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SUPREME COURT
GUAM

IN THE SUPREME COURT OF GUAM

Re:	Supreme Court Case No.PRM06-002
AMENDMENTS TO THE GUAM RULES FOR JUDICIAL DISCIPLINARY ENFORCEMENT	**PROMULGATION ORDER NO. 06-002-03**

On September 5, 2006 this court issued Promulgation Order 06-002-001 memorializing its March 27, 2006 adoption of the Guam Rules for Judicial Disciplinary Enforcement ("RJDE") pursuant to the Organic Act of Guam at 48 U.S.C. 1424-1(a)(7) to govern discipline of Guam's judicial officers. On April 13, 2007, this court issued Promulgation Order 06-002-002 which amended and restated the RJDE in order to broaden the pools of eligible appointees from which judicial officer and attorney members of the Committee on Judicial Discipline ("CJD") and Special Court might be selected.

In the interests of efficiency and justice, this court has determined that certain additional amendments to the RJDE are necessary to ensure the proper functioning of the judicial discipline system. The amendments address the follow five (5) issues:

1. Rules 2.1(D) and 2.2(D) of the RJDE currently limits attorney members of the CJD and Special Court to those attorneys who are admitted to practice in any court of Guam and in good standing. However, it has become apparent that having members of the Guam bar sit on the investigative and adjudicative bodies of the judicial discipline system regarding judicial officers of the Guam Judiciary is potentially problematic with regards to confidentiality and conflicts issues. As such, it is appropriate to amend Rules 2.1(D) and 2.2(D) of the RJDE to also allow inactive members of the Guam bar in good standing and active members of the CNMI Bar Association in good standing to serve on the CJD or Special Court, much as judicial officers of the CNMI may serve on the CJD or Special Court.

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Additionally, Rule 2.1(D) erroneously refers to the CJD as the "commission," which should be corrected for the sake of clarity.

2. Rule 6(A)(1) of the RJDE states that the grounds for judicial discipline include "any conduct constituting a violation of the Code of Judicial Conduct." The RJDE were first adopted on March 27, 2006. In order to make clear what was meant by the term "Code of Judicial Conduct," an amendment to Rule 6(A)(1) is appropriate, identifying the Code of Judicial Conduct with particularity as the ABA Model Code of Judicial Conduct in place on March 27, 2006, that being the 1990 ABA Model Code of Judicial Conduct as amended in 1997, 1999 and 2003.

3. Rule 2.1(E) of the RJDE currently limits members of the CJD to two four-year terms and Rule 2.2(E) current limits members of the Special Court of two four-year terms. In addition, neither Rule 2.1(E) nor Rule 2.2(E) allow members of the CJD or Special Court, absent formal reappointment, to participate on the CJD or Special Court in any way immediately after a term has come to an end. In order to allow the continuous and efficient functioning of the judicial discipline system, amendments to Rules 2.1(E) and 2.2(E) are appropriate to eradicate term limits on both the CJD and the Special Court and to clarify that members of each body may continue to serve, notwithstanding the technical expiration of a term, until such time as they are reappointed or a successor is appointed.

4. Rule 17(C)(4) of the RJDE contemplates either disciplinary counsel or the judge having the authority to request that the judge appear before disciplinary counsel at which time the judge would respond to questions form disciplinary counsel. Such meeting must take place before the CJD determines its disposition of the complaint pursuant to Rule 17(D). In the interest of the efficient functioning of the judicial discipline system, and in order to allow the CJD to proceed to a final determination as contemplated by Rule 17(D) after receiving disciplinary counsel's final report and recommendation, a deadline should exist by which the judge must request a Rule 17(C)(4) meeting with disciplinary counsel if the judge desires that such a meeting take place. Therefore it is appropriate to amend Rule 17(C)(4) to require that a judge's request for an appearance before disciplinary counsel be submitted in writing to disciplinary counsel within thirty days of the

judge's filing with disciplinary counsel of their written response to the Rule 17(C)(1) notice of full investigation, or their deadline for such filing, whichever is later.

5. Rule 19 of the RJDE is entitled "Formal Charges" and directs that disciplinary counsel "shall file the formal charges with the Special Court." Various other rules throughout the RJDE refer to "filing" with the Special Court relative to the processing of a judicial discipline case subsequent to the filing of formal charges. However there is currently no direction given within the RJDE regarding where such filing with the Special Court should physically be done. In the interest of clarifying the process and improving efficiency, it is appropriate to add language to the RJDE expressly directing that the clerk's office of the Supreme Court of Guam shall accept all filings on behalf of the Special Court. The clerk's office will then coordinate with the Chairperson of the Special Court regarding such filings. Therefore Rule 19 shall be renumbered as Rule 19.1 and a new Rule 19.2 shall be added which shall articulate this filing procedure.

Therefore, pursuant to the authority to govern judicial ethics granted by the Organic Act of Guam at 48 U.S.C. § 1424-1(a)(7), Rule 19 is renumbered as Rule 19.1. Further, Rules 2.1(D), 2.1(E), 2.2(D), 2.2(E), 6(A)(1), and 17(C)(4) of the RJDE are amended, and a new Rule 19.2 is added, to now state as follows:

RULE 2.1 THE COMMITTEE ON JUDICIAL DISCIPLINE

(D) **Appointment of Members**. The Committee on Judicial Discipline shall have 6 members who shall be appointed by the Guam Judicial Council. Two members shall be current or former judges of the Superior Court of Guam or the Superior Court or Supreme Court of the CNMI, current or former judges or justices of the federal courts, or former justices of the Supreme Court of Guam; 2 members shall be lawyers who are residents of Guam and admitted to practice in any court of Guam and of good standing, residents of Guam who are inactive members of the Guam bar in good standing, or lawyers who are residents of the CNMI and admitted to practice in any court of the CNMI and of good standing; and 2 members who are residents of Guam and who are neither lawyers nor judges shall be public members.

(E) **Terms**. Members of the Committee on Judicial Discipline shall serve for a term of 4 years and shall be eligible for reappointment. Initial appointments shall be made so that the terms of one member in each of the three categories shall expire every 2 years. Members may continue to serve, notwithstanding the technical expiration of a term, until such time as they are

reappointed or a successor is appointed. The members of the Committee on Judicial Discipline shall not be subject to removal except for cause. Three successive unexcused absences shall be deemed cause for removal. Removal shall be by the Guam Judicial Council.

RULE 2.2 THE SPECIAL COURT

(D) **Appointment of Members**. The Special Court shall have 3 members who shall be appointed by the Chief Justice of Guam. One member shall be current or former judge of the Superior Court of Guam or the Superior Court or Supreme Court of the CNMI, a current or former judge or justice of the federal courts, or a former justice of the Supreme Court of Guam; 1 member shall be a resident of Guam who is a lawyer admitted to practice in any court of Guam and of good standing, a resident of Guam who is an inactive member of the Guam bar in good standing or a lawyer who is a resident of the CNMI and admitted to practice in any court of the CNMI and in good standing; and 1 member who is neither a neither a lawyer nor a judge who shall be a public member.

