

# Rules Governing Review of Judicial Standards Commission Proceedings

## ARTICLE 1 General Provisions

### 27-101. Scope and title.

A. **Scope.** These rules govern the procedure for Supreme Court review of the record of proceedings and recommendations of the Judicial Standards Commission for the suspension, discipline, removal or retirement of a justice, judge or magistrate. These rules do not govern proceedings to remove a justice, judge or magistrate by impeachment or proceedings to suspend, discipline or remove a justice, judge or magistrate commenced pursuant to the original superintending control of the Supreme Court.

B. **Title.** These rules shall be known as the Rules Governing Review of Judicial Standards Commission Proceedings.

[Approved, effective April 17, 1996.]

### ANNOTATIONS

**Cross references.** — For creation and authority of judicial standards commission, see N.M. Const., art. VI, § 32.

For statutory provisions relating to the judicial standards commission, see Chapter 34, Article 10 NMSA 1978.

### 27-102. Definitions.

As used in the Rules Governing Review of Judicial Standards Commission Proceedings:

A. "commission" means the Judicial Standards Commission; and

B. "judge" means a Supreme Court justice, Court of Appeals judge, district court judge, metropolitan court judge, magistrate court judge, probate court judge or municipal court judge.

[Approved, effective April 17, 1996.]

### 27-103. Computation of time.

A. **Computation.** In computing any period of time prescribed or allowed by these rules, by order of court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes New Year's day, Martin Luther King, Jr.'s birthday, Presidents day, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, Christmas day and any other day designated as a state or judicial holiday.

B. **Additional time after service by mail.** Except as otherwise provided by these rules, whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon the party and the paper is served by mail, three (3) days shall be added to the prescribed period.

[Approved, effective April 17, 1996.]

## **27-104. Filing and service.**

A. **Filing.** Papers required or permitted to be filed in the Supreme Court shall be filed with the clerk. Filing by mail is not complete until actual receipt.

B. **Filing under seal before the conclusion of formal proceedings.** To protect the privileged and confidential nature of proceedings that are pending before the Commission as required by Article VI, Section 32 of the New Mexico Constitution, any papers filed in the Supreme Court before the conclusion of formal proceedings in the Commission shall be automatically sealed from public access and shall not be disclosed to anyone other than Court personnel, the parties to the proceeding, and their counsel, without further order of the Court. For purposes of this paragraph, the conclusion of formal proceedings occurs when the Commission holds an evidentiary hearing and issues findings, conclusions, and a recommendation for removal, retirement, or discipline based on that evidence. Accordingly, petitions for temporary suspension and responses filed pursuant to Rule 27-201 NMRA, stipulated petitions for discipline, and any request for interim relief under Paragraph E of Rule 32 of the Judicial Standards Commission Rules filed before conclusion of formal proceedings and submission to the Court of the Commission record pursuant to Article VI, Section 32, are subject to the automatic sealing provisions of this paragraph. The contents, the fact of filing, and any other information about any request for temporary suspension, stipulated discipline, or interim relief shall remain confidential until the Court determines that confidentiality is no longer required and enters an unsealing order on its own initiative or grants a motion to unseal pursuant to Paragraph I of Rule 12-314 NMRA. The Clerk of the Court shall open the case with the Commission's assigned inquiry number as the style of the case

and docket pleadings only as sealed pleadings. Any papers filed under the provisions of this paragraph shall be clearly labeled "Filed Under Seal". In the event the Court rejects the stipulated discipline or denies the request for interim relief, the documents under seal shall be returned to the Commission and shall not become public record. Any other requests to seal papers filed with the Court shall be governed by the provisions of Rule 12-314 NMRA of the Rules of Appellate Procedure. Any person or entity who knowingly discloses any material obtained from a court record sealed pursuant to this rule may be held in contempt or subject to other sanctions as the Court deems appropriate.

**C. Service of all papers required.** Copies of all papers filed by any party and not required by these rules to be served by the clerk shall be served by the party on all other parties to the proceeding. Service shall be upon the attorney of record of the party to be served or upon the party if the party has no attorney. Service may be made by either personal service or by mail. Service shall be made at or before the time of filing the paper in the Supreme Court.

**D. Service on incompetent persons.** If there is an issue of the mental competency of a judge who is not represented by counsel, service shall be made upon a guardian ad litem appointed to represent the judge in the proceedings.

