

CHAPTER 52
RULES OF PROCEDURE OF THE STATE OF IOWA
COMMISSION ON JUDICIAL QUALIFICATIONS

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CHAPTER 52
RULES OF PROCEDURE OF THE STATE OF IOWA
COMMISSION ON JUDICIAL QUALIFICATIONS

Rule 52.1 Authorization and scope. The rules in this chapter are adopted pursuant to Iowa Code section 602.2105. They apply to all proceedings, functions, and responsibilities of the commission. [Court Order November 9, 2001, effective February 15, 2002]

Rule 52.2 Definitions. In this chapter unless the content or subject matter otherwise requires:

“Chairperson” means the presiding officer of the commission and includes the chairperson of the commission, the vice chairperson, or any acting chairperson designated by the commission to preside in the absence of the chairperson.

A *“charge”* is the written specification by which formal proceedings are instituted pursuant to Iowa Code section 602.2104.

“Commission” means the commission on judicial qualifications.

A *“complaint”* shall be any written communication to the commission which indicates a violation of Iowa Code section 602.2106(3).

“Employee” means an officer or employee of the judicial branch, except a judicial officer subject to the jurisdiction of the commission.

“Judicial officer” means a supreme court justice, a court of appeals judge, a district court judge, a district associate judge, associate juvenile judge, associate probate judge, or magistrate of this state subject to the jurisdiction of the commission.

“Oath” is synonymous with “affirmation” and *“swear”* is synonymous with “affirm.”

“Shall” is mandatory and *“may”* is permissive.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.3 Officers and staff.

52.3(1) The commission shall elect a chairperson and a vice chairperson to serve for the calendar year and until successors are elected.

52.3(2) The state court administrator or designee of the state court administrator shall be executive secretary of the commission.

52.3(3) The commission may employ such additional investigative personnel as it deems necessary.

52.3(4) The commission may employ or contract for the employment of legal counsel. However, the attorney general shall prosecute the charge(s) before the commission on behalf of the state.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.4 Replacement of interested judicial member.

52.4(1) If the judicial member of the commission is the subject of a complaint before the commission under rule 52.9, the chief justice of the supreme court shall appoint a district judge of another judicial district to the commission until the person charged is exonerated, or for the unexpired portion of the term if the person charged is not exonerated.

52.4(2) If the judicial member of the commission is a resident judge of the same judicial district as the judicial officer who is the subject of a complaint before the commission under rule 52.9, the chief justice of the supreme court shall appoint a district judge of another judicial district to the commission to act as the judicial member during that proceeding. However, if the judicial member recuses himself or herself from the matter prior to the commission acting on the complaint, and a quorum is present to act on the matter, the judicial member shall not be replaced by the chief justice of the supreme court, unless formal proceedings under rule 52.12 are commenced.

52.4(3) The executive secretary shall notify the chief justice of the supreme court of any need for such replacement appointment.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.5 Confidentiality.

52.5(1) Notwithstanding the provisions of Iowa Code chapters 21 and 22, all records, papers, proceedings, meetings, and hearings of the commission shall be confidential, unless the commission applies to the supreme court to retire, discipline, or remove a judicial officer or employee.

52.5(2) If the commission applies to the supreme court to retire, discipline, or remove a judicial officer or employee, the following records and papers shall become public documents:

- a. The initial complaint(s).
- b. The notice of charge(s) filed by the commission initiating the charge(s) against the judicial member or employee.
- c. All pleadings, motions and discovery filed with the commission after the notice of charge(s).
- d. A transcript of any hearing of the commission that was made by a certified shorthand reporter.
- e. All exhibits admitted at any hearing of the commission.
- f. The application of the commission made to the supreme court.

52.5(3) Any records and papers contained in the commission's investigation file shall remain privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the judicial officer, employee, the attorneys, or the attorneys' agents involved in the proceeding before the commission. The judicial officer, employee, the attorneys, or the attorneys' agents involved in the proceeding before the commission shall not disclose any records and papers contained in the commission's investigation file to any third parties unless disclosure is required in the prosecution or defense of the charges. The records and papers contained in the commission's investigation file shall not be admissible in evidence in a judicial or administrative proceeding other than the formal commission proceeding under rule 52.12.

52.5(4) Every witness in every proceeding under this chapter shall swear or affirm to tell the truth, and not to disclose the existence of the proceedings or the identity of the judicial officer or employee until the proceeding is no longer confidential under these rules.

52.5(5) All communications, papers, and materials concerning any complaint which may come into the hands of a commission member shall remain confidential and the member shall keep the same in a safe and secure place.

52.5(6) All statements, communications, or materials received by any person investigating any complaint on behalf of the commission shall be confidential.

52.5(7) The executive secretary, chairperson or a member of the commission designated by the chairperson may issue one or more clarifying announcements when the subject matter of a complaint or charge(s) is of broad public interest and failure to supply information on the status and nature of the formal proceedings could threaten public confidence in the administration of justice. No other member of the commission shall make any public statement concerning any matter before the commission without prior approval of the commission.

52.5(8) Nothing in this chapter shall prohibit the commission from releasing any information regarding possible criminal violations to appropriate law enforcement authorities, wherever located, or any information regarding possible violations of the Iowa Rules of Professional Conduct to the Iowa Supreme Court Attorney Disciplinary Board.

[Court Order November 9, 2001, effective February 15, 2002; April 20, 2005, effective July 1, 2005]

Rule 52.6 Meetings. The commission shall meet at least once in each calendar quarter. Meetings may be held by telephone conference or at such place as the chairperson may designate if no member of the commission objects. If there is an objection by a member of the commission to holding a meeting by telephone conference or at a place other than the Iowa Judicial Branch Building in Des Moines, the meeting shall be held at the Iowa Judicial Branch Building in Des Moines. Special meetings may be called by the chairperson or at the request of three or more members of the commission.

[Court Order November 9, 2001, effective February 15, 2002; April 9, 2003]

Rule 52.7 Quorum. A quorum for the transaction of business by the commission shall consist of four members. Only members present may vote. Members participating in a telephone conference shall be deemed to be present at the meeting.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.8 Minutes. Minutes shall be kept of each meeting of the commission and shall record the action taken, the names of those present, and any other matter that the commission may deem appropriate. The minutes shall be confidential.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.9 Complaints.

52.9(1) A complaint shall be in writing but may be simple and informal. It shall be mailed to or filed with the executive secretary of the commission.

52.9(2) The executive secretary shall promptly acknowledge receipt of any writing and transmit a copy of the writing to each member of the commission.

52.9(3) A complaint may be initiated by the commission's own motion. A separate writing signed by the chairperson shall be filed with the commission if the complaint was initiated on the commission's own motion. This filing shall constitute the complaint.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.10 Initial inquiry.

52.10(1) Upon receipt of a complaint a determination shall be made whether or not the complaint is of substantial nature and involves matters which could be grounds for a charge within the jurisdiction of the commission to make application to the supreme court:

a. To retire a judicial officer or employee for permanent physical or mental disability which substantially interferes with the performance of his or her duties.

b. To discipline or remove a judicial officer or employee for persistent failure to perform duties, habitual intemperance, willful misconduct in office, conduct which brings the judicial office into disrepute, or a substantial violation of the canons of judicial ethics.

52.10(2) If the commission finds the complaint on its face is clearly unfounded, frivolous, or could not be the basis for a charge within the jurisdiction of the commission, the complaint shall be dismissed with notice to the complainant.

52.10(3) If the commission finds the complaint on its face is substantial, and, if true, would warrant application to the supreme court the commission may formulate a charge and institute formal proceedings, without any further inquiry or investigation.

52.10(4) Upon the making of the determination provided in rule 52.10(1), when the commission has received a complaint or initiated a complaint on its own motion, the commission or the chairperson may direct that an additional inquiry be made by the executive secretary, or a commission member. The chairperson of the commission may further direct that the judicial officer or employee about whom a complaint has been made be notified that a complaint has been received, and of the substance of the complaint. When such notice is directed it shall advise the judicial officer or employee that the matter is in a preliminary stage and is not the subject of a formal investigation under rule 52.11(1), nor is the notice intended to be notice required under rule 52.11(2) of the commission. In such circumstances the judicial officer or employee shall be notified that because of the substance of the complaint or the commission's concern, the commission or chairperson feels that it would be desirable for the judicial officer or employee to provide in writing a report to the commission concerning matters referred to in the notice, and that it is requested, but not required, that the judicial officer or employee give to the commission such report.

52.10(5) The commission or the chairperson may request the complainant to clarify the complainant's original statement to furnish additional information, to disclose sources of information, or to verify by affidavit statements of fact within the complainant's knowledge.

52.10(6) The commission or the chairperson may also initiate inquiries of other sources.

52.10(7) The commission shall dismiss the complaint and so inform the complainant if the initial inquiry confirms the fