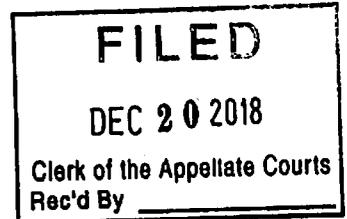


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: ADOPTION OF RULE 10C OF THE
RULES OF THE TENNESSEE SUPREME COURT



No. ADM2018-02254

ORDER

Pursuant to Tennessee Code Annotated section 4-29-239(a)(43), the Board of Judicial Conduct established under Tennessee Code Annotated section 17-5-201 terminated effective June 30, 2018, and commenced its wind-up period pursuant to Tennessee Code Annotated section 4-29-112. That wind-up period expires June 30, 2019, at which time the Board of Judicial Conduct will cease to exist. As a result, the Supreme Court has determined that it is appropriate that the Court now adopt by Supreme Court Rule a comprehensive system and procedures for disciplinary enforcement with respect to the judges of this State. Accordingly, the Court has drafted new Supreme Court Rule 10C, which is contained in the appendix attached to this Order.

Adopting Rule 10C will result in a new and comprehensive system and set of procedures governing the discipline of Tennessee judges. In light of the significance of this new Rule, the Court hereby solicits written comments from judges, lawyers, bar associations, members of the public and any other interested parties. The deadline for submitting written comments is March 29, 2019. Written comments may be e-mailed to appellatecourtclerk@tncourts.gov or mailed to:

James M. Hivner, Clerk
Re: Supreme Court Rule 10C
Tennessee Appellate Courts
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

and should reference the docket number set out above. The Clerk shall provide a copy of this order, including the appendix, to LexisNexis and to Thomson Reuters. In addition,

this order, including the appendix, shall be posted on the Tennessee Supreme Court's website.

IT IS SO ORDERED.

PER CURIAM

APPENDIX

**TENN. SUP. CT. R. 10C. JUDICIAL DISCIPLINARY
ENFORCEMENT**

1 **Rule 10C. Judicial Disciplinary Enforcement**

2

3

Section 1. Preamble.

4

5 The regulation of judicial conduct is critical to preserving the integrity of the
6 judiciary and enhancing public confidence in the judicial system. This Rule is
7 intended to provide an orderly and efficient method for making inquiry into the
8 physical, mental, and moral fitness of any Tennessee judge; the judge's manner of
9 performance of duty; the judge's commission of any act that reflects unfavorably
10 upon the judiciary of the state or brings the judiciary into disrepute or that may
11 adversely affect the administration of justice in the state. This rule also applies to or
12 the conduct of candidates for judicial office. This Rule further is intended to provide
13 a process by which appropriate sanctions may be imposed.

14 **Section 2. Definitions.**

15

16 **Commission:** The Commission on Judicial Conduct created by the Supreme Court of
17 Tennessee.

18

19 **Complainant:** A person who alleges misconduct by, or the incapacity of, a judge,
20 including judges who are members of the Commission.

21

22 **Court:** The Supreme Court of Tennessee.

23

24 **Declaration under Penalty of Perjury:** A declaration under penalty of perjury
25 meeting the requirements of Tenn. R. Civ. P. 72.

26

27 **Disciplinary Counsel:** The Chief Disciplinary Counsel selected by the Court and staff
28 Disciplinary Counsel employed by the Chief Disciplinary Counsel, with the approval
29 of the Commission, pursuant to the provisions of this Rule.

30

31 **Hearing panels:** Panels of Commission members appointed by the Chair or Vice-
32 Chair of the Commission to hear matters pursuant to the provisions of this Rule and to
33 take any other action authorized by this Rule.

34

35 **Investigative panels:** Panels of Commission members appointed by the Chair or
36 Vice-Chair of the Commission to review and act upon the recommendations of
37 Disciplinary Counsel after either a preliminary or full investigation and to take any
38 other action authorized by this Rule.

39

40 **Protocol Memorandum:** A memorandum prepared by Disciplinary Counsel and
41 provided to the Court pursuant to the provisions of this Rule that addresses the
42 following: 1) The basis for the formal charges; 2) The proposed disposition; 3) The
43 procedural history; 4) The prior history of discipline; and, 5) The reasons for the
44 proposed discipline, including: a) application of the criteria in section 9.9 of this Rule;
45 and, b) comparative Tennessee discipline in similar cases.

46

47 **Rule:** Rule 10C of the Rules of the Tennessee Supreme Court.

48

49 **Section:** A section of Rule 10C of the Rules of the Tennessee Supreme Court.

50

51 **Serious crime:** The term "serious crime" as used in Section 13 of this Rule shall
52 include any felony and any other crime a necessary element of which, as determined
53 by the statutory or common law definition of such crime, involves improper conduct
54 as a public official, interference with the administration of justice, false swearing,
55 misrepresentation, fraud, willful failure to file income tax returns, willful tax evasion,

56 deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or
57 solicitation of another to commit a "serious crime."

58

59 **Serve or service:** The method of serving pleadings or other papers as specified in
60 Section 10.6 of this Rule or otherwise in the provisions of this Rule.

61 **Section 3. Applicability.**

62

63 This Rule shall apply to:

64

65 (1) All Tennessee judges, including but not limited to, appellate, trial, general
66 sessions, probate, juvenile, and municipal judges, judges sitting on court of workers'
67 compensation claims and on the workers' compensation appeals board, senior judges,
68 claims commissioners, and any other judge sitting on or presiding over any court
69 heretofore or hereafter created by the General Assembly or by the express or implied
70 authority of the General Assembly;

71

72 (2) All persons for their conduct while sitting or presiding over any judicial
73 proceeding, including but not limited to persons sitting by special appointment; and

74

75 (3) Candidates for judicial office, as defined by the Code of Judicial Conduct, Rule 10
76 of the Rules of the Tennessee Supreme Court.

77

78 This Rule does not apply to Administrative Law Judges.

79

80 **Section 4. The Commission on Judicial Conduct.**

81

82 **4.1.** The Court shall appoint an eighteen (18) member Commission to be known as
83 "The Commission on Judicial Conduct" (hereinafter the "Commission") which shall
84 consist of:

85

86 (a) One current or former trial judge from each grand division of the State;

87

88 (b) One current or former general sessions court judge from each grand division of the
89 State;

90

91 (c) One current or former municipal court judge;

92

93 (d) One current or former juvenile court judge;

94

95 (e) Two current or former court of appeals or court of criminal appeals judges;

96

97 (f) Two current or former judges chosen at large by the Court;

98

99 (g) Six members of the public who are not salaried judges, three of whom shall be

100 attorneys who regularly practice in the courts of this State and may be members of the

101 district attorneys general conference or members of the district public defenders
102 conference (hereinafter “attorney members”), and three of whom shall be members of
103 the public who are neither judges nor attorneys (hereinafter “public members”). There
104 shall be one attorney member from each grand division of the State and one public
105 member from each grand division of the State.

106

107 Four of the judge members, one of the attorney members, and one of the public
108 members shall be appointed for an initial term of three years. Four of the judge
109 members, one of the attorney members, and one of the public members shall be
110 appointed for an initial term of two years. Four of the judge members, one of the
111 attorney members, and one of the public members shall be appointed for an initial
112 term of one year. Subsequent terms of all members shall be for three years. A
113 member whose initial term is created by a vacancy and is less than three years is
114 eligible to serve an additional two consecutive three-year terms. A member who has
115 served the maximum term shall be eligible for reappointment after the expiration of
116 three years. Vacancies shall be filled by the Court.

117

118 **4.2** The Court shall designate one member as Chair of the Commission and another
119 member as Vice-Chair of the Commission.

120

121 **4.3.** Ten members of the Commission shall constitute a quorum. Unless otherwise

122 permitted by this Rule, an affirmative vote of ten members of the Commission shall be
123 necessary to authorize any action. Commission members may meet by telephone or
124 audio-visual conference and may communicate their vote for or against the
125 recommendation by telephone, audio-visual conference, facsimile, regular mail, or
126 electronic means. Any member of the Commission may request that the Chair
127 convene a telephone or audio-visual conference of the Commission, whereupon the
128 Chair may convene such conference with at least a quorum so conferring.

129

130 **4.4.** Members shall receive no compensation for their services but may be reimbursed
131 for their travel and other expenses incidental to the performance of their duties in
132 accordance with the schedule for judicial reimbursement promulgated by the
133 Administrative Office of the Courts.

134

135 **4.5.** The Commission shall exercise the powers conferred upon it by this Rule,
136 including the power:

137

138 (a) To investigate and consider any alleged ground for discipline or alleged incapacity
139 of any judge called to its attention, or upon its own motion, and to take such action
140 with respect thereto as shall be appropriate to effectuate the purposes of this Rule.

141

142 (b) To adopt written internal operating procedures to ensure the efficient and timely

143 resolution of complaints, investigations, and formal proceedings, which operating
144 procedures shall be approved by the Court, and to monitor Disciplinary Counsel's, the
145 investigative panels', and the hearing panels' continuing compliance with those
146 operating procedures. The Commission shall quarterly send to each Member of the
147 Court and shall post on the Commission's website statistics to aid in the
148 administration of the judicial discipline system under this Rule.

149

150 (c) To delegate to a committee of its members, or to Chief Disciplinary Counsel, any
151 administrative, non-adjudicatory function authorized by this Rule.

152

153 (d) The powers and duties set forth in this Section are not duties owed to or
154 enforceable by a judge by means of claim, defense, or otherwise.

155

156 **4.6.** A Commission member shall not undertake or participate in any adjudicative
157 function when doing so would violate either federal or Tennessee constitutional due
158 process requirements for administrative adjudications. *See FVithroll' v. Larkin*, 421
159 U.S. 35 (1975); *Moncier v. Board of Professional Responsibility*, 406 S.W.3d
160 139 (Tenn. 2013). The procedures set out in Tenn. Sup. Ct. R. 10B are not applicable
161 to motions to disqualify or for recusal in matters under this Rule. The party seeking
162 the recusal of a Commission member may appeal an adverse decision to the Chair, or
163 in the absence of the Chair the Vice-Chair. The decision of the Chair or Vice-Chair

164 shall be final and not subject to further appeal.

165

166 In the event any member elects to recuse or abstain in any matter, the matter may
167 be heard by the remaining members of the Commission. In the event that recusal
168 or abstention results in the absence of a quorum, the Chair shall request that the
169 Court appoint temporary replacement members of the Commission. In making
170 such appointments, the Court shall give due regard to the status of the recusing
171 members, to the end that the contemplated composition and balance of the
172 Commission be maintained.