**E. Proof of service.** Proof of service, in the form of written acknowledgment of the party to be served or certificate of the clerk of the court or of the attorney making service, or affidavit of any other person, shall state the name and address of counsel on whom service has been made, or the name and address of the party if the party has no attorney. Such proof of service shall be filed with the papers filed or immediately after service is effected.

[Approved, effective April 17, 1996; as amended by Supreme Court Order 09-8300-022, effective September 4, 2009; by Supreme Court Order No. 11-8300-026, effective for papers filed on or after May 4, 2011.]

## **ANNOTATIONS**

**The 2009 amendment,** approved by Supreme Court Order No. 09-8300-022, effective September 4, 2009, added Paragraph B.

**The 2011 amendment,** approved by Supreme Court Order No. 11-8300-026, effective May 4, 2011, provided that formal proceedings are concluded when a recommendation of removal or retirement is issued; required that stipulated petitions for discipline, request for interim relief, and the commission record be sealed as provided in Paragraph B; provided that the contents, fact of filing, and information about a request for temporary suspension, stipulated discipline, and interim relief is confidential until the court enters an unsealing order; required the clerk of the court to open a case with the assigned inquiry number as the style of the case and docket pleadings only as sealed pleadings; provided that when the court rejects stipulated discipline or denies a request for interim relief, the documents will be returned to the commission under seal and are

not a public record; provided that requests for the sealing of documents filed with the court are governed by Rule 12-314 NMRA; and provided that a person who discloses material from sealed records may be held in contempt or be subject to other sanctions.

## **27-105. Motions.**

A. **Use of motion.** Unless otherwise prescribed by these rules, all requests for an order or other relief shall be made by filing a motion.

B. **Content and filing.** Motions shall be filed, together with any supporting affidavits or other papers, with proof of service on all parties as provided in Rule 27-104. A motion shall state concisely and with particularity the relief sought and the ground on which it is based.

C. **Procedural motions.** Motions seeking extensions of time, leave to exceed the length of a brief permitted to be filed pursuant to these rules and similar motions directed to the appellate court's discretion in procedural matters need not be accompanied by briefs. Such motions shall state with particularity the reasons for the request.

D. **Other motions.** Other motions may be accompanied by a separate brief. Adverse parties may file and serve a response within ten (10) days after service of movant's motion.

[Approved, effective April 17, 1996.]

## **27-106. Form of papers.**

A. **Transcripts of proceedings and records proper.** Copies of non-taped transcripts of proceedings shall be reproduced from the original transcript by any duplicating or copying process which produces a clear black image on white paper or shall be typed or printed on white paper. Transcripts and records proper shall be bound and paginated with consecutive page numbers at the bottom.

B. **Other papers.** Motions, applications, petitions and all other papers, except exhibits, prepared by the parties or their counsel and filed in the Supreme Court, shall comply with Paragraphs B, C, and D of Rule 12-305 NMRA of the Rules of Appellate Procedure.

C. **Cover page.** The front cover of a record proper, transcript of proceedings and other papers shall show the following:

- (1) the name of the respondent judge;
- (2) the title of the paper or item being filed; and

(3) the name and mailing address of counsel filing the pleading. If a party is not represented by counsel, the name and address of the party shall appear on the cover page of the pleading.

[Approved, effective April 17, 1996; as amended by Supreme Court Order No. 10-8300-010, effective March 3, 2010; by Supreme Court Order No. 11-8300-026, effective for papers filed on or after May 4, 2011.]

## ANNOTATIONS

**The 2010 amendment**, approved by Supreme Court Order No. 10-8300-010, effective March 3, 2010, in Paragraph B, in the first sentence, after "shall be typed or printed using" deleted "pica (10 pitch) type style or a twelve (12) point typeface" and added the remainder of the sentence.

**The 2011 amendment**, approved by Supreme Court Order No. 11-8300-026, effective May 4, 2011, required transcripts and records proper to be bound and paginated with consecutive numbers; eliminated the specifications for preparing pleadings; and required that pleadings be prepared as provided in Rule 12-305 NMRA.

### **27-107. Number of copies of papers.**

A. **Copy; definition.** As used in this rule, "copy" includes the original.

B. **Papers filed in the Supreme Court.** The following numbers of copies of papers shall be filed in the Supreme Court:

- (1) findings, conclusions and recommendations of the commission: seven (7);
- (2) motions for extension of time or page limits and responses thereto: one (1);
- (3) motions to amend papers and responses thereto: one (1);
- (4) motions for rehearing and briefs in support thereof and responses thereto: six (6);
- (5) all other motions, responses and briefs in support thereof or opposition thereto: four (4);
- (6) all other papers: seven (7).