(E) **Terms**. Members of the Special Court shall serve for a term of 4 years and shall be eligible for reappointment. Members may continue to serve, notwithstanding the technical expiration of a term, until such time as they are reappointed or a successor is appointed. The members of the Special Court shall not be subject to removal except for cause. Three successive unexcused absences shall be deemed cause for removal. Removal shall be by the Guam Judicial Council.

RULE 6. GROUNDS FOR DISCIPLINE; SANCTIONS IMPOSED; DEFERRED DISCIPLINE

(A) **Grounds for Discipline**. The grounds for discipline are:

(1) any conduct constituting a violation of the 1990 ABA Model Code of Judicial Conduct as amended in 1997, 1999 and 2003, the Guam Rules of Professional Conduct or

RULE 17. SCREENING AND INVESTIGATION

(C) **Full Investigation**.

(4) Before the Committee on Judicial Discipline determines its disposition of the complaint under Rule 17(D), either disciplinary counsel or the judge may request an appearance before disciplinary counsel to respond to questions. The appearance shall be on the record. If the judge requests an appearance before disciplinary counsel, such request shall be in writing served upon disciplinary counsel within thirty days of the judge's filing with disciplinary counsel of their written response to the notice of full investigation pursuant to Rule 17(C)(3), or within thirty days of the deadline for such filing, whichever is later. If disciplinary counsel requests the judge's appearance, disciplinary counsel must give the judge 20 days notice and the testimony shall be sworn.

RULE 19.2 METHOD OF FILING

The clerk's office of the Supreme Court of Guam shall accept all filings on behalf of the Special Court.

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These amendments shall be effective immediately upon the filing of the present order. The amendments shall apply to all judicial discipline matters commenced after their effective date, and to all pending judicial discipline matters commenced prior to the effective date, except to the extent that application to matters pending as of the effective date would not be feasible, or would work injustice. The Rules for Judicial Disciplinary Enforcement, inclusive of these amendments, are attached hereto as Exhibit A.

SO ORDERED this 23rd day of December, 2011.

ROBERT J. TORRES
Associate Justice

KATHERINE A. MARAMAN
Associate Justice

F. PHILIP CARBULLIDO
Chief Justice

EXHIBIT A

SUPREME COURT OF GUAM'S RULES FOR JUDICIAL DISCIPLINARY ENFORCEMENT

[As amended by Prom. Order Nos. 06-002-002 and 06-002-003 as noted herein.]

TERMINOLOGY

To promote effective disciplinary enforcement in Guam, the terminology set forth below shall be used.

Commission Counsel: the lawyer drafting reports, providing legal advice to the judicial disciplinary authority and performing other duties assigned by the judicial disciplinary authority. *See* Rule 5.

Complaint: information in any form from any source received by the Committee on Judicial Discipline that alleges or from which a reasonable inference can be drawn that a judge committed misconduct or is incapacitated. If there is no written complaint from another person, disciplinary counsel's written statement of the allegations constitutes the complaint.

Deferred Discipline Agreement: a confidential agreement between the judge and the Committee on Judicial Discipline for the judge to undergo treatment, participate in education programs or take other corrective action. It is only available as a response to misconduct that is minor and can be addressed through treatment or a rehabilitation program. A deferred discipline agreement can only be entered into prior to the filing and service of formal charges.

Disciplinary Counsel: the lawyer in charge of screening and investigating complaints, prosecuting formal charges and performing other duties assigned by the Committee on Judicial Discipline or the Special Court. *See* Rule 4.

Formal Charges: the document that charges the judge with specific acts of misconduct or with a specific incapacity.

Special Court: the adjudicatory body of the judicial disciplinary system appointed by the Supreme Court of Guam that conducts hearings on formal charges. *See* Rule 3.2.

Hearing: the public proceeding at which the issues of law and fact raised by the formal charges and answer are tried. *See* Rule 24.

Incapacity: a mental or physical condition that adversely affects a judge's ability to perform judicial functions. Incapacity is distinguished from a disability that does not adversely affect a judge's performance of judicial functions.

Incapacity Inactive Status: non-disciplinary involuntary retirement or removal of a judge from judicial office, with or without pay or retirement benefits, because of mental or physical inability to perform judicial functions.

Interim Suspension: temporary removal from office pending a final determination in any proceeding under these rules. *See* Rule 15.

Investigation: an inquiry into allegations of misconduct, including a search for and examination of evidence concerning the allegations, divided into two stages: a preliminary investigation conducted by disciplinary counsel after the receipt of a complaint and a full investigation conducted after approval by the Committee on Judicial Discipline. *See* Rule 17.

Committee on Judicial Discipline: the investigatory body of the judicial disciplinary system that determines whether full investigations will be conducted and whether formal charges will be filed. *See* Rule 3.1.

Judge: anyone, whether or not a lawyer, who is an officer of a judicial system, and who is eligible to perform judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of these Rules. A justice of the Supreme Court of Guam is a judge within the meaning of these Rules.

Misconduct: any conduct by a judge constituting grounds for discipline. *See* Rule 6(A).

Private Admonition: a non-public sanction imposed on a judge by Committee on Judicial Discipline with the consent of the judge. *See* Rule 6(B)(6). A private admonition cannot be imposed after the filing and service of formal charges. Only in cases of minor misconduct, when there is little or no injury to the public, the legal system or the profession, should a private admonition be imposed.

Proceedings: all steps in the discipline and incapacity system set forth in these rules.

Public Members: members of the Committee on Judicial Discipline and the Special Court who are neither lawyers nor judges.

Public Reprimand: a reprimand by the Supreme Court of Guam in the form of a written decision which shall be imposed in person or served upon the respondent by certified mail.

Reasonable Cause: a reasonable ground for belief in the existence of facts warranting the filing of formal charges for discipline or a petition for transfer to incapacity inactive status.

Record: all documents filed in the case beginning with the formal charges. The record includes a transcript of the hearing on the formal charges only if a transcript is requested by the

respondent, disciplinary counsel or a member of the Special Court, Committee on Judicial Discipline or the Supreme Court of Guam.

Respondent: a judge or former judge against whom formal charges have been filed.

Screening: examination of a complaint or other information coming to the attention of disciplinary counsel to determine whether the Committee on Judicial Discipline has jurisdiction. *See* Rule 17.

RULE 1. DISCIPLINARY AUTHORITY

The disciplinary authority of the Committee on Judicial Discipline and the Special Court extends to every judge.

RULE 2.1 THE COMMITTEE ON JUDICIAL DISCIPLINE

(A) **Established**. There is a special committee of the Guam Judicial Council called the Committee on Judicial Discipline.

(B) **Purpose**. The Committee on Judicial Discipline shall administer the investigatory function of the judicial discipline and incapacity system.

