

## **Rule 11. Confidentiality**

**A. Before Formal Charges.** All information regarding a disciplinary or incapacity matter of a judge shall be kept confidential by the Investigative Panel and Commission staff before formal charges are filed and served; provided, however, that if prior to filing formal charges the judge and the Investigative Panel agree to a satisfactory disposition of a disciplinary matter other than by a private admonition or deferred discipline agreement, a report of such disposition shall be publicly filed in the Supreme Court. See OCGA § 15-1-21 (k) (1).

### **B. After Filing and Service of Formal Charges.**

- (1) With respect to an incapacity matter of a judge, all pleadings, information, hearings, and proceedings shall remain confidential; and
- (2) With respect to a disciplinary matter of a judge, all pleadings and information shall be subject to disclosure to the public and all hearings and proceedings shall be open and available to the public except to the extent that such pleadings and information or hearings and proceedings could be properly sealed or closed by a court as provided by law. See OCGA § 15-1-21 (k) (2).

**C. Administrative and Other Matters.** With respect to administrative and other matters, all records and information shall be subject to disclosure to the public and all meetings, or portions thereof, shall be open and available to the public, except to the extent such records, information, and meetings would:

- (1) disclose disciplinary matters of a judge protected in Rule 11.A;
- (2) disclose incapacity matters of a judge protected in Rule 11.A or 11.B (1);
- (3) be considered a matter subject to executive session, if the Commission were considered to be an agency under Chapter 14 of Title 50 of the Georgia Code; or
- (4) not be required under OCGA § 50-18-72, if the Commission were considered to be an agency. See OCGA § 15-1-21 (k) (3).

**D. Work Product and Deliberations.** The work product of the Commission and its staff and the deliberations of the Commission shall remain confidential. See OCGA § 15-1-21 (k) (4).

**E. Exceptions.** Notwithstanding the other provisions of this Rule, information regarding a disciplinary or incapacity matter of a judge may be disclosed to the general public or to specific persons or agencies when:

- (1) the privilege of confidentiality has been waived by the individual who was the subject of the Commission's investigation; or
- (2) the Investigative Panel or the Hearing Panel determines that disclosure is necessary:
  - (a) in the interest of justice and to protect the public;
  - (b) because an emergency situation exists;
  - (c) because a judge is under consideration for another state or federal position;
  - (d) in response to a valid court order or subpoena; or
  - (e) as provided in Rule 29. See OCGA § 15-1-21 (l).

### ***Commentary***

[1] In the initial stages of the disciplinary case, confidentiality is necessary to protect a judge's reputation from unfounded charges and to protect witnesses from possible recriminations while a claim is being investigated.

[2] Disclosing the existence of complaints that were considered and dismissed is unfair to the judge and undermines the work of the Commission. It is unfair to allow any adverse inferences to be drawn from the mere existence of a complaint when it was not substantial enough to state a possible ground for discipline. The Commission will have greater credibility if it does not release information about dismissed complaints under any circumstances. If the judge wishes to have such information disclosed, the judge may release the information.

[3] Once the formal charges have been filed and served upon the judge, the policy emphasis shifts from confidentiality to the public's right to know. The integrity of the judicial system is better protected by an open public hearing than by a closed hearing. It is no longer possible to protect the identity of the witnesses because their identity must be disclosed through the discovery to which the respondent is entitled.

[4] Disclosures that the Investigative Panel or the Hearing Panel may determine to be necessary under Rule 11.E (2) (a) or (b) include disclosures to law enforcement authorities and potential victims of substantial evidence that a judge has committed, is committing, or is intending to commit a serious crime, and similar disclosures to attorney disciplinary authorities regarding serious violations of the Georgia Rules of Professional Conduct by judges who are lawyers. The timing and extent of such disclosures is at the discretion of the Investigative Panel.

[5] When the alleged misconduct or incapacity of a judge who is the subject of a complaint has been publicized and the public would expect the Commission to be investigating such conduct, the Investigative Panel may authorize the chairperson or the Director to publicly confirm the existence of such an investigation pursuant to Rule 11.E (2) (a).

[6] The Commission's administrative records and meetings that do not disclose specific, confidential disciplinary and incapacity matters should be available and open to the public like the records and meetings of other governmental agencies in this state.

[7] The Constitution provides for confidentiality of certain findings and records of the Commission in proceedings under Rule 15.A. See Rule 15.A (4).