

PURSUANT TO RULE 27(f) OF THE MISSISSIPPI RULES OF APPELLATE PROCEDURE, THE RULES COMMITTEE ON THE LEGAL PROFESSION SEEKS COMMENTS FROM THE BENCH, THE BAR AND THE PUBLIC ON THE PROPOSED AMENDMENT TO **RULES OF THE MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE**

Comments should be filed with the Clerk of the Supreme Court,
Gartin Justice Building, P.O. Box 249, Jackson, Mississippi 39205-0249.
Deadline: **May 10, 2013.**

RULES OF THE MISSISSIPPI COMMISSION
ON JUDICIAL PERFORMANCE

Adopted July 9, 1980
Including Amendments Received Through June 1, 2011

Rule 1. General

A. Definitions. In these rules, unless the context or subject matter otherwise requires:

- (1) “Commission” means the **Mississippi Commission on Judicial Performance**.
- (2) “Supreme Court” means the Mississippi Supreme Court.
- (3) “Judge” means a Justice of the Supreme Court or a judge of the Court of Appeals, Circuit Court, Chancery Court, County Court, Family Court, Justice Court, Municipal Court, and all other courts in existence in Mississippi, including someone serving as a part-time judge, special judge or a judge in senior status. Reference to “the judge” shall mean any judge whose conduct or mental or physical condition is under consideration.
- (4) “Chairman” means the chairman of the Commission or the vice-chairman when serving as chairman.
- (5) “Member” means a member of the Commission or an alternate member serving in the place of a member of the Commission.
- (6) “Shall” is mandatory and “may” is permissive.
- (7) The masculine gender includes the feminine gender.

B. Purpose. The Commission was created in 1979 by the Mississippi Legislature and the voters of the State of Mississippi by constitutional amendment. The Commission shall enforce the standards of judicial conduct, inquire into judicial disability and conduct, protect the public from judicial misconduct and disabled judges, and protect the judiciary from unfounded allegations. All proceedings before the Commission shall be of a civil nature, not criminal, as the purpose of the Commission is to be rehabilitative and educational as well as disciplinary.

C. Construction of Rules. These rules shall be liberally interpreted so as to carry out the mandate of the electorate by its approval of Section 177A of the Mississippi Constitution of 1890.

CREDIT(S)

[Amended effective June 29, 1995; amended March 24, 1997.]

JUDICIAL DECISIONS

[Judge 1](#)

[Jurisdiction 2](#)

[1.](#) Judge

State constitutional provision, which provides that, on recommendation of Commission on Judicial Performance, Supreme Court may remove from office, suspend, fine or publicly censure or reprimand any justice or judge, should be construed as if the word “or” was inserted between each sanction permitted. Const. § 177A. [In re Branam \(Miss. 1982\) 419 So.2d 145. Judges ↻11\(4\)](#)

[2.](#) Jurisdiction

The Supreme Court, and the Commission on Judicial Performance had jurisdiction over a mayor who served also as a judge pro tempore of a municipal court, via the supervision of inferior courts and officials of those courts. Const. § 177A. [Mississippi Judicial Performance Com'n v. Thomas \(Miss. 1989\) 549 So.2d 962. Courts ↻204; Judges ↻11\(3\)](#)

Commission on Judicial Performance Rule 1, MS R J PERF COMM Rule 1
Current with amendments received through 06/01/2012

Rule 2. Jurisdiction

The Commission shall consider conduct of a judge or the physical or mental condition of a judge. In the absence of fraud, corrupt motive, or bad faith, the Commission shall not consider allegations against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. The Commission may consider allegations against a judge regarding any conduct prior to January 1, 1980, where such prior conduct relates to the judge's ability to serve, brings discredit to the judiciary, or adversely affects the administration of justice. Notwithstanding that a judge has resigned his office, the Commission shall retain jurisdiction over that judge if prior to his resignation the Commission has initiated an inquiry into the conduct of the judge.

JUDICIAL DECISIONS

Removal or discipline 1

1. Removal or discipline

Commission on Judicial Performance had jurisdiction to consider misconduct allegations against judge, based on judge's alleged release of inmates from department of corrections after judge had lost jurisdiction to do so, notwithstanding rule providing that Commission may not consider claim based on judge's act of making findings of fact, reaching legal conclusion, or applying law as judge understands it absent fraud, corrupt motive, or bad faith; evidence supported finding that judge acted in bad faith where caselaw at relevant time clearly held that circuit judge had no authority to suspend inmates' sentences. [Code 1972, § 47-7-33](#); Commission on Judicial Performance Rule 2. [Mississippi Com'n of Judicial Performance v. Russell \(Miss. 1997\) 691 So.2d 929](#), rehearing denied [693 So.2d 384](#). [Judges ↪11\(3\)](#)

Specific intent to use powers of judicial office to accomplish a purpose that judge knows or should know are beyond the legitimate exercise of his authority constitutes “bad faith” for purposes of judicial performance rule providing that absent bad faith, Commission on Judicial Performance shall not consider allegations against judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. Commission on Judicial Performance Rule 2. [Mississippi Com'n on Judicial Performance v. Dodds \(Miss. 1996\) 680 So.2d 180](#). [Judges ↪11\(4\)](#)

Commission on Judicial Performance's finding that judge engaged in willful, or at least negligent, misconduct so as to entitle Commission to have jurisdiction over judicial disciplinary case was supported by clear and convincing evidence that judge issued a temporary restraining order against pastor without any legal authority and without any notice or opportunity to be heard given to pastor. Commission on Judicial Performance Rule 2. [Mississippi Com'n on Judicial Performance v. Dodds \(Miss. 1996\) 680 So.2d 180](#). [Judges ↪11\(7\)](#)

Commission on Judicial Performance Rule 2, MS R J PERF COMM Rule 2
Current with amendments received through 06/01/2012

Rule 3. Organization

A. Membership and Terms. The membership of the Commission shall be as prescribed in Section 177A of the Mississippi Constitution of 1890 for such terms as prescribed by general law.

