

State of Michigan  
Judicial Tenure Commission

*Revised*  
Internal Operating  
Procedures

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## INTRODUCTION

These Internal Operating Procedures (“IOPs”) are a memorialization of the practices, policies, and procedures in effect at the Michigan Judicial Tenure Commission. Each such practice is numbered, where possible, to correspond with the court rule it implements. The current version of the IOPs, as approved by the Supreme Court, does not contain any reference to letters of explanation or caution or to admonishment or private censure. The Court is awaiting further input from the Commission on these IOPs and will revisit them at a later time after receiving that input. Because the IOPs by definition are *internal* matters, they may be modified from time to time, without prior notice, upon approval by the Supreme Court.

Moreover, these IOPs do not constitute legal advice, do not have the force of law, and do not confer any substantive or procedural due process rights on litigants. In short, these IOPs are meant to describe Commission practice and procedure, not to establish any official standards or to be administrative rules. The Michigan Constitution, the Michigan Court Rules, and the decisional law construing the Constitution and court rules, remain the authoritative, controlling law.

Copies of these IOPs are available at the Commission offices for members of the public, and they are available on the Commission’s website as well. The Commission, as the constitutional body charged with enforcing judicial ethics, welcomes public comment on its practices, policies, and procedures. The public is invited to submit any comments or suggestions, in writing, to the Commission’s offices.

**IOP 9.201(B) – Jurisdiction over State Judicial Officers.** The Commission has jurisdiction over all state judicial officers, including elected and appointed judges, court referees, and magistrates. The Commission does not have jurisdiction over state *administrative* law judges or over any federal judicial officers.

**IOP 9.201(C) – Definition of “Respondent.”** The term “Respondent” includes not only a judge against whom a formal complaint has issued, but also refers to any judicial officer against whom a Request for Investigation has been filed.

**IOP 9.201(G) – Grievances and Requests for Investigation.** The terms “grievance” and “Request for Investigation” are often used interchangeably. The Commission generally refers to a grievance as a Request for Investigation (“RFI”).

**IOP 9.202-1 – Committees.** The Commission may establish standing or *ad hoc* committees as it sees fit. The Commission chairperson appoints any such committees and designates a committee chairperson.

**IOP 9.202-2 – Fiscal Committee.** The Fiscal Committee is a standing committee composed of the Commission vice-chairperson and two other members. The Fiscal Committee generally meets monthly, 30 minutes prior to the general Commission meeting, and presents a fiscal report to the full Commission.

**IOP 9.202-3 – Annual Report.** The Commission issues an annual report summarizing its jurisdiction, authority, activity in formal cases, and other information. Included in the report are redacted versions of confidential matters. The names of judges and locations of courts are deleted, as are all other details that may tend to identify the case. However, the Commission tries to provide enough information to allow the public, the legal profession, and the judiciary, to learn

about the types of behavior that resulted in Commission action over the preceding year.

**IOP 9.202(D)(3) – Commissioner Expenses.** Commissioners are not paid, but may submit for reimbursement travel, parking, lodging, and meal expenses incurred in relation to Commission business. The executive director approves submitted expenses, which then are forwarded to Lansing for payment from the Commission’s budget. Copies of the receipts are maintained in the Commission’s offices for review by the Fiscal Committee.

**IOP 9.202(E)(1)-1 – Election of Commission Officers.** Election of officers occurs in the first meeting of every odd-numbered year. Officers continue to serve in their respective positions until their successors are duly elected.

**IOP 9.202(E)(1)-2 – Succession of Commission Officers.** If the chairperson no longer serves on the Commission, the vice-chairperson succeeds to the office of chairperson and serves the remainder of that term. The Commission elects a new vice-chairperson at the next regularly scheduled meeting, unless a special meeting is held for that purpose.

**IOP 9.202(E)(1)-3 – Chairperson and Vice-chairperson Not To Seek Successive Terms.** The chairperson and vice-chairperson shall not seek successive terms. However, a chairperson who succeeded to that office to complete the term of his or her predecessor may run for a full successive term as chairperson. A vice-chairperson elected to serve the remainder of a term may also run for a full successive term as vice-chairperson.

**IOP 9.202(F)-1 – Meeting Dates.** The Commission generally meets at 10:00 a.m. on the second Monday of each month. There is usually no Commission meeting in the month of August. The Commission posts a list of meeting dates on

its website. Commission meetings are not open to the public, unless the Commission is conducting a public hearing as required in formal complaint proceedings. An agenda for each meeting is prepared and circulated to all commissioners prior to the meeting. Any commissioner may place any item on the agenda for consideration at the next meeting by requesting the executive director to do so. Due to the requirements of confidentiality, Commission agendas are not matters of public record and are not available for inspection.

