsection (a)(4)(A) of this Rule, include that notice with a copy of the subpoena.

(C) Prior to Conclusion of the Investigation

Subject to subsection (a)(4)(F) of this Rule, unless notice has been given to the judge pursuant to subsection (a)(4)(A) or (B) of this Rule, it shall be given before conclusion of the investigation.

(D) Content

Investigative Counsel's notification to the judge shall be in writing and shall state: (i) that Investigative Counsel has undertaken an investigation into whether the judge has a disability or impairment or has committed sanctionable conduct; (ii) whether the investigation was undertaken on Investigative Counsel's initiative or on a complaint; (iii) if the investigation was undertaken on a complaint, the name of the person who filed the complaint and the contents of the complaint; (iv) the nature of the alleged disability, impairment, or sanctionable conduct under investigation; and (v) the judge's rights under subsection (a)(5) of this Rule.

(E) Service

The notice shall be given by first class mail or by certified mail requesting "Restricted Delivery - show to whom, date, address of delivery" and shall be addressed to the judge at

the judge's address of record.

(F) Exception

Notice shall not be given under this Rule if Investigative Counsel determines, prior to the conclusion of the investigation, that the recommendation of Investigative Counsel will be dismissal of the complaint without a letter of cautionary advice and the judge had not been given notice of the opening of the file pursuant to subsection (a)(4)(A) or (B) of this Rule.

Committee note: If, pursuant to subsection (a)(4)(A) or (B) of this Rule, the judge had received notice of the opening of a file, the judge also must be given notice that the complaint was dismissed or that any inquiry by Investigative Counsel pursuant to Rule 18-421 (f) was terminated.

(5) Opportunity of Judge to Respond

Upon the issuance of notice pursuant to subsection (a)(4) of this Rule, Investigative Counsel shall afford the judge a reasonable opportunity prior to concluding the investigation to present such information as the judge chooses and shall give due consideration to the judge's response before concluding the investigation.

(6) Time for Completion

Investigative Counsel shall complete an investigation within 90 days after the investigation is commenced. Upon application by Investigative Counsel within the 90-day period and for good cause, the Board, with the approval of the Chair of the

Commission, may extend the time for completing the investigation for a reasonable period. An order extending the time for good cause shall be in writing and shall articulate the basis of the good cause. The Commission may dismiss any complaint and terminate the investigation for failure to comply with the time requirements of this section.

(b) Report and Recommendation by Investigative Counsel

(1) Duty to Make

Upon completion of an investigation, Investigative Counsel shall make a report of the results of the investigation in the form that the Commission requires.

(2) Contents

~~Investigative Counsel shall include in the report or attach to it any response or other information provided by the judge pursuant to subsection (a)(5) of this Rule.~~

(A) The report shall be in three distinct parts.

(B) Part 1 shall contain a statement of relevant factual information obtained by Investigative Counsel and shall include, in the body of the report or as attachments to it, (i) recorded witness statements and summaries of unrecorded witness statements, and (ii) any response or other information provided by the judge pursuant to subsection (a)(5) of this Rule.

(C) Part 2 shall contain Investigative Counsel's analysis

or evaluation of the material in Part 1 and legal conclusions drawn therefrom, which are in the nature of Investigative Counsel's work product.

(D) The report shall include Part 3 shall contain Investigative Counsel's recommendations, including a statement that the investigation indicates probable sanctionable conduct, probable impairment, probable disability, any of them, or none of them, together with one of the following recommendations, as appropriate:

(A)(i) dismissal of any complaint, without a letter of cautionary advice;

(B)(ii) dismissal of any complaint, with a letter of cautionary advice;

(C)(iii) a conditional diversion agreement;

(D)(iv) a reprimand;

(E)(v) the filing of charges; or

(F)(vi) retirement of the judge based upon a finding of disability.

(3) Recipient of Report

(A) If the recommendation is dismissal of the complaint without a letter of cautionary advice, ~~the~~ Parts 1 and 3 of the report and recommendation shall be made to the Commission. Upon

receipt of the recommendation, the Commission shall proceed in accordance with Rule 18-425.

(B) Otherwise, the report and recommendation shall be made to the Board.

Committee note: A complaint may be dismissed outright and without a letter of cautionary advice for various reasons, at different stages, and by different entities. Investigative Counsel may dismiss a claim on his or her own initiative, without opening a file, pursuant to Rule 18-421 ~~(a)~~ **(b)**. In that instance, no notice need be given to the judge ~~unless the judge has requested notice~~. If Investigative Counsel opens a file pursuant to Rule 18-421 ~~(b)~~, **(e) or (f)** and performs an investigation under this Rule, Investigative Counsel may recommend dismissal without a letter of cautionary advice because, as a factual matter, there is insufficient evidence of a disability, impairment, or sanctionable conduct **or because the complaint is stale**. In that situation, if the Commission, **or, in the case of a stale complaint, the Board** adopts the recommendation, there is no need for notice to the judge unless the judge has requested such notice. If ~~the~~ **a** matter **other than a stale complaint** proceeds to the Board, the judge must receive notice, even if the ultimate decision is to dismiss the complaint.

(c) Records

Subject to a retention schedule approved by the Chief Judge of the Court of Appeals, Investigative Counsel shall keep a record of the investigation.

Source: This Rule is in part derived from former Rule 16-805 (e) and (f) (2016), in part from former Rule 18-404 (e) (2018), and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 3. ADMINISTRATIVE PROCEDURE

Rule 18-423. PROCEEDINGS BEFORE BOARD; REVIEW BY COMMISSION

(a) Review of Investigative Counsel's Report

The Board shall review the reports and recommendations made to the Board by Investigative Counsel and any matters referred to it by the Commission pursuant to these Rules.

Cross reference: See Rule 18-425 (a).