B. Vacancies. When a judge ceases to be a judge of the court from which he was appointed or whenever any member becomes otherwise ineligible to hold office, his membership shall terminate. The Chairman shall promptly notify the appointing authority of the vacancy. The appropriate alternate member shall serve as a temporary replacement until such time as the appointing authority shall duly certify to the Commission a replacement member for the remainder of the unexpired term. An alternate member appointed to fill an unexpired term shall be eligible for an appointment for a full term. If a member who is a judge becomes a respondent to a formal complaint under [Rule 6](#) before the Commission, that member shall be disqualified

from attending meetings and shall not perform any Commission duties until the formal complaint is finally disposed of. The appointing authority shall be notified and shall appoint another alternate member to serve during the term of disability or disqualification. A formal complaint against a member shall be given highest priority on the Commission's docket and shall be brought to a conclusion expeditiously unless waived by the member.

C. Alternate Members. An alternate member shall serve in the place of a member of the same category whenever such member is absent, disqualified, unwilling or unable to serve.

D. Disqualification. A member shall be disqualified to serve in any inquiry or complaint when (1) he is related to the judge or complainant by affinity or consanguinity, (2) the judge is a resident of his county, or (3) the member has personal knowledge or information which could interfere with the member impartially considering such matter.

A member may voluntarily disqualify himself when (1) the member resides in the judge's judicial district; or (2) upon a showing of good cause, the Commission approves the member's request for voluntary disqualification.

E. Officers. A Chairman and Vice-Chairman shall be elected each year at the January meeting to serve from January 1 through December 31 of such year. The Vice-Chairman shall perform the duties of the Chairman whenever he is absent or unable to act.

F. Executive Director. The Commission shall appoint a member of the Mississippi State Bar as executive director to serve at its pleasure. He shall neither engage in the private practice of law nor serve in any judicial capacity.

The Commission shall prescribe the duties and responsibilities of the executive director, which may include the authority to:

- (1) Receive information from any proper source, including allegations and complaints;
- (2) Make preliminary evaluations;
- (3) Screen complaints and make recommendations to the Commission;
- (4) Conduct and/or supervise investigations as directed by the Commission;
- (5) Maintain and preserve in confidentiality the Commission's records, including all complaints, files and written dispositions;
- (6) Maintain statistics concerning the operations of the Commission and make them available to the Commission and to the Supreme Court;
- (7) Prepare the Commission's budget for its approval and administer its funds;
- (8) Recommend employment and supervise other members of the Commission's staff;

(9) Prepare an annual report of the Commission's activities;

(10) Employ, upon the direction of the Commission, special counsel, private investigators or other experts as necessary to investigate and process matters before the Commission and before the Supreme Court; and

(11) Represent the Commission as counsel in formal proceedings and in other proceedings, upon the direction of the Commission.

(12) Represent the Commission at conferences, seminars, and other educational functions.

G. Meetings. The Commission shall meet at least monthly at announced dates and places, except when there is no business to be conducted. Meetings shall be called by the Chairman or upon the written request of two (2) members.

H. Quorum; Voting Requirements. Four members (or their alternates) shall constitute a quorum for the transaction of all Commission business. Commission business may be decided by a majority vote of the members present. A two-thirds ($2/3$) vote of the Commission shall be required for any action pertaining to its disciplinary authority.

I. Rules and Forms. These rules shall control complaints to, investigations by, and proceedings by the Commission. ~~The Commission may, for good cause, suspend any or all of its rules upon a two-thirds ($2/3$) vote of the Commission.~~ The Commission shall prescribe such forms as it deems appropriate.

J. Commission Office. The Commission shall establish a permanent office, in a building approved by the Capitol Commission, which shall be open to the public at regular announced hours.

K. Finances. The expenses of the Commission shall be authorized to be paid in accordance with the approved Commission budget and in compliance with applicable procedures established by the Auditor of Public Accounts. In the event of an unanticipated funding shortage, the Commission shall not curtail the discharge of its constitutionally mandated operations, but shall authorize the executive director to seek a deficit appropriation to fund the Commission's operations.

CREDIT(S)

[Amendment approved April 11, 1984; amended effective June 29, 1995; amended January 9, 1998.]

Commission on Judicial Performance Rule 3, MS R J PERF COMM Rule 3
Current with amendments received through 06/01/2012

Rule 4. Confidentiality

A. All Proceedings. All proceedings before the Commission shall be confidential, except upon unanimous vote of the Commission, as prescribed in Section 177A of the Mississippi Constitution of 1890. Confidentiality shall attach upon the initiation of an inquiry and shall include all records, files and reports of the Commission. All proceedings before the Supreme Court and any final decisions made by the Supreme Court shall be made public as in other cases at law. ~~However, an appeal from a private admonishment by the Commission shall be confidential unless on appeal the Supreme Court imposes sanctions harsher than the private admonishment.~~

B. Disclosure. By unanimous vote, the Commission may waive confidentiality and disclose such information deemed appropriate by the Commission. Such action may be taken upon the Commission's own motion or upon written request of the judge.