**IOP 9.202(F)-2 – Special Meetings.** Notice of any special meetings must be given to Commissioners either in writing or by telephone at least 24 hours prior to the meeting.

**IOP 9.202(F)-3 – Minutes of Commission Meetings.** The minutes of each meeting are approved at the subsequent meeting and thereafter constitute the official record of the proceedings of the Commission. Commission minutes are not open to the public, and are not available for review by anyone other than Commissioners or Commission employees.

**IOP 9.202(F)-4 – Content of Minutes.** The minutes shall reflect the name of the moving party as well as the Commissioner who seconded the motion. The minutes shall reflect whether the vote on a motion was unanimous or whether it passed by a majority. Individual votes are not recorded, although a Commissioner may request that that Commissioner’s opposition to a vote be made part of the record.

**IOP 9.202(G)-1 – Commission Employees are “At Will” Employees.** The executive director and all other Commission employees are “at will” employees, serving at the pleasure of the Commission. No attorney employed by the Commission may engage in the practice of law outside the attorney’s employment relationship with the Commission.

**IOP 9.202(G)-3 – Role of the Executive Director.** The executive director runs the day-to-day affairs of the Commission under its direction. He or she also provides legal advice to the Commission and acts as the examiner when the Commission issues a formal complaint. The executive director also acts as the liaison between the Commission and the public.

**IOP 9.202(G)-4 – Staffing the Commission.** The executive director is authorized to fill positions at the professional or investigative level, with the prior approval of the Commission. The executive director is authorized to fill any clerical or secretarial positions on a temporary basis subject to the approval of the Commission.

The business hours of the Commission are Monday through Friday, 9:00 a.m. to 5:00 p.m. The Commission follows the legal holiday schedule established by the Supreme Court and published at MCR 8.110(D)(2).

**IOP 9.202(G)-5 – General Policy on “Limited Personal Use” of Commission Office Equipment, Including Information Technology.** Judicial Tenure Commission employees are permitted limited use of Commission office equipment for personal needs if the use does not interfere with official business and involves minimal additional expense to the Commission. This limited personal use of government office equipment should take place during the employee’s nonwork time. This privilege to use Commission office equipment for non-Commission purposes may be revoked or limited at any time. The full policy is included in Appendix I to these IOPs.

**IOP 9.202(G)(1) – Staff Salaries.** The Commission has adopted a schedule for staff salaries. The Commission sets all staff salaries, upon recommendation of the Fiscal Committee.

**IOP 9.203(A) – Advisory Opinions.** The Commission does not formally or informally issue advisory opinions regarding past or prospective conduct. Anyone making a request for such advice is referred to the State Bar of Michigan Ethics Committee and/or the Bar’s Director of Professional Standards.

**IOP 9.204 – *Ex Parte* Contacts with Commissioners.** Commissioners who receive *ex parte* communications in connection with a matter pending before the Commission, regardless of when the communication is received, shall report them directly to the executive director, who shall then advise the other Commissioners. The Commission, through the executive director, shall notify the author or proponent of the communication that the Commission only considers matters of record and does not engage in *ex parte* communications.

If the communication occurs after the issuance of a formal complaint, the Commission chairperson, rather than the executive director, shall advise the proponent of the communication. Copies of any such written communication, or a summary of it if oral, along with the Commission’s response to the proponent of the communication, shall be provided to the Examiner and the Respondent (or his or her attorney).

**IOP 9.204(A)-1 – Requests for Investigations of Judge-Commissioners.** A Request for Investigation of a Judge-Commissioner is treated the same as a Request for Investigation of any other member of the judiciary. However, a Commissioner against whom a Request for Investigation (“RFI”) has been filed is automatically disqualified from participating in the Commission’s consideration of that RFI.

**IOP 9.204(A)-2 – Redaction of Minutes to Judge-Commissioner who is the Subject of a Request for Investigation.** The copy of the minutes sent to a Commissioner who is the subject of a Request for Investigation shall be redacted to delete any reference to the investigation of that matter.

**IOP 9.204(A)-3 – Commissioner Access to Commission Files and Records.** Commissioners generally have access to any and all Commission files and records. However, no Commissioner has access to the investigative file or records concerning that Commissioner or to any file where the executive director has determined that the Commissioner may be a witness. For good cause shown, the Commission may waive this policy to allow such access.