[Approved, effective April 17, 1996.]

### **27-108. Process.**

Process of the Supreme Court shall be in the name of the chief justice of the Supreme Court. It shall be attested by the signature of the clerk and the seal of the Court.

[Approved, effective April 17, 1996.]

## **ARTICLE 2**

### **Suspension Pending Hearing**

#### **27-201. Suspension of judge pending hearing.**

**A. Temporary suspension.** A judge may be suspended by the Supreme Court pending a hearing by the Judicial Standards Commission upon the Judicial Standards Commission filing with the Supreme Court a petition for temporary suspension which shall be accompanied by:

(1) a certified copy of a judgment finding the judge guilty of a felony or other serious crime;

(2) a certificate of the commission that a judge has been convicted of or has pleaded guilty or no contest to a felony or serious crime;

(3) a court order or judgment declaring the judge to be incompetent or incapacitated; or

(4) a certificate of the commission that immediate suspension of a judge is necessary pending disposition of:

(a) an investigation by the commission for an alleged violation of the Code of Judicial Conduct, Rules of Professional Conduct or a violation of a court rule, statute or other law;

(b) a criminal complaint, information or indictment which has been filed against the judge; or

(c) a determination of the present competency of the judge.

**B. Notice and hearing.** Prior to entering an order suspending a judge pursuant to this rule, the Supreme Court shall serve on the judge an order to show cause why the judge should not be suspended. The order to show cause shall be served on the judge at least ten (10) days prior to the date set for the hearing unless a shorter time is ordered by the Court. At any time prior to the hearing, the judge may file a response to the order to show cause. A copy of the response shall be served by the respondent judge on the Judicial Standards Commission.

C. **Suspension order.** Upon a showing made pursuant to Paragraph A of this rule, the Supreme Court may enter an order immediately suspending the judge pending filing with the Court of the recommendations by the Judicial Standards Commission. Unless otherwise ordered by the Court, the salary of a judge shall be suspended during the period of suspension.

D. **Evidence of commission of crime.** A judgment or plea of guilty or no contest by a judge for any crime shall be conclusive evidence of the commission of that crime in any Judicial Standards Commission proceeding instituted against the judge based upon the conviction.

E. **Reinstatement.** A judge suspended under the provisions of this rule may be reinstated immediately upon the filing of a certificate by the Judicial Standards Commission demonstrating that:

(1) if the suspension was for conviction of a crime, the underlying conviction for the felony or other serious crime has been reversed and no further criminal or Judicial Standards Commission proceedings are pending against the judge;

(2) if the suspension was imposed because of incompetency or incapacity, that such incapacity or incompetency no longer exists; or

(3) if the suspension was imposed pursuant to Subparagraph (4) of Paragraph A of this rule, that reinstatement of the judge will not result in a substantial loss of public confidence in the judiciary.

F. **Effect of reinstatement.** Reinstatement after a temporary suspension pursuant to this rule shall not terminate any Judicial Standards Commission proceedings pending against the judge.

G. **Rehearing.** No motion for rehearing or reconsideration shall be permitted.

[Approved, effective April 17, 1996.]

## **ARTICLE 3**

### **Commission Proceedings**

#### **27-301. Commencement of proceedings.**

A. **Discipline, retirement or removal.** Proceedings for the discipline, retirement or removal of a judge upon recommendation of the Judicial Standards Commission shall be commenced by the commission filing in the Supreme Court a petition for discipline, retirement or removal of the judge.

B. **Contents of petition.** The petition shall contain:

- (1) a brief and plain statement of the grounds for discipline, retirement or removal, or if more than one, each of the separate grounds;
- (2) the provisions of the Code of Judicial Conduct, court rule, statute or other law claimed to have been violated; and
- (3) a concise statement of the recommendations of the commission.

C. **Petition length.** The petition shall not exceed twenty-five (25) pages in length.

D. **Exhibits.** The recommendations, findings and conclusions of the commission and any certificates of the commission may be attached as exhibits to the petition.

E. **Service of petition.** The petition and any exhibits shall be served by the commission on the respondent judge in the manner provided by the procedural rules of the commission.