C. Violation by Staff. Employment of the executive director or any member of the staff may be terminated for violation of confidentiality.

CREDIT(S)

Amended March 7, 2002.

COMMENT

Proceedings before the Commission and the Court in matters of judicial discipline are governed by Section 177A of the Mississippi Constitution. Generally, unless the Commission unanimously votes to make its proceedings public, they remain confidential. However, ~~except in the case of an appeal by a judge of a private admonishment issued by the Commission against that judge, and in cases where the Court expressly seals the record following a private reprimand issued by the Court after the Commission has filed recommendations for more severe sanctions, proceedings before the Court and decisions of the Court are public.~~

[Adopted March 7, 2002.]

Commission on Judicial Performance Rule 4, MS R J PERF COMM Rule 4
Current with amendments received through 06/01/2012

Rule 5. Procedures of Commission

A. Initiation of Inquiry. Upon receipt of proper information regarding a judge's conduct or physical or mental condition, the Commission shall initiate a confidential inquiry to determine whether the matter is within the Commission's jurisdiction. On its own motion, the Commission may make inquiry concerning a judge's conduct or physical or mental condition, and may file a formal complaint based upon the results of such inquiry on its own motion.

B. Preliminary Inquiry. Upon receipt of such information, the executive director shall make a prompt, discreet, and confidential preliminary inquiry and evaluation under guidelines approved by the Commission. The executive director shall then make a report to the Commission.

After such report, the Commission shall dismiss complaints which are not within the Commission's jurisdiction, relate only to claimed errors of law or fact, or are unfounded. The complainant shall be informed in writing of the Commission's action.

C. Notice to Judge. The Commission shall not notify a judge of any initial complaint dismissed after preliminary inquiry, unless otherwise determined by the Commission.

When the initial complaint is not dismissed, within ninety (90) days of its receipt the judge shall be notified of the investigation and nature of the charge. Failure to make timely notification shall not be grounds for dismissal of any investigation or proceeding. Such notice shall be in writing and may be transmitted by a member of the Commission, the executive director, any adult person designated by the Commission, or by certified or registered mail addressed to the judge at his last known residence of record.

When a judge has been notified of an investigation and the Commission has dismissed the matter, the judge shall be so notified and the file shall be closed.

D. Sworn Complaint or Statement in Lieu of Complaint. If the initial complaint is not dismissed, the complainant shall be asked to file a detailed, signed, sworn complaint against the judge. The sworn complaint shall state the names and addresses of the complainant and the judge, the facts constituting the alleged misconduct, and, so far as is known, whether the same or a similar complaint by the complainant against the judge has ever been made to the Commission. A sworn complaint may be waived by a two-thirds (2/3) vote of the Commission; a sworn complaint shall not be required in an inquiry initiated by the Commission on its own motion.

E. Informal Conference. The Commission may request the judge to attend an informal conference concerning the matters relating to his judicial performance.

F. Right to Counsel. At all stages of the Commission's proceedings, the judge shall be entitled to counsel.

G. Subpoena. The subpoena power granted the Commission by law shall apply at any stage of the investigation or any proceedings. The judge shall be entitled to subpoenae for any formal hearing. All subpoenae shall be on the form prescribed by the Commission, and the Commission shall have the power to enforce process.

H. Earwiggling Prohibited. No person shall discuss or attempt to discuss with or in the presence or hearing of a member anything concerning an inquiry or proceeding then pending with or likely to be considered by the Commission, except in accordance with these rules. Any person knowingly violating this or any other rule of the Commission may be guilty of contempt.

CREDIT(S)

[Amended effective June 29, 1995.]

JUDICIAL DECISIONS

Due process rights [2](#)

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Public policy [1](#)

[1](#). Public policy

Public policy mandates that judge should have power to make decisions without having to worry about being held liable for judge's actions; best interests of people and public order require that judges be immune from civil liability, and there are other remedies for correction of such behavior. [Mississippi Com'n of Judicial Performance v. Russell \(Miss. 1997\) 691 So.2d 929](#), rehearing denied [693 So.2d 384](#). [Judges](#) [↪36](#)

[2](#). Due process rights

Judge had no due process right to appear in person before the full Commission on Judicial Performance; thus, seven-day hearing before a duly appointed committee where he could present witnesses and advance his defense complied with due process. [U.S.C.A. Const.Amend. 14](#); Commission on Judicial Performance Rule 8, subd. C. [Mississippi Com'n on Judicial Performance v. Spencer \(Miss. 1998\) 725 So.2d 171](#), rehearing denied. [Constitutional Law](#) [↪4175](#); [Judges](#) [↪11\(5.1\)](#)

Combination of investigative, prosecutorial, and adjudicatory functions in Commission of Judicial Performance in connection with disciplinary actions against judges did not violate due process, as Commission's procedures did not in and of themselves appear to present unacceptable risk of bias, notwithstanding alleged financial motive for Commissioners to find in accordance with Commission's Executive Director. [U.S.C.A. Const.Amend. 14](#). [Mississippi Com'n of Judicial Performance v. Russell \(Miss. 1997\) 691 So.2d 929](#), rehearing denied [693 So.2d 384](#). [Constitutional Law](#) [↪4175](#); [Judges](#) [↪11\(5.1\)](#)