**IOP 9.204(A)-4 – Disqualification of Commissioner in Other Matters.** A Commissioner shall enter a disqualification in a matter where the Commissioner cannot participate in a fair and impartial manner, including but not limited to instances where the Commissioner:

- (a) is the Respondent in the matter;
- (b) is the Grievant in the matter;
- (c) acted as an attorney in a case that is the subject of a complaint against the Respondent;
- (d) has a personal bias or prejudice concerning the complainant, the Respondent or the Respondent’s lawyer, a strong personal bias involving an issue in the case, or personal knowledge of disputed evidentiary facts concerning the proceedings;
- (e) has an immediate family member who has a financial interest in any events relating to the matter or proceeding, individually or as a fiduciary;
- (f) has any other reason for disqualifying himself or herself.

Commissioners shall be guided by appropriate ethics opinions of the State Bar of Michigan.

**IOP 9.204(A)-5 – Effect of Disqualification.** A disqualified Commissioner does not have access to the investigative file, does not receive any of the staff analysis reports, and does not receive the minutes of the meeting concerning that



matter. A disqualified commissioner leaves the room before the Commission discusses the matter in which that Commissioner is disqualified and does not participate in its consideration.

**IOP 9.206(A) – Appearance by Attorney.** A judge may be represented by an attorney at any stage of the investigation or following issuance of a formal complaint. An attorney representing a judge must file an appearance with the Commission on behalf of the judge.

**IOP 9.207(A)-1 – Requests for Investigation Must be in Writing.** Except when acting at its own initiative or at the written request of the Supreme Court, the State Court Administrator, or the Attorney Grievance Commission, the Commission does not initiate an investigation without having first received a written Request for Investigation (“RFI” or “grievance”), verified on oath by the complainant (the “Grievant”).

**IOP 9.207(A)-2 – Availability of Forms.** The Commission staff sends RFI forms to anyone who requests them, and the forms are also available on the Commission website.

**IOP 9.207(A)-3 – Requests for Investigation Filed Without the Proper Form.** If someone other than the Attorney Grievance Commission, the State Court Administrator, or the Supreme Court makes a written request to investigate a judge, that person is sent a cover letter together with the proper Request for Investigation form. The person is directed to complete the RFI and is further advised that any materials previously submitted will be retained pending receipt of the verified statement.

**IOP 9.207(A)-4 – Requests for Investigation First Filed with the Attorney Grievance Commission.** The Commission also receives referrals from

the Attorney Grievance Administrator. These referrals are generally of two kinds: (1) complaint regarding a judge filed directly with the Grievance Administrator or (2) complaint regarding an attorney who, in the interim, becomes a judicial officer. The overwhelming majority of these referrals are the former type – the Grievant simply filed the grievance with the wrong agency.

Complaints against attorneys do not need to be made under oath, but complaints against judges do. When the Commission receives a forwarded complaint from the Grievance Administrator, the Grievant is contacted and advised of the need to complete the Commission's Request for Investigation, which provides for verification. The Grievant is advised that his or her materials will be retained pending receipt of the verified Request for Investigation.

**IOP 9.207(A)-5 – Requests for Investigation from the Supreme Court, the State Court Administrator or the Attorney Grievance Commission.** The Supreme Court, the State Court Administrator, or the Attorney Grievance Commission may request an investigation without having to do so on the Commission's Request for Investigation form. Although such requests are invariably in writing, a written request from the Supreme Court, the State Court Administrator or the Attorney Grievance Commission need not be made under oath. The Commission staff may not investigate an oral request for investigation unless authorized to do so by the Commission or the Commission chairperson.

**IOP 9.207(A)-6 – Investigations at the Commission's Own Initiative.** The Commission has authority to open an investigation on its own initiative. The investigation of those cases where the Commission has opened the file on its own does not differ from the other "traditional" sources; once a file is opened, all grievances proceed through the same protocol.

**IOP 9.207(A)-7 – Investigative Files Opened at the Initiative of the Executive Director.** The executive director may, in his or her discretion, open a file as if there had been a Request for Investigation. However, no investigation may be commenced without authority from the Commission or the chairperson. Once opened, such a file is placed on the agenda of the next Commission meeting

to determine if further action is required or if the file should be closed. If the Commission approves opening the file, it proceeds through the normal protocol.

**IOP 9.207(A)-8 – Treatment of Anonymously Submitted Grievances or Other Information.** The Commission occasionally receives anonymous information but generally does not consider it. If such information is received, it is circulated among the Commissioners. A Commissioner may then place a “hold” on the item, causing it to be placed on the next agenda for discussion. Similarly, if a matter has been reported in the media, that item may be circulated among the Commissioners, who may then place the item on the next agenda for discussion. The Commission may elect to open its own investigation pursuant to MCR 9.207(A).