[Approved, effective April 17, 1996; as amended by Supreme Court Order No. 10-8300-010, effective March 3, 2010.]

## ANNOTATIONS

**The 2010 amendment**, approved by Supreme Court Order No. 10-8300-010, effective March 3, 2010, in Paragraph C, changed the page limitation from fifteen pages to twenty-five pages.

### **27-302. Record of proceedings.**

A. **Record of proceedings.** Within fifteen (15) days after the commission files a petition pursuant to Rule 27-301 of these rules, the commission shall file with the clerk of the Supreme Court the record of proceedings before the commission. For purposes of this rule, the record of proceedings shall consist of:

- (1) a title page containing caption of the proceedings before the Judicial Standards Commission and the names and mailing addresses of each party or, if the party is represented by counsel, the name and address of the attorney;
- (2) a copy of all papers and pleadings filed in the proceedings;
- (3) any exhibits; and
- (4) the transcript of the proceedings made by the Judicial Standards Commission, either stenographically recorded or tape recorded. If the record is a tape recording, the commission shall prepare and file with the Supreme Court the original tapes and index log.



**B. Notice of filing.** The clerk of the Supreme Court shall give prompt notice to all parties of the filing of the record of proceedings in the Supreme Court.

**C. Filing of recommendations, findings and conclusions of the commission.** Unless filed as exhibits to the petition, the recommendations, findings and conclusions of the commission shall be filed with the record of proceedings and shall be served by the commission on the respondent judge in the manner provided by the procedural rules of the commission.

[Approved, effective April 17, 1996.]

### **27-303. Response.**

Within ten (10) days after filing of the record of proceedings in the Supreme Court, the respondent judge shall file in the Supreme Court a response to the petition. The response shall not exceed twenty-five (25) pages in length and shall be served on the commission in accordance with Rule 27-104. No briefs shall be filed unless otherwise ordered by the Court.

[Approved, effective April 17, 1996; as amended by Supreme Court Order No. 10-8300-010, effective March 3, 2010.]

## **ANNOTATIONS**

**The 2010 amendment**, approved by Supreme Court Order No. 10-8300-010, effective March 3, 2010, in the second sentence, changed the page limitation from fifteen pages to twenty-five pages.

### **27-304. Oral argument.**

**A. Oral argument.** Upon the filing of the response in the proceedings, the Supreme Court may schedule oral arguments or may consider the record of proceedings and the recommendations of the commission without further argument of the parties.

**B. Time for argument.** If the Court orders the presentation of oral argument, the time for oral argument shall not exceed thirty (30) minutes on each side unless the time is extended or restricted by the Court.

**C. Nonappearance of parties.** If the respondent judge fails to appear to present argument, the Court may, in its discretion, hear argument on behalf of the commission.

[Approved, effective April 17, 1996.]

### **27-305. Enforcement.**

A. **Cooperation.** If any person willfully fails to cooperate with, obstructs or interferes with any inquiry, investigation or proceeding of the Judicial Standards Commission, counsel for the commission may apply to the Supreme Court for an order to show cause why that person should not be held in contempt for such conduct.

B. **Refusal to be sworn; failure or refusal to appear.** If any person refuses to take the oath or affirmation as a witness, or refuses or fails to appear and be examined, counsel for the commission may apply to the Supreme Court for an order to show cause why that person should not be ordered to take the required action. If the person violates a Supreme Court order to take the action, the person may be ordered to show cause why the person should not be held in contempt of Court.

[Approved, effective February 1, 1999.]

## **ARTICLE 4**

### **Disposition; Suspension and Reinstatement**

#### **27-401. Disposition.**

A. **Supreme Court decision.** The Supreme Court, in its discretion and under such conditions as it may specify, may:

- (1) accept, reject or modify any or all of the findings and conclusions of the commission;
- (2) if the judge is eligible for retirement benefits, order the retirement of the judge;
- (3) impose the discipline recommended by the commission or any other greater or lesser discipline that it deems appropriate under the circumstances including removal;
- (4) impose public censure of the judge;
- (5) impose probation or other conditions as a type of discipline by itself or may defer the effect of the discipline imposed;
- (6) suspend the judge;
- (7) remove the judge; or
- (8) remand the proceedings to the commission for additional evidence. The commission may then affirm or modify its recommendations, and shall file with the Supreme Court as a part of the record any additional evidence, together with the affirmation of, or modifications in, its recommendations.