(b) Informal Meeting with Judge; Peer Review

(1) Generally

The Board may meet informally with the judge.

(2) Peer Review

(A) As part of or in furtherance of that meeting, the Chair of the Board, with the consent of the judge, may convene a peer review panel consisting of not more than two judges who serve or have served on the same level of court upon which the judge sits to confer with the judge about the complaint and suggest options for the judge to consider. The judges may be incumbent judges or senior judges.

(B) The discussion may occur in person or by telephone or

other electronic conferencing but shall remain informal and confidential. The peer review panel (i) shall have no authority to make any findings or recommendations, other than to the judge; (ii) shall make no report to Investigative Counsel, the Board, or the Commission; and (iii) may not testify regarding the conference with the judge before the Commission or in any court proceeding.

Committee note: The peer review panel is not intended as either an arbitrator or a mediator but, as judicial colleagues, simply to provide an honest and neutral appraisal for the judge to consider.

(c) Further Investigation

The Board may direct Investigative Counsel to make a further investigation pursuant to Rule 18-424.

(d) Board's Report to Commission

(1) Contents

(A) After considering Investigative Counsel's report and recommendation, the Board shall submit a report to the Commission. The Board shall include in its report the recommendation made to the Board by Investigative Counsel. Subject to subsection (d)(2) of this Rule, the report shall include one of the following recommendations:

~~(A)~~ (i) dismissal of any complaint, without a letter of cautionary advice pursuant to Rule 18-425 (a) and termination of any investigation;

~~(B)~~ (ii) dismissal of any complaint, with a letter of cautionary advice pursuant to Rules 18-425 (b) or 18-436;

~~(C)~~ (iii) a conditional diversion agreement pursuant to Rules 18-426 or 18-436;

~~(D)~~ (iv) a reprimand pursuant to Rules 18-427 or 18-436;

~~(E)~~ (v) retirement of the judge pursuant to Rule 18-428; or

~~(F)~~ (vi) upon a determination of probable cause that the judge has a disability or impairment or has committed sanctionable conduct, the filing of charges pursuant to Rule 18-431.

(B) The information transmitted by the Board to the Commission shall be limited to a proffer of evidence that the Board has determined would likely be admitted at a plenary hearing before the Commission. The Chair of the Board may consult with the Chair of the Commission in determining the information to be transmitted to the Commission.

(2) Time for Submission of Report

(A) Generally

Unless the time is extended by the Chair of the Commission for good cause, the Board shall submit the report within 45 days after the date the Board received Investigative Counsel's report and recommendation.

(B) Extension

Upon a written request by the Chair of the Board, the Chair of the Commission may grant a reasonable extension of time for submission of the report. An order extending the time shall be in writing and shall articulate the nature of the good cause.

(C) Failure to Submit Timely Report

If the Board fails to submit a report within the time allowed, the Chair of the Commission shall direct Investigative Counsel to create and submit a report that conforms to the requirements of subsections (d)(1) and (2) of this Rule, subject to Rule 18-422 (b)(2), and refer the matter to the Commission, which may proceed, using the report as submitted by Investigative Counsel in accordance with this provision.

(D) Copy to Investigative Counsel and Judge

Upon receiving the report and recommendation, the Commission promptly shall transmit a copy of it, including any appendices or memoranda attached to it, to Investigative Counsel and to the judge.

(e) Filing of Response

Investigative Counsel and the judge may file with the Commission a written response to the Board's report and recommendation. Unless the Chair of the Commission, Investigative Counsel, and the judge agree to an extension, any response shall be filed within ~~30~~ 15 days after the date the

Commission transmitted copies of the report and recommendation to Investigative Counsel and the judge if the recommendation is a dismissal, with or without a letter of cautionary advice, and within 30 days after that date in all other cases.

(f) Action by Commission on Board Report and Recommendation

(1) Review

The Commission shall review the report and recommendation and any timely filed responses.

(2) Appearance by Judge

Upon written request by the judge, with a copy to Investigative Counsel, the Commission may permit the judge to appear before the Commission on reasonable terms and conditions established by the Commission.

Committee note: This review and any appearance by the judge is not an evidentiary hearing. That is provided for in Rule 18-434 after charges have been filed. It is only for the Commission to determine whether to direct that charges be filed against the judge or some other action set forth in subsection (f)(3) should be taken.

(3) Disposition

Upon its review of the report and recommendation and any timely filed responses and consideration of any evidence or statement by the judge pursuant to subsection (f)(2) of this Rule, the Commission shall:

(A) direct Investigative Counsel to conduct a further

investigation pursuant to Rule 18-424;

(B) remand the matter to the Board for further consideration and direct the Board to file a supplemental report within a specified period of time;

(C) dismiss the complaint pursuant to Rule 18-425, with or without a letter of cautionary advice;

(D) enter a disposition pursuant to Rule 18-426, 18-427, or 18-428;

(E) enter an appropriate disposition to which the judge has filed a written consent in accordance with the Rules in this Chapter, including a disposition under 18-435; or

(F) direct Investigative Counsel to file charges pursuant to Rule 18-431.

Source: This Rule is derived in part from former Rule 16-805 (h) through (l) (2016) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 3. ADMINISTRATIVE PROCEDURE

RULE 18-424. FURTHER INVESTIGATION

(a) Notice to Judge

Upon a directive for a further investigation by the Board pursuant to Rule 18-423 (c) or by the Commission pursuant to Rule 18-423 (f)(3), Investigative Counsel promptly shall ~~(A)~~ (1) provide the notice and opportunity to respond required by Rule 18-422 (a)(4) and (5) if such notice and opportunity have not already been provided, and ~~(B)~~ (2) notify the judge at the judge's address of record that the Board or Commission has directed a further investigation.

(b) Investigative Subpoenas

~~(1) Issuance~~

The issuance of an investigative subpoena is governed by Rule 18-409.1 (a).