**IOP 9.207(B)-1 – Initial Review by the Executive Director.** Once a proper Request for Investigation is received, a file is opened. The executive director reviews every such file, makes a preliminary evaluation of it, and classifies it by type of complaint (*i.e.*, demeanor, bias/prejudice, delay, *etc.*) and type of Grievant (*i.e.*, litigant, nonlitigant, attorney, Grievance Administrator referral, *etc.*) The executive director assigns the file to one of the staff attorneys for review. The file is given a number, the Grievant is notified that the file has been opened, and the staff conducts its preliminary investigation.

**IOP 9.207(B)-2 – Preliminary Investigation.** After a file is opened, the staff may conduct a limited, preliminary investigation. A staff attorney may only contact the Grievant (who may supply additional information or documents), the attorney for the Grievant, and (with the consent of the executive director) may go to the courthouse to review the court file. Any further investigation requires authorization by the Commission. In cases of compelling necessity where it is not advisable to wait until the next Commission meeting, the Commission chairperson may authorize further investigation.

**IOP 9.207(B)-3 – Dismissal of Requests for Investigation.** The Commission may dismiss a grievance without first seeking the judge’s comment. It is the policy of the Commission to dismiss a Request of Investigation as being without merit if:

- (a) it does not identify the judge alleged to have committed misconduct;
- (b) it does not clearly allege facts constituting judicial misconduct;
- (c) the alleged acts of misconduct are not within the jurisdiction of the Commission;
- (d) the Commission lacks jurisdiction over the judicial officer complained about; or
- (e) the alleged misconduct occurred prior to August 6, 1968, the effective date of the constitutional amendment creating the Commission.

**IOP 9.207(B)-4 – Summary Dismissal Cases.** The Commission has a “summary dismissal” docket for review of grievances that do not warrant further investigation beyond that preliminary review. Such cases, for example, are grievances filed against administrative law judges (over whom the Commission lacks jurisdiction) or, more commonly, are seeking purely appellate review of a case. As part of the preliminary evaluation, the executive director identifies those grievances that seem to be clear candidates for summary dismissal. The staff attorney may need to conduct the limited, preliminary investigation outlined in **IOP 9.207(B)-3** to confirm the initial impression that the Request for Investigation should be summarily dismissed.

**IOP 9.207(B)-5 – Summary Dismissal Letter.** No later than 10 days before the Commission’s next regularly scheduled meeting, the executive director prepares a letter to the Commissioners outlining the various grievances on that month’s summary dismissal docket. The letter is sent to all Commissioners, and those grievances are placed on the agenda for the next meeting. The Commission

discusses the cases designated for summary dismissal at the meeting. The Commission approves for summary dismissal those grievances lacking jurisdiction or it deems without arguable merit. The Commission may also direct that further investigation be done in any of the cases.

**IOP 9.207(B)-6 – Grievance Report.** After having reviewed the file, having spoken to the Grievant, and evaluating the transcripts, documents, or other materials supplied by the Grievant, the staff prepares a First Grievance Summary for the Commissioners, if summary dismissal has not been granted. A Grievance Summary includes a copy of the Request for Investigation and generally contains the following sections:

- a. date;
- b. grievance number;
- c. Respondent;
- d. Grievant;
- e. date Request for Investigation received;
- f. Grievant’s allegations;
- g. prior relevant grievances, their dispositions, and any history of formal discipline against Respondent judge;
- h. prior grievances filed by Grievant;
- i. other information considered;
- j. analysis of information received to date;
- k. materials submitted with report;
- l. analysis of similar fact patterns and the action taken by the Commission/Supreme Court in those matters; and
- m. recommendation based on available information.

In a grievance summary, the staff may recommend dismissal for reasons that were not readily apparent for summary dismissal. Alternatively, the staff may recommend further investigation beyond what the staff is authorized to conduct as part of the preliminary investigation under **IOP 9.207(B)-2**.

The section calling for analysis of similar fact patterns and the action taken by the Commission/Supreme Court in those matters is designed to allow the Commission to treat equivalent cases similarly. The Commission knows that no two cases of judicial misconduct are sufficiently similar to be deemed equivalent. But, for example, the Commission wants to ensure that there are standardized

“bright lines” for certain behavior. Thus, the Commission tries to compare the judge who repeatedly engages in docket delay in excess of 12 months to another judge who engages in that type of behavior, rather than to a judge who has delayed for 12 months only once, or for six months, or 16. The Commission is intent on treating similar acts of judicial misconduct similarly. This policy is consistent with the goals set forth in *In re Brown*, 461 Mich 1291 (1999), regarding recommendations of discipline in formal complaint cases.