(C) **Jurisdiction.**

(1) **Judges**. The Committee on Judicial Discipline has jurisdiction over judges regarding allegations that misconduct occurred during service as a judge and regarding allegations of incapacity during service as a judge.

(2) **Former Judges**. The Committee on Judicial Discipline has continuing jurisdiction over former judges regarding allegations that misconduct occurred during service as a judge if a complaint is made within one year following service as a judge.

(3) The lawyer disciplinary authority shall have exclusive jurisdiction over judges regarding allegations that misconduct occurred before service as a judge. The lawyer disciplinary authority shall have exclusive jurisdiction over former judges regarding allegations that misconduct occurred following service as a judge.

(D) **Appointment of Members**. The Committee on Judicial Discipline shall have 6 members who shall be appointed by the Guam Judicial Council. Two members shall be current or former judges of the Superior Court of Guam or the Superior Court or Supreme Court of the CNMI, current or former judges or justices of the federal courts, or former justices of the Supreme Court of Guam; 2 members shall be lawyers who are residents of Guam and admitted to

practice in any court of Guam and of good standing, residents of Guam who are inactive members of the Guam bar in good standing, or lawyers who are residents of the CNMI and admitted to practice in any court of the CNMI and of good standing; and 2 members who are residents of Guam and who are neither lawyers nor judges shall be public members.

(E) **Terms**. Members of the Committee on Judicial Discipline shall serve for a term of 4 years and shall be eligible for reappointment. Initial appointments shall be made so that the terms of one member in each of the three categories shall expire every 2 years. Members may continue to serve, notwithstanding the technical expiration of a term, until such time as they are reappointed or a successor is appointed. The members of the Committee on Judicial Discipline shall not be subject to removal except for cause. Three successive unexcused absences shall be deemed cause for removal. Removal shall be by the Guam Judicial Council.

(F) **Vacancies**. A vacancy shall occur when a member of the Committee on Judicial Discipline ceases to be eligible to represent the category from which the member was appointed, or becomes unable to serve for any reason. An appointment to fill a vacancy for the duration of an unexpired term shall be made by the Guam Judicial Council. If a vacancy is not filled by the Guam Judicial Council within 60 days from the date on which the Committee on Judicial Discipline notified the Guam Judicial Council of the vacancy, the Chief Justice of Guam shall appoint from the category to be represented a member within the next ten 10 days. That member will serve for the duration of the unexpired term.

(G) **Funding**. The Committee on Judicial Discipline shall prepare its own budget and submit it to the Guam Judicial Council.

(Rule 2.1(D) amended by Promulgation Order 06-002-002)
(Rule 2.1(D) & 2.1(E) amended by Promulgation Order 06-002-003)

RULE 2.2 THE SPECIAL COURT

(A) **Established**. There is a court impaneled and constituted by the Supreme Court of Guam called the Special Court.

(B) **Purpose**. The Special Court shall administer the adjudicatory function of the judicial discipline and incapacity system.

(C) **Jurisdiction**.

(1) **Judges**. The Special Court has jurisdiction over judges regarding allegations that misconduct occurred during service as a judge and regarding allegations of incapacity during service as a judge.

(2) **Former Judges**. The Special Court has continuing jurisdiction over former judges regarding allegations that misconduct occurred during service as a judge if a complaint is made within one year following service as a judge.

(D) **Appointment of Members**. The Special Court shall have 3 members who shall be appointed by the Chief Justice of Guam. One member shall be current or former judge of the Superior Court of Guam or the Superior Court or Supreme Court of the CNMI, a current or former judge or justice of the federal courts, or a former justice of the Supreme Court of Guam; 1 member shall be a resident of Guam who is a lawyer admitted to practice in any court of Guam and of good standing, a resident of Guam who is an inactive member of the Guam bar in good standing or a lawyer who is a resident of the CNMI and admitted to practice in any court of the CNMI and in good standing; and 1 member who is neither a neither a lawyer nor a judge who shall be a public member.

(E) **Terms**. Members of the Special Court shall serve for a term of 4 years and shall be eligible for reappointment. Members may continue to serve, notwithstanding the technical expiration of a term, until such time as they are reappointed or a successor is appointed. The members of the Special Court shall not be subject to removal except for cause. Three successive unexcused absences shall be deemed cause for removal. Removal shall be by the Guam Judicial Council.

(F) **Vacancies**. A vacancy shall occur when a member of the Special Court becomes unable to serve for any reason. An appointment to fill a vacancy for the duration of an unexpired term shall be made by the Chief Justice of Guam. If a vacancy is not filled by the Chief Justice of Guam within 60 days from the date on which the Special Court notified the Chief Justice of the vacancy, the Guam Judicial Council shall appoint from the category to be represented a member within the next 10 days. That member will serve for the duration of the unexpired term.

(Rule 2.2(D) amended by Promulgation Order 06-002-002)
(Rule 2.2(D) & 2.2(E) amended by Promulgation Order 06-002-003)

RULE 3.1 ORGANIZATION AND AUTHORITY OF THE COMMITTEE

(A) **Meetings**. The Committee on Judicial Discipline shall meet periodically as determined by its members to consider administrative matters. Meetings of the Committee on Judicial Discipline other than periodic meetings may be called by the chair upon the chair's own motion and shall be called by the chair upon the written request of three members of the Committee on Judicial Discipline.

(B) **Officers**. The Committee on Judicial Discipline shall elect one of its members to serve as chair and another to serve as vice-chair for such terms as the Committee on Judicial Discipline shall determine. The vice-chair shall perform the duties of the chair whenever the chair is absent or unable to act.

(C) **Quorum**. Four members of the full Committee on Judicial Discipline shall constitute a quorum for the transaction of business. Alternate members should be appointed where necessary to fulfill the quorum requirements. Alternate member(s) shall be appointed by the Guam Judicial Council.

(D) **Expenses**. Members shall be reimbursed for reasonable and necessary expenses incurred pursuant to their duties.

(E) **Powers and Duties**.

(1) The Committee on Judicial Discipline, with the concurrence of the Special Court, shall have the duty and authority to:

(a) adopt its own rules of procedure for discipline and incapacity proceedings subject to the approval of the Supreme Court of Guam of Guam; and

(b) propose amendments to the code of judicial conduct and these Rules for Judicial Disciplinary Enforcement to the Supreme Court of Guam.

(2) In addition to the duties assigned to disciplinary counsel and commission counsel in Rules 4 and 5, the Committee on Judicial Discipline may delegate to either the disciplinary counsel or commission counsel the duty and authority to:

(a) maintain the Committee on Judicial Discipline's records;

(b) maintain statistics concerning the operation of the Committee on Judicial Discipline and make them available to the Committee and the Supreme Court of Guam;

(c) prepare the commission's budget for its approval and administer the funds;

(d) notify the appropriate appointing authority of vacancies on the Committee on Judicial Discipline;

(e) prepare an annual report of the Committee on Judicial Discipline's activities for presentation to the Supreme Court of Guam and the public; and

(f) inform the public of the existence and operation of the judicial discipline system, including the Committee on Judicial

Discipline's address and telephone number and the disposition of each matter in which public discipline is imposed.