~~(2) Notice to Judge~~

~~Promptly after service of the subpoena and in addition to any other notice required by law, Investigative Counsel shall provide to the judge a copy of the subpoena and notice of the~~

~~service of the subpoena. The notice to the judge shall be sent by first class mail to the judge's address of record or, if previously authorized by the judge, by any other reasonable method.~~

~~—(3) Motion for Protective Order~~

~~The judge, a person named in the subpoena, or a person named or depicted in an item specified in the subpoena may file a motion for a protective order pursuant to Rule 2-510 (e). The motion shall be filed in the circuit court for the county in which the subpoena was served or, if the judge under investigation serves on that court, another circuit court designated by the Commission. The court may enter any order permitted by Rule 2-510 (e).~~

~~(4) Failure to Comply~~

~~Upon a failure to comply with a subpoena issued pursuant to this Rule, the court, on motion of Investigative Counsel, may compel compliance with the subpoena as provided in Rule 18-411 (g).~~

~~—(5) Confidentiality~~

~~—(A) Subpoena~~

~~To the extent practicable, a subpoena shall not divulge the name of the judge under investigation.~~

~~—(B) Court Files and Records~~

~~Files and records of the court pertaining to any motion filed with respect to a subpoena shall be sealed and shall be open to inspection only upon order of the Court of Appeals.~~

~~(C) Hearings~~

~~Hearings before the circuit court on any motion filed with respect to a subpoena shall be on the record and shall be conducted out of the presence of all individuals except those whose presence is necessary.~~

Cross reference: See Code, Courts Article, §§ 13-401 - 403.

(c) Time for Completion of Investigation

Investigative Counsel shall complete a further investigation within the time specified by the Board or Commission. Upon application by Investigative Counsel made within that period and served by first class mail upon the judge or the judge's attorney of record, the Chair of the Commission, for good cause, may extend the time for completing the further investigation for a specified reasonable time. An order extending the time for good cause shall be in writing and shall articulate the basis of the good cause. The Commission may dismiss the complaint and terminate the investigation for failure to complete the investigation within the time allowed.

(d) Report and Recommendation

(1) Duty to Make

Within the time for completing the further investigation, Investigative Counsel shall make a report of the results of the investigation to the Board or Commission, whichever authorized the further investigation, in the form the Commission requires.

(2) Contents

Unless the material already has been provided, Investigative Counsel shall include in the report or attach to it any response or other information provided by the judge pursuant to section (a) of this Rule or Rule 18-422 (a)(5). The report shall **be in the form required by Rule 18-422 (b)(2) and** include a statement that the investigation indicates probable disability, probable impairment, probable sanctionable conduct, any of them, or none of them, together with one of the following recommendations:

(A) dismissal of any complaint, without a letter of cautionary advice;

(B) dismissal of any complaint, with a letter of cautionary advice;

(C) a conditional diversion agreement;

(D) a reprimand;

(E) the filing of charges; or

(F) retirement of the judge based upon a finding of disability.

Source: This Rule is in part new and in part derived from former Rule 18-405 (2018).

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 4. DISPOSITION OTHER THAN FILING OF CHARGES

RULE 18-425. DISMISSAL OF COMPLAINT

(a) Without Letter of Cautionary Advice

If, after an investigation by Investigative Counsel, the Commission concludes that the evidence fails to show that the judge has a disability or impairment or has committed sanctionable conduct, it shall dismiss the complaint without a letter of cautionary advice and notify the complainant, the judge, and the Board. If the Commission is unable to make that conclusion based on a recommendation by Investigative Counsel pursuant to Rule 18-422 (b)(3), it shall refer the matter to the Board for its review under Rule 18-423.

(b) With Letter of Cautionary Advice

(1) When Appropriate

If the Commission determines that any sanctionable conduct that may have been committed by the judge will be sufficiently addressed by the issuance of a letter of cautionary advice, the Commission may accompany a dismissal with such a letter.

Committee note: A letter of cautionary advice may be appropriate

where ~~(1)~~ the judge's conduct was (1) inappropriate and perhaps marginally sanctionable or (2) if sanctionable, was not particularly serious, was not intended to be harmful, was not repetitious, may have been the product of a momentary lapse in judgment or the judge being unaware that the conduct was not appropriate, and does not justify discipline. The letter is intended to be remedial in nature, so that the judge will be careful not to repeat that or similar conduct.

(2) Notice to Judge; Response

The Commission shall notify the judge of a proposed the dismissal with cautionary advice. Within 15 days after the sending of that notice, the judge may file a written response, which, before issuing the dismissal and letter, the Commission shall consider.

(3) Confidentiality

The existence and contents of the letter are private and confidential, except that the Commission and Investigative Counsel shall retain a copy of it and any response by the judge and may consider ~~it~~ them if relevant in any subsequent proceeding against the judge. The Commission shall notify the complainant that the complaint was brought to the judge's attention and that no public action against the judge was taken.

(4) Not a Form of Discipline

A letter of cautionary advice is not a reprimand and does not constitute a form of discipline.

Source: This Rule is derived in part from former Rule 18-406 (a) (2018) and is in part new.

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TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 4. DISPOSITION OTHER THAN FILING OF CHARGES

Rule 18-426. CONDITIONAL DIVERSION AGREEMENT

(a) When Appropriate

The Commission and the judge may enter into a conditional diversion agreement if, after an investigation by Investigative Counsel:

(1) the Commission concludes (A) that any alleged sanctionable conduct was not so serious, offensive, or repeated as to justify the filing of charges or, if charges already had been filed, the imposition of any immediate discipline, and (B) that the appropriate disposition is for the judge to undergo specific treatment, participate in one or more specified educational or therapeutic programs, issue an apology to the complainant, or take other specific corrective or remedial action; and

(2) the judge, in the agreement, (A) agrees to the specified conditions, (B) waives the right to a hearing before the Commission and subsequent proceedings before the Court of Appeals, (C) agrees that the conditional diversion agreement may

be revoked for noncompliance in accordance with the provisions of section (b) of this Rule, and (D) agrees that the agreement may be admitted in any subsequent disciplinary proceeding against the judge to the extent that it is relevant to the allegations at issue or the sanction that may be imposed.