B. **Mandate.** The Court may dispose of the proceedings by filing an order in the proceedings. The order may be accompanied by a written decision or opinion. The Court may order the publication of its order or other disposition in the Bar Bulletin and New Mexico Appellate Reports, and all formal opinions shall be published in accordance with Paragraph C of Rule 12-405 NMRA.

C. **Rehearing.** No motion for rehearing or reconsideration shall be permitted.

D. **Expenses.** The Supreme Court in its discretion may direct that the costs of the proceedings be paid by the respondent judge in accordance with Rule 27-403 NMRA.

[Approved, effective April 17, 1996; as amended by Supreme Court Order 12-8300-009, effective March 5, 2012.]

## ANNOTATIONS

**The 2012 amendment**, approved by Supreme Court Order No. 12-8300-009, effective March 5, 2012, eliminated the requirement that formal opinions be published in the New Mexico Reports; permitted the court to publish orders and decisions in the Bar Bulletin and the New Mexico Appellate Reports; in Paragraph B, in the second sentence, after "order or other disposition", added "in the Bar Bulletin and New Mexico Appellate Reports, and all"; and after "formal opinions shall be published in" deleted "the New Mexico Reports" and added "accordance with Paragraph C of Rule 12-405 NMRA".

**Removal from office.** — Where the metropolitan court judge adjudicated traffic cases involving family members, friends, and family members of friends and staff outside the presence of a representative of the state, without hearings or taking evidence; blamed his secretary for fixing the traffic citations; and during the time the judge was fixing the traffic citations, knew that he was under investigation in a separate disciplinary matter involving the improper delegation of his judicial duties to his secretary, removal from office was the proper remedy. In the Matter of Griego, 2008-NMSC-020, 143 NM 698, 181 P.3d 690.

### 27-402. Suspension and reinstatement.

A. **Indefinite or permanent suspension.** If an order imposed pursuant to Rule 27-401 results in the suspension of a judge, unless otherwise ordered by the Court, the salary of the judge shall be suspended during the period of suspension. The Court shall assign all cases of the judge to a temporary judge. A judge who has been suspended may not apply for reinstatement, except upon prior approval of the Supreme Court.

B. **Definite suspension.** A judge who has been suspended for a specific period of time shall be automatically reinstated at the expiration of the period specified in the order of suspension.

C. **Suspension due to incompetency or incapacity.** A judge who has been suspended indefinitely due to incompetency or incapacity may during the judge's term of office move for reinstatement upon clear and convincing evidence that the disability has been terminated and that the judge is once again fit to resume office. If the incapacity has not been terminated within one (1) year, the Court may enter an order removing the judge from office or, if eligible, ordering the retirement of the judge.

D. **Reinstatement proceedings.** The Supreme Court may order the commission to conduct a reinstatement investigation.

[Approved, effective April 17, 1996.]

### **27-403. Assessment of expenses.**

A. **Disciplinary proceeding costs.** If the Supreme Court disciplines a judge as provided by Rule 27-401 of these rules, the Court may direct that expenses of the commission incurred in the disciplinary proceedings be paid by the judge.

B. **Reinstatement costs.** If a judge who has been suspended pursuant to these rules files a motion for reinstatement, the Supreme Court may direct that expenses incurred in the investigation and processing of the motion for reinstatement be paid by the suspended judge.

C. **Court order.** An order requiring the payment of expenses entered pursuant to this rule shall include a statement of the costs assessed, a date by which the costs will be paid to the commission and the rate of interest to be paid by the judge after the payment due date.

D. **Enforcement of Court order.** The order assessing the payment of expenses will constitute an enforceable judgment and may be enforced in the manner provided by the Rules of Civil Procedure for the District Courts for enforcement of money judgments. If an order imposing costs is entered pursuant to these rules, upon request of the commission the clerk may issue a writ of execution or writ of garnishment in the manner provided by the Rules of Civil Procedure for the District Courts.

E. **Transcript of judgment.** Upon request of the commission the clerk shall issue a transcript of judgment.

[Approved, effective April 17, 1996.]

### **ANNOTATIONS**

**Cross references.** — For issuance of transcript of judgment, see 39-1-6 NMSA 1978.

**Costs not recoverable.** — The commission may not recover the costs of its investigation or reimbursement for its travel and per diem expenses because they are

expenses that relate to the commission's core function. In the Matter of Rodella, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338.