(3) The Committee on Judicial Discipline shall have the duty and authority to:

(a) review the recommendations of disciplinary counsel after preliminary investigation and either authorize a full investigation or dismiss the complaint; and

(b) review the recommendations of disciplinary counsel after full investigation and approve, disapprove or modify the recommendations as provided in Rule 17(D)(2).

(4) The Committee on Judicial Discipline may issue advisory opinions at the request of a judge.

(F) **Recusal**. A member of the Committee on Judicial Discipline shall recuse himself or herself in any matter in which recusal would be required of a judge under the Code of Judicial Conduct or the laws of Guam.

(G) **Complaints Against Members of the Committee on Judicial Discipline**. If a complaint is filed against a member of the Committee on Judicial Discipline who is a judge subject to the jurisdiction of the Committee, the Committee member against whom the complaint has been filed shall not participate in the investigation or adjudication of the matter.

RULE 3.2 ORGANIZATION AND AUTHORITY OF THE SPECIAL COURT

(A) **Officers**. The Special Court shall elect one of its members to serve as chair and another to serve as vice-chair for such terms as the Special Court shall determine.

(B) **Quorum**. Three members of the Special Court shall constitute a quorum for the transaction of business. Alternate members should be appointed where necessary to fulfill the quorum and category requirements.

(C) **Expenses**. Members shall be reimbursed for reasonable and necessary expenses incurred pursuant to their duties.

(D) **Powers and Duties**.

(1) The Special Court, with the concurrence of the Committee on Judicial Discipline, shall have the duty and authority to:

(a) adopt its own rules of procedure for discipline and incapacity proceedings subject to the approval of the Supreme Court of Guam;

(b) propose amendments to the code of judicial conduct and these Rules for Judicial Disciplinary Enforcement to the Supreme Court of Guam;

(2) In addition to the duties assigned to disciplinary counsel and commission counsel in Rules 4 and 5, the Special Court may delegate to either the disciplinary counsel or commission counsel the duty and authority to:

(a) maintain the Special Court's records;

(b) maintain statistics concerning the operation of the Special Court and make them available to the Special Court and the Supreme Court of Guam;

(c) notify the appropriate appointing authority of vacancies on the Special Court;

(d) prepare an annual report of the Special Court's activities for presentation to the Supreme Court of Guam and the public; and

(e) inform the public of the existence and operation of the judicial discipline system, including the Special Court's address and telephone number and the disposition of each matter in which public discipline is imposed.

(3) The Special Court shall have the duty and authority to:

(a) rule on pre-hearing motions, conduct hearings on formal charges and make findings, conclusions and recommendations to the Supreme Court of Guam for sanctions or dismiss the case, pursuant to Rule 24.

(F) **Recusal**. A member of the Special Court shall recuse himself or herself in any matter in which recusal would be required of a judge under the code of judicial conduct or the laws of Guam.

(G) **Complaints Against Members of the Special Court**. If a complaint is filed against a member of the Special Court who is a judge subject to the jurisdiction of the disciplinary authority of the judicial branch of Guam, the member against whom the complaint has been filed shall not participate in the adjudication of the matter.

RULE 4. DISCIPLINARY COUNSEL

(A) **Appointment**. The Prosecuting Counsel for the Guam Bar Ethics Committee shall serve as the disciplinary counsel described herein.

(B) **Powers and Duties**. Disciplinary counsel shall have the authority and duty to:

(1) receive and screen complaints, refer complainants to other agencies when appropriate, conduct preliminary investigations, recommend to the Committee on Judicial Discipline, and upon authorization, conduct full investigations, notify complainants about the status and disposition of their complaints, make recommendations to the Committee on Judicial Discipline on the disposition of complaints after full investigation, file formal charges when directed to do so by the Committee on Judicial Discipline, prosecute formal charges and file notices of exceptions to the findings, conclusions, recommendations for sanctions or orders of dismissal of the Special Court;

(2) maintain permanent records of the operations of disciplinary counsel's office, including receipt of complaints, screening, investigation and filing of formal charges in judicial discipline and incapacity matters, subject to the requirements of Rule 18;

(3) compile statistics to aid in the administration of the system, including but not limited to a log of all complaints received, investigative files and statistical summaries of docket processing and case dispositions;

(4) prepare disciplinary counsel's budget for submission to the Committee on Judicial Discipline and administer the funds;

(5) supervise other members of disciplinary counsel's staff;

(6) employ private investigators or experts as necessary to investigate and process matters before the Committee on Judicial Discipline, the Special Court, and the Supreme Court of Guam; and

(7) perform other duties at the direction of the Committee on Judicial Discipline and the Special Court.

RULE 5. COMMISSION COUNSEL

(A) **Appointment**. The Special Court may appoint a commission counsel to assist the Special Court in the discharge of its duties.

(B) **Powers and Duties**. The Special Court may delegate functions to the commission counsel, including but not limited to the duty and authority to:

(1) advise the Special Court during its deliberations and draft decisions, orders, reports and other documents on behalf of the Special Court;

(2) employ and supervise other staff necessary to the performance of the Special Court's duties; and

(3) perform other duties at the direction of the Special Court.

RULE 6. GROUNDS FOR DISCIPLINE; SANCTIONS IMPOSED; DEFERRED DISCIPLINE

(A) **Grounds for Discipline**. The grounds for discipline are:

(1) any conduct constituting a violation of the 1990 ABA Model Code of Judicial Conduct as amended in 1997, 1999 and 2003, the Guam Rules of Professional Conduct or

(2) a willful violation of a valid order of the Supreme Court of Guam, Committee on Judicial Discipline or the Special Court, in a proceeding under these Rules, a willful failure to appear personally as directed, or a knowing failure to respond to a lawful demand from a disciplinary authority.

(B) **Sanctions**. These sanctions may be imposed upon a respondent who has committed misconduct:

(1) removal by the Supreme Court of Guam;

(2) suspension by the Supreme Court of Guam;

(3) imposition by the Supreme Court of Guam of limitations on the performance of judicial duties;

(4) imposition of lawyer discipline by the Supreme Court of Guam;

(5) public reprimand by the Supreme Court of Guam;

(6) private admonition by the Committee on Judicial Discipline with the consent of the judge, provided that a private admonition may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of the sanction to be imposed, pursuant to Rule 17(D)(1); and

(7) deferred discipline agreement.

(Rule 6(A)(1) amended by Promulgation Order 06-002-003)

RULE 7. PROOF

Charges of misconduct and grounds for transfer to and from incapacity inactive status shall be established by clear and convincing evidence. The burden of proof in proceedings seeking transfer from incapacity inactive status is on the judge.

RULE 8. CIVIL RULES APPLICABLE

Except as otherwise provided in these Rules, the rules of evidence applicable to non-jury civil proceedings and the rules of civil procedure apply in judicial discipline and incapacity cases.