[3](#). Findings

Failure of Commission on Judicial Performance to file findings within thirty days after the hearing did not require Supreme Court to strike findings of fact and conclusions of law given the voluminous record, the length of the hearing, the number of witnesses, and the request by the judge's attorney for additional time even after the Commission had set a deadline. Commission on Judicial Performance Rule 8, subd. E. [Mississippi Com'n on Judicial Performance v. Spencer \(Miss. 1998\) 725 So.2d 171](#), rehearing denied. [Judges](#) [↪11\(8\)](#)

Commission on Judicial Performance Rule 5, MS R J PERF COMM Rule 5
Current with amendments received through 06/01/2012

Rule 6. Probable Cause

A. Grounds for Discipline and Retirement. The grounds for discipline and retirement, as prescribed by the Constitution, are:

- (1) Actual conviction of a felony in a court other than a court of the State of Mississippi [\[FN1\]](#);
- (2) Willful misconduct in office;
- (3) Willful and persistent failure to perform his duties;
- (4) Habitual intemperance in the use of alcohol or other drugs;
- (5) Conduct prejudicial to the administration of justice which brings the judicial office into disrepute;
- (6) Physical or mental disability seriously interfering with the performance of his duties, which disability is or is likely to become of a permanent character;
- (7) Any willful violation of law constituting a serious misdemeanor or felony;
- (8) Any violation of the code of judicial conduct and
- (9) Any violation of the rules of professional conduct as adopted by the Supreme Court.

B. Disposition. The Commission shall dispose of the case in one (1) of the following ways:

- (1) If it finds that there has been no misconduct, the case shall be dismissed.
- ~~(2) If it finds that there has been misconduct for which a private admonishment constitutes adequate discipline, it shall issue the admonishment. The complainant shall be notified that the matter has been resolved. The Commission shall notify the Chief Justice of the Supreme Court of its action.~~
- (3) Where the Commission finds a violation, and that its recommendation for punishment may be affected by treatment or counseling, the Commission may enter into a memorandum of understanding with the judge concerning his future conduct or submission to professional treatment or counseling prior to referring the case to the Supreme Court.
- (4) If it is determined that probable cause exists to require a formal hearing, it shall so notify the judge by service of a notice and a formal complaint.

C. Formal Complaint. The formal complaint shall be entitled “BEFORE THE MISSISSIPPI COMMISSION ON JUDICIAL PERFORMANCE, INQUIRY CONCERNING A JUDGE, NO. ____.” The formal complaint shall identify any complainant and shall specify in ordinary and concise language the charges against the judge. The notice shall advise the judge of his right to file a written, sworn answer to the charges against him within thirty (30) days after service of the notice upon him. The notice and formal complaint shall be served upon the judge by personal

service by a member of the Commission, the executive director, or by any adult person designated by the Commission, or by certified or registered mail addressed to the judge at his last known residence of record.

D. Answer. Within thirty (30) days after service of the notice and the formal complaint, the judge may file with the Commission a sworn answer or motions. The formal complaint and answer shall constitute the pleadings. Thereafter, no further motions or pleadings may be filed unless the Commission shall first grant leave.

CREDIT(S)

[Amended effective June 29, 1995; amended April 4, 2002.]

[FN1] Under [Section 175, Mississippi Constitution of 1890](#), and [Section 25-5-1, Mississippi Code of 1972](#), public officers convicted of a crime in this state shall be removed from office. [Section 25-5-1](#) was amended in 1979 to provide for removal upon conviction of certain crimes in federal courts and the courts of other states as well as in state courts.

Commission on Judicial Performance Rule 6, MS R J PERF COMM Rule 6
Current with amendments received through 06/01/2012

Rule 7. Interim Suspension of Judge

Upon the filing of a formal complaint, the Commission may, at its discretion, issue its order directed to the judge to show good cause before the Commission why the Commission should not recommend to the Supreme Court that he be suspended from office while the inquiry is pending. The order to show cause shall be returnable before the Commission at a designated place and at a time certain, at which place and time the Commission shall consider the question of suspension. Either after issuing its order to show cause or without such order to show cause, the Commission may recommend to the Supreme Court that the judge be suspended from performing the duties of his office, pending final determination of the inquiry. If the Commission recommends suspension, such recommendation and a transcript of all proceedings of the Commission shall be immediately forwarded to the Clerk of the Supreme Court. An interim suspension shall not preclude further action by the Commission.

Commission on Judicial Performance Rule 7, MS R J PERF COMM Rule 7
Current with amendments received through 06/01/2012

Rule 8. Formal Hearing

A. Scheduling of Hearing. The Commission shall schedule a formal hearing concerning the charges. The hearing shall be held no sooner than five (5) days after filing of an answer or after the deadline for filing of the answer if no answer is filed. Notice of the hearing shall be sent to the judge at his last known residence of record or to his attorney.

At the date set for the formal hearing, the hearing shall proceed whether or not the judge has filed an answer, and whether or not he appears in person or through counsel. The failure of the judge to answer or appear may be taken as evidence of the facts alleged in the formal complaint.

B. Discovery and Procedure. In all formal proceedings the Mississippi Rules of Civil Procedure shall be applicable except as otherwise provided in these rules. The sole parties to formal proceedings shall be the Commission and the judge.

C. Factfinder. The formal hearing shall be conducted before the entire Commission or before a committee of the Commission, a master or a factfinder designated by the Commission.