Committee Note: A conditional diversion agreement may be the most appropriate response to the situation set forth in subsection (a)(1) where any sanctionable conduct was predominantly the product of the judge's impairment, as it can provide a meaningful opportunity for remedial assistance to the judge who, by consenting to the agreement, recognizes it is needed, as well as protection of the public. The judge is free, of course, to reject an offer of a conditional diversion agreement, in which event the Commission may deal with any sanctionable conduct in other ways.

(b) Compliance

The Commission shall direct Investigative Counsel or some other person to monitor compliance with the conditions of the agreement and may direct the judge to document compliance.

~~Investigative Counsel~~ **The monitor** shall give written notice to the judge of the nature of any alleged failure to comply with a condition of the agreement. If, after affording the judge at least 15 days to respond to the notice, the Commission finds that the judge has failed to satisfy a material condition of the agreement, the Commission may revoke the agreement and proceed with any other disposition authorized by these Rules. If, upon request of the judge, a monitor other than Investigative Counsel

is appointed, all reasonable expenses of the monitor shall be assessed against the judge.

(c) Not a Form of Discipline

A conditional diversion agreement under this section does not constitute discipline or a finding that sanctionable conduct was committed.

(d) Notice to Complainant; Confidentiality

The Commission shall notify the complainant that the complaint has resulted in an agreement with the judge for corrective or remedial action. Except as permitted in Rule 18-407, the terms of the agreement shall remain confidential and not be disclosed to the complainant or any other person unless the judge consents, in writing, to the disclosure.

(e) Termination of Proceedings

Until the conditions of the agreement have been fully satisfied, the complaint remains open. Upon notification by Investigative Counsel that the judge has satisfied all conditions of the agreement, the Commission shall terminate the proceedings.

Source: This Rule is derived in part from former Rule 16-807 (c) (2016) and in part from Rule 18-406 (c) (2018).

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TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 4. DISPOSITION OTHER THAN FILING OF CHARGES

Rule 18-427. REPRIMAND

(a) When Appropriate

The Commission may issue a reprimand to the judge if, after an investigation by Investigative Counsel and an opportunity for a hearing:

(1) the Commission concludes that the judge has committed sanctionable conduct that justifies some form of discipline;

(2) the Commission further concludes that the sanctionable conduct was not so serious, offensive, or repetitious as to justify the filing of charges and that a reprimand is an appropriate disposition under the circumstances.

(b) Procedure

(1) If, after investigation, Investigative Counsel recommends a reprimand, Investigative Counsel shall serve notice of that recommendation on the judge.

(2) Within 30 days after service of the notice, the judge shall serve notice on Investigative Counsel that the judge (A) will not oppose that disposition, (B) will not contest the facts

underlying the recommendation but requests a hearing before the Commission on whether a reprimand is a proper disposition, or (C) will contest the facts underlying the recommendation.

(3) If the judge agrees to proceed in accordance with subsection (b)(2)(A) or fails to make a timely response, the Commission may issue the reprimand.

(4) If the judge agrees to proceed in accordance with subsection (b)(2)(B), the matter shall be transmitted to the Board and the Commission pursuant to Rule 18-423. Proceedings before the Commission shall be on the record but, if the Commission issues the reprimand, those proceedings and the reprimand shall be confidential and not subject to disclosure, except as allowed by Rule 18-407 (b).

(5) If the judge elects to contest the underlying facts, the matter shall be transmitted to the Board pursuant to Rule 18-423, but proceedings before the Commission and any disposition by the Commission shall be public.

(c) Form of Discipline

A reprimand constitutes a form of discipline.

(d) Retention of Copy

Investigative Counsel and the Commission shall retain a copy of the reprimand and may consider it if relevant in any subsequent proceeding against the judge.

(e) Notice to Complainant

Upon the issuance of a reprimand, the Commission shall notify the complainant that the complaint was brought to the judge's attention and that no public action was taken against the judge.

Source: This Rule is derived in part from former Rule 16-807 (b) (2016) and in part from former Rule 18-406 (b) (2018).

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 4. DISPOSITION OTHER THAN FILING OF CHARGES

Rule 18-428. RETIREMENT AS A DISPOSITION

(a) Applicability

This Rule applies to a retirement ordered by the Court of Appeals as a disposition upon a finding of disability. It does not apply to a voluntary retirement by the Judge.

(b) When Appropriate

Retirement of a judge may be an appropriate disposition upon a determination that (1) the judge suffers from a disability, as defined in Rule 18-402 (i), and (2) any alleged conduct that otherwise may constitute sanctionable conduct was predominantly the product of that disability and did not involve misconduct so serious that, if proven, would justify suspension or removal of the judge from office or, in light of the circumstances, would justify a censure.

(c) Effect

(1) Retirement under this Rule is permanent. A judge who is retired under this Rule may not be recalled to sit on any court, but the judge shall lose no other retirement benefit to which he

or she is entitled by law.

(2) Retirement under this Rule does not constitute discipline.

Cross reference: See Rule 18-441 dealing with special procedures in disability cases. See also Md. Const., Art. IV, §4B (a)(2), authorizing the Commission to recommend to the Court of Appeals retirement of a judge "in an appropriate case" and Rule 19-740 authorizing a comparable disposition for attorneys who have a disability.

Source: This Rule is new.