RULE 9. RIGHT TO COUNSEL

The judge shall be entitled to retain counsel and to have the assistance of counsel at every stage of these proceedings.

RULE 10. *EX PARTE* CONTACTS

Members of the Committee on Judicial Discipline, the Special Court, hearing officers and commission counsel shall not engage in *ex parte* communications regarding a case, except that before making a determination to file formal charges in a case pursuant to Rule 17(D)(2), members of the Committee on Judicial Discipline may communicate with disciplinary counsel as required to perform their duties in accordance with these Rules.

RULE 11. CONFIDENTIALITY

(A) **Proceedings.**

(1) Before the filing and service of formal charges, all proceedings shall be confidential.

(2) After the filing and service of formal charges, all proceedings shall be public except incapacity proceedings as provided in Rule 27(B).

(B) **Information.**

(1) Before the filing and service of formal charges, all information relating to a complaint that has not been dismissed shall be held confidential by the Committee on Judicial Discipline and disciplinary counsel and their staffs, except that the Committee may disclose information:

(a) when it is determined that there is a need to notify another person to protect that person or to notify a government

agency in order to protect the public or the administration of justice; or

(b) upon waiver in writing by the judge.

(3) All information relating to a complaint that has been dismissed without formal charges being filed shall be held confidential by the Committee on Judicial Discipline and disciplinary counsel and their staffs.

(4) Disciplinary counsel's work product, Committee deliberations and records of the Committee's deliberations shall not be disclosed.

(5) Commission counsel's work product, Special Court deliberations and records of the Special Court's deliberations shall not be disclosed.

(C) **Consequences of Disclosure**. Any person, including any member or staff of the Committee on Judicial Discipline, the Special Court, Commission Counsel or Disciplinary Counsel, including the individual making the complaint, who divulges information concerning the proceedings prior to the filing and service of formal charges, or if the investigation discloses that formal charges should not be issued by the Committee on Judicial Discipline, any member or staff or person described above who divulges at any time any information concerning the original charge or divulges the contents or discloses any matter except as permitted by these Rules, shall be guilty of a misdemeanor.

RULE 12. IMMUNITY FROM CIVIL SUITS

Communications to the Committee on Judicial Discipline, the Special Court, disciplinary counsel, commission counsel, or their staffs relating to misconduct or incapacity and testimony given in the proceedings shall be absolutely privileged, and no civil lawsuit predicated thereon may be instituted against any complainant or witness. Members of the Committee on Judicial Discipline, disciplinary counsel and staff, the Special Court, and commission counsel and staff shall be absolutely immune from civil suit for all conduct in the course of their official duties.

RULE 13. SERVICE

Service upon the judge of formal charges in any disciplinary or incapacity proceeding or of notice that a complaint has been received shall be made by personal service upon the judge or judge's counsel by any person authorized by the chair of the Committee on Judicial Discipline or by registered or certified mail to the judge's address of record. Delivery of all other papers or notices shall be made in accordance with the Guam Rules of Civil Procedure.

RULE 14. SUBPOENA POWER

(A) **Oaths**. Oaths and affirmations may be administered by any member of the Committee on Judicial Discipline, disciplinary counsel in matters under full investigation or any other person authorized by law.

(B) **Subpoenas for Investigation**. After a full investigation is authorized pursuant to Rule 17(B)(3), disciplinary counsel may issue subpoena to compel the attendance of the judge or witnesses and the production of pertinent books, papers and documents for purposes of investigation. The Chairperson of the Committee on Judicial Discipline may issue subpoenas for specific witnesses or documents at the request of a judge under investigation.

(C) **Subpoenas for Deposition or Hearing**. After formal charges are filed, disciplinary counsel and respondent may issue subpoena to compel the attendance of witnesses and the production of pertinent books, papers and documents at a deposition or hearing held under these rules.

(D) **Enforcement of Subpoenas**. Upon proper application, the Superior Court of Guam, in a sealed proceeding may enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(E) **Quashing Subpoena**. Any attack on the validity of a subpoena shall be heard and determined by the Committee on Judicial Discipline or the Special Court before which the matter is pending or by the Supreme Court of Guam wherein enforcement of the subpoena is being sought. Any resulting order is not appealable prior to entry of a final order in the proceeding.

(F) **Witnesses and Fees**. Subpoena fees and costs shall be the same as those provided for in proceedings in the Superior Court of Guam.

RULE 15. INTERIM SUSPENSION

(A) **Criminal Prosecution**. Without the necessity of disciplinary action, the Supreme Court of Guam may immediately place a judge on interim suspension, with pay, upon notice of the filing of an indictment, information or complaint in any jurisdiction charging the judge with a "serious crime".

(B) **Definition of "Serious Crime."** A "serious crime" is: (1) any felony or (2) a lesser crime that reflects adversely on the judge's honesty, trustworthiness or fitness as a judge in other respects; or (3) any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft or an attempt, conspiracy or solicitation of another to commit a "serious crime."

(C) **Other Misconduct**. Upon receipt of sufficient evidence demonstrating that a judge poses a substantial threat of serious harm to the public or to the administration of justice,

the Supreme Court of Guam may suspend the judge, with or without pay, pending a final determination in any proceeding under these Rules.

(D) **Motion for Reconsideration.** A suspended judge may apply to the Supreme Court of Guam for reconsideration of the order.

(E) **Effect on Disciplinary Action.** Interim suspension of a judge shall not preclude action by the disciplinary authority on the same conduct that was the basis for the criminal charge. Acquittal, dismissal or conviction of the criminal charge shall not preclude proceedings by the disciplinary authority on the conduct that was the basis for the charge.

RULE 16. NOTIFICATION TO COMPLAINANT

Disciplinary counsel shall provide written acknowledgment of every complaint, if the complainant is known, and notify the complainant in writing of the final disposition of a proceeding under these Rules. Notification in writing shall be mailed within 10 days of the order disposing of the proceeding.

RULE 17. SCREENING AND INVESTIGATION

(A) **Screening.** Disciplinary counsel shall evaluate all information coming to disciplinary counsel's attention by complaint or from other sources that alleges judicial misconduct or incapacity. If the information would not constitute misconduct or incapacity if true, disciplinary counsel shall dismiss the complaint, subject to review by the Committee on Judicial Discipline. If the information raises allegations that would constitute judicial misconduct or incapacity if true, disciplinary counsel shall conduct a preliminary investigation.

(B) **Preliminary Investigation.**

(1) Disciplinary counsel may conduct interviews and examine evidence to determine whether grounds exist to believe the allegations of complaints, provided that no subpoena shall issue to obtain testimony or evidence until the Committee on Judicial Discipline authorizes a full investigation pursuant to Rule 17(C).