**IOP 9.207(B)-7 – Reference to Prior Grievances/Requests for Investigation.** The grievance summary shall not refer to dismissed grievances that originated more than three years before the current Request for Investigation, *unless* the misconduct is of the same nature, or resulted in something other than a straight dismissal.

**IOP 9.207(B)-8 – Obtaining Commission Approval for Further Investigation.** If the staff feels additional investigation is necessary, the Commission must first approve. Grievance summaries may request approval to contact and interview other witnesses and attorneys, to request transcripts, and to solicit the judge’s response to the grievance.

**IOP 9.207(B)-9 – Commission May Authorize Investigations by Mail Ballot.** The Commission may authorize the investigation in writing by voting on a mail ballot included with each Grievance Summary. To discuss the proposed investigation plan or proposed dismissal, a Commissioner places a “hold” on the file, and the matter is placed on the agenda for the next Commission meeting. At that time, the Commission discusses the case and authorizes or modifies the request. If further investigation is warranted or needed, the process is repeated.

**IOP 9.207(B)-10 – Ballot Procedure.** Fourteen days from the date of mailing the Grievance Report (or sooner if all the votes are in), the ballots are counted. Five or more votes approving or disapproving the staff recommendation

are effective. A “hold” supersedes a majority vote and places the matter on the agenda for Commission discussion.

**IOP 9.207(B)-11 – Supplemental Reports to the Commission.** The staff prepares supplemental grievance summaries to keep the Commission apprised of the status of the investigation. The same mail ballot system is used.

**IOP 9.207(B)-12 – Dismissal After Judge’s Opportunity to Comment.** The Commission may dismiss an investigation at any point. The Commission may dismiss the matter outright, or it may dismiss the matter contingent upon the satisfaction of certain conditions. In any event, the Grievant is simply advised that the Request for Investigation has been dismissed.

**IOP 9.207(C)(1) – Further Opportunity for Judge’s Comments.** If the investigation shows that there is evidence of judicial misconduct warranting the filing of a formal complaint, the Commission gives the judge written notice, pursuant to MCR 9.207(C)(1) (the so-called 28-day letter). At any point along the way, the Commission may review the investigation and decide to dismiss.

**IOP 9.207(C)(1)(a) – Extension of Time for Judge to Answer.** The executive director may authorize up to an additional 28 days for the Respondent to submit an answer to the 28-day letter. If the Respondent requests more time, the executive director advises the Respondent or the Respondent’s attorney to submit the request in writing for consideration by the Commission. The chairperson is authorized to act on behalf of the entire Commission in deciding whether to grant additional time.

**IOP 9.207(C)(2) – Inviting the Respondent-Judge’s Comments.** A judge, like all court personnel and officers of the court “must comply with a reasonable request made by the Commission for aid in its investigation of a judge.” MCR

9.208(B). A request to a judge to respond to a Request for Investigation should not be construed as anything other than an investigative aid at that point. The proceedings are not adversarial; they are investigative.

If the Commission approves inviting the Respondent's comments, the staff forwards a copy of the grievance to the judge, with a cover letter requesting the judge's response pursuant to MCR 9.207(C)(2). The Commission may direct that the judge's comments be limited to certain allegations in the grievance, as other allegations may already have proven unfounded or without merit. The executive director or the Commission may authorize supplemental inquiries as needed to clarify a judge's comment.

The judge is asked to respond to the letter of inquiry within 28 days. If no response is received, a reminder letter is sent asking for the response within 14 days. If no response is received then, the Commission may proceed without the benefit of the judge's comments. The Commission is not precluded from considering a judge's untimely response.

**IOP 9.207(C)(3) – Informal Appearance Before Commission.** As part of the judge's response to the written notice provided for by MCR 9.207(C)(1) or (2), a judge may request to appear before the Commission and discuss the matter on an informal basis.

**IOP 9.207(C)(4)-1 – Notice to Grievant.** The Grievant is to receive notice of the resolution of the grievance. For dismissals, the Grievant is simply notified that the Commission has investigated the matter and has dismissed it. The Grievant does not receive a copy of the letter sent to the Respondent, nor does the Respondent receive a copy of the letter sent to the Grievant.

**IOP 9.207(C)(4)-3 – Standardized Letters of Dismissal.** Letters of dismissal sent to Grievants are standardized, as are letters of dismissal sent to Respondents.