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TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

RULE 18-431. FILING OF CHARGES

(a) Direction by Commission

After considering the report and recommendation of the Board or Investigative Counsel submitted pursuant to Rule 18-423 and any timely filed response, and upon a finding by the Commission of probable cause to believe that a judge has a disability or impairment or has committed sanctionable conduct, the Commission may direct Investigative Counsel to initiate proceedings against the judge by filing with the Commission charges that the judge has a disability or impairment or has committed sanctionable conduct.

(b) Content of Charges

The charges shall (1) state the nature of the alleged disability, impairment, or sanctionable conduct, including each Rule of the Maryland Code of Judicial Conduct allegedly violated by the judge, (2) allege the specific facts upon which the charges are based, and (3) state that the judge has the right to

file a written response to the charges within 30 days after service of the charges.

(c) Service; Notice

The charges shall be served upon the judge pursuant to Rule 18-404. A return of service of the charges shall be filed with the Commission. Upon service, the Commission shall notify any complainant that charges have been filed against the judge. Cross reference: See Md. Const., Art. IV, § 4B (a).

(d) Response

Within 30 days after service of the charges, the judge may file with the Commission an original and 11 copies of a written response or file a response electronically pursuant to Rule 18-404.

(e) Notice of Hearing

(1) Generally

Upon the filing of a response or, if no response is filed upon expiration of the time for filing one, the Commission shall schedule a hearing and notify the judge of the date, time, and place of the hearing. Unless the judge has agreed to an earlier hearing date, the hearing shall not be held earlier than 60 days after the notice was sent.

(2) Sanctionable Conduct

If the hearing is on a charge of sanctionable conduct, the Commission also shall notify the complainant and post a notice on the Judiciary website that is limited to (1) the name of the judge, (2) the date, time, and place of the hearing, (3) the charges that have been filed, and (4) any response from the judge. If the charges also contain allegations of disability or impairment, any information related to those allegations shall be governed by the provisions of subsection (e)(3) and shall not be posted on the Judiciary website or otherwise made public.

(3) Disability or Impairment

If the hearing is on a charge of disability or impairment, the Commission shall notify the complainant that charges have been filed and a hearing date has been set, but all other information, including the charges, any response from the judge, and all proceedings before the Commission, shall be confidential.

Cross reference: See Rule 18-407 (a)(3) concerning the time for posting on the Judiciary website.

(f) Extension of Time

The Commission may extend the time for filing a response and for the commencement of a hearing.

(g) Amendment

Rule 18-431

At any time before the hearing, the Commission on request may allow amendments to the charges or the response. If an amendment to the charges is made less than 30 days before the scheduled hearing, the judge, upon request, shall be given a reasonable time to respond to the amendment and to prepare and present any defense.

Source: This Rule is derived in part from former Rule 16-808 (2016) and in part from Rule 18-407 sections (a) through (h) (2018).

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

Rule 18-432. PROCEDURAL RIGHTS OF JUDGES

The judge has the right to:

- (1) conduct discovery pursuant to Rule 18-433;
- (2) receive a prompt hearing on the charges in accordance with Rule 18-434;
- (3) procure the issuance of subpoenas for the attendance of witnesses and for the production of documents and other tangible things;
- (4) present evidence and argument; and
- (5) examine and cross-examine witnesses.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

Rule 18-433. DISCOVERY

(a) Generally

(1) Except as otherwise provided in this Rule, discovery is governed by the relevant Rules in Title 2, Chapter 400.

(2) The Chair of the Commission, rather than a court, may limit the scope of discovery, enter protective orders permitted by Rule 2-403, and resolve other discovery issues.

Cross reference: For the issuance of subpoenas pertaining to discovery proceedings, see Rule 18-409.1 (b).

(3) Investigative Counsel and the judge have the obligation to respond to the other's discovery requests addressed to them.

(4) Investigative Counsel, the Commission, and the judge have a continuing duty to supplement information required to be disclosed under this Rule.

(5) The Commission shall preclude a party from calling a witness, other than a rebuttal witness, or otherwise presenting evidence upon a finding, after the opportunity for a hearing if one is requested, that (1) the witness or evidence was subject to

disclosure under this Rule, (2) the party, without substantial justification, failed to disclose the witness or evidence in a timely manner, and (3) failure was prejudicial to the other party. For purposes of this Rule, the parties are Investigative Counsel and the judge against whom charges have been filed.

(b) Open File

Upon request by the judge or the judge's attorney, at any time after service of charges upon the judge (1) the Executive Secretary of the Commission shall allow the judge or attorney to inspect and copy the entire Commission record, (2) Investigative Counsel shall (A) allow the judge or attorney to inspect and copy all evidence accumulated during the investigation and all material, information, and statements as defined in Rule 2-402 (f), (B) provide summaries or reports of all oral statements for which contemporaneously recorded substantially verbatim recitals do not exist, and (C) certify to the judge in writing that, except for material that constitutes attorney work product or that is subject to a lawful privilege or protective order issued by the Commission, the material disclosed constitutes the complete record of Investigative Counsel as of the date of inspection.

(c) Exculpatory Evidence

Whether as part of the disclosures pursuant to section (b)

of this Rule or otherwise, no later than 30 days prior to the scheduled hearing, Investigative Counsel shall disclose to the judge all statements or other evidence of which Investigative Counsel is aware that (1) directly negates any allegation in the charges, (2) would be admissible to impeach a witness intended to be called by Investigative Counsel, or (3) would be admissible to mitigate a permissible sanction. **This obligation includes exculpatory information that is included in Investigative Counsel's Report to the Board.**

(d) Witnesses

No later than 30 days prior to the scheduled hearing, Investigative Counsel shall provide to the judge the names and addresses of all persons, other than a rebuttal witness, Investigative Counsel intends to call at the hearing. No later than 25 days prior to the scheduled hearing, the judge shall provide to Investigative Counsel the names and addresses of all persons, other than a rebuttal witness, the judge intends to call at the hearing.