(2) When disciplinary counsel believes there is evidence supporting the allegations against a judge, he or she shall recommend to the Committee on Judicial Discipline that the Committee authorize a full investigation. Disciplinary counsel may recommend a full investigation when there are grounds to believe that evidence supporting the allegations could be obtained by subpoena or further

investigation. In all other cases, disciplinary counsel shall recommend that the matter be dismissed.

(3) The Committee on Judicial Discipline shall review disciplinary counsel's recommendations and either dismiss the complaint or authorize a full investigation.

(C) **Full Investigation.**

(1) Within 10 days after the Committee on Judicial Discipline authorizes a full investigation, disciplinary counsel shall give the following notice to the judge:

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

(b) the judge's duty to respond pursuant to Rule 17(C)(3);

(c) the judge's opportunity to meet with disciplinary counsel pursuant to Rule 17(C)(4); and

(d) the name of the complainant unless the Committee on Judicial Discipline determines that there is good cause to withhold that information taking into consideration factors, including but not limited to the materiality of the information possessed by the complainant and the position the complainant occupies in relation to the judge.

(2) The Committee on Judicial Discipline may defer the giving of notice but, when notice is deferred, disciplinary counsel must give notice to the judge before making a recommendation as to a disposition.

(3) Disciplinary counsel may request that the judge file a written response within 20 days after service of the notice under Rule 17(C)(1).

(4) Before the Committee on Judicial Discipline determines its disposition of the complaint under Rule 17(D), either disciplinary counsel or the judge may request an appearance before disciplinary counsel to respond to questions. The appearance shall be on the record. If the judge requests an appearance before disciplinary counsel, such request shall be in writing served upon disciplinary counsel within thirty days of the judge's filing with disciplinary counsel of their written response to the notice of full investigation pursuant to Rule 17(C)(3), or within thirty days of the deadline for such

filing, whichever is later. If disciplinary counsel requests the judge's appearance, disciplinary counsel must give the judge 20 days notice and the testimony shall be sworn.

(5) Disciplinary counsel is authorized to issue subpoenas pursuant to Rule 14(B) once a full investigation has been approved. Disciplinary counsel shall conduct all investigations.

(D) **Disposition After Full Investigation**.

(1) Upon the conclusion of a full investigation, disciplinary counsel may recommend to the Committee on Judicial Discipline:

(a) dismissal;

(b) private admonition or deferred discipline agreement;

(c) the filing of formal charges;

(d) the filing of a petition for transfer to incapacity inactive status;

(e) referral to an appropriate agency; or

(f) a stay.

(2) The Committee may adopt, reject or modify the recommendations of disciplinary counsel. If the Committee finds a violation pursuant to Rule 6 for which the imposition of discipline is not warranted it may dismiss. If the Committee finds that there is reasonable cause to believe the judge committed misconduct,

(a) it may propose a private admonition or deferred discipline agreement to the respondent and if the respondent consents, it shall admonish the respondent or implement the deferred disciplinary agreement; in addition, it may assess costs against the respondent as a condition of the private admonition or deferred disciplinary agreement;

(b) if the respondent does not consent to the admonishment or the deferred discipline, the investigative panel may direct disciplinary counsel either to file formal charges or dismiss the complaint; or

(c) it may direct disciplinary counsel to file formal charges.

(E) **Immunity from Criminal Prosecution**. Whenever a witness invokes his or her privilege against self-incrimination as a basis for refusing to answer a question or to produce other evidence that may be relevant to a discipline or incapacity proceeding, disciplinary counsel may apply to the appropriate court for a grant of immunity from criminal prosecution and shall give notice of the application to the prosecuting authority. If the court grants the order, the witness may not refuse to comply with the order on the basis of the witness's privilege against self-incrimination, but no testimony or other evidence compelled under such an order shall be used against the witness in any criminal case. The witness may be prosecuted for perjury or contempt committed in answering or failing to answer in accordance with the order.

(Rule 17(C)(4) amended by Promulgation Order 06-002-003)

RULE 18. USE OF ALLEGATIONS FROM DISMISSED CASES

If a complaint has been dismissed, the allegations made in that complaint shall not be used for any purpose in any judicial or lawyer disciplinary proceeding against the judge. If additional information becomes known to disciplinary counsel regarding a complaint that has been dismissed before the filing of formal charges, the allegations may be reinvestigated with permission of the Committee on Judicial Discipline.

RULE 19.1 FORMAL CHARGES

The formal charges shall give fair and adequate notice of the nature of the alleged misconduct or incapacity. Disciplinary counsel shall file the formal charges with the Special Court. Disciplinary counsel shall cause a copy of the formal charges to be served upon the respondent or respondent's counsel pursuant to Rule 13 and shall file proof of service with the Special Court.

(Rule 19.1 renumbered from Rule 19 by Promulgation Order 06-002-003)

RULE 19.2 METHOD OF FILING

The clerk's office of the Supreme Court of Guam shall accept all filings on behalf of the Special Court.

(Rule 19.2 added by Promulgation Order 06-002-003)

RULE 20. ANSWER

(A) **Time**. The respondent shall file a written answer with the Special Court and serve a copy on disciplinary counsel within 20 days after service of the formal charges, unless the time is extended by the Special Court.

(B) **Waiver of Privilege**. The raising of a mental or physical condition as a defense constitutes a waiver of medical privilege pursuant to Rule 27(D)(4).

RULE 21. FAILURE TO ANSWER/FAILURE TO APPEAR

(A) **Failure to Answer**. Failure to answer the formal charges shall constitute an admission of the factual allegations.

(B) **Failure to Appear**. If the respondent should fail to appear when specifically so ordered by the Special Court or the Supreme Court of Guam, the respondent shall be deemed to have admitted the factual allegations which were to be the subject of such appearance and to have conceded the merits of any motion or recommendations to be considered at such appearance. Absent good cause, the Special Court or Supreme Court shall not continue or delay proceedings because of the respondent's failure to appear.

(C) Nothing in this Rule shall be construed to relieve disciplinary counsel from the burden of proof or persuasion in establishing a prima facie case of misconduct.

RULE 22. DISCOVERY

(A) **Witnesses**. Within 20 days of the filing of an answer, disciplinary counsel and respondent shall exchange the names and addresses of all persons known to have knowledge of the relevant facts. Disciplinary counsel or the respondent may withhold such information only with permission of the Special Court, which can authorize withholding of the information only for good cause shown, taking into consideration the materiality of the information possessed by the person known to have knowledge of the relevant facts and the position such person occupies in relation to the judge. The Special Court's review of the withholding request is to be in camera, but disciplinary counsel must advise respondent of the request without disclosing the subject of the request. The Special Court shall set a date not less than thirty [30] days prior to the completion of discovery for the exchange of the names and addresses of all witnesses the parties intend to call at the hearing. Disciplinary counsel and respondent may take depositions only of witnesses to be called at the hearing and other witnesses who are unavailable to testify. Depositions of other persons may be taken only with permission of the Special Court and only for good cause shown.

