

## RULES OF PROCEDURE

### COMMISSION ON JUDICIAL FITNESS AND DISABILITY

State of Oregon

Adopted March 22, 1969

Amended February 15, 1992, June 20, 2003, June 9, 2006, September 5, 2006, and October 22, 2009.

Last Amended December 14, 2018.

#### Rule 1. SCOPE AND TITLE

These rules are adopted pursuant to ORS Sections 1.410 to 1.480 and shall apply to all proceedings before the Commission on Judicial Fitness and Disability and before masters appointed to conduct hearings and to report to the Commission on the conduct of judges and judicial candidates.

#### Rule 2. DEFINITIONS

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

- a. “Chairperson” means the member of the Commission selected to serve as the acting chairperson.
- b. “Commission” means the Commission on Judicial Fitness and Disability.
- c. “Counsel” means the lawyer designated by the Commission to gather and present evidence before the masters or Commission with respect to the charges against a judge and to represent the Commission before the Supreme Court in connection with any proceedings before said court.
- d. “Disability” means a physical or mental condition of a judge, including, but not limited to, impairment derived in whole or in part from habitual or excessive use of intoxicants, drugs, or controlled substances, that significantly interferes with the capacity of the judge to perform judicial duties. A disability may be permanent or temporary.
- e. “Judge” means a judge of any court of this state, excluding municipal court judges.
- f. “Judicial candidate” means any person, including a sitting judge, who is seeking to be selected for judicial office by election or appointment. A person becomes a candidate for judicial office as soon as the person makes a public announcement of candidacy, declares or files as a candidate with the Secretary of State or files an application for appointment with the Governor, and for as long as the position for which election or appointment is sought remains unfilled.
- g. “Mail” and “mailed” include ordinary mail and personal delivery.

- h. “Masters” means special masters appointed by the Supreme Court upon request of the Commission.
- i. “Presiding Master” means the master so designated by the Supreme Court or, in the absence of such designation, the justice or judge first named in the order appointing masters.
- j. “Presiding Officer” means the member selected by the Commission to preside over disciplinary proceedings and shall be one of the judges currently serving on the Commission.
- k. “Proceedings” means all phases of consideration of a complaint by the Commission or its staff including receipt, investigation, and discussion at Commission meetings and public meetings.
- l. “Shall” is mandatory and “may” is permissive.

Rule 3.           OFFICERS OF THE COMMISSION

The Commission shall elect a chairperson and a vice-chairperson, each of whom shall serve for a term of one calendar year. The vice-chairperson shall act as the chairperson of the Commission in the absence of the chairperson.

Rule 4.           QUORUM OF COMMISSION

A quorum for the transaction of business other than a hearing by the Commission shall be five members of the Commission, which shall include at least one lawyer member, one judge member, and one public member.

Rule 5.           DISQUALIFICATION

- a. A member of the Commission shall disqualify himself or herself in a proceeding against a judge in which the member’s impartiality might reasonably be questioned, including, but not limited to, instances where:
  - (1) the member has a personal bias or prejudice concerning a complainant or a judge or personal knowledge of disputed evidentiary facts concerning the proceedings;
  - (2) the member, the member’s spouse, a person within the third degree of relationship to either of the member or the member’s spouse, or the spouse of such a person, is a complainant, the judge subject to the proceeding, or is likely to be a material witness in the proceeding;
  - (3) the member sits on or has sat on the election or reelection campaign committee of the judge subject to the proceeding;
  - (4) a judge who is a member of the Commission or of the Supreme Court or who acts as a master under ORS 1.420 or 1.425 shall not participate in any proceedings involving his or her alleged conduct or disability.

- b. A member of the Commission may disqualify himself or herself in a proceeding against a judge if the member reasonably believes that his or her participation in the proceeding may create an appearance of impropriety or lack of impartiality

- c. Motion to Disqualify a Commission Member

An accused judge, who has received notice of the institution of formal proceedings pursuant to Rule 8, may, upon motion supported by affidavit, move to disqualify a Commission member from participation. The affidavit shall assert that the judge involved in the proceeding or his or her counsel, believes that the judge involved in the proceeding or his or her counsel cannot have a fair and impartial hearing before that Commission member. The affidavit must be made in good faith and not for the purpose of delay. Except upon extraordinary circumstances, no motion to disqualify a Commission member shall be made more than four weeks after the judge receives formal notice under Rule 8. Absent a written objection submitted by the Commission member within two weeks of receipt of the motion, the motion to disqualify the Commission member shall be granted. Upon the submission of a written objection, the burden of proof is on the Commission member to establish that the motion was made in bad faith or for the purposes of delay. The presiding officer shall rule upon the motion. In the event that the presiding officer is the subject of the motion, the chairperson shall rule upon the motion. In the event that the presiding officer and the chairperson are the subject of the motion, the vice-chairperson shall rule. There shall be no more than two applications to disqualify a Commission member in any one proceeding.