D. Conduct of Hearing. Facts requiring action of the Commission shall be established by clear and convincing evidence.

The Mississippi Rules of Evidence shall apply to any formal hearing. All witnesses shall take an oath or affirmation to tell the truth. All Commission members, staff, witnesses, counsel, or any other person privy to any hearing before the Commission shall take an oath of secrecy concerning all proceedings before the Commission, violation of which shall be punishable as contempt.

The Commission shall employ a member of the Mississippi State Bar to prepare and present the formal complaint to the Commission and otherwise act as counsel and to represent the Commission before the Supreme Court or direct the Executive Director to so represent the Commission as counsel.

The Commission shall designate one (1) of its judicial or attorney members to preside over each formal hearing. He shall dispose of all preliminary matters and shall rule on procedural and evidentiary matters during the course of the hearing.

The judge shall have the right to present evidence and to produce and cross-examine witnesses.

The judge shall be limited to two (2) character witnesses who may testify at the formal hearing, **but** ~~he~~ may submit the affidavits of any other character witnesses he deems appropriate.

The hearing shall be recorded by a reporter employed by the Commission.

E. Determination. If the full Commission has held the formal hearing, it shall promptly prepare its findings of fact and any recommendations.

When a committee, master, or factfinder has held the formal hearing, its findings of fact and recommendations shall be filed with the Commission within thirty (30) days after the hearing's conclusion; provided, however, the Commission may grant additional time for the preparation of such findings and recommendations. The executive director shall promptly deliver to the judge or his legal representative and to the Commission counsel a copy of the transcript of the proceedings and a copy of the findings and recommendations. Within ten (10) days from receipt

of such copies, the judge and Commission counsel may submit written objections to the findings and recommendations. The Commission shall review the findings and recommendations, the written objections, and the transcript; and it may accept, modify, or reject, in whole or in part, the findings and recommendations and may make additional findings of fact and recommendations.

F. Commission Recommendation. The Commission recommendations to the Supreme Court for discipline may include removal from office, suspension, fine, public censure or reprimand, or retirement. ~~In addition, the Commission may privately admonish a judge as provided by law.~~

The Commission findings and recommendation and the numerical vote shall be recorded; all other Commission action shall remain confidential.

G. Dissent. If any member dissents from a recommendation as to discipline or retirement, the dissenting recommendation shall also be transmitted to the Supreme Court. Only the dissent, with the number of dissenters shall be transmitted; the names of the individual dissenters shall remain confidential.

H. No Discipline Recommended. If two-thirds(2/3) of the members of the Commission fail to recommend discipline or retirement, the case shall be dismissed.

I. Witness Fees. All witnesses shall receive fees and expenses in the statutorily allowable amount. Expenses of witnesses shall be borne by the party calling them. When the physical or mental disability of the judge is in issue, the Commission may reimburse the judge for the reasonable fees of any physician rendering a report or testifying at a Commission hearing. If the judge is exonerated of the charges against him and the Commission determines that the imposition of costs and expert witness fees would work a financial hardship or injustice upon him, the Commission may order that part or all of those costs and fees be reimbursed.

CREDIT(S)

[Amendment approved April 11, 1984; amended effective June 29, 1995.]

COMMENT

Disciplinary recommendations to the Supreme Court by the Commission are prescribed by the Mississippi Constitution, and include removal from office, suspension, fine, public censure or reprimand, or retirement. ~~range from removal from office down to public censure or reprimand. Although the Commission generally does not impose disciplinary sanctions, but rather makes findings and recommendations for submission to the Supreme Court, it may, under Rule 6, dismiss cases or impose the lesser sanction of a private admonishment, without action by the Supreme Court. In the case of private admonishment, the Commission will notify the Chief Justice of the Supreme Court of its action.~~

[Comment adopted March 7, 2002.]

JUDICIAL DECISIONS

Discipline 3

Due process 1

Findings 2

1. Due process

Use of a three-judge panel, rather than the full Commission on Judicial Performance, to make findings and recommendations to the Supreme Court in a judicial disciplinary proceeding was not unauthorized under constitutional provision governing commission, and thus did not deny due process to justice court judge. [U.S.C.A. Const.Amend. 14](#); [Const. Art. 6, § 177A](#); Commission on Judicial Performance Rule 8, subd. C. [Mississippi Com'n on Judicial Performance v. Willard \(Miss. 2001\) 788 So.2d 736](#). [Constitutional Law ↪4175](#); [Justices Of The Peace ↪10](#)

Judge had no due process right to appear in person before the full Commission on Judicial Performance; thus, seven-day hearing before a duly appointed committee where he could present witnesses and advance his defense complied with due process. [U.S.C.A. Const.Amend. 14](#); Commission on Judicial Performance Rule 8, subd. C. [Mississippi Com'n on Judicial Performance v. Spencer \(Miss. 1998\) 725 So.2d 171](#), rehearing denied. [Constitutional Law ↪4175](#); [Judges ↪11\(5.1\)](#)

Combination of investigative, prosecutorial, and adjudicatory functions in Commission of Judicial Performance in connection with disciplinary actions against judges did not violate due process, as Commission's procedures did not in and of themselves appear to present unacceptable risk of bias, notwithstanding alleged financial motive for Commissioners to find in accordance with Commission's Executive Director. [U.S.C.A. Const.Amend. 14](#). [Mississippi Com'n of Judicial Performance v. Russell \(Miss. 1997\) 691 So.2d 929](#), rehearing denied [693 So.2d 384](#). [Constitutional Law ↪4175](#); [Judges ↪11\(5.1\)](#)