173 **Section 5. Investigative Panels.**

174

175 **5.1. Appointment and Composition.** The Chair, or in the absence of the Chair the
176 Vice-Chair, shall appoint from the members of the Commission standing investigative
177 panels of three members each to review the recommendations of Disciplinary Counsel.
178 One investigative panel shall consist of members who do not reside in the eastern
179 grand division of the State; one investigative panel shall consist of members who do
180 not reside in the middle grand division of the State; and one investigative panel shall
181 consist of members who do not reside in the western grand division of the State. At
182 least one member of each investigative panel shall be a member other than a current
183 judge, and no more than one member of each investigative panel shall be a public
184 member. Membership on investigative panels shall rotate in a manner to be
185 determined by the Chair. The Chair of the Commission shall not serve on
186 investigative panels.

187

188 **5.2. Assignment.** The Chair, or in the absence of the Chair the Vice-Chair, shall
189 assign an investigative panel to each case upon the submission of a written complaint
190 or upon receipt by Disciplinary Counsel of information from a source other than a
191 signed written complaint, if the Commission has determined the information
192 sufficiently credible. The investigative panel assigned to a case shall not include
193 members who reside in the same grand division of the State as the judge against whom

194 the complaint has been made. The investigative panel shall perform the duties
195 assigned to it as set forth in Section 10 of this Rule.

196

197 **5.3. Recusal.** No member of the Commission shall serve on the investigative panel
198 and the hearing panel for the same proceeding. An investigative panel member shall
199 not take part in any matter in which a judge, similarly situated, would have to recuse
200 himself or herself in accordance with the Code of Judicial Conduct, Tenn. Sup. Ct. R.
201 10. However, the procedures set out in Tenn. Sup. Ct. R. 10B are not applicable to
202 motions to disqualify or for recusal in matters under this Rule. The party seeking the
203 recusal of a Commission member may appeal an adverse decision to the Chair, or in
204 the absence of the Chair the Vice-Chair. The decision of the Chair or Vice-Chair shall
205 be final and not subject to further appeal. Alternate members may be appointed by the
206 Chair, or in the absence of the Chair the Vice-Chair, to serve on an investigative panel
207 in the event of a panel member's recusal. In making such appointments, due
208 consideration should be given to the status of the recusing member, with the goal of
209 maintaining the contemplated composition and balance of the investigative panel's
210 membership.

211

212

213

214

215 **Section 6. Hearing Panels.**

216

217 **6.1. Appointment and Composition.** The Chair, or in the absence of the Chair the
218 Vice-Chair, shall appoint from the members of the Commission three hearing panels
219 of five members each to hear matters pursuant to the provisions of this Rule. One
220 hearing panel shall consist of members who do not reside in the eastern grand division
221 of the State; one hearing panel shall consist of members who do not reside in the
222 middle grand division of the State; and one hearing panel shall consist of members
223 who do not reside in the western grand division of the State. Each panel shall include
224 one, but not more than two, public members. Membership on hearing panels shall
225 rotate in a manner to be determined by the Chair. The Chair, or in the absence of the
226 Chair the Vice-Chair, shall appoint a chair of each hearing panel. The chair shall be
227 either a judge or an attorney member.

228

229 **6.2. Assignment and Duties.**

230

231 (a) Upon the filing of formal charges by Disciplinary Counsel, the Chair, or in the
232 absence of the Chair the Vice-Chair, shall assign a hearing panel to each case. The
233 hearing panel assigned to a case shall not include members who reside in the same
234 grand division of the State as the judge against whom the charges have been filed.

235

236 (b) The hearing panel shall conduct the proceedings in any matter upon the filing of
237 formal charges, including but not limited to the hearing and disposition of pre-hearing
238 motions; the approval or rejection of offers of settlement; the conduct of the
239 evidentiary hearing on the formal charges; and the disposition of those charges,
240 whether by dismissal or the imposition of sanctions as provided in Section 10 of this
241 Rule.

242

243 **6.3. Recusal.** No member of the Commission shall serve on the investigative and
244 hearing panels for the same complaint. A hearing panel member shall not take part in
245 any matter in which a judge, similarly situated, would have to recuse himself or
246 herself in accordance with Tenn. Sup. Ct. R. 10. However, the procedures set out in
247 Tenn. Sup. Ct. R. 10B are not applicable to motions to disqualify or for recusal in
248 matters under this Rule. The party seeking the recusal of a Commission member may
249 appeal an adverse decision to the Chair, or in the absence of the Chair the Vice-Chair.
250 The decision of the Chair or Vice-Chair shall be final and not subject to further appeal.
251 Alternate members may be appointed by the Chair, or in the absence of the Chair the
252 Vice-Chair, to serve on a hearing panel in the event of a panel member's recusal. In
253 making such appointments, due consideration should be given to the status of the
254 recusing member, with the goal of maintaining the contemplated composition and
255 balance of the panel's membership.

256

257 **Section 7. Disciplinary Counsel.**

258

259 **7.1.** The Court shall appoint an attorney admitted to practice in the State to serve as
260 Chief Disciplinary Counsel, who shall serve at the pleasure of the Court. Following
261 his or her appointment by the Court, Chief Disciplinary Counsel shall report to the
262 Commission, which shall conduct performance evaluations of Chief Disciplinary
263 Counsel every two years and shall report such evaluations to the Court. Neither
264 Chief Disciplinary Counsel nor full-time staff disciplinary counsel shall engage in
265 the private practice of law; however, the Commission and the Court may agree to a
266 reasonable period of transition after appointment.

267

268 **7.2.** Chief Disciplinary Counsel shall have the power with the approval of the Court
269 to:

270

271 (a) Employ and supervise staff, including staff disciplinary counsel, needed for the
272 performance of Disciplinary Counsel's functions. The staff and physical resources of
273 the Board of Professional Responsibility may be utilized, with the approval of the
274 Court, to assist in the performance of Disciplinary Counsel's functions effectively and
275 without delay; the Commission will compensate the Board of Professional
276 Responsibility for the use of any such staff and physical resources.

277

278 (b) Perform any administrative, non-adjudicatory function authorized by this Rule and
279 delegated by the Commission.

280

281 **7.3.** Disciplinary counsel shall have the power to:

282

283 (a) Receive and screen complaints or other information alleging judicial misconduct or
284 incapacity, refer complaints to other agencies when appropriate, conduct preliminary
285 investigations, recommend to the investigative panel of the Commission and, upon
286 authorization, conduct full investigations, notify complainants about the status and
287 disposition of their complaints, make recommendations to the investigative panel on
288 the disposition of complaints after full investigation, file formal charges subject to
289 approval of the investigative panel when directed to do so by the investigative panel,
290 and prosecute formal charges;

291

292 (b) Maintain permanent records of the operations of Disciplinary Counsel's office,
293 including receipt of complaints or other information alleging judicial misconduct or
294 incapacity, screening, investigation, and filing of formal charges in judicial discipline
295 and incapacity matters;

296

297 (c) Only with concurrence of the assigned investigative panel, seek investigative
298 assistance from the Tennessee Bureau of Investigation, or from any district attorney

299 general and, in appropriate cases, employ private investigators or experts, as
300 necessary, to investigate and process matters before the Commission;

301

302 (d) Perform other duties at the direction of the Chair or a majority of the Commission;

303 and

304

305 (e) Implement the written internal operating procedures adopted by the Commission

306 and approved by the Court pursuant to Section 4.5(b).

307 **Section 8. Grounds for Discipline.**

308

309 The following are grounds for discipline of judges pursuant to this Rule.

310

311 **8.1.** Willful misconduct relating to the official duties of the office.

312

313 **8.2.** Willful or persistent failure to perform the duties of the office.

314

315 **8.3.** Violation of the Code of Judicial Conduct as set out in Tenn. Sup. Ct. R. 10.

316

317 **8.4.** The commission of any act constituting a violation of so much of the Tennessee
318 Rules of Professional Conduct as set out in Tenn. Sup. Ct. R. 8 as is applicable to
319 judges.

320

321 **8.5.** A pattern of intemperate, irresponsible or injudicious conduct.

322

323 **8.6.** A pattern of discourtesy to litigants, witnesses, jurors, court personnel or lawyers.

324

325 **8.7.** A pattern of delay in disposing of pending litigation.

326

327 **8.8.** Any other conduct that brings the judiciary into public disrepute or that adversely

328 affects the administration of justice.

329

330 **8.9.** The willful violation of a valid order of this Court, the Commission, or an
331 investigative or hearing panel in proceedings under this Rule; the willful failure to
332 appear personally as directed by the Commission or an investigative or hearing panel
333 in proceedings under this Rule; or a knowing and willful failure to respond to a lawful
334 demand from the Commission, Disciplinary Counsel, or an investigative or hearing
335 panel in proceedings under this Rule.

336 **Section 9. Types of Discipline.**

337

338 The following are the types of discipline which the Commission may impose, with
339 or without conditions, on the basis of the grounds for discipline set forth in Section 8
340 of this Rule.

341

342 **9.1.** Private admonition by the investigative panel; provided that a private admonition,
343 whether imposed by the Commission or by an investigative panel, may be used in
344 subsequent proceedings as evidence of prior misconduct solely upon the issue of the
345 discipline to be imposed;

346

347 **9.2.** Entry into a deferred discipline agreement;

348

349 **9.3.** Public reprimand;

350

351 **9.4.** Imposition of limitations and conditions on the performance of judicial duties,
352 including the issuance of a cease and desist order;

353

354 **9.5.** Suspension, with or without pay, for such period as the Commission determines.

355 In the event the judge is exonerated at any stage of the proceedings, the judge may
356 seek repayment of withheld pay by filing a written request with the Commission

357 accompanied by proof of exoneration;

358

359 **9.6.** Entry of judgment recommending removal of the judge from office. A
360 recommendation of removal may be made in conjunction with a suspension under
361 Section 9.5, and such suspension shall remain in full force and effect unless and until
362 the judge is removed from office or the period of the suspension expires.

363

364 **9.7. Temporary Suspension.**

365

366 (a) On petition of Disciplinary Counsel and supported by an affidavit or sworn
367 declaration demonstrating facts personally known to affiant showing that a judge has
368 misappropriated funds to the judge's own use, failed to respond to the Commission or
369 Disciplinary Counsel concerning a complaint of misconduct, has failed to substantially
370 comply with a Tennessee Lawyer Assistance Program monitoring agreement requiring
371 mandatory reporting to Disciplinary Counsel pursuant to Section 24 of this Rule, or
372 otherwise poses a threat of substantial harm to the public, the Court may issue an order
373 with such notice as the Court may prescribe temporarily suspending the judge.