Rule 6.            STATUS OF DOCUMENTS AND PROCEEDINGS/CONFIDENTIALITY AND DISCLOSURE

- a. Documents filed with the Commission and the investigation conducted by the Commission prior to a hearing pursuant to ORS 1.420 or 1.425 shall not be public records unless received as competent evidence in the course of a public hearing pursuant to ORS 1.420. The decision of the Commission after hearing or upon review of the record and report of masters shall be public records, together with the recommendations, if any, of the Commission to the Supreme Court. The decision of the Commission after hearing or upon review of the record and report of the masters under ORS 1.425 shall not be a public record, except for a decision and recommendation to the Supreme Court under ORS 1.425(4)(b).
- b. Documents filed and testimony given in proceedings under ORS 1.420 and 1.425 are privileged communications which may not be received in evidence in any judicial proceedings other than those directly connected with the administration of ORS 1.410 to 1.480 unless expressly or impliedly waived by the person tendering the document to or testifying in such proceedings or except in a criminal prosecution for perjury or false swearing before the Commission
- c. Members of the Commission, masters appointed pursuant to ORS 1.420 or 1.425 and staff of the Commission shall not disclose or use any investigation testimony or

documents, which are not public records as defined in ORS 1.410 to 1.480, for any purpose other than in connection with their official duties in the administration of ORS 1.410 to 1.480. The Commission may, upon the request of a judge who has been the subject of a complaint not brought to hearing, state the disposition of the complaint and the reasons for its decision when the Commission finds that the complaint has been publicized and fairness requires such comment.

- d. All notices, papers, and pleadings mailed to a judge or a complainant pursuant to these rules shall be enclosed in an envelope marked “confidential”.
- e. Notwithstanding Rule 6(a), when the Commission receives information concerning a threat to the safety of any person or persons, information concerning such threat may be provided to the person or persons threatened, to persons or organizations responsible for the safety of the person or persons threatened, and to law enforcement and/or any appropriate prosecutorial agency.

Rule 7.        INVESTIGATION AND DISPOSITION

a. Preliminary Investigation

The Commission, upon receiving information indicating that a judge’s behavior may come within the purview of Article VII (amended), Section 8, of the Constitution of the State of Oregon, shall make such investigation as it deems necessary to determine whether formal proceedings should be instituted and a hearing held. The Commission may make such investigation on its own motion. In conducting a preliminary investigation under this rule and ORS 1.420, the Commission may, pursuant to ORS 1.415(2), issue any processes necessary to compel the attendance of witnesses and the production of any books, papers, records, or documents as may be required to conduct such preliminary investigation. Such processes shall be issued in such a way as to protect the confidentiality of the proceedings.

b. Inquiry of Judge

- (1) The Commission’s investigation may include a written inquiry directed to the subject judge requesting information on the allegations contained in the complaint. The purpose of the inquiry shall be to develop basic information regarding the complaint in order to assist the Commission in evaluating the merits of the complaint. A copy of these rules shall be provided to the judge with the written inquiry.
- (2) Prior to the Commission acting under Rule 7(c) or 7(d), the Commission shall make a written inquiry directed to the subject judge giving notice of the allegations the Commission is investigating. The subject judge shall have 30 days from receipt of the written inquiry to submit a written response for the Commission’s consideration if he or she so chooses.

c. Informal Disposition

If the investigation reveals a departure by the judge from the Code of Judicial Conduct which in the opinion of the Commission is not sufficiently serious to warrant a

public hearing under Rule 8, the Commission shall inform the judge of the objectionable conduct and of the Commission's intent to dismiss the complaint under this rule. The subject judge shall have 30 days from receipt of the notice of the Commission's intent to dismiss under Rule 7(c) to submit a written objection and request for hearing pursuant to ORS 1.420(1)(a).

Any complaint dismissed under Rule 7(c) may be considered by the Commission as competent evidence in any future proceeding regarding the Commission's recommendations to the Supreme Court concerning the subject judge.