Source: This Rule is in part derived from former Rule 18-407 (g) (2018) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

Rule 18-434. HEARING ON CHARGES

(a) Bifurcation

If the judge has been charged with both sanctionable conduct and disability or impairment, the hearing shall be bifurcated and the hearing on charges of disability or impairment shall proceed first.

(b) Subpoenas

Upon application by Investigative Counsel or the judge, the Commission shall issue subpoenas to compel the attendance of witnesses and the production of documents or other tangible things at the hearing in accordance with Rule 18-409.1 (b).

(c) Non-Response or Absence of Judge

The Commission may proceed with the hearing whether or not the judge has filed a response or appears at the hearing.

(d) Motion for Recusal

Except for good cause shown, a motion for recusal of a member of the Commission shall be filed at least 30 days before the hearing. The motion shall specify with particularity the

reasons for recusal.

(e) Role of Investigative Counsel

At the hearing, Investigative Counsel shall present evidence in support of the charges. If Investigative Counsel and any assistants appointed pursuant to Rule 18-411 (e)(3) are recused from a proceeding before the Commission, the Commission shall appoint an attorney to handle the proceeding.

(f) Evidence

Title 5 of the Maryland Rules shall generally apply.

Committee note: Rulings on evidence shall be made by the Chair, who [may] [shall] take into consideration any views expressed by other members of the Commission. Whether expert testimony may be allowed in a Commission hearing is governed by Rules 5-701 through 5-706, with the Commission exercising the authority of a court.

(g) Recording

The proceeding shall be recorded verbatim, either by electronic means or stenographically, as directed by the Chair of the Commission. Except as provided in Rule 18-435 (e), the Commission is not required to have a transcript prepared. The judge, at the judge's expense, may have the record of the proceeding transcribed.

(h) Proposed Findings

The Chair of the Commission may invite the judge and Investigative Counsel to submit proposed findings of fact and

conclusions of law within the time period set by the Chair.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

Rule 18-435. COMMISSION FINDINGS AND ACTION

(a) Finding of Disability

If the Commission finds that the judge has a disability, it shall refer the matter to the Court of Appeals, whether or not the Commission also finds that the judge committed sanctionable conduct.

(b) Finding of Impairment

If the Commission finds that the judge has an impairment and a conditional diversion agreement has not been signed pursuant to Rule 18-426, the Commission shall refer the matter to the Court of Appeals, whether or not the Commission also finds that the judge committed sanctionable conduct.

(c) Finding of Sanctionable Conduct

If the Commission finds that the judge has committed sanctionable conduct and that dismissal, with or without a letter of cautionary advice, or a conditional diversion agreement is not appropriate but does not find that the judge has a disability or impairment, it shall either issue a reprimand to the judge, if

the proceeding was conducted pursuant to Rule 18-427 (b)(2)(A) or (B), or refer the matter to the Court of Appeals.

(d) Finding of No Disability, Impairment, or Sanctionable Conduct

If the Commission finds that the judge does not have a disability or impairment and did not commit sanctionable conduct, it shall dismiss the charges with or without a letter of cautionary advice and terminate the proceeding.

(e) Duties of Commission on Referral to Court of Appeals

If the Commission refers the case to the Court of Appeals, the Commission shall:

(1) make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceeding, state its recommendations, and enter those findings and recommendations in the record;

(2) cause a transcript of all proceedings at the hearing to be prepared and included in the record;

(3) make the transcript available for review by the judge and the judge's attorney or, at the judge's request, provide a copy to the judge at the judge's expense;

Cross reference: See Rule 18-408.

(4) file with the Court of Appeals, under seal if related to charges of disability or impairment, the entire hearing record,

which shall be certified by the Chair of the Commission and shall include the transcript of the proceedings, all exhibits and other papers filed or marked for identification in the proceeding, and all dissenting or concurring statements by Commission members;

(5) promptly serve on the judge pursuant to Rule 18-404 notice of the filing of the record and a copy of the findings, conclusions, and recommendations and all dissenting or concurring statements by Commission members; and

(6) if the Commission has made a finding that the judge did or did not commit sanctionable conduct, notify the complainant and post on the Judiciary website a notice that contains the Commission's finding of sanctionable conduct or no sanctionable conduct and any written findings of fact, conclusions of law, and recommendation as to a proposed sanction, if any.

(f) Confidentiality upon Finding as to Disability or Impairment

If the Commission has made a finding that the judge is or is not disabled or impaired, the Commission's findings of fact, conclusions of law, and recommendation shall remain confidential, except that the Commission may notify the complainant of the finding pursuant to 18-425, 18-426, and 18-427.

Source: This Rule is in part derived from former Rule 16-808 (a)

through (k) (2016), in part derived from 18-407 (j) and (k) (2018) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

Rule 18-436. CONSENT TO DISPOSITION

(a) Generally

At any time after completion of an investigation by Investigative Counsel, a judge may consent to:

- (1) a conditional diversion agreement pursuant to Rule 18-426;
- (2) a reprimand pursuant to 18-427;
- (3) suspension or removal from judicial office; or
- (4) retirement from judicial office pursuant to Rule 18-428.

(b) Form of Consent

(1) Generally

A consent shall be in the form of a written agreement between (A) the judge and **Investigative Counsel if charges were not yet directed to be filed, or (B) the judge and** the Commission **if charges have been directed to be filed.**

(2) If Charges Directed to Be Filed

If the agreement is executed after charges have been directed to be filed, it shall contain:

(A) an admission by the judge to all or part of the charges or an acknowledgment that there is sufficient evidence from which the Commission could find all or part of the charges sustained;

(B) as to the charges admitted, an admission by the judge to the truth of all facts constituting the sanctionable conduct, impairment, or disability as set forth in the agreement;

(C) an agreement by the judge to take any corrective or remedial action provided for in the agreement;

(D) a consent by the judge to the stated sanction;

(E) a statement that the consent is freely and voluntarily given; and

(F) a waiver by the judge of the right to further proceedings before the Commission and, unless the Court orders otherwise, to participate in subsequent proceedings before the Court of Appeals.