374

375 (b) The judge may for good cause request dissolution or amendment of any such order
376 of temporary suspension by filing with the Commission and serving on Disciplinary
377 Counsel a Petition for Dissolution or Amendment. Such petition for dissolution shall

378 be set for immediate hearing before the Commission or a hearing panel, which shall
379 hear such petition forthwith and render its decision. There shall be no petition
380 for rehearing. The aggrieved party may appeal to the Court, which may dissolve the
381 suspension, modify its order if appropriate, or continue such provision of the order as
382 may be appropriate until final disposition of all pending disciplinary charges against
383 the judge.

384

385 **9.8.** For purposes of this section, the following definitions apply:

386

387 (a) “Deferred discipline agreement” means a response to misconduct that is minor and
388 can be addressed through treatment, training, or a rehabilitation program under which
389 the judge agrees with the recommendation of the investigative panel of the
390 Commission to undergo evaluation or treatment, or both; to participate in educational
391 programs; or, to take other specified corrective action. Other discipline arising from
392 the same incident is suspended during the term of a deferred discipline agreement, and
393 no further discipline will be imposed upon the successful completion of the deferred
394 discipline agreement by the judge. Failure to comply with the discipline agreement
395 authorizes Disciplinary Counsel to proceed with other appropriate action;

396

397 (b) “Private admonition” is a form of non-public discipline imposed by a letter that
398 details the finding of minor judicial misconduct and enumerates the reasons that such

399 conduct is improper or brings discredit upon the judiciary or the administration of
400 justice;

401

402 (c) “Public reprimand” is identical to a private admonition except that the letter is
403 released to the public.

404

405 **9.9.** The criteria to be considered by the investigatory panel or the hearing panel in
406 determining the type or combination of types of discipline appropriate for the level of
407 culpability involved in the judge's misconduct include the following:

408

409 (a) Whether the misconduct is an isolated instance or evidences a pattern of conduct;

410

411 (b) The nature, extent and frequency of occurrence of the acts of misconduct;

412

413 (c) Whether the misconduct occurred in or out of the courtroom;

414

415 (d) Whether the misconduct occurred while the judge was acting in an official
416 capacity;

417

418 (e) Whether the judge has acknowledged or recognized the occurrence, nature and
419 impropriety of the acts;

420

421 (f) Whether the judge has evidenced an effort to change or modify conduct;

422

423 (g) The judge's length of service on the bench;

424

425 (h) Whether there have been prior complaints about the judge, except where prior
426 complaints have been found frivolous, unfounded, or beyond the permissible scope of
427 the Commission's authority pursuant to Section 10.3 of this Rule;

428

429 (i) The effect of the misconduct upon the integrity of, and respect for, the judiciary;

430 and

431

432 (j) The extent to which the judge exploited the judicial position for personal gain or
433 satisfaction.

434 **Section 10. Initiation, Investigation, Prehearing Procedures, and Hearing.**

435

436 **10.1. Initiation, Review, and Preliminary Investigation.**

437

438 (a) Disciplinary Counsel

439

440 (1) Disciplinary Counsel shall evaluate all information coming to Disciplinary
441 Counsel's attention by complaint, upon the request of any member of the Commission,
442 or from any other credible source that alleges judicial misconduct or incapacity.

443

444 (2) In instances in which a complaint is filed, the complaint must be submitted in
445 writing, must contain the name of the complainant, and must be signed by the
446 complainant. The complaint should allege specific facts directly relating to the
447 alleged misconduct or incapacity of the judge in question.

448

449 (3) All complaints or other information alleging judicial misconduct or incapacity
450 shall be reviewed by Disciplinary Counsel. If Disciplinary Counsel determines the
451 complaint or other information establishes probable cause that the conduct
452 complained of occurred and constitutes a ground for discipline under Section 8
453 of this Rule, Disciplinary Counsel shall conduct a preliminary investigation.
454 If the complaint or other information raises an issue regarding a judge's

455 capacity, Disciplinary Counsel shall proceed in accordance with Section 17 of
456 this Rule. If Disciplinary Counsel determines the complaint or other
457 information fails to establish probable cause that either the conduct occurred or that
458 the conduct constitutes a ground for discipline under Section 8 of this Rule,
459 Disciplinary Counsel shall recommend dismissal, or if appropriate, refer the matter to
460 another agency. Disciplinary Counsel shall not have the authority to dismiss a matter
461 without the review of and approval by the investigative panel.

462

463 (4) Disciplinary Counsel may conduct interviews, request the judge to voluntarily
464 provide information, and examine evidence to determine whether the specific facts
465 alleged are true and, if so, whether the facts establish probable cause that conduct
466 constituting a ground for discipline under Section 8 of this Rule has occurred,
467 provided that no subpoena shall issue to obtain testimony or evidence until the
468 investigative panel authorizes a full investigation pursuant to subsection (b).

469

470 (5) If Disciplinary Counsel determines there is evidence supporting the allegations
471 against a judge, Disciplinary Counsel shall recommend to the investigative panel
472 assigned to the case that the panel authorize a full investigation. Disciplinary Counsel
473 may also recommend a full investigation when Disciplinary Counsel determines that
474 there is evidence that would establish probable cause that conduct constituting a
475 ground for discipline under Section 8 of this Rule has occurred and that such

476 evidence could be obtained by subpoena or further investigation. In all other
477 cases, Disciplinary Counsel must recommend that the matter be dismissed.
478 Disciplinary Counsel shall not have the authority to dismiss a matter without
479 the review of and approval by the investigative panel.

480

481 (b) Investigative Panel.

482

483 (1) Promptly upon receipt of a complaint or other information, report, and
484 recommendations from Disciplinary Counsel, the investigative panel assigned to the
485 case shall review the matter. The meeting of the investigative panel may be conducted
486 in person, by telephone conference call, by audio-visual conference, or by e-mail or
487 other electronic means.

488

489 (2) The Investigative Panel shall either:

490

491 (A) authorize a full investigation;

492

493 (B) give further instructions to Disciplinary Counsel; or

494

495 (C) dismiss the matter.

496

497 **10.2. Full Investigation.**

498

499 (a) Disciplinary Counsel

500

501 (1)(A) Within thirty days after the investigative panel authorizes a full
502 investigation, Disciplinary Counsel shall give notice to the judge by personal
503 service by any person authorized to do so pursuant to the Tennessee Rules of Civil
504 Procedure, by any form of United States mail providing delivery confirmation, or by
505 commercial delivery service having computer tracking capacity. The notice shall
506 contain the following:

507

508 (i) A specific statement of the allegations being investigated and the canons or rules
509 allegedly violated, with the provision that the investigation can be expanded if
510 appropriate;

511

512 (ii) The judge's duty to respond;

513

514 (iii) The judge's opportunity to meet with Disciplinary Counsel; and

515

516 (iv) The name of the complainant, unless the investigative panel determines that there
517 is good cause to withhold that information.

518

519 (B) The investigative panel may defer the giving of notice; however, notice must be
520 given pursuant to this section before making a determination other than dismissal of
521 the matter.

522

523 (C) Disciplinary Counsel may request that the judge file a written response within
524 thirty days after service of the notice. The judge's response must be in writing and
525 signed by the judge.

526

527 (2) Upon the conclusion of the Disciplinary Counsel's full investigation, Disciplinary
528 Counsel may recommend to the investigative panel any or any combination of the
529 following:

530

531 (A) Dismissal;

532

533 (B) Private admonition, deferred discipline agreement, or public reprimand;

534

535 (C) The filing of formal charges;

536

537 (D) Referral to an appropriate agency; or

538

539 (E) A stay.

540

541 (b) Investigative Panel

542

543 (1) The investigative panel by majority vote may adopt, reject or modify the
544 recommendations of Disciplinary Counsel. If the investigative panel finds conduct for
545 which the imposition of discipline is not warranted, it may dismiss the matter. If the
546 investigative panel determines the full investigation has established probable cause
547 that the judge engaged in conduct that constitutes grounds for discipline under Section
548 8 of this Rule, the investigative panel may:

549

550 (A) direct Disciplinary Counsel to file formal charges;

551

552 (B) propose any or a combination of the following: private admonition, deferred
553 discipline agreement, or public reprimand to the judge. If the judge consents to the
554 discipline proposed by the investigative panel, the investigative panel shall impose the
555 discipline or implement the deferred discipline agreement. If the judge does not
556 consent to the proposed discipline or the deferred discipline agreement, the
557 investigative panel may direct Disciplinary Counsel either to file formal charges or to
558 dismiss the matter.

559

560 (2) If no two members of an investigative panel concur in the decision, then the Chair
561 of the Commission shall direct that the matter be assigned to another investigative
562 panel for consideration. If the second investigative panel recommends the filing of
563 formal charges, no member of either the first investigative panel or the second
564 investigative panel shall serve on the hearing panel for such matter.

565

566 **10.3. Dismissal of Complaints.** If the investigative panel determines that the charges
567 are frivolous, unfounded, would not constitute misconduct if true, or are beyond the
568 permissible scope of the Commission's authority, the investigative panel shall dismiss
569 the charges. The matter will then be closed, and the Commission's docket will state
570 that the complaint has been investigated and dismissed pursuant to Section 10.3 of this
571 Rule.

572

573 **10.4. Sanctions by Consent Prior to Formal Charges.** If a judge, with the
574 concurrence of the investigative panel, consents to a private admonition before the
575 filing of formal charges, the agreement shall be reduced to writing and shall specify
576 the behavior that resulted in the agreed upon sanction. Private admonition shall be
577 confidential; however, copies shall be provided to the judge and retained in the
578 Commission's files.

579

580 **10.5. Formal Charges.**

581

582 (a) If the investigative panel determines the full investigation has established probable
583 cause that the judge has committed conduct constituting one or more of the grounds
584 for discipline under Section 8 of this Rule, or if the respondent judge does not consent
585 to the proposed discipline or the deferred discipline agreement following a full
586 investigation, and the investigative panel directs that Disciplinary Counsel file formal
587 charges, then prior to the filing of the formal charges the investigative panel shall
588 review and approve the form and content of such formal charges. Such formal charges
589 shall be signed by Disciplinary Counsel.