**IOP 9.207(C)(4)-5 – Letter Procedures.** The executive director signs all the letters to the Grievants. The Commission chairperson signs all letters to Respondents, on behalf of the entire Commission.

**IOP 9.207(C)(4)-6 – Confidentiality of Letters.** All letters of dismissal remain confidential and are not forwarded or disclosed to any other person or entity.

**IOP 9.208(B) – Duty to Assist Commission in its Investigation.** A judge, clerk, court employee, member of the bar, or other officer of a court has an obligation to assist the Commission in its investigation by complying with a reasonable request made in the course of the Commission’s investigation. This obligation includes the judge under investigation. On the basis of this provision, the Commission occasionally solicits the judge’s comments regarding a Request for Investigation (or a particular aspect of the investigation). The Commission, on occasion, also will form a subcommittee to talk to a judge about a recurring problem or to try to identify any areas where the judge might be in need of professional assistance.

**IOP 9.209 – Divergence in Roles of the Commission and the Executive Director/Examiner.** The roles of the Commission and the executive director change upon issuance of a formal complaint. The Commission’s role changes from one of directing the investigation to one of judging the matter. The executive director becomes the “examiner.”

The Commission and the examiner do not discuss the merits of the case until *after* the Supreme Court finally disposes of the matter. Once the formal complaint is filed, the executive director only advises the Commission on technical, administrative aspects of the case: the date of the hearing, where it will be held, and things of that nature. The executive director is not present when the Commission goes into executive session to discuss the case, at any time before, during or after the hearing before the master or the Commission. See also MCR 9.202(G)(2).

**IOP 9.209(A) – Notifying Respondent Before Release of Formal Complaint.** The executive director shall provide a Respondent (or the Respondent’s attorney) with notice of the filing of a formal complaint at least two hours before releasing it to the public and/or issuing a press release regarding it to the media.

**IOP 9.209(A)-2. Contents of Complaint.** The complaint shall identify only the respondent and those whose identification is necessary to provide adequate notice of specific allegations.

**IOP 9.210(B) – Hearings on Formal Complaints are Generally Held Before a Master.** Unless otherwise directed by the Commission, all public hearings on formal complaints are conducted before a master appointed by the Supreme Court.

**IOP 9.220(B) – Notifying Attorney Grievance Commission of Filing of Decision and Recommendation.** Upon filing a Decision and Recommendation for Discipline with the Supreme Court, the Commission shall also file a copy with the Attorney Grievance Commission if the Decision and Recommendation is filed in a public matter. If the Decision and Recommendation is filed as part of a negotiated resolution, *i.e.*, in still nonpublic matter, the Commission cannot advise the Grievance Administrator unless and until the Supreme Court makes public its action on the Commission’s recommendation.

**IOP 9.220(C)-1 – Settlement Efforts.** The Commission advocates negotiating resolutions to judicial misconduct matters to the extent that the interests of the public are protected and the integrity of the judiciary may be preserved. In that regard, the Commission has authorized the executive director to negotiate resolutions to matters that the Commission believes serves these ends.

Proposed resolutions negotiated by the executive director are submitted to the Commission for consideration.

**IOP 9.220(C)-2 – Resignation In Lieu of Formal Complaint.** If a judge resigns from judicial office to resolve a Request for Investigation or to avoid or abate formal disciplinary proceedings, the Respondent must agree in writing not to seek assignments as a visiting judge following the resignation. The Respondent must further agree that the Commission may inform the Supreme Court and the State Court Administrator of any and all information relating to the Request for Investigation against the Respondent, including the terms of its resolution.

**IOP 9.221-1 – Public Comment by the Commission.** Only the executive director and the Commission chairperson are authorized to speak on behalf of the Commission.

**IOP 9.221-2 – No Comment on Existence of Pre-formal Complaint Inquiries.** The executive director neither confirms nor denies the existence of an investigation regarding any pre-formal complaint inquiries. Upon the issuance of a formal complaint, the executive director does not elaborate on the allegations set forth in the formal complaint. The executive director may explain Commission policies and procedures at any time.

**IOP 9.221(A)-2 – Inquiry by a Judge about Investigations of That Same Judge.** If a judge identifies a particular Request for Investigation pending against him or her, the Commission may forward a copy of it to the judge. This procedure is not designed to allow a judge to make blanket inquiries as to whether Requests for Investigation are pending against him or her.

**IOP 9.221(C) – Statement Regarding a Judge’s Past Contacts With the Commission.** At times during judicial election campaigns, the Commission

receives requests from individuals requesting information on whether a particular judge has had any contacts with the judicial discipline system. In order to avoid becoming entangled in election politics, the Commission declines to answer any such inquiries, even if made by a judge about the judge's own conduct.