2. Findings

Findings of the Commission on Judicial Performance must be based upon clear and convincing evidence. Commission on Judicial Performance Rule 8, subd. D. [Mississippi Com'n on Judicial Performance v. R.R. \(Miss. 1999\) 732 So.2d 224](#). [Judges ↪11\(7\)](#)

Failure of Commission on Judicial Performance to file findings within thirty days after the hearing did not require Supreme Court to strike findings of fact and conclusions of law given the voluminous record, the length of the hearing, the number of witnesses, and the request by the judge's attorney for additional time even after the Commission had set a deadline. Commission on Judicial Performance Rule 8, subd. E. [Mississippi Com'n on Judicial Performance v. Spencer \(Miss. 1998\) 725 So.2d 171](#), rehearing denied. [Judges ↪11\(8\)](#)

3. Discipline

In judicial disciplinary proceeding brought against Justice Court judge for making derogatory statements during national drug court seminar break-out session about her fellow, community elected officials, fellow seminar participants, and African-American members of her community, Commission of Judicial Performance properly restricted judge's cross-examination of seminar participant regarding her employment, salary, and refusal to speak to defense counsel prior to the proceeding; such issues had already been addressed, and additional questioning would not have been pertained to judge's hearing on her conduct. [Mississippi Com'n on Judicial Performance v. Boland \(Miss. 2008\) 975 So.2d 882](#). [Justices Of The Peace ↪10](#)

Commission of Judicial Performance properly excluded testimony of three of Justice Court judge's witnesses, in judicial disciplinary proceeding brought against judge for making derogatory statements during national drug court seminar break-out session about her fellow, community elected officials, fellow seminar participants, and African-American members of her community; testimony of the witnesses amounted to character testimony that was duplicative of the other character witnesses who testified on judge's behalf. [Mississippi Com'n on Judicial Performance v. Boland \(Miss. 2008\) 975 So.2d 882. Justices Of The Peace ↩️10](#)

In determining whether reprimand for judicial misconduct should be public, Supreme Court considers mitigating factors which weigh in favor of confidential, private action. [Mississippi Com'n of Judicial Performance v. Russell \(Miss. 1997\) 691 So.2d 929](#), rehearing denied [693 So.2d 384. Judges ↩️11\(4\)](#)

Knowingly committing perjury, failing to remedy deficiency in regard to assurance of garnishments, and failing or refusing to refund garnishment costs which have been deposited but as to which no garnishment had issued warrant removal from office. Const. § 177A; Commission on Judicial Performance Rule 8, subd. A; ABA Code of Jud.Conduct, Canon 2, subd. A. [In re Anderson \(Miss. 1984\) 451 So.2d 232. Judges ↩️11\(4\)](#)

Commission on Judicial Performance Rule 8, MS R J PERF COMM Rule 8
Current with amendments received through 06/01/2012

Rule 9. Mental or Physical Disability

When the mental or physical health of a judge is in issue, the Commission may request the judge either (1) to submit to examinations by licensed physicians chosen and paid by the Commission, or (2) to submit to the Commission all reports of recent examinations by licensed physicians relating to the alleged condition. If the judge fails to submit to the examinations or to submit all recent medical reports, such failure shall raise an adverse inference to the judge on such issue, unless the judge's failure was due to circumstances beyond his control. The judge shall be furnished a copy of the report of any examination conducted under this rule.

Commission on Judicial Performance Rule 9, MS R J PERF COMM Rule 9
Current with amendments received through 06/01/2012

Rule 10. Supreme Court Review

A. Filing and Service. The Commission shall promptly file the record, its findings and recommendations, and any dissents with the Clerk of the Supreme Court and shall immediately serve copies thereof upon the judge.

B. Procedure. The Mississippi Rules of Appellate Procedure shall be applicable for all Commission proceedings before the Supreme Court, except as otherwise provided in these rules.

C. Preference Cases. The Supreme Court shall treat all Commission matters as preference cases, to be determined with reasonable expedition.

D. Briefs. When the Commission has recommended the interim suspension of a judge, the Commission, as petitioner, and the judge, as respondent, shall file simultaneous briefs with the Supreme Court within seven (7) days after the filing of the Commission's recommendations with the Clerk of the Supreme Court. No reply briefs shall be filed.

In other cases the Commission, as petitioner, and the judge, as respondent, shall file simultaneous briefs with the Supreme Court within thirty (30) days after the filing of the Commission's recommendations with the Clerk of the Supreme Court. No reply briefs shall be filed.

E. Decision. Based upon a review of the entire record, the Supreme Court shall prepare and publish a written opinion and judgment directing such disciplinary action, if any, as it finds just and proper. The Supreme Court may accept, reject, or modify, in whole or in part, the findings and recommendation of the Commission. In the event that more than one (1) recommendation for discipline of the judge is filed, the Supreme Court may render a single decision or impose a single sanction with respect to all recommendations.

~~**F. Private Admonishments.** If a judge desires to appeal a private admonishment, he shall file a notice of appeal with the Commission within thirty (30) days from the issuance of such admonishment. The Commission shall promptly file with the Clerk of the Supreme Court the record and its admonishment. The judge shall be the appellant and the Commission the appellee.~~

~~An appeal from a private admonishment issued by the Commission shall follow the same procedures as other Commission matters except that such appeal shall remain confidential, as provided by law.~~

CREDIT(S)

[Amended March 24, 1997.]