590

591 (b) If the investigative panel finds there is probable cause to believe the judge under
592 investigation has committed conduct constituting one or more of the grounds for
593 discipline under Section 8 of this Rule, it shall be the duty of the Disciplinary Counsel
594 to give the judge under investigation written notice of the details of the formal
595 charges. The formal charges shall give fair and adequate notice of the nature of the
596 alleged misconduct or incapacity.

597

598 (c) Disciplinary Counsel shall serve the formal charges upon the judge in accordance
599 with Section 10.6(a) of this Rule. Disciplinary counsel shall file the formal charges
600 and proof of service with the Commission.

601

602 (d) The judge shall have thirty days from the date of service of written notice of the
603 formal charges within which to file an answer with the Commission and serve a copy
604 on Disciplinary Counsel in accordance with Section 10.6(b) of this Rule.

605

606 (e) The raising of a mental or physical condition as a defense constitutes a waiver of
607 any claim of privilege or confidentiality with respect to medical or mental health
608 records and information, including protected health information. The judge raising
609 such condition shall identify all health care providers who have provided evaluation,
610 care, or treatment with respect to the claimed mental or physical condition and shall
611 provide Disciplinary Counsel with a HIPAA-compliant medical authorization
612 permitting Disciplinary Counsel to obtain from each such provider the judge's
613 complete medical records relative to the claimed mental or physical condition.

614

615 Failure of the judge to identify the health care providers who have provided
616 evaluation, care, or treatment with respect to the claimed mental or physical condition
617 or to provide Disciplinary Counsel with a HIPAA-compliant medical authorization
618 permitting Disciplinary Counsel to obtain from each such provider the judge's
619 complete medical records relative to the claimed mental or physical condition shall
620 constitute a waiver of any and all defenses based in any manner on the judge's
621 asserted mental or physical condition.

622

623 (f) Failure to answer the formal charges shall constitute an admission of the factual
624 allegations.

625

626 (g) If the judge fails to appear when specifically so ordered by the hearing panel or the
627 Commission, the judge shall be deemed to have admitted the factual allegations that
628 were to be the subject of the appearance and to have conceded the merits of any
629 motion or recommendation to be considered at the appearance. Absent good cause,
630 the hearing panel or Commission shall not continue or delay proceedings because of
631 the judge's failure to appear.

632

633 **10.6. Service.**

634

635 (a) The formal charges in any disciplinary proceeding shall be served on the
636 respondent judge by personal service by any person authorized to do so pursuant to the
637 Tennessee Rules of Civil Procedure, or by any form of United States mail providing
638 delivery confirmation, or by commercial delivery service having computer tracking
639 capacity. If such service is not successfully completed, the Commission shall
640 undertake additional reasonable steps to obtain service, including but not limited to,
641 personal service or service by mail at such addresses as the Commission may identify,
642 or service by email at such email addresses as the Commission may identify.

643

644 (b) Service of any other papers or notices required by this Rule shall, unless otherwise
645 provided by this Rule, be made in accordance with Rule 5.02 of the Tennessee Rules
646 of Civil Procedure.

647

648 **10.7. Subpoena Power, Witnesses and Pre-Hearing Proceedings.**

649

650 (a) Any member of a hearing panel in matters before it, and Disciplinary Counsel in
651 matters under investigation or in formal proceedings, may administer oaths and
652 affirmations and may obtain from the circuit or chancery court having jurisdiction
653 subpoenas to compel the attendance of witnesses and the production of pertinent
654 books, papers and documents. A judge may, similarly, obtain subpoenas to compel
655 the attendance of witnesses and the production of pertinent books, papers and
656 documents before a hearing panel after formal disciplinary proceedings are instituted.

657

658 (b) Subpoenas issued prior to formal proceedings shall clearly indicate on their face
659 that the subpoenas are issued in connection with a confidential investigation under this
660 Rule and that it may be regarded as contempt of the Court or grounds for discipline
661 under this Rule for a person subpoenaed to in any way breach the confidentiality of
662 the investigation. The scope of the confidentiality of the investigation shall be
663 governed by Section 19 of this Rule. It shall not be regarded as a breach of
664 confidentiality for a person subpoenaed to consult with an attorney.

665

666 (c) The circuit or chancery court in which the attendance or production is required
667 may, upon proper application, enforce the attendance and testimony of any witness
668 and the production of any documents so subpoenaed. Subpoena and witness fees and
669 mileage shall be the same as in the courts of this State.

670

671 (d) Any attack on the validity or scope of a subpoena so issued, and any application
672 for a protective order with respect to a subpoena so issued, shall be filed in and heard
673 and determined by the court in which enforcement of the subpoena is being sought.

674

675 (e) Upon motion of Disciplinary Counsel or the judge and for good cause shown, the
676 Commission may permit discovery prior to the institution of formal proceedings
677 pursuant to Section 10.5.

678

679 (f) By the agreement of Disciplinary Counsel and the judge, testimony may be taken
680 by deposition or by interrogatories. In the absence of such agreement, testimony may
681 be taken by deposition or by interrogatories only with the approval of the hearing
682 panel and if the witness is not subject to service or subpoena or is unable to attend or
683 testify at the hearing because of age, illness, infirmity, or incarceration. A complete
684 record of the testimony so taken shall be made and preserved, but need not be
685 transcribed unless needed for appeal pursuant to Section 20 of this Rule.

686

687 (g) The subpoena and deposition procedures shall be subject to the protective
688 requirements of confidentiality provided in Section 19 of this Rule.

689

690 **10.8. Sanctions by Consent Subsequent to Formal Charges.**

691

692 (a)(1) At any time after the filing of formal charges and before final disposition, the
693 judge may agree with Disciplinary Counsel that the judge shall admit to any or all of
694 the formal charges in exchange for a stated sanction.

695

696 (b) The agreement shall be approved by the judge; the judge's attorney, if any; and
697 Disciplinary Counsel, and then submitted to the hearing panel assigned to the case,
698 which shall either:

699

700 (1) Reject the agreement; or

701

702 (2) Approve the agreement and enter the order disciplining the judge.

703

704 (c) If the stated sanction is rejected by the hearing panel, the agreement shall be
705 withdrawn and cannot be used against the judge in any proceedings.

706

707 (d) A judge who consents to a stated sanction shall sign an affidavit or a declaration
708 under penalty of perjury stating that:

709

710 (1) The judge consents to the sanction;

711

712 (2) The consent is freely and voluntarily rendered;

713

714 (3) There is presently pending a proceeding involving allegations of misconduct,
715 which shall be specifically set forth in the affidavit or declaration; and

716

717 (4) The facts set forth in the affidavit or declaration are true.

718

719 (e) Upon approval by the hearing panel, the affidavit or declaration shall be filed with
720 the Commission. The final order of discipline shall be based upon the formal charges
721 and the conditional admission. The final order of discipline shall be a matter of public
722 record.

723

724 **10.9. Evidentiary Hearing.**

725

726 (a) The matter shall be set for an evidentiary hearing within sixty days from the date of
727 the filing of the answer. The Chair shall determine the location of the hearing and

728 shall provide notice of the location to the members of the hearing panel, Disciplinary
729 Counsel, the judge, and the judge's attorney. Upon request of the judge, or upon a
730 finding by the Commission that the public interest would be served, the evidentiary
731 hearing shall be conducted in the county of the judge's residence.

732

733 (b) The chair of the assigned hearing panel shall preside at the evidentiary hearing
734 and, with the advice and consent of the other members of the hearing panel, shall rule
735 on all issues of law, evidence and procedure that may arise during the course of the
736 hearing.

737

738 (c) The evidentiary hearing shall be conducted by the hearing panel, and no member
739 of the investigative panel for the particular cause shall participate in the hearing or the
740 deliberations of the case.

741

742 (d) Four members of the hearing panel shall constitute a quorum, and a quorum of the
743 hearing panel shall be required in order to hold a hearing. The hearing panel shall
744 decide a matter only upon the concurrence of a majority of all members of the panel
745 hearing the matter. The decision of the hearing panel is the decision of the
746 Commission. In the event that a majority of all members of the panel hearing
747 the matter are unable to reach a concurrence, the chair of the hearing panel
748 shall so notify Disciplinary Counsel, the judge, and the judge's attorney.

749 Disciplinary Counsel shall confer with the investigative panel assigned to the
750 complaint, which shall determine whether or not to proceed with a rehearing
751 before a new hearing panel. Within fifteen days of receipt of the notice from
752 the chair of the hearing panel, Disciplinary Counsel shall inform the Chair of
753 the Commission, the judge, and the judge's attorney of the investigative
754 panel's decision. If the investigatory panel elects to proceed with a rehearing,
755 the Chair of the Commission shall direct that the matter be assigned to another
756 hearing panel for consideration. If the investigatory panel elects not to proceed
757 with a rehearing, it shall dismiss the matter.

758

759 (e) Charges of misconduct shall be established by a preponderance of the
760 evidence.

761

762 (f) At the conclusion of the hearing, the hearing panel may dismiss the charges or
763 impose any discipline authorized in Section 9 of this Rule, with the exception of
764 temporary suspension or private admonition. Temporary suspension and private
765 admonition are not types of discipline available to the hearing panel following the
766 filing of formal charges.

767

768 (1) In every case, regardless of the disposition or any sanction imposed, the hearing
769 panel shall issue its findings and judgment in the form of an opinion and final decree

770 of a trial court within forty-five days of the conclusion of the hearing. The findings
771 and judgment shall specify the type of discipline imposed. In determining the
772 appropriate type of discipline, the hearing panel shall consider the applicable criteria
773 under Section 9.9 of this Rule.

774

775 The findings and judgment shall contain a notice that the findings and judgment may
776 be appealed pursuant to Section 20 of this Rule. The Commission shall serve a copy
777 of the hearing panel's findings and judgment upon Disciplinary Counsel, the judge,
778 and the judge's attorney of record pursuant to Section 10.6(b) of this Rule. The
779 hearing panel may make a written request to the Chair of the Commission for an
780 extension of time within which to file its findings and judgment. In the event that the
781 hearing panel does not submit its findings and judgment within forty-five days,
782 Disciplinary Counsel shall report the same to the Court which may take such action as
783 it deems necessary to secure submission of the findings and judgment. The failure of
784 the hearing panel to meet this deadline, however, shall not be grounds for dismissal of
785 the formal charges.

786

787 (2) There shall be no petition for rehearing. Any appeal to the Court pursuant to
788 Section 20 of this Rule must be filed within thirty days of the entry of the hearing
789 panel's judgment.