The complainant shall be advised of the action taken by the Commission.

d. Formal Disposition: Notice

If the investigation reveals a departure by the judge from the Code of Judicial Conduct which may warrant censure, suspension or removal, the Commission shall notify the judge of the investigation, the nature of the charges, and the Commission's intent to issue a formal complaint under Rule 8. Such notification shall be given by certified mail addressed to the judge at his or her office. The judge shall be afforded reasonable opportunity to make a statement in writing explaining, refuting or admitting the alleged misconduct or disability. The judge shall be provided with a copy of the Commission's rules if such rules have not been provided previously.

e. Stipulation to Discipline

After receipt of formal disposition notice under Rule 7(d), the subject judge may propose for the Commission's consideration a written proposed stipulation of facts and proposed consent to discipline pursuant to ORS 1.420(1)(c).

f. Dismissal

- (1) At any stage in the proceedings, if the investigation discloses that there is not sufficient cause to warrant further proceedings, the case shall be dismissed. If the judge has been notified of the pendency of the complaint, the judge shall be provided notice of the dismissal.
- (2) Notwithstanding Rule 7(f)(1), the Commission may reinvestigate alleged misconduct that has been previously disposed of by dismissal based upon the Commission's consideration of, including but not limited to, the following factors:
  - a. The quality and nature of new information;
  - b. The nexus between new information and the original information that the commission previously investigated that had led to dismissal;
  - c. The relative seriousness of the alleged misconduct that was the subject of the earlier dismissal;
  - d. The amount of time that has passed since that dismissal; and/or
  - e. Whether the Commission has regained jurisdiction over a former judge or judicial candidate.

g. Notice to Complainant

The complainant shall be notified in writing when the Commission concludes its consideration of the complaint. If the Commission has jurisdiction over the complaint, the

notice shall state only that the matter has been concluded. If the Commission does not have jurisdiction, the notice shall so state. When formal proceedings are initiated, the complainant shall receive a copy of the notice of public hearing.

h. Contact Protocol

Prior to the final disposition of a formal complaint, Commission members shall not engage in ex-parte communications regarding the formal complaint with Commission counsel, judges, the subject judge's counsel, witnesses, members of the public, the media and masters. The permitted exception is communications on behalf of the Commission previously approved by the Commission.

Rule 8. FORMAL PROCEEDINGS

a. Notice

After notifying the judge as provided by Rule 7(d) and after consideration of the judge's response thereto, if any, the Commission may initiate formal proceedings to inquire into the charges against the judge.

b. Title of Proceedings

Such proceedings shall be entitled: "BEFORE THE COMMISSION ON JUDICIAL FITNESS AND DISABILITY, STATE OF OREGON Inquiry Concerning a Judge, No. \_\_\_\_\_."

c. Content of Complaint

The complaint shall be issued in the name of the Commission and shall specify in ordinary and concise language the charges against the judge, the alleged facts upon which such charges are based, and the sections of the Constitution, state statute, and Code of Judicial Conduct alleged to have been violated. The complaint shall advise the judge of the right to file a written answer, under oath or affirmation, to the charges within 30 days after service of the complaint.

d. Service

The complaint shall be served by certified mail at either the judge's chambers or the judge's last known address, or at the office of the judge's attorney.

e. Designation of Counsel

The Commission may designate one or more counsel who shall be members of the Oregon State Bar and to present the charges against the judge including any appearances before the Supreme Court.

Rule 9. ANSWER

Within 30 days after service of the complaint the judge may file with the Commission a signed original answer, under oath, and shall serve a copy on counsel for the Commission by mail.

Rule 10. PLEADINGS

a. Types of Pleadings

The complaint and answer shall constitute the pleadings. Except as provided in subsection (b), no further pleadings shall be filed. No motion or demurrer shall be filed against any of the pleadings. Nothing in this rule prevents the subject judge from submitting, in writing, information regarding the legal sufficiency of the pleadings or any other relevant matters.

b. Amendments to Complaint or Answer

The complaint may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his or her defense against the matters charged thereby.