As part of its background check into appointments to the federal bench or other office, the Federal Bureau of Investigation ("FBI") occasionally requests information on whether a particular judge has had any contacts with the judicial discipline system. The Commission will provide the FBI with *public* information regarding any formal complaints, but does not disclose any nonpublic information.

Likewise, if the governor or state police, in the course of the state judicial appointment process, requests information on whether a particular judge has had any contacts with the judicial discipline system, the commission will provide *public* information regarding any formal complaints.

**IOP 9.222-2 – Record Retention Policy.** In order to maintain the Commission's files and records in a manageable and consistent manner, the Commission resolves to establish a Record Retention Committee, to consist of three Commissioners appointed by the Chair. The Committee will review the Record Retention Policy as it deems advisable, or at the request of the Commission. The full Record Retention Policy is attached as Appendix II.

## Appendix I

### General Policy on “Limited Personal Use” of Commission Office Equipment, Including Information Technology

#### A. Definitions

1. **“Privilege”** means, in the context of this policy, that the Commission is extending the opportunity to its employees to use Commission property for personal use in an effort to create a more supportive work environment. However, this policy does not create a right to use Commission office equipment for non-Commission purposes. Nor does the privilege extend to modifying such equipment, including loading personal software or making configuration changes.
2. **“Commission office equipment including information technology”** includes but is not limited to: personal computers and related peripheral equipment and software, library resources, telephones, facsimile machines, photocopiers, office supplies, Internet connectivity and access to internet service, and e-mail. This list is provided to show examples of office equipment as envisioned by this policy. The executive director may include additional types of office equipment.
3. **“Minimal additional expense”** means that employee’s personal use of Commission office equipment is limited to those situations where the Commission is already providing equipment or services and the employee’s use of such equipment or services will not result in any additional expense to the Commission or the use will result in only normal wear and tear or the use of small amounts of electricity, ink toner or paper. Examples of minimal additional expenses include: making a few photocopies, using a computer printer to printout a few pages of material, making occasional brief personal phone calls, infrequently sending personal e-mail messages, or limited use of the Internet for personal reasons.

4. **“Employee nonwork time”** means times when the employee is not otherwise expected to be addressing official business. Employees may for example use Commission office equipment during their own off-duty hours such as before or after a workday and during lunch periods, authorized breaks, or weekends or holidays.
5. **“Personal use”** means activity that is conducted for purposes other than accomplishing official or otherwise authorized activity. Commission employees are specifically prohibited from using Commission office equipment to maintain or support a personal private business. Examples of this prohibition include employees using a Commission computer and Internet connection to run a travel business or investment service. The ban on using Commission office equipment to support a personal private business also includes employees using Commission office equipment to assist relatives, friends, or other persons in such activities.
6. **“Information technology”** means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement control, display, switching, interchange, transmission, or reception of data or information.

## **B. Specific Provisions on Use of Equipment and Services**

Employees are authorized limited personal use of Commission office equipment. This personal use must not result in loss of employee productivity or interference with official duties. Moreover, such use should incur only minimal additional expense to the Commission in areas such as:

- (1) communications infrastructure costs; e.g., telephone charges, telecommunications traffic, etc.;
- (2) use of consumables in limited amounts; e.g., paper, ink, toner, etc.;

- (3) general wear and tear on equipment;
- (4) data storage on storage devices;
- (5) transmission impacts with moderate e-mail message sizes such as e-mails with small attachments.

### **C. Inappropriate Personal Uses**

Employees are expected to conduct themselves professionally in the workplace and to refrain from using Commission office equipment for activities that are inappropriate. Misuse or inappropriate personal use of Commission office equipment includes:

- (1) Any personal use that could cause congestion, delay, or disruption of service to any government system or equipment. For example, greeting cards, video, sound or other large file attachments can degrade the performance of the entire network. “Push” technology on the Internet and other continuous data streams would also degrade the performance of the entire network and be an inappropriate use.
- (2) Using the Commission systems as a staging ground or platform to gain unauthorized access to other systems.
- (3) The creation, copying, transmission, or retransmission of chain letters or other unauthorized mass mailings regardless of subject matter.
- (4) Using Commission office equipment for activities that are illegal, inappropriate, or offensive to fellow employees or the public. Such activities include material that ridicules others on the basis of religion, race, color, national origin, age, sex, height, weight, or marital status.
- (5) The creation, download, viewing, storage, copying, or transmission of sexually explicit or sexually oriented materials.