790

791 **10.10. Sanction Review.**

792

793 (a) If the judgment of the hearing panel is that the judge shall receive a public
794 reprimand, a suspension, or a recommendation of removal from office, and no
795 appeal is perfected within the time allowed, or if there is a settlement
796 providing for a public reprimand, a suspension, or a recommendation of
797 removal from office, at any stage of disciplinary proceedings, the Commission
798 shall file in the Nashville office of the Clerk of the Supreme Court a Notice of
799 Submission with attached copies of the formal charges, the judgment or
800 settlement, the final order of discipline, and a protocol memorandum as
801 defined in Section 2. A copy of the protocol memorandum shall be served
802 upon the judge and the judge's counsel of record pursuant to Section 10.6(b).
803 In all cases except those in which the sanction imposed is by agreement, the
804 judge shall have ten days from service of the foregoing within which to file
805 with the Court and serve upon Disciplinary Counsel pursuant to Section
806 10.6(b) a response to the protocol memorandum. Such response shall be
807 limited to contesting any alleged factual errors in the protocol memorandum.
808 The Court shall review the recommended discipline provided in such
809 judgment or settlement with a view to attaining uniformity of discipline
810 throughout the State and appropriateness of discipline under the circumstances
811 of each particular case. The Court may direct that the transcript or record of

812 any proceeding be prepared and filed with the Court for its consideration.

813

814 (b) If the Court finds that the discipline imposed under subsection (a) appears
815 to be inadequate or excessive, it shall issue an order advising the Commission
816 and the judge that it proposes to increase or to decrease the discipline. If the
817 Court proposes to increase the discipline, the judge shall have twenty days
818 from the date of the order to file a brief; if the Court proposes to decrease the
819 discipline, the Commission shall have twenty days from the date of the order
820 within which to file a brief. Response briefs shall be filed within twenty days
821 of the filing of the preceding brief. Either party may request oral argument in
822 the party's brief and the Court, in its discretion, may grant such a request.
823 After review, the Court may modify the discipline as it deems appropriate.
824 There shall be no petition for rehearing.

825

826 **10.11. Ex parte communications.** Ex parte communications between Commission
827 staff and members of the Commission concerning the selection of investigative panels
828 and hearing panels and for scheduling or other administrative purposes are permitted.
829 A Commission member may advise Commission staff, the Chair, or Vice-Chair if he
830 or she is unable to serve on an investigative panel or a hearing panel for any reason.

831

832 **10.12. Notification of Complainant.**

833

834 Unless confidential under other sections of this Rule, Disciplinary Counsel shall notify
835 the complainant in writing of the final disposition of the matter under this Rule within
836 five days from the final disposition. If, however, the disposition is confidential under
837 other sections of this Rule, Disciplinary Counsel shall notify the complainant in
838 writing only that the matter has been finally resolved within five days from the final
839 disposition.

840

841

842 **Section 11. Refusal of Complainant to Proceed, Compromise, etc.**

843

844 Neither unwillingness nor neglect of the complainant to sign a complaint or to
845 prosecute a charge shall, in itself, justify abatement of the processing of any
846 complaint.

847 **Section 12. Matters Involving Related Pending Civil or Criminal Litigation.**

848

849 Processing of disciplinary complaints shall not be deferred or abated because of
850 substantial similarity to the material allegations made in other pending criminal or
851 civil litigation or because the substance of the complaint relates to the respondent
852 judge's alleged conduct in pending litigation, unless authorized by the Commission, in
853 its discretion, for good cause shown.

875

876 (c) Upon receiving notice from a judge pursuant to Section 13.2(b) with respect to any
877 serious crime, as defined in Section 2, or upon otherwise being advised that a judge
878 subject to this Rule has entered a plea of nolo contendere or a plea of guilty to, or has
879 been found guilty by verdict of the jury or of the trial court sitting without a jury of,
880 any crime, Disciplinary Counsel shall obtain adequate proof of the plea or verdict,
881 including a copy thereof, and shall file the same with a Notice of Submission in the
882 Nashville office of the Clerk of the Supreme Court.

883

884 **13.3. Acts Not Constituting Serious Crime.**

885 Upon receipt of adequate proof including copies of the judgment, plea of nolo
886 contendere, or guilty plea with respect to any crime not constituting a serious crime, as
887 defined in Section 2, the Court shall refer the matter to the Commission for whatever
888 action the Commission may deem warranted, including the institution of an
889 investigation by Disciplinary Counsel and an investigative panel, or a formal
890 proceeding before a hearing panel, provided, however, that the Court may in its
891 discretion make no reference with respect to convictions for minor offenses.

892

893 **13.4. Serious Crime.**

894

895 (a) Upon the filing with the Court of the Notice of Submission with attached adequate

896 proof and copies demonstrating that a judge who is a defendant in a criminal case
897 involving a serious crime, as defined in Section 2, has entered a plea of nolo
898 contendere or a plea of guilty or has been found guilty by verdict of the jury, or the
899 trial court sitting without a jury, the Court may enter an order immediately suspending
900 the judge with or without pay.

901

902 (b) A judge suspended under the provisions of subsection (a) will be reinstated
903 immediately upon the filing of an affidavit or declaration under penalty of perjury
904 with supporting documentation demonstrating that the underlying conviction of a
905 serious crime has been reversed, but the reinstatement will not terminate any formal
906 proceeding then pending against the judge, the disposition of which shall be
907 determined by the hearing panel and the Commission on the basis of the available
908 evidence.

909

910 (c) Upon the receipt of adequate proof including copies of a judgment, plea of nolo
911 contendere, or guilty plea with respect to a serious crime, as defined in Section 2, the
912 Court shall, in addition to any suspension of the judge in accordance with the
913 provisions of subsection (a), refer the matter to the Commission for the institution of a
914 formal proceeding before a hearing panel in which the sole issue to be determined
915 shall be the extent of the final discipline to be imposed, provided that a disciplinary
916 proceeding so instituted will not be brought to hearing until all appeals from the

917 conviction are concluded.

918

919 **13.5.** A judge suspended pursuant to Section 13.4(a) shall receive credit for any period
920 of suspension served pursuant to Section 13.4(a) that preceded the commencement of
921 any term of incarceration.

922

923 **13.6.** A certified copy of the judgment, plea of nolo contendere or guilty plea, or an
924 affidavit or declaration under penalty of perjury with other adequate proof of a
925 conviction of a judge for any crime, shall be conclusive evidence of the commission of
926 that crime in any disciplinary proceeding instituted against the judge based upon the
927 conviction.

928

929 **13.7.** Judicial diversion pursuant to Tenn. Code Ann. § 40-35-313, including dismissal
930 and discharge of the criminal proceedings and expungement from the official records
931 pursuant to Tenn. Code Ann. § 40-35-313(b), shall not foreclose the initiation,
932 investigation or prosecution of disciplinary action on the basis of the conduct
933 constituting the diverted criminal offense(s).

934 **Section 14. Complaints against Judges Serving as Commission Members.**

935

936 **14.1.**

937

938 (a) Complaints against judge members of the Commission alleging violations of the
939 Code of Judicial Conduct shall be submitted directly to the Chief Justice of the Court.

940

941 (b) Disagreement with the official decision of the Commission or a judge member,
942 including a decision as a member of an investigative panel or a hearing panel, made in
943 the course and scope of his or her responsibilities, shall not be grounds for the filing of
944 a disciplinary complaint.

945

946 **14.2.** The investigation of complaints against judge members of the Commission
947 submitted under Section 14.1 of this Rule shall proceed in accordance with the
948 procedures contained in Section 10 of this Rule, with the following modifications:

949

950 (a) A Special Disciplinary Counsel, whom the Chief Justice shall appoint by order
951 entered under seal, shall take the place and perform all of the functions of Disciplinary
952 Counsel set forth in Section 10 of this Rule, including all investigations, whether upon
953 complaint or otherwise.

954

955 (b) A standing special investigative panel, the members of which the Chief Justice
956 shall appoint by order entered under seal, shall have the same composition as the
957 investigative panels provided under Section 5.1 of this Rule and shall take the place
958 and perform all of the functions of such investigative panels as set forth in Section 10
959 of this Rule.

960

961 (c) If formal charges are filed, the Chief Justice shall appoint by order a special
962 hearing panel, which shall have the same composition as the hearing panels provided
963 under Section 6.1 of this Rule and shall take the place and perform all of the functions
964 of such hearing panels as set forth in Sections 6.2 and 10 of this Rule.

965

966 (d) There shall be no petition for rehearing. The judge or Special Disciplinary
967 Counsel may appeal the judgment of the special hearing panel as provided in Section
968 20 of this Rule.

969 **Section 15. Complaints against Justices of the Court.**

970

971 **15.1.** Complaints against Justices of the Supreme Court alleging violations of the Code
972 of Judicial Conduct shall be initiated, reviewed, investigated, heard and determined in
973 accordance with the procedures contained in this Rule, with the following
974 modifications:

975

976 (a) The Justice who is the subject of the disciplinary proceedings shall not participate
977 in any sanction review by the Court with respect to that Justice pursuant to Section
978 10.10 of this Rule.

979

980 (b) The Justice who is the subject of the disciplinary proceedings shall not participate
981 in any appeal heard by the Court with respect to that Justice pursuant to Section 20 of
982 this Rule.

Section 16. Immunity.

983
984 Members of the Commission, Disciplinary Counsel, and their staff shall be absolutely
985 immune from civil suit for all conduct and actions in the course of their official duties
986 pursuant to this Rule. Complainants and witnesses shall be immune from civil suit
987 with respect to any communications to the Commission, Disciplinary Counsel, or their
988 staffs relating to judge misconduct or disability or testimony in any proceedings
989 regarding the same. The immunity granted by this Section shall not be construed to
990 limit any other form of immunity available to any covered person.

991 **Section 17. Judicial Incapacity.**

992

993 **17.1.** Where a judge has been judicially declared incompetent or involuntarily
994 committed on the grounds of incompetency or disability or detained or placed in the
995 custody of a center for the treatment of mental illness after a probable cause hearing
996 pursuant to the procedures set forth in Tenn. Code Ann. § 33-6-418, the Court, upon
997 proper proof of the fact, shall enter an order certifying that the judge is incapacitated
998 from continuing to perform his or her judicial duties by reason of mental infirmity or
999 illness and suspending the judge with pay, effective immediately for an indefinite
1000 period until further order of the Court. A copy of the Court's order shall be served
1001 upon the judge, the judge's guardian, and/or the director of the institution to which the
1002 judge had been committed in such manner as the Court may direct.