JUDICIAL DECISIONS

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[1](#). In general

While Supreme Court gives great deference to the Commission on Judicial Performance's findings, Court is also charged to render an independent judgment in judicial disciplinary proceedings. [Mississippi Com'n on Judicial Performance v. Sanford \(Miss. 2006\) 941 So.2d 209. Judges ↪11\(8\)](#)

Although Supreme Court has obligation to conduct independent inquiry in judicial misconduct proceedings, it nonetheless gives great weight to finding of Commission on Judicial Performance, which has had opportunity to observe demeanor of witnesses. [Const. Art. 6, § 177A](#); Commission on Judicial Performance Rule 10. [Mississippi Com'n on Judicial Performance v. Fletcher \(Miss. 1996\) 686 So.2d 1075. Judges ↻11\(8\)](#)

2. De novo review

Supreme Court reviews the recommendations of the Mississippi Commission on Judicial Performance in judicial misconduct proceedings de novo. [Mississippi Com'n on Judicial Performance v. Osborne \(Miss. 2008\) 977 So.2d 314](#), rehearing denied. [Judges ↻11\(8\)](#)

Supreme Court conducts de novo review of judicial misconduct proceedings, giving great deference to the findings, based on clear and convincing evidence, of the recommendations of the Commission on Judicial Performance. [Mississippi Com'n on Judicial Performance v. Sanford \(Miss. 2006\) 941 So.2d 209. Judges ↻11\(8\)](#)

The Supreme Court reviews judicial disciplinary matters de novo. [Mississippi Com'n On Judicial Performance v. Teel \(Miss. 2004\) 863 So.2d 973. Judges ↻11\(8\)](#)

3. Standard of review

The appropriate standard of review used in a judicial disciplinary proceeding is derived from the Rules of the Mississippi Commission on Judicial Performance. Commission on Judicial Performance Rule 10, subd. E. [Mississippi Com'n on Judicial Performance v. Jenkins \(Miss. 1998\) 725 So.2d 162](#), rehearing denied. [Judges ↻11\(8\)](#)

4. Findings of commission

While the Supreme Court gives great deference to the findings of the Commission on Judicial Performance in judicial misconduct proceedings, the Court is also charged to render an independent judgment. [Mississippi Com'n on Judicial Performance v. Osborne \(Miss. 2008\) 977 So.2d 314](#), rehearing denied. [Judges ↻11\(8\)](#)

Although the Supreme Court is not bound by the findings by the Commission on Judicial Performance in the context of a judicial disciplinary proceeding, they are given great deference when based on clear and convincing evidence of misconduct. Commission on Judicial Performance Rule 10(E). [Mississippi Com'n on Judicial Performance v. Britton \(Miss. 2006\) 936 So.2d 898. Judges ↻11\(8\)](#)

Although the Supreme Court is not bound by the findings and recommendations of the Commission on Judicial Performance and may impose additional sanctions, in a judicial disciplinary proceeding, it nonetheless gives great weight to the findings of the Commission which had the opportunity to observe the demeanor of the witnesses. [Mississippi Com'n On Judicial Performance v. Teel \(Miss. 2004\) 863 So.2d 973. Judges ↻11\(8\)](#)

Supreme Court conducts de novo review of judicial misconduct proceedings, giving great deference to the findings, based on clear and convincing evidence, of the recommendations of the Judicial Performance Commission; although Court considers the recommendations of the Commission, Court is in no way

bound by them and may also impose additional sanctions. [Mississippi Com'n on Judicial Performance v. Sanders \(Miss. 1999\) 749 So.2d 1062. Judges ¶11\(8\)](#)

Although Supreme Court is not bound by findings of Commission on Judicial Performance, they are given great deference when based on clear and convincing evidence. Commission on Judicial Performance Rule 10, subd. E. [Mississippi Com'n on Judicial Performance v. Sanders \(Miss. 1998\) 708 So.2d 866. Judges ¶11\(8\)](#)

Supreme Court conducts de novo review of judicial misconduct proceedings, giving great deference to findings, based on clear and convincing evidence, of recommendations of Judicial Performance Commission; although Court considers recommendations of Commission, Court is in no way bound by recommendations and may also impose additional sanctions. [Mississippi Com'n of Judicial Performance v. Russell \(Miss. 1997\) 691 So.2d 929, rehearing denied 693 So.2d 384. Judges ¶11\(8\)](#)

Although Supreme Court is not bound by the Commission on Judicial Performance's findings in judicial disciplinary proceeding, Commission's findings are given great deference when based on clear and convincing evidence. Commission on Judicial Performance Rule 10, subd. E. [Mississippi Com'n on Judicial Performance v. Dodds \(Miss. 1996\) 680 So.2d 180. Judges ¶11\(5.1\)](#)

Supreme Court is not bound by findings of Judicial Performance Commission in disciplinary matter, but findings are given great deference when surrounded by clear and convincing evidence. Commission on Judicial Performance Rule 10, subd. E. [Mississippi Com'n on Judicial Performance v. Underwood \(Miss. 1994\) 644 So.2d 458. Judges ¶11\(5.1\)](#)