(B) **Other Evidence**. Disciplinary counsel and respondent shall exchange:

(1) non-privileged evidence relevant to the formal charges, documents to be presented at the hearing, and witness statements of those who will be called at the hearing; and

(2) other material only upon good cause shown to the Special Court.

(C) **Exculpatory Evidence**. Disciplinary counsel shall provide respondent with exculpatory evidence relevant to the formal charges.

(D) **Duty of Supplementation**. Both parties have a continuing duty to supplement information required to be exchanged under this Rule.

(E) **Completion of Discovery**. Unless extended by the Special Court for good cause shown, all discovery shall be completed within 60 days of the filing of the answer.

(F) **Failure to Disclose**. Taking into consideration the reasons for the failure to disclose, the prejudice to the party calling the witness if the witness is not called and the extent to which the opposing party will be prejudiced by the lack of advance disclosure, the Special Court may preclude either party from calling a witness at the hearing if the party has not provided the opposing party with the witness's name and address, or any statements taken from the witness.

(G) **Resolution of Disputes**. Disputes concerning discovery shall be determined by the Special Court. The decisions of the Special Court concerning discovery may not be appealed before the entry of the final order.

(H) **Civil Rules Not Applicable**. Proceedings under these Rules are not subject to the Guam Rules of Civil Procedure regarding discovery except those rules relating to depositions and subpoenas.

RULE 23. DISCIPLINE BY CONSENT

(A) **Approval**. At any time after the filing of formal charges and before final disposition, the respondent may agree with disciplinary counsel that the respondent shall admit to any or all of the formal charges in exchange for a stated sanction. The agreement shall be submitted to the Special Court, which shall either:

(1) reject the agreement and generally state the reasons therefor; or

(2) submit the agreement to the Supreme Court of Guam for approval.

(B) **Rejection of Sanction**. If the stated sanction is rejected by the Special Court or the Supreme Court, the admission shall be withdrawn and cannot be used against the respondent in any proceedings.

(C) **Affidavit of Consent**. A respondent who consents to a stated sanction shall sign an affidavit stating that:

(1) the respondent consents to the sanction;

(2) the consent is freely and voluntarily rendered;

(3) there is presently pending a proceeding involving allegations of misconduct; and

(4) the facts set forth in the affidavit are true.

(D) **Order of Discipline**. The Special Court shall file the affidavit with the Supreme Court. The affidavit shall remain confidential until it is accepted by the Supreme Court. The Supreme Court shall either reject the agreement generally stating the reasons therefor or enter the order disciplining the respondent. The final order of discipline shall be based upon the formal charges and the conditional admission.

RULE 24. HEARING

(A) **Scheduling**. Upon receipt of the respondent's answer or upon expiration of the time to answer, the Special Court shall schedule a public hearing and notify disciplinary counsel and respondent of the date, time and place of the hearing.

(B) **Hearing Panel**. The hearing shall be conducted by the Special Court.

(C) **Conduct of Hearing**.

(1) All testimony shall be under oath.

(2) Disciplinary counsel shall present evidence on formal charges.

(3) Disciplinary counsel may call the respondent as a witness.

(4) Both parties shall be permitted to present evidence and produce and cross-examine witnesses.

(5) The hearing shall be recorded verbatim. Whenever a transcript is requested by respondent, disciplinary counsel, a member of the Special Court, or the Supreme Court, a transcript of the hearing or that part of the hearing requested shall be produced promptly and shall be provided to the respondent without cost.

(6) Disciplinary counsel and the respondent may submit proposed findings of fact, conclusions of law, and recommendations for sanction or order of dismissal to the Special Court.

(7) If a hearing officer is used, the findings are to be submitted to the Special Court.

(D) **Dismissal or Recommendation for Sanction**. The Special Court shall either dismiss the case or recommend a sanction to the Supreme Court of Guam. The Special Court shall decide a matter only upon the concurrence of a majority of its members.

(E) **Submission of the Report**. Within 30 days after the hearing or after the filing of the transcript if one was requested, the Special Court shall file with the Supreme Court the record of the proceeding and a report setting forth a written summary, proposed findings of fact, conclusions of law, any minority opinions and the order of dismissal or recommendation for

sanction. The Special Court shall at the same time serve the report upon the respondent and disciplinary counsel.

(F) **Notice of Exceptions**. Within 20 days of receipt of the Special Court's report, the respondent and disciplinary counsel may file with the Supreme Court notice of exceptions to the findings, conclusions or recommendations for sanction or order of dismissal of the Special Court and the request for any further transcripts. The failure to file notice of exceptions constitutes acceptance of the findings of fact, conclusions of law and order of dismissal or recommendation for sanction.

(G) **Notice to the Guam Bar Ethics Committee**. Whenever the Special Court recommends the suspension or removal of a respondent, it shall serve a copy of its report on the Guam Bar Ethics Committee at the same time the report is filed with the Supreme Court. The Guam Bar Ethics Committee may file with the Supreme Court recommendations for imposing lawyer disciplinary sanctions on the respondent. Recommendations from the Guam Bar Ethics Committee shall be filed in a brief in accordance with Rule 25(B).

RULE 25. REVIEW BY SUPREME COURT OF GUAM

(A) **Expedited Consideration.**

(1) The Clerk of the Supreme Court shall docket for expedited consideration any case in which the Special Court recommended a sanction or a notice of exceptions was filed.

(2) In cases the Special Court has dismissed to which no exceptions were filed, the dismissal shall be final if the Supreme Court has not ordered a review within 15 days.

(B) **Brief and Supplementary Filings.**

(1) Disciplinary counsel, the respondent and the Guam Bar Ethics Committee, if it is entitled to file pursuant to Rule 24(G), shall file briefs as follows: upon the filing of the record, the Clerk of Court shall issue a briefing schedule granting the excepting party(ies) 30 days to file its opening brief. Opposing party(ies) shall have 20 days to file the opposition brief. The excepting party(ies) shall have 7 days to file any reply.

(2) If the Supreme Court desires an expansion of the record or additional findings, it shall remand the case to the Special Court with appropriate directions, retain jurisdiction and withhold action pending receipt of the additional filing.

(3) The Supreme Court may order additional briefs or oral arguments as to the entire case or specified issues.

(C) **Stay for Further Proceedings.** If during review by the Supreme Court the Special Court receives another complaint against the respondent, the disciplinary counsel shall advise the Supreme Court. The Supreme Court may stay its review pending the Special Court's determination of the second complaint. The Supreme Court may impose a single sanction covering all recommendations for discipline from the Special Court against a respondent.

(D) **Decision.**

(1) The Supreme Court shall file a written decision dismissing the case or imposing a sanction. All decisions issued by the Supreme Court shall be published for the guidance of other judges and for public information.

(2) The Supreme Court may accept, reject or modify in whole or in part the findings and conclusions of the Special Court.

(3) The Supreme Court may assess costs against the respondent if it finds the respondent committed misconduct.