Rule 11. DISCOVERY

a. Availability of Discovery

Upon a judge's request, discovery shall be provided subject to ORS 1.440, rules of confidentiality and work product, and these rules of procedure. Prior to the filing of a formal complaint, the Commission has the discretion to redact the name of the complainant and other information, unless such information is necessary for the judge to respond to the Commission's request for information. The Commission shall disclose any exculpatory evidence.

b. Pretrial Disclosure

Each party shall disclose as soon as reasonably practicable but no fewer than 14 days before the hearing, with a continuing obligation thereafter, the following:

- (1) names, phone numbers and addresses of all witnesses whose testimony that party expects to offer at the hearing;
- (2) a brief summary of the expected testimony of each witness;
- (3) copies of written or recorded statements of anticipated witnesses; and
- (4) copies of documents which may be offered.

For failure to comply with this obligation, the presiding officer or chairperson may exclude witnesses or documents not disclosed.

c. Deposition

Upon the written request by the judge or the Commission's counsel, the Commission, through its chairperson or presiding officer, may order that the testimony of any material witness be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the name and address of the witness whose testimony is desired, and a showing of the materiality of the testimony of the witness. If the witness is unwilling to appear, the Commission may issue a subpoena as provided in Rule 17.

Rule 12.        HEARING BEFORE COMMISSION

a.    Setting of Hearing

Upon the filing of an answer or upon the expiration of the time for its filing, the Commission shall order a hearing. The Commission shall appoint a Presiding Officer. The Commission shall give notice of the time, date and location of the hearing by certified mail to the judge, judge's counsel and Commission's counsel at least 30 days prior to the date set. Except as provided in ORS 1.425, all hearings shall be public and all the testimony and evidence given and received in the hearing shall be a public record.

b.    Public Notice

The Commission shall issue a public notice of the hearing not less than 14 days prior to the date of the hearing. Public notice shall be reasonably calculated to give actual notice to interested parties including news media which have requested notice. The public notice shall include the name of the case to be heard and a general statement of the allegations of the complaint.

c.    Recipients

Public notice shall be provided to:

- (1) the principal newspaper in the county where the alleged incident occurred;
- (2) the principal newspaper in the county where the subject judge sits;
- (3) the Oregonian;
- (4) wire services;
- (5) the complainant(s);
- (6) the subject judge;
- (7) persons requesting notice; and
- (8) the Chief Justice.

d.    Extensions of Time

The chairperson or the presiding officer of the proceedings may extend the time for filing an answer or commencement of the hearing

Rule 13.        HEARING PROCEDURES

a.    With or Without Answer

The hearing may proceed at the time and place set for the hearing, whether or not the judge has filed an answer or appears at the hearing. Counsel for the Commission shall present the case in support of the charges in the notice of formal proceedings.

b.    Record of Hearing

The proceedings at the hearing shall be reported verbatim.

c.    Number of Commission Members at Hearing

When the hearing is before the Commission, not less than six members of the Commission shall be present at the hearing, including at least one judge, one lawyer, and



one public member.

d. Evidence

Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. Privileges afforded by Oregon law shall be recognized. Objections to evidence may be made and shall be noted in the record. All oral evidence shall be taken only on oath or affirmation.

e. Procedural Rights of Judge

At the hearing, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses.

f. Transcript of Testimony

When a transcript of the testimony has been prepared at the expense of the Commission, a copy thereof shall be furnished without cost to the judge. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at the judge's expense.

Rule 14. MASTERS

a. Appointment of Masters

The Commission may request the Supreme Court to appoint three qualified persons to act as masters to conduct the hearing on the formal complaint pursuant to these rules.

b. Contents of Report – Recommended Findings

After the conclusion of the hearing before the masters, they shall promptly prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings, their recommended findings of fact and a transcript of the hearing with a copy of the exhibits received during the proceeding. The recommended findings of facts by the masters shall not be binding upon the Commission.

c. Transmittal to Judge and Counsel

The Commission shall promptly mail a copy of the report to the judge and the attorneys of record.

d. Objections to Report of Masters

Within 30 days of the mailing of the report, any party may file objections with the Commission.

e. Appearance Before Commission

If no objections to the report of the masters are filed, the Commission may adopt the recommended findings of the masters. If the Commission proposes to modify or reject the recommended findings or if objections are filed, the Commission shall give the judge

and the attorneys of record an opportunity to submit briefs and present oral argument.

Rule 15. HEARING ADDITIONAL EVIDENCE

The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and the place of the hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge and attorneys of record at least 30 days prior to the date of hearing. In any case in which masters have been appointed, the hearing of additional evidence shall be before the masters, and the proceedings therein shall be in conformance with the provisions of Rules 13 and 14.