- (6) The creation, download, viewing, storage, copying, or transmission of materials related to illegal gambling, illegal weapons, terrorist activities, and any other illegal activities or activities otherwise prohibited, etc.
- (7) Use for commercial purposes or in support of “for-profit” activities or in support of other outside employment or business activity (e.g. consulting for pay, sales or administration of business transactions, sale of goods or services).
- (8) Engaging in any outside fund-raising activity, endorsing any product or service, participating in any lobbying activity, or engaging in any prohibited partisan political activity.
- (9) Use for posting agency information to external newsgroups, bulletin boards or other public forums without authority. This includes any use that could create the perception that the communication was made in one’s official capacity as a Commission employee, unless appropriate Commission approval has been obtained.
- (10) Any use that could generate more than minimal additional expense to the Commission.
- (11) The unauthorized acquisition, use, reproduction, transmission, or distribution of any controlled information including computer software and data, that includes privacy information, copyrighted, trade marked or material with other intellectual property rights (beyond fair use), proprietary data, or export controlled software or data.

#### **D. Proper Representation**

It is the responsibility of employees to ensure that they are not giving the false impression that they are acting in an official capacity when they are using Commission office equipment for non-Commission purposes. If there is expectation that such a personal use could be interpreted to represent the Commission, then an adequate disclaimer must be used. One acceptable disclaimer is – “The contents of this



message are mine personally and do not reflect any position of the Commission.”

**E. Sanctions for Misuse**

Unauthorized or improper use of Commission office equipment could result in loss of use or limitations on use of equipment, disciplinary or adverse actions criminal penalties and/or employees being held financially liable for the cost of improper use.

**F. Every current and future employee shall sign a copy of this policy and be given a copy for his or her records.**

## **Appendix II**

### **Record Retention Policy**

#### ***I. Microfilm/CD***

- A. All grievance files shall be transferred to microfilm/CD storage as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.
- B. All Formal Complaints, transcripts, decisions and recommendations and all other materials associated with the Formal Complaints shall be transferred to microfilm/CD storage as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.
- C. All Minutes shall be transferred to microfilm/CD storage as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.
- D. One copy of each Annual Report shall be to microfilm/CD storage as soon as practical. This transfer may take place over a period of years, if deemed advisable, and then annually after the initial backlog is finally transferred.

#### ***II. Retention of Files and Other Materials***

- A. All Formal Complaints, transcripts, decisions and recommendations and all other materials associated with the Formal Complaints shall be maintained on the Commission premises. Any consent discipline shall also be maintained on the premises.
- B. All Minutes shall be maintained on the Commission premises.
- C. All other materials shall be retained, except as set forth in Section III.

### **III. Disposal of Materials**

#### **A. Deceased judges**

After the transfer to microfilm/CD, the grievance files (but not Formal Complaints) against any deceased judge shall be destroyed.

#### **B. Dismissals**

If the grievance is dismissed, the file shall be destroyed six years after the date of the dismissal letter, or after transfer to microfilm/CD, whichever is later.

#### **C. Correspondence and miscellaneous material to/from potential grievants**

All correspondence and miscellaneous material to or from potential Grievants who then did not follow through and file a proper Request for Investigation shall be destroyed after three years.

#### **D. Other correspondence**

All correspondence to or from the Commission, including to or from Commissioners, and including the “chron” file, shall be destroyed after six years.

#### **E. Bills and invoices**

All bills and invoices shall be destroyed after seven years.

#### **F. Personnel files**

Personnel files may be transferred to microfilm/CD. The files themselves shall be destroyed after the elapse of any statute of limitations for that employee to bring a civil action against the Commission or the state.

#### **IV. *Procedure for Destroying Materials***

##### **A. Designation by the executive director**

The executive director, as deemed necessary but at least once per year, shall review all materials that may be disposed of in accordance with this policy. The executive director shall then segregate those materials and designate them in a letter to all commissioners as being ready for disposal.

##### **B. The Record Retention Committee**

The Committee shall meet as deemed necessary by the committee members, or at the direction of the Commission, but at least once per year. At that meeting, in addition to whatever other business the Committee may have, the Committee shall review the materials identified for disposal pursuant to Section IV(A). The Committee shall recommend to the Commission what action should be taken with respect to those materials.

##### **C. Commission approval**

The Commission shall, as it deems necessary but at least once per year, review the recommendations of the Record Retention Committee with respect to the disposal of materials.

#### **V. *Disposal of Materials***

The executive director shall arrange for the secure and confidential disposal of all materials so designated by the Commission as soon afterward as practicable.