1003

1004 **17.2.** Whenever during the course of an investigation pursuant to Sections 10.1 or 10.2
1005 of this Rule, or formal proceedings pursuant to Sections 10.5 and 10.9 of this Rule,
1006 Disciplinary Counsel obtains information calling into question the mental or physical
1007 health of the judge that raises a substantial concern regarding the judge's capacity to
1008 perform his or her judicial duties or to respond to or defend against a complaint,
1009 Disciplinary Counsel should request the judge to agree voluntarily to submit to an
1010 evaluation by the Tennessee Lawyer Assistance Program or an examination by a
1011 qualified medical or mental health expert to determine the judge's capacity and report

1012 the results of the examination to Disciplinary Counsel, and to the judge and the
1013 judge's attorney. In the event the judge declines to submit to such evaluation or
1014 examination and reporting, Disciplinary Counsel should file a petition with the Court
1015 for an order requiring the judge to submit to an evaluation by the Tennessee Lawyer
1016 Assistance Program or an examination by a qualified medical or mental health expert
1017 as the Court shall designate, the results of either of which shall be reported to
1018 Disciplinary Counsel, the Court, the judge, and the judge's attorney. Failure to
1019 comply with an order issued under this Subsection may serve as the basis for
1020 temporary suspension pursuant to Section 9.7 of this Rule and Disciplinary Counsel
1021 may petition the Court for the imposition of a temporary suspension.

1022

1023 **17.3.** Disciplinary Counsel shall evaluate all information coming to Disciplinary
1024 Counsel's attention by complaint, upon the request of any member of the Commission,
1025 from any other credible source that alleges judicial incapacity, or from an evaluation
1026 conducted pursuant to section 17.2 of this Rule. Disciplinary Counsel may petition
1027 the Court to determine whether a judge is incapacitated from continuing to perform
1028 his or her judicial duties by reason of mental or physical infirmity or illness or because
1029 of addiction to drugs or intoxicants. If such a petition is filed, the Court may take or
1030 direct such action as it deems necessary or proper to determine whether the judge is so
1031 incapacitated, including the examination of the judge by such qualified medical or
1032 mental health experts as the Court shall designate or assignment to a hearing panel for

1033 a formal hearing to determine the issue of capacity. If Disciplinary Counsel petitions
1034 the Court, the burden of proof shall be upon Disciplinary Counsel and shall be by a
1035 preponderance of the evidence. If, upon due consideration of the matter, the Court
1036 concludes that the judge is incapacitated from continuing to perform his or her judicial
1037 duties, it shall enter an appropriate order that may include suspending the judge with
1038 pay on the ground of such disability for an indefinite period and until further order of
1039 the Court. If Disciplinary Counsel files a petition pursuant to this Section while a
1040 disciplinary proceeding is pending against the judge, the disciplinary proceeding shall
1041 be suspended pending the determination as to the judge's alleged incapacity.

1042

1043 **17.4.**

1044

1045 (a) If, during the course of a disciplinary investigation or proceeding, the judge
1046 contends that he/she is suffering from a disability by reason of mental or physical
1047 infirmity or illness, or because of addiction to drugs or intoxicants, which disability
1048 renders the judge unable to respond to or defend against the complaint, such
1049 contention shall place at issue the judge's capacity to perform his or her judicial
1050 duties. Disciplinary Counsel, the judge, or the judge's attorney shall file in the
1051 Nashville office of the Clerk of the Supreme Court a notice advising the Court of such
1052 contention within ten days of learning of the contention, if the Court has not been
1053 otherwise notified. The Court thereupon shall enter an order suspending the judge

1054 with pay for an indefinite period and until the further order of the Court. The Court
1055 may take or direct such action as it deems necessary or proper to make a determination
1056 as to the judge's capacity to perform his or her judicial duties and to respond to or
1057 defend against the complaint, including the examination of the judge by such qualified
1058 medical or mental health experts as the Court shall designate or the referral of the
1059 matter to a hearing panel for a formal hearing to determine the judge's capacity to
1060 perform his or her judicial duties and to respond to or defend against the complaint. In
1061 any such proceeding, the burden of proof shall rest upon the judge and shall be by a
1062 preponderance of the evidence.

1063

1064 (b) If the Court or hearing panel determines that the judge is incapacitated from
1065 responding to or defending against the complaint, the Court or hearing panel shall
1066 take such action as it deems proper and advisable, including a direction for the
1067 suspension of the disciplinary proceeding against the judge.

1068

1069 (c) If the investigation of complaints or disciplinary proceedings has been suspended
1070 pursuant to this Section, Disciplinary Counsel may petition the Court to require the
1071 disabled judge to provide competent evidence from qualified medical or mental health
1072 experts that his or her condition continues to be such that the disabled judge is not
1073 capable of responding to pending disciplinary complaints, or to submit to an
1074 examination by such independent qualified medical or mental health experts as the

1075 Court shall designate in order to determine whether the condition continues to be such
1076 that the disabled judge is not capable of responding to pending complaints or
1077 defending against disciplinary proceedings. The results of such examination shall be
1078 reported to the Disciplinary Counsel, the Court, the judge, and the judge's attorney. In
1079 the event such experts determine that the judge has recovered from the disability to the
1080 point that the judge is capable of defending against allegations of misconduct,
1081 Disciplinary Counsel may petition the Court for an order permitting the disciplinary
1082 proceedings to be reactivated. If Disciplinary Counsel files such a petition, the burden
1083 of proof shall rest upon Disciplinary Counsel and shall be by a preponderance of the
1084 evidence. Should the Court permit the disciplinary proceedings to proceed, the cost of
1085 the independent medical or mental health examinations shall be charged to the judge.

1086

1087 **17.5.**

1088

1089 (a) No judge suspended by the Court pursuant to this Section may return to his or her
1090 judicial duties until reinstated by order of the Court. Any judge suspended by the
1091 Court pursuant to this Section shall be entitled to petition for reinstatement after the
1092 disability is removed. The petition for reinstatement shall be filed with the Court in
1093 the form adopted by the Commission. The petitioner shall serve a copy of the petition
1094 upon Disciplinary Counsel, who shall investigate the matter and file an answer to the
1095 petition within thirty days. The answer shall include a recommendation as to

1096 whether the petition should be granted without a hearing or referred to a hearing
1097 panel for a hearing.

1098

1099 (b) Upon the filing of a petition for reinstatement pursuant to subsection (a), the Court
1100 may take or direct such action as it deems necessary or proper to determine whether
1101 the judge's disability has been removed, including a direction for an examination of
1102 the judge by such qualified medical or mental health experts as the Court shall
1103 designate and the furnishing of such expert's report to the Court, Disciplinary Counsel,
1104 the judge, and the judge's attorney. In its discretion, the Court may direct that the
1105 expense of such an examination shall be paid by the judge. The Court also may refer
1106 the petition to a hearing panel for a hearing in which the judge shall have the burden
1107 of proof. The petition shall be granted upon a showing by clear and convincing
1108 evidence that the judge's disability has been removed and the judge is fit to resume his
1109 or her judicial duties.

1110

1111 (c) Pending disciplinary complaints against the judge, whether filed before or after the
1112 judge's suspension by the Court, must be resolved before the effective date of any
1113 reinstatement. Provided, however, that the Court may order reinstatement pending the
1114 completion of any conditional disciplinary action imposed upon the judge or the final
1115 completion of the terms of any agreement executed by the judge and the Tennessee
1116 Lawyer Assistance Program.

1117

1118 (d) The filing of a petition for reinstatement by a judge suspended because of
1119 disability shall be deemed to constitute a waiver of any doctor-patient privilege with
1120 respect to any treatment of the judge during the period of disability. The judge shall
1121 be required to disclose the name of every psychiatrist, psychologist, physician, and
1122 hospital or other institution by whom or in which the judge has been examined or
1123 treated since the suspension on the basis of disability, and shall furnish to the Court a
1124 HIPAA-compliant medical authorization authorizing the Court to obtain from each
1125 such provider the judge's complete medical records relative to any examination or
1126 treatment since the suspension on the basis of disability.

1127

1128 **17.6.** Where a judge has been suspended by an order of the Court in accordance with
1129 Section 17.1 and, thereafter, in proceedings duly taken, the judge has been judicially
1130 declared to be competent, the Court may dispense with further evidence that the
1131 judge's disability has been removed and may direct the judge's reinstatement upon
1132 such terms as the Court deems proper and advisable, subject to section 17.7.

1133

1134 **17.7.** If, in any proceeding under this section, the Court or a hearing panel determines
1135 that a judge is suffering from a disability by reason of mental or physical infirmity or
1136 illness, or because of addiction to drugs or intoxicants, which disability is or is likely
1137 to become permanent and which disability would substantially interfere with the

1138 prompt, orderly and efficient performance of the judge’s judicial duty, the Court or
1139 hearing panel may recommend the removal of the judge from office.

1140

1141 **17.8.** With the exception of the orders of the Court or hearing panel, all proceedings
1142 and all documents, reports, records, and materials of any kind and in any form filed
1143 pursuant to Section 17 of this Rule shall be privileged and confidential.

1144

1145 **17.9.** There shall be no appeal from the orders of the Court under Section 17 of the
1146 Rule.

1147

1148 **17.10.** Nothing in Section 17 of this Rule shall abrogate the authority of the Chief
1149 Justice as set forth in Tennessee Code Annotated section 17-2-116(a)(2).

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- 1159 **Section 18. Effective Date of Orders.**
- 1160
- 1161 All orders entered pursuant to this Rule are effective upon the date of entry.

1162 **Section 19. Confidentiality.**

1163

1164 **19.1.** All hearings held before a duly appointed hearing panel or the Court, except
1165 those pursuant to Section 17 of this Rule, shall be public, subject to the provisions of
1166 Section 19.6 of this Rule and Tenn. Sup. Ct. R. 30. The deliberations of a hearing
1167 panel and those of the Court shall not be public.

1168

1169 All matters, investigations, or proceedings involving allegations of misconduct by or
1170 the disability of a judge, including all information, records, minutes, correspondence,
1171 files or other documents of the Commission, Commission members, and Disciplinary
1172 Counsel shall be confidential and privileged, and shall not be public records or open
1173 for public inspection, except as otherwise provided in this Section.