Rule 16. COMMISSION VOTE AND RECOMMENDATION

a. Commission Vote

If, after consideration of the evidence presented at a public hearing or the report of the masters, the Commission finds violations by clear and convincing evidence, it shall recommend to the Supreme Court the discipline of the judge. Discipline may be in the form of censure, suspension or removal of a judge. A recommendation for discipline shall be adopted only upon the affirmative vote of five members of the Commission. Five members need not be unanimous in their recommendation of the form of discipline. If the Commission finds no violations and recommends dismissal, it shall forward its recommendation to the Supreme Court.

b. Certification of Commission Recommendations to Supreme Court

Upon making a determination recommending the discipline or removal of a judge, the Commission shall promptly file a copy of the findings of fact, conclusions of law and recommendation certified by the chairperson of the Commission, together with the transcript of the proceedings consisting of the pleadings, exhibits and testimony, with the clerk of the Supreme Court and shall promptly mail to the judge and attorneys of record notice of such filing, together with a copy of such findings, conclusions and recommendation.

c. Review of Commission Proceedings

Subject to such rules as may be adopted by the Supreme Court, a petition to the Supreme Court to modify or reject the recommendations of the Commission for discipline of a judge may be filed by the judge pursuant to ORS 1.430.

d. Record of Commission Proceedings

The Commission shall keep a record of all formal proceedings concerning a judge, including all documents filed with the Supreme Court in accordance with this rule.

Rule 17. POWERS OF COMMISSION

a. Administration of Oaths

The Commission, by its presiding officer or chairperson or its vice-chairperson,

shall have power to take and preserve testimony and administer oaths to witnesses on any matter within jurisdiction of the Commission. At a public hearing, the oath shall be administered by the presiding officer or presiding master.

b. Issuance of Subpoenas

At the request of an attorney of record or the judge whose conduct is subject to a hearing, the presiding officer or chairperson of the Commission shall issue any processes necessary to compel the attendance of witnesses and the production of any books, papers, records or documents as may be required.

c. Compensation of Witnesses

Each witness compelled to attend any proceedings, other than an officer or employee of the state, a public corporation or a political subdivision, shall receive for attendance the same fees and mileage allowed by law to a witness in a civil case, payable from funds appropriated to the Commission.

d. Enforcement Proceedings

Whenever a person summoned by the Commission fails to appear to testify or fails to produce any books, papers, records or documents as required or whenever any person so summoned refuses to answer any question pertinent to the subject under inquiry before the Commission, or the masters, the Commission may apply to the circuit court for the county in which the failure occurred for an order to the person to attend and testify, or otherwise to comply with the demand or request of the Commission or the masters, as provided by ORS 1.475.

e. Expert Witnesses and Special Counsel

The Commission may request the assistance of and compensate expert witnesses and special counsel.

f. Filing of Papers and Pleadings

All papers and pleadings filed with the Executive Director of the Commission at the Director's office shall be considered filed with the Commission.

g. Effect of Resignation of Judge

When a judge resigns from all judicial work prior to formal charges being filed, the complaint will be dismissed without prejudice. The complaint may be revived if the judge resumes a position that would subject the judge to these Rules.

Rule 18. DISABILITY OF A JUDGE

a. Complaint of Disability

Upon receiving a complaint indicating that a judge may have a disability, the Commission shall notify the Chief Justice of the Oregon Supreme Court.

b. Preliminary Investigation

Upon receiving a complaint pursuant to ORS 1.425(1) indicating that a judge has

a disability, the Commission shall make such investigation as it deems necessary to determine the appropriate disposition of the complaint.

c. Referral to Chief Justice for Informal Disposition

If the investigation reveals that the judge has a temporary disability, the Commission shall refer the complaint to the Chief Justice of the Supreme Court for consideration of informal disposition under ORS 1.303.

d. Formal Proceedings

If the investigation reveals that the judge may have a permanent disability, then the Commission may proceed as provided under ORS 1.420 and Rule 8 of these rules.

e. Temporary Disability

When the Chief Justice refers a complaint concerning the temporary disability of a judge which has been the subject of proceedings under ORS 1.303, the Commission may hold a hearing to inquire into the alleged disability, or request the Supreme Court to appoint three qualified persons to act as masters, to hold a hearing and maintain a record on the matter referred to them and report to the Commission on the alleged disability. The hearing shall not be open to the public unless the subject judge requests a public hearing. The testimony and evidence given and received in the hearing shall not be public records. The subject judge shall have the right to be present at such hearing, to be represented by counsel, to present testimony and evidence, and to cross-examine witnesses. Except as otherwise provided herein, the hearing shall be conducted in accordance with the procedures for a formal proceeding under Rules 8 to 13.