Committee note: If the agreement is entered into after charges were filed and the agreed disposition is one that only the Court of Appeals can make, the agreement must be submitted to the Court for approval under section (c), but under that section, the waiver is deemed withdrawn if the Court rejects the agreement. It is possible that the Court will want to have argument on the question of whether to approve the agreement, and, if it does so, the waiver should not prevent the judge from participating in that argument.

(3) If Charges Not Yet Directed to Be Filed

Unless the consent is to a dismissal accompanied by a letter of cautionary advice or a reprimand, if the agreement is

executed before charges have been directed to be filed, it shall contain a statement by the Commission of the charges that would have been filed but for the agreement and the consents and admissions required in subsection (b)(2) of this Rule shall relate to that statement.

(c) Submission to Court of Appeals

An agreement for a disposition that can be made only by the Court of Appeals shall be submitted to the Court, which shall either approve or reject the agreement. Until approved by the Court of Appeals, the agreement is confidential and privileged. If the Court approves the agreement and enters the stated disposition, the Commission shall notify the complainant and the agreement shall be made public, except that any portion of the agreement and stated disposition that relates to charges of disability or impairment shall be confidential. If the Court rejects the stated disposition, the proceeding shall resume as if no consent had been given, and all admissions and waivers contained in the agreement are withdrawn and may not be admitted into evidence.

Committee note: Because the Commission has the authority, on its own, to dismiss a complaint accompanied by a letter of cautionary advice, to issue a reprimand, and to enter into a conditional diversion agreement, a consent to those dispositions need not be submitted to the Court of Appeals for approval. See, however, Rule 18-407 (b)(3).

Rule 18-436

Source: This Rule is derived in part from former Rule 16-808 (1) (2016), is derived in part from former Rule 18-407 (1) (2018) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

RULE 18-437. PROCEEDINGS IN COURT OF APPEALS

(a) Expedited Consideration

Upon receiving the hearing record file pursuant to Rule 18-435, the Clerk of the Court of Appeals shall docket the case for expedited consideration.

(b) Exceptions

The judge may except to the findings, conclusions, or recommendation of the Commission by filing exceptions with the Court of Appeals within 30 days after service of the notice of filing of the record and in accordance with Rule 20-405. The exceptions shall set forth with particularity all errors allegedly committed by the Commission and the disposition sought. A copy of the exceptions shall be served on the Commission in accordance with Rules 1-321 and 1-323.

(c) Response

The Commission shall file a response within 15 days after service of the exceptions in accordance with Rule 20-405. The Commission shall be represented in the Court of Appeals by its

Executive Secretary or such other attorney as the Commission may appoint. A copy of the response shall be served on the judge in accordance with Rules 1-321 and 1-323.

(d) Memoranda

If exceptions are timely filed, upon the filing of a response or, if no response is filed, upon the expiration of the time for filing it, the Court ~~shall~~ may set a schedule for filing memoranda in support of or in opposition to the exceptions and any response and shall set a date for a hearing.

(e) Hearing

The hearing on exceptions shall be conducted in accordance with Rule 8-522. If no exceptions are timely filed or if the judge files with the Court a written waiver of the judge's right to a hearing, the Court may decide the matter without a hearing.

(f) Disposition

(1) The Court of Appeals may ~~(1)~~ (A) impose the disposition recommended by the Commission or any other disposition permitted by law; ~~(2)~~ (B) dismiss the proceeding; or ~~(3)~~ (C) remand for further proceedings as specified in the order of remand.

(2) If the disposition includes a suspension of the judge from his or her judicial duties, the order imposing the suspension shall state whether the suspension (A) is to be with or without pay, (B) is to be served on consecutive dates, (C)

prohibits the judge from conducting any official business during the period of suspension, and (D) prohibits the judge from entering any courthouse location except under legal compulsion or the written consent of the administrative judge of the court.

Cross reference: For rights and privileges of the judge after disposition, see Md. Const., Art. IV, § 4B (b).

(g) Order

The decision shall be evidenced by an order of the Court of Appeals, which shall be certified under the seal of the Court by the Clerk. An opinion shall accompany the order or be filed at a later date. Unless the case is remanded to the Commission, the record shall be retained by the Clerk of the Court of Appeals.

(h) Confidentiality

All proceedings in the Court of Appeals related to charges of disability or impairment shall be confidential and remain under seal unless otherwise ordered by the Court of Appeals.

(i) Public Inspection

Subject to section (h) or any other shielding of confidential material by the Court of Appeals, the Court shall permit public inspection of the record filed with it.

Source: This Rule is former Rule 18-408 (2018).

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 5. FILING OF CHARGES; PROCEEDINGS BEFORE COMMISSION

Rule 18-438. SUSPENSION OF EXECUTION OF DISCIPLINE

(a) Authority

In imposing discipline upon a judge pursuant to the Rules in this Chapter, whether pursuant to an agreement between the judge and the Commission or otherwise, the Court of Appeals, in its Order, may suspend execution of all or part of the discipline upon terms it finds appropriate.

(b) Monitoring Compliance

(1) Unless the Court orders otherwise, the Commission shall monitor compliance with the conditions stated in the order. The Commission may direct Investigative Counsel or any other person to monitor compliance on its behalf. If, upon request of the judge, a monitor other than Investigative Counsel is appointed, all reasonable expenses of the monitor shall be assessed against the judge.

(2) The Commission may direct the judge to provide to the monitor such information and documentation and to authorize other designated persons to provide such information and documentation

to the monitor as necessary for the Commission effectively to monitor compliance with the applicable conditions.