RULE 26. COMPLAINT AGAINST A MEMBER OF THE SUPREME COURT OF GUAM

(A) **Proceedings Generally.** A complaint against a member of Supreme Court of Guam shall proceed in the same manner as a complaint against any other judge except as set forth in this Rule.

(B) **Special Supreme Court.** Upon either a motion by disciplinary counsel or the Supreme Court of Guam's own motion for interim suspension of a member of the Supreme Court pursuant to Rule 15(A) or a finding of reasonable cause to believe misconduct was committed by a member of the Supreme Court of Guam pursuant to Rule 17(B)(2), a Special Supreme Court shall be constituted. The Special Supreme Court shall consist of a number of judges equal to the number of justices of the Supreme Court of Guam. Judges of the Special Supreme Court shall meet the same qualifications as a regularly appointed Justice of the Supreme Court. Selection of the Judges of the Special Supreme Court shall be determined by the Clerk of the Supreme Court, by lot, from a list maintained by the Clerk of the Supreme Court of Guam of qualified and available persons.

(C) **Stipulated Dispositions.** Final review of a stipulation pursuant to Rule 23 shall be by the Committee on Judicial Discipline and the Special Court.

(D) **Final Disposition.** If neither the disciplinary counsel nor the respondent objects to the decision of the Special Court pursuant to Rule 24(D), the decision shall be final and the Special Supreme Court shall not review the matter. If either the disciplinary counsel or the respondent objects, the Special Court shall file its report and conclusions, any minority opinion and the record of the proceedings with the Special Supreme Court which shall review the matter pursuant to Rule 25.

RULE 27. CASES INVOLVING ALLEGATIONS OF MENTAL OR PHYSICAL INCAPACITY

(A) **Initiation of Incapacity Proceeding.** An incapacity proceeding can be initiated by complaint, by a claim of inability to defend in a disciplinary proceeding or by an order of involuntary commitment or adjudication of incompetency.

(B) **Proceedings to Determine Incapacity Generally.** All incapacity proceedings shall be conducted in accordance with the procedures for disciplinary proceedings, except:

(1) the purpose of the incapacity proceedings shall be to determine whether the judge suffers from a physical or mental condition that adversely affects the judge's ability to perform judicial functions;

(2) all of the proceedings shall be confidential;

(3) the Committee on Judicial Discipline may appoint a lawyer to represent the judge if the judge is without representation; and

(4) if the Supreme Court concludes that the judge is incapacitated to hold judicial office, it may enter any order appropriate to the circumstances, the nature of the incapacity and the probable length of the period of incapacity, including:

(a) retiring the judge;

(b) transferring the judge to judicial incapacity inactive status;

(c) if the Supreme Court concludes that the judge is incapacitated to practice law, transferring the judge to lawyer incapacity inactive status; and

(d) if a judicial disciplinary proceeding against the judge is pending and the Supreme Court concludes that the judge is incapacitated to defend, deferring the disciplinary proceeding, pursuant to Rule 27.D(2).

(C) **Involuntary Commitment or Adjudication of Incompetency.** If a judge has been judicially declared incompetent or is involuntarily committed on the grounds of incompetency or incapacity by a final judicial order after a judicial hearing, the Supreme Court, upon receipt of a certified copy of the order, shall enter an order immediately transferring the judge to both lawyer and judicial incapacity inactive status. A copy of the order shall be served, in the manner the Supreme Court shall direct, upon the judge, his or her guardian or the director of the institution to which the judge has been committed.

(D) **Inability to Properly Defend in a Disciplinary Proceeding.**

(1) If in the course of a disciplinary proceeding a judge alleges an inability to assist in the defense due to mental or physical incapacity, disciplinary counsel shall notify the Supreme Court. The Supreme Court shall immediately transfer the judge to lawyer and judicial incapacity inactive status pending a determination by the Supreme Court of the incapacity pursuant to Rule 27(B). A determination by the Committee on Judicial Discipline that the judge is able to assist in his or her own defense is interlocutory and may not be appealed before entry of a final order in the proceeding.

(2) If, pursuant to Rule 27(B), the Supreme Court determines the claim of inability to defend is valid, the disciplinary proceeding shall be deferred. Any investigation of the disciplinary complaint may continue. The judge shall be retained on lawyer and judicial incapacity inactive status until the Supreme Court grants a petition for reinstatement to active status as a lawyer or judge. If the Supreme Court considering the petition for reinstatement to active status determines that the petition shall be granted, the Supreme Court shall also determine the disposition of the interrupted disciplinary proceedings.

(3) If, pursuant to Rule 27(B), the Supreme Court determines that the claim of inability to defend is invalid but that the judge is incapacitated to hold judicial office, the disciplinary proceeding shall resume. The judge shall be retained on judicial incapacity inactive status.

(4) The raising of mental or physical condition as a defense to or in mitigation of formal charges constitutes a waiver of medical privilege.

(E) **Stipulated Disposition.**

(1) The Special Court shall designate one or more qualified medical, psychiatric or psychological experts to examine the judge prior to the hearing on the matter. The Special Court may designate an expert agreed upon by disciplinary counsel and the judge. The expert or experts shall report to the highest court and the parties.

(2) After receipt of the examination report, disciplinary counsel and the judge may agree upon proposed findings of fact, conclusions, and order. The stipulated disposition shall be submitted to the Special Court for a recommendation to the Supreme Court for approval or rejection. The final decision on the recommendation shall be made by the Supreme Court.

(3) If the Supreme Court accepts the stipulated disposition, the Supreme Court shall enter an order in accordance with its terms. If the stipulated disposition is rejected by the Supreme Court, it shall be withdrawn and cannot be used against the judge in any proceedings. If the Supreme Court rejects the stipulated disposition, the Supreme Court shall order that the hearing proceed.

(F) **Reinstatement from Incapacity Inactive Status.**

(1) No judge transferred to incapacity inactive status may resume active status except by order of the Supreme Court.

(2) Any judge transferred to incapacity inactive status shall be entitled to petition for transfer to active status once a year or at whatever shorter intervals the Supreme Court may direct in the order transferring the judge to incapacity inactive status or any modifications thereof.

(3) Upon the filing of a petition for transfer to active status, the Supreme Court may take or direct whatever action it deems necessary or proper to determine whether the incapacity has been removed, including a direction for an examination of the judge by qualified medical or psychological experts designated by the Supreme Court.

(4) With the filing of a petition for reinstatement to active status, the judge shall be required to disclose the name of each psychiatrist, psychologist, physician and hospital or other institution by whom or in which the judge has been examined or treated since the transfer to incapacity inactive status. The judge shall furnish to the Supreme Court written consent to the release of information and records relating to the incapacity if requested by the Supreme Court or court-appointed medical or psychological experts.

(5) If a judge transferred to lawyer incapacity inactive status on the basis of a judicial determination of incompetence has been declared to be competent, the Supreme Court may dispense with further evidence that the incapacity to practice law has been removed and may immediately direct reinstatement to active status as a lawyer.