f. Physical and Mental Health Examination

When a judge is charged with having a temporary or permanent disability, the Commission may direct that a subject judge, prior to a hearing, submit to a physical examination by one, two or three physicians licensed to practice in this state and appointed by the Commission to conduct the examination, or submit to a mental evaluation by one, two or three physicians, psychologists or other mental health professionals licensed to practice in this state and appointed by the Commission to conduct the evaluation, or submit to both that examination and evaluation. The persons appointed to conduct the examination or evaluation shall report thereon to the Commission. A copy of any report to the Commission shall be provided by the Commission to the subject judge. The cost of the examination, evaluation and reporting shall be paid by the Commission.

g. Failure to Take Examination

If a subject judge directed to submit to an examination or evaluation fails to do so, the judge may not present as evidence in the proceeding the results of any medical examination of the judge done at the instance of the judge, and the Commission or masters may consider the failure of the judge to submit to examination or evaluation as evidence that the judge has a disability.

h. Disposition: Temporary Disability

If, after hearing or after considering the record and report of the masters, the Commission finds that the subject judge has a temporary disability, the Commission may:

- (1) enter into a disposition of the matter with the subject judge, which may include:
  - (A) agreement by the judge to obtain professional counseling, medical treatment or other assistance or to comply with other conditions with respect to the future conduct of the judge;
  - (B) supervision of compliance by the judge; and
  - (C) if the judge fails to answer, investigation and hearing as provided in subsection d of this rule and, if appropriate, action by the Commission as provided in paragraph (2) of this subsection.
- (2) If the Commission also finds that the conduct of the subject judge justifies suspension, the Commission shall recommend to the Supreme Court that the judge be suspended without loss of salary for a period not exceeding one year.

i. Procedure for Considering Violations of Code and Alleged Disability

When a complaint and investigation reveals that a judge has violated the Code of Judicial Conduct and may also have a disability, the Commission may:

- (1) bifurcate the allegations and proceed separately under Rules 8 and 18, respectively; or
- (2) stay further disciplinary proceedings until the disability proceeding is concluded.

Rule 19. INVOLUNTARY RETIREMENT

a. Request for Investigation and Hearing

When, in accordance with ORS 1.310(3), the Secretary of State transmits to the Commission the documents set forth in that section, the Commission shall make the requested investigation and shall initiate formal proceedings as set forth in Rules 7 and 8.

b. Conduct of Proceedings

The proceedings of the Commission shall be conducted in accordance with the provisions of these rules, except that masters shall not be utilized. In addition, the procedures related to temporary disabilities, including reference to the Chief Justice, as set forth in Rule 18 and ORS 1.303, shall not be available.

c. Findings

If a majority of the members of the Commission shall determine that the subject judge is in fact disabled, as defined in ORS 1.310(1)(c), the members shall make and sign written findings of fact upon which the determination is made and transmit them to the Secretary of State. If a majority of the members does not find that the subject judge is disabled, the members shall sign and file with the Secretary of State a written report to that effect, and the proceedings shall then terminate.

d. Appeal of Commission Determination

If the subject judge appeals the determination of the Commission, the Commission shall transmit the official record of the hearing to the Supreme Court.

Rule 20.      RETENTION OF RECORDS

- a. Except for matters which proceed to a public hearing, the retention period will be not less than two years for all documents related to complaints against judges, including, but not limited to, the original complaint, investigative notes, documents obtained in the course of an investigation, and correspondence to and from complainants, witnesses and judges. These materials are not public records.
- b. Records for complaints which proceed to a public hearing will be retained permanently. This includes all documents connected with the complaint, including the original complaint, investigatory materials, all documents introduced at a public hearing, the transcript of the proceedings and the Commission's recommendation. Only documents introduced at the hearing will be public record.
- c. The retention period shall be three years for all administrative materials, including budget preparation materials, financial records, personnel records, etc. These materials will be public record, except as specifically provided by law.
- d. Minutes of all Commission meetings shall be retained permanently. Letters of informal disposition sent to judges will be attached to the minutes of the meeting at which the Commission approved the sending of such letter(s).