(3) Upon any material failure of the judge to comply with those requirements or upon receipt of information that the judge otherwise has failed to comply with a condition imposed by the Court, the monitor promptly shall file a report with the Commission and send written notice to the judge that it has done so. The notice shall include a copy of the report and inform the judge that, within fifteen days from the date of the notice, the judge may file a written response with the Commission.

(4) The Commission promptly shall schedule a hearing on the report and any timely response filed by the judge and shall report to the Court its findings regarding any material violation by the judge. The report shall include any response filed by the judge.

Committee note: The hearing should be conducted in general conformity with Rule 4-347 (e).

(5) If a material violation found by the Commission is based upon conduct by the judge that could justify separate discipline for that conduct, the Commission may direct Investigative Counsel to proceed as if a new complaint had been filed and shall include that in its report to the Court.

(c) Response; Hearing

Rule 18-438

Within fifteen days after the filing of the Commission's report, the judge may file a response with the Court. The judge shall serve a copy of any response on the Commission. The Court shall hold a hearing on the Commission's report and any timely response filed by the judge and may take whatever action it finds appropriate. The Commission may be represented in the proceeding by its Executive Secretary or any other attorney the Commission may appoint.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 6. SPECIAL PROCEEDINGS

Rule 18-441. CASES OF ALLEGED OR APPARENT DISABILITY OR
IMPAIRMENT

(a) In General

Except as otherwise provided in this Rule, proceedings involving an alleged disability or impairment of a judge shall be in accordance with the other Rules in this Chapter.

(b) Initiation

A proceeding involving alleged or apparent disability or impairment may be initiated:

(1) by a complaint alleging that the judge is disabled or impaired, or by an inquiry into such a status commenced by Investigative Counsel pursuant to Rule 18-421 (f);

(2) by a claim of disability or impairment made by the judge in response to a complaint alleging sanctionable conduct;

(3) upon direction of the Commission pursuant to Rule 18-431;

(4) pursuant to a voluntary commitment or an order of involuntary commitment of the judge to a mental health facility;
or

(5) pursuant to the appointment of a guardian of the person or property of the judge based on a finding that the judge is a disabled person as defined in Code, Estates and Trusts Article, § 13-101.

(c) Confidentiality

All proceedings involving a judge's alleged or apparent disability or impairment shall be confidential.

(d) Inability to Defend

Upon a credible allegation by the judge or other evidence that the judge, by reason of physical or mental disability or impairment, is unable to assist in a defense to a complaint of sanctionable conduct, disability, or impairment, the Commission may appoint (1) an attorney for the judge if the judge is not otherwise represented by an attorney, (2) a guardian *ad litem*, or (3) both.

(e) Interim Measure

If a disability or impairment proceeding is initiated pursuant to section (b) of this Rule, the Commission immediately shall notify the Court of Appeals which, after an opportunity for a hearing, may place the judge on temporary administrative leave pending further order of the Court and further proceedings pursuant to the Rules in this Chapter.

(f) Waiver of Medical Privilege; Medical or Psychological

Examination

(1) The assertion by a judge of the existence of a mental or physical condition or an addiction, as a defense to or in mitigation of a charge of sanctionable conduct, or the non-existence of a mental or physical condition or an addiction, as a defense to a charge that the judge has a disability or impairment constitutes a waiver of the judge's medical privilege and permits:

(A) the Commission to authorize Investigative Counsel to obtain, by subpoena or other legitimate means, medical and psychological records of the judge relevant to issues presented in the case; and

(B) upon a motion by Investigative Counsel, the Board or the Commission to order the judge to submit to a physical or mental examination by a licensed physician or psychologist designated by Investigative Counsel and direct the physician or psychologist to render a written report to Investigative Counsel. ~~Unless the judge and Investigative Counsel agree otherwise~~ If the judge has asserted the existence of a mental or physical condition or an addiction as a defense to or in mitigation of a charge of sanctionable conduct, the cost of the examination and report shall be paid by the judge. Otherwise, it shall be paid by the ~~Commission, subject to a subsequent assessment as costs~~

~~pursuant to Rule 18-408.~~

(2) Failure or refusal of the judge to submit to a medical or psychological examination ordered by the Board shall preclude the judge from presenting evidence of the results of medical examinations done on the judge's behalf, and the Commission may consider such a failure or refusal as evidence that the judge has or does not have a disability or impairment.

Source: This Rule is new. It is derived, in part, from ABA Model Rules for Judicial Disciplinary Enforcement, Rule 27.

MARYLAND RULES OF PROCEDURE

TITLE 18 - JUDGES AND JUDICIAL APPOINTEES

CHAPTER 400 - JUDICIAL DISABILITIES AND DISCIPLINE

DIVISION 6. SPECIAL PROCEEDINGS

Rule 18-442. INTERIM SUSPENSION OR ADMINISTRATIVE LEAVE UPON
INDICTMENT

(a) Definition

In this Rule, "serious crime" means a crime (A) that constitutes a felony, (B) that reflects adversely on the judge's honesty, trustworthiness, or fitness as a judge, or (C) as determined by its statutory or common law elements, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or conspiracy to commit such a crime.

(b) Interim Suspension

Upon notice by the Commission that a judge has been indicted for a serious crime and a recommendation by the Commission, the Court of Appeals may immediately place the judge on interim suspension pending further order of the Court.

(c) Administrative Leave

Upon notice by the Commission that a judge has been

charged by indictment or criminal information with other criminal misconduct for which incarceration is a permissible penalty and poses a substantial threat of serious harm to the public, to any person, or to the administration of justice, the Court of Appeals may place the judge on interim administrative leave pending further order of the Court.

(d) Reconsideration

A judge placed on interim suspension or administrative leave may move for reconsideration.

Source: This Rule is new.