In a judicial disciplinary proceeding the Supreme Court must conduct an independent inquiry and make its own final determination of the appropriate sanction, although the court accords careful consideration to findings of fact and recommendations of the Commission on Judicial Performance or its committee. Const. § 177A; [Code 1972, §§ 9-19-1 et seq., 9-19-17, 9-19-23. In re Anderson \(Miss. 1982\) 412 So.2d 743. Judges ¶11\(5.1\)](#)

5. Record

Supreme Court considered the additional mitigating factors which justice court judge who was subject of disciplinary proceeding requested be considered by Commission on Judicial Performance, but which had not been included in agreed statement of facts, where it was ambiguous whether Commission adopted agreed statement of facts or amended agreed statement of facts; by Commission rule, Court was to direct disciplinary action based upon a review of entire record. Commission on Judicial Performance Rule 10, subd. E. [Mississippi Com'n on Judicial Performance v. Williams \(Miss. 2004\) 880 So.2d 343. Justices Of The Peace ¶10](#)

6. Sanctions

In judicial misconduct proceedings, Supreme Court is trier of fact and has sole power to impose sanctions. [Const. Art. 6, § 177A](#); Commission on Judicial Performance Rule 10. [Mississippi Com'n on Judicial Performance v. Fletcher \(Miss. 1996\) 686 So.2d 1075; Mississippi Com'n on Judicial Performance v. Carr \(Miss. 2008\) 990 So.2d 763; Mississippi Com'n on Judicial Performance v. Osborne \(Miss. 2008\) 977 So.2d 314, rehearing denied ; Mississippi Com'n On Judicial Performance v. Teel \(Miss. 2004\) 863 So.2d 973.](#)

Notwithstanding Commission on Judicial Performance's recommendation, Supreme Court, and Supreme Court alone, is constitutionally charged with making the ultimate decision as to the appropriate sanction to impose upon one who has engaged in actionable judicial misconduct. West's [A.M.C. Const. Art. 6, § 177A. Mississippi Com'n on Judicial Performance v. Sanford \(Miss. 2006\) 941 So.2d 209. Judges ↩️11\(3\)](#)

Imposition of sanctions for judicial misconduct is matter left solely to discretion of Supreme Court; Court gives great deference to recommendations of Commission on Judicial Performance, but is not bound thereby. [Mississippi Com'n of Judicial Performance v. Russell \(Miss. 1997\) 691 So.2d 929](#), rehearing denied [693 So.2d 384. Judges ↩️11\(8\)](#)

Although Supreme Court defers to recommendation of sanctions made by Commission on Judicial Performance, Court is not bound by them; sanctions which can be imposed by Supreme Court for judicial misconduct include removal or suspension of judge from office, fine, or public reprimand. [Const. Art. 6, § 177A. Mississippi Judicial Performance Com'n v. Hopkins \(Miss. 1991\) 590 So.2d 857. Judges ↩️11\(4\), 11\(5.1\)](#)

Supreme Court has full jurisdiction to increase or diminish sanctions to be imposed upon judicial officer for misconduct, based on court's review of record made before Commission on judicial performance, but court is neither dependent upon nor limited by recommendations of Commission. Const. § 177A. [In re Collins \(Miss. 1987\) 524 So.2d 553. Judges ↩️11\(5.1\)](#)

7. Costs

In judicial performance proceeding, judge would be required to pay costs incurred by Commission on Judicial Performance, including costs for Supreme Court fee, transcripts, and travel expenses for committee members. Commission on Judicial Performance Rule 10, subd. E. [Mississippi Com'n on Judicial Performance v. Russell \(Miss. 1998\) 724 So.2d 873. Judges ↩️11\(5.1\)](#)

In a judicial performance proceeding, the assessment of costs against the judge is within the discretion of the Supreme Court, is in keeping with the precedent of the Court, and is reasonable where the complaining party is on notice that such costs are being sought and where the behavior of the complaining party is the reason for the incurring of the costs. Commission on Judicial Performance Rule 10, subd. E. [Mississippi Com'n on Judicial Performance v. Russell \(Miss. 1998\) 724 So.2d 873. Judges ↩️11\(5.1\)](#)

Commission on Judicial Performance Rule 10, MS R J PERF COMM Rule 10
Current with amendments received through 06/01/2012

Rule 11. Charges Against Justice of the Supreme Court

Charges against a Justice of the Supreme Court shall proceed in the same manner as charges against any other judge except that, upon the filing of the report and recommendation of the Commission, a special tribunal shall be empaneled as provided by Section 177A of the Mississippi Constitution of 1890. Upon recommendation by the Commission for discipline or retirement of a Justice of the Supreme Court, the executive director shall notify the Secretary of State to select the tribunal in accordance with the procedures established in the Constitution. In the event a judge selected for the tribunal is disqualified or otherwise unable to serve, such judge shall file a notice of recusal with the Clerk of the Supreme Court within ten (10) days. The Clerk

of the Supreme Court shall notify the Secretary of State and another member shall be selected in the manner provided by the constitution. When seven (7) qualified members have been selected the tribunal shall, within ten (10) days, meet and select one of its members as the presiding member of the tribunal. The tribunal shall proceed in accordance with the Mississippi Rules of Appellate Procedure, except as otherwise provided in these rules, and the Rules of the Commission, which shall control all proceedings before the seven (7) member tribunal.

CREDIT(S)

[Amended effective March 27, 1997; amended effective May 27, 2004 to shorten period for filing notices of recusal and convening the tribunal.]

Commission on Judicial Performance Rule 11, MS R J PERF COMM Rule 11
Current with amendments received through 06/01/2012