1174

1175 **19.2.** Upon (a) an investigative panel's imposition of public discipline without the
1176 initiation of a formal disciplinary proceeding pursuant to Section 10.2(b)(1)(B) of this
1177 Rule, or (b) the filing of a petition for formal discipline pursuant to 10.5 of this Rule,
1178 the following documents, subject to the provisions of any protective order that may be
1179 entered pursuant to Section 19.6, shall be public records and open for public
1180 inspection:

1181

1182 (i) all pleadings, petitions, motions, orders, correspondence, exhibits, transcripts or

1183 documents filed in the formal disciplinary proceeding;

1184

1185 (ii) the written complaint(s) and any additional or supplemental submissions received

1186 by the Commission;

1187

1188 (iii) the written response(s) to the complaint received by the Commission;

1189

1190 (iv) the formal written public discipline imposed by the Commission in the matter.

1191

1192 **19.3.** Upon receipt by the Commission of a written request from a judge that a

1193 pending matter regarding the judge be made public, the following documents, subject

1194 to the provisions of any protective order that may be entered pursuant to Section 19.6,

1195 shall be public records and open for public inspection:

1196

1197 (i) all pleadings, petitions, motions, orders, correspondence, exhibits, transcripts or

1198 documents filed in the formal disciplinary proceeding;

1199

1200 (ii) the written complaint(s) and any additional or supplemental submissions received

1201 by the Commission;

1202

1203 (iii) the written response(s) to the complaint received by the Commission;

1204

1205 (iv) the formal written public discipline imposed by the Commission in the matter.

1206

1207 **19.4.** In disability proceedings pursuant to Section 17 of this Rule, the Court's order
1208 suspending the judge shall become a public record upon filing; however, all other
1209 documents relating to the judge's disability proceeding, including any subsequent
1210 petition for reinstatement, shall not be public records and shall be kept confidential.

1211 An order granting a petition for reinstatement shall become a public record upon
1212 filing.

1213

1214 **19.5.** Notwithstanding anything to the contrary herein, all work product and work files
1215 of the Commission, Commission members, and Disciplinary Counsel, including but
1216 not limited to internal memoranda; internal correspondence, emails, and notes;
1217 investigative notes, statements and reports; and, similar documents and files, shall be
1218 confidential and privileged, shall not be public records, and shall not be subject to the
1219 provisions of Sections 19.2 and 19.3.

1220

1221 **19.6.** In order to protect the interests of a complainant, judge, witness, or third party,
1222 the Commission may, at any stage of the proceedings and upon application of any
1223 person and for good cause shown, issue a protective order prohibiting the disclosure of
1224 specific information or documents or the closure of any hearing and direct that the

1225 proceedings be conducted so as to implement the order, including requiring that the
1226 hearing be conducted in such a way as to preserve the confidentiality of the
1227 information that is the subject of the application. After the initiation of a formal
1228 proceeding, any such application shall be filed with and decided by the hearing panel
1229 assigned to the case.

1230

1231 **19.7.** All participants in any matter, investigation, or proceeding shall conduct
1232 themselves so as to maintain confidentiality. However, unless a protective order has
1233 been entered, nothing in this Section or this Rule shall prohibit the complainant, judge,
1234 or any witness from disclosing the existence or substance of a complaint, matter,
1235 investigation, or proceeding under this Rule or from disclosing any documents or
1236 correspondence filed by, served on, or provided to that person.

1237

1238 The Commission members, Disciplinary Counsel, their assistants, staff and employees
1239 shall maintain confidentiality with respect to all pending matters, investigations and
1240 proceedings arising under this Rule, except as may be provided under Sections 19.2
1241 and 19.3.

1242

1243 **19.8.** In those disciplinary proceedings in which an appeal is taken pursuant to Section
1244 20 of this Rule, the records and hearing in the Court shall be public to the same extent
1245 as in all other cases.

1246

1247 **19.9.** The provisions of this Rule shall not be construed to deny access to relevant
1248 information to authorized agencies investigating the qualifications of judicial
1249 candidates; or to other jurisdictions investigating qualifications for admission to
1250 practice; or to law enforcement agencies investigating qualifications for government
1251 employment; or to prevent the Commission from reporting evidence of a crime by a
1252 judge or other person to courts or law enforcement agencies; or to prevent the
1253 Commission from reporting to the Tennessee Lawyer Assistance Program evidence of
1254 a disability that impairs the ability of a judge to perform his or her judicial duties; or to
1255 prevent the Commission or Disciplinary Counsel from defending any action or
1256 proceeding now pending or hereafter brought against either of them.

1257

1258 **19.10.** Nothing in this Section is intended to limit or repeal any confidentiality or
1259 privilege afforded by other law.

1260 **Section 20. Appeal.**

1261

1262 **20.1.**

1263

1264 (a) The judge or the Commission may appeal the judgment of a hearing panel to the
1265 Court by filing within thirty days of the date of entry of the hearing panel's judgment a
1266 Notice of Appeal in accordance with Rules 3(e) and (f) and Rule 4(a) of the Tennessee
1267 Rules of Appellate Procedure. The thirty-day time period for filing the Notice of
1268 Appeal is jurisdictional.

1269

1270 (b) Except as otherwise provided in this Rule, Tenn. R. App. P. 24, 25, 26, 27, 28, 29
1271 and 30 shall apply to appeals to this Court.

1272

1273 (c) The review shall be de novo on the transcript of the evidence before the hearing
1274 panel and its findings and judgment. If allegations of irregularities in the procedure
1275 before the hearing panel are made, the Court, in its sole discretion, may appoint a
1276 Special Master to take such additional proof and make such factual findings as may be
1277 necessary to resolve such allegations. The Court may affirm the decision of the
1278 hearing panel or remand the case for further proceedings. The Court may reverse or
1279 modify the decision of the hearing panel if the rights of the appealing party have been
1280 prejudiced because the hearing panel's findings, inferences, conclusions or decisions

1281 are: (1) in violation of constitutional or statutory provisions; (2) in excess of the
1282 hearing panel's jurisdiction; (3) made upon unlawful procedure; (4) arbitrary or
1283 capricious or characterized by abuse of discretion or clearly unwarranted exercise of
1284 discretion; or (5) unsupported by evidence which is both substantial and material in
1285 the light of the entire record. In determining the substantiality of evidence, the Court
1286 shall take into account whatever in the record fairly detracts from its weight, but the
1287 Court shall not substitute its judgment for that of the hearing panel as to the weight of
1288 the evidence on questions of fact.

1289

1290 (d) There shall be no petitions for rehearing.

1291

1292 **20.2.** The judgment of the hearing panel may be stayed, in the discretion of the hearing
1293 panel, pending any appeal pursuant to this Section. Upon the filing of a Notice of
1294 Appeal pursuant to this Section, and in the event the judgment is not stayed by the
1295 hearing panel, the Court, in its discretion, may stay the hearing panel's judgment.

1296 **Section 21. Transmittal to the General Assembly.**

1297

1298 **21.1.** In the event the hearing panel recommends removal of the judge pursuant to
1299 Sections 9.6 and 10.9(f) of this Rule, and there is no timely appeal from that
1300 recommendation, or in the event there is a timely appeal pursuant to Section 20 of this
1301 Rule and the Court affirms the removal recommendation, the question of removal
1302 shall be transmitted to the General Assembly for final determination. In the event the
1303 Court recommends removal pursuant to Section 17.7 of this Rule, the question of
1304 removal shall be transmitted to the General Assembly for final determination.

1305

1306 **21.2.** The Commission, in the event the removal recommendation is not appealed, or
1307 the Clerk in the event the removal recommendation is appealed to and affirmed by the
1308 Court or in the event the Court recommends removal pursuant to Section 17.7 of this
1309 Rule, shall send written notice to the Speaker of the Senate and Speaker of the House
1310 of Representatives of the removal recommendation and shall promptly certify the
1311 entire record to the Speaker of the Senate with a duplicate certified copy to the
1312 Speaker of the House of Representatives.

1313

1314 **21.3.** The procedure for removal of a judge as provided in this Rule does not limit or
1315 alter, and shall not be construed to limit or alter, the power of impeachment provided
1316 in Tenn. Const. art. 5 or the power of removal provided in Tenn. Const. Art. VI § 6.

1317 **Section 22. Additional Rules of Procedure**

1318

1319 **22.1.**

1320

1321 (a) The Commission Chair may authorize the preparation of all or any portion of the
1322 transcript of a hearing upon a written request from the hearing panel stating the need
1323 therefore. If request is made by the hearing panel for only a portion of the transcript,
1324 either Disciplinary Counsel or the judge may request in writing from the Chair
1325 authorization for transcription of any other portion of the hearing for completeness.
1326 Each party shall pay for that portion of the transcript which the respective party
1327 requests.

1328

1329 (b) It is the responsibility of the party appealing the hearing panel's decision to procure
1330 and file the transcript of the hearing. However, if there is no appeal from the
1331 judgment of the hearing panel, the hearing shall not be transcribed unless requested by
1332 one of the parties, which party shall pay the expense of transcription. The court
1333 reporter shall preserve the record of the proceedings until the time for appeal has
1334 expired.

1335

1336 **22.2.** Except as is otherwise provided in this Rule, time is directory and not
1337 jurisdictional. Time limitations are administrative, not jurisdictional. Failure to

1338 observe such directory time intervals may result in contempt of the agency having
1339 jurisdiction but will not justify abatement of any disciplinary investigation or
1340 proceeding.

1341

1342 **22.3.**

1343

1344 (a) Except as otherwise provided in this Rule, the Tennessee Rules of Civil Procedure
1345 and the Tennessee Rules of Evidence apply in disciplinary case proceedings before the
1346 Commission or a hearing panel.

1347

1348 (b) Regardless of the forum in which the proceeding is pending, Disciplinary
1349 Counsel's work product shall not be required to be produced, nor shall a member of
1350 the Commission, the Chief Disciplinary Counsel, staff Disciplinary Counsel, or their
1351 staffs be subject to deposition, including Tenn. R. Civ. P. 30.02(6) depositions, or
1352 compelled to give testimony, unless ordered by the Special Master or the Court upon a
1353 showing by the requesting party of substantial need and an inability to obtain
1354 substantially equivalent materials by other means without undue hardship during an
1355 appeal pursuant to Section 20 of this Rule.

1356 **Section 23. Administrative Expenses, Reimbursement of Costs.**

1357

1358

1359 **23.1.** Accounting. The Administrative Office of the Courts performs accounting
1360 functions for the Commission, either directly or through its oversight and final
1361 approval of transactions performed by Commission personnel.

1362

1363 **23.2.** Reimbursement of Costs.

1364

1365 (a) In the event that a judgment of recommendation of removal, suspension, or
1366 public reprimand results from formal proceedings before a hearing panel pursuant
1367 to Section 10 of this Rule; or a judgment of disability, reinstatement, or denial of
1368 reinstatement results from formal proceedings before a hearing panel pursuant to
1369 Section 17 of this Rule, Disciplinary Counsel shall within fifteen days from the
1370 hearing panel's submission of such judgment pursuant to Section 10 or the Court's
1371 entry of such judgment pursuant to Section 17, make application to the hearing panel
1372 for the assessment against the judge of the necessary and reasonable costs of the
1373 proceedings, including, but not limited to, court reporter's expenses for appearances
1374 and transcription of all hearings and depositions, the expenses of the hearing panel in
1375 the hearing of the cause, and the hourly charge of Disciplinary Counsel in
1376 investigating and prosecuting. Disciplinary Counsel shall serve a copy of such

1377 application on the judge and the petitioning judge's counsel of record pursuant to
1378 Section 10.6(b). The application shall be accompanied by an affidavit or
1379 declaration under penalty of perjury and such other documentary evidence as
1380 Disciplinary Counsel deems appropriate documenting the hours expended and the
1381 costs incurred by Disciplinary Counsel in investigating and prosecuting the
1382 complaint or responding to the petition for reinstatement. Such proof shall create a
1383 rebuttable presumption as to the necessity and reasonableness of the hours
1384 expended and the costs incurred. The judge may, within fifteen days after
1385 Disciplinary Counsel's application, submit to the hearing panel and serve on
1386 Disciplinary Counsel pursuant to Section 10.6(b) any response in opposition to the
1387 application for an assessment of costs. The burden shall be upon the judge to
1388 prove by a preponderance of the evidence that the hours expended or costs incurred
1389 by Disciplinary Counsel were unnecessary or unreasonable. Disciplinary Counsel
1390 or the judge may request a hearing before the hearing panel, in which event the
1391 hearing panel shall promptly schedule the same. The hearing panel shall, within
1392 fifteen days from the conclusion of such hearing, or in the event no hearing is
1393 requested, within fifteen days from the date on which the judge's response is due or
1394 is submitted, whichever is earlier, submit to the Commission its findings and
1395 judgment with respect to Disciplinary Counsel's application for the assessment of
1396 costs. There shall be no petition for rehearing. The making of an application under
1397 this Section shall extend the time for taking steps in the regular appellate process

1398 under Section 20 of this Rule unless, upon application of the Commission to
1399 the Court and for good cause shown, the Court orders otherwise.

1400

1401 (b) In the event that the judgment of the hearing panel is appealed to the Court
1402 pursuant to Section 20 of this Rule and the Commission is the prevailing party in
1403 such appeal, Disciplinary Counsel may make application to the Court for the
1404 assessment against the judge of the necessary and reasonable costs of the
1405 proceedings before the Court, including court reporter's expenses for appearances
1406 and transcription of all hearings and depositions and the hourly charge of
1407 Disciplinary Counsel for the proceedings before the Court. Disciplinary Counsel shall
1408 file any such application within fifteen days from the Court's judgment and shall
1409 serve a copy of such application on the judge and the judge's counsel of record.
1410 The application shall be accompanied by an affidavit or declaration under penalty of
1411 perjury and such other documentary evidence as Disciplinary Counsel deems
1412 appropriate documenting the hours expended and the costs incurred by Disciplinary
1413 Counsel for the proceedings in the Court. Such proof shall create a rebuttable
1414 presumption as to the necessity and reasonableness of the hours expended and the
1415 costs incurred. The judge may within fifteen days after Disciplinary counsel's
1416 application file and serve on Disciplinary Counsel any response in opposition to the
1417 application for an assessment of costs. The burden shall be upon the judge to prove
1418 by a preponderance of the evidence that the hours expended or costs incurred by

1419 Disciplinary Counsel were unnecessary or unreasonable. The Court shall consider
1420 the application on the written submissions.

1421

1422 (c) The provisions of subsections (a) and (b) shall not apply to costs assessed pursuant
1423 to a guilty plea in which the judge has agreed to the payment of costs and the amount
1424 thereof.

1425

1426 (d) The hourly charges of Disciplinary Counsel on formal proceedings shall be
1427 assessed at the rates set forth in Tenn. Sup. Ct. R. 13, Section 2(c)(l) for compensation
1428 of counsel appointed for indigent criminal defendants in non-capital cases.

1429

1430 (e) Payment of the costs and fees assessed pursuant to this Section shall be
1431 required as a condition precedent to any later request for reinstatement of the judge
1432 from disability status. In the discretion of Disciplinary Counsel, the judge may,
1433 upon a showing of extraordinary need, be permitted to pay costs in periodic
1434 payments. If a payment plan is permitted, the judge also shall pay the Commission
1435 interest at the statutory rate for interest on judgments as set forth at Tenn. Code
1436 Ann. § 47-14-121. If for any reason, the judge does not abide by the terms of the
1437 payment plan, Disciplinary Counsel may revoke the plan and the judge shall be
1438 required to pay the balance of any unpaid assessment of costs within thirty days
1439 thereof.

1440

1441 (f) Judges successfully defending some or all disciplinary charges filed by the

1442 Commission may not recover attorney's fees or costs from the Commission.

1443

1444

1445 **Section 24. Tennessee Lawyer Assistance Program.**

1446

1447 The Tennessee Lawyer Assistance Program (TLAP) was established by the Court to
1448 provide immediate and continuing help to attorneys, judges, bar applicants, and law
1449 students who suffer from physical or mental disabilities that result from disease,
1450 disorder, trauma, or age and that impair their ability to practice or serve.

1451

1452 **24.1. Referrals to TLAP.**

1453

1454 (a) Pursuant to Rule 33.07(A) of the Rules of the Tennessee Supreme Court, the
1455 Court, the Commission, or its hearing panels or Disciplinary Counsel, may provide a
1456 written referral to TLAP of any judge who the Court, the Commission, or a hearing
1457 panel, or Disciplinary Counsel determines:

1458

1459 (1) has failed to respond to a disciplinary complaint;

1460

1461 (2) has received three or more complaints within a period of twelve months;

1462

1463 (3) has received a complaint that includes multiple failures to timely fulfill his or her
1464 judicial duties;

1465

1466 (4) has pleaded impairment or disability as a defense to a complaint;

1467

1468 (5) has exhibited behavior or has engaged in behavior that, in the Commission's or the
1469 Court's determination, warrants consultation and, if recommended by TLAP, further
1470 assessment, evaluation, treatment, assistance, or monitoring;

1471

1472 (6) is seeking readmission or reinstatement where there is a question of either prior or
1473 present impairment or disability; or

1474

1475 (7) is requesting TLAP's involvement.

1476

1477 (b) The Executive Director of TLAP shall review any referral made pursuant to
1478 subsection (a). If the Executive Director of TLAP deems that assistance and
1479 monitoring of a judge is appropriate, the Executive Director will make reasonable
1480 efforts to enter into a Monitoring Agreement ("Agreement") with the judge pursuant to
1481 Rule 33.05(E) of the Rules of the Tennessee Supreme Court. If the Executive Director
1482 of TLAP determines that TLAP assistance is not appropriate, for whatever reason, the
1483 Executive Director shall report that determination in writing to the referring party
1484 under subsection (a), without further elaboration and without disclosure of information
1485 otherwise confidential under Rule 33.10.

1486

1487 (c) The Commission will provide written notification to the Executive Director of
1488 TLAP that TLAP's assistance will be or has been recommended in any matter pending
1489 before the Commission or when the Commission, a hearing panel, or Disciplinary
1490 Counsel knows that TLAP has an ongoing relationship with a judge who has a matter
1491 pending before the Commission. The Commission will provide such notification prior
1492 to the date of any hearing and will further provide notice of any hearing date. The
1493 Executive Director of TLAP or his or her representative may attend any such hearing.

1494

1495 (d) The Commission will provide written notification to the Executive Director of
1496 TLAP of any provision concerning the participation of TLAP included in any order by
1497 the Court, the Commission, or by an investigative panel or a hearing panel, or any
1498 other agreement between the judge and the Commission or Disciplinary Counsel,
1499 informal or otherwise, in which TLAP is required. The Executive Director of TLAP
1500 will notify the Commission of any requested modification of the order and may
1501 decline involvement. Both the Commission and TLAP will timely provide this
1502 information to the other to prevent unnecessary delay of the disciplinary process. If
1503 the Executive Director of TLAP declines involvement of TLAP, neither the Court, the
1504 Commission, nor an investigative panel or hearing panel, nor Disciplinary Counsel,
1505 shall include TLAP's participation in any order. Neither the Court, the Commission,
1506 an investigative panel, a hearing panel, nor Disciplinary Counsel, shall include TLAP
1507 in any order unless TLAP has given notice to the Commission or the judge or his or

1508 her attorney that TLAP will accept involvement in the matter In any order of the
1509 Court, the Commission, a hearing panel, or an investigatory panel that includes TLAP
1510 involvement, the order shall specifically state that TLAP has been consulted and that
1511 TLAP has accepted involvement in the matter, and the order shall contain a certificate
1512 of service stating the date and manner in which the order was served upon the
1513 Executive Director of TLAP.

1514

1515 (e) Pursuant to Rule 33.07(B) of the Rules of the Tennessee Supreme Court, TLAP
1516 will provide the Commission with the following information:

1517

1518 (1) TLAP will notify Disciplinary Counsel of a referred judge's failure to establish
1519 contact with TLAP or enter into a recommended Agreement.

1520

1521 (2) If the judge enters into an Agreement with TLAP that requires mandatory
1522 reporting to Disciplinary Counsel, TLAP will provide a copy of the Agreement to
1523 Disciplinary Counsel. Such Agreement will provide for notification by TLAP to
1524 Disciplinary Counsel of substantial non-compliance with any of the terms or
1525 conditions of the Agreement. Contemporaneously with any such notification, the
1526 Executive Director of TLAP may make such recommendation to Disciplinary
1527 Counsel as TLAP deems appropriate.

1528

1529 (3) Upon request of Disciplinary Counsel, TLAP will provide Disciplinary Counsel
1530 with a status report of monitoring and compliance pursuant to the Agreement. When
1531 appropriate, Disciplinary Counsel will obtain from TLAP's Executive Director a
1532 recommendation concerning the judge's compliance with any Agreement.

1533

1534 **24.2. Autonomy.** The Commission and TLAP shall remain completely independent
1535 from one another, and the activities of one shall in no way be construed to limit or
1536 impede the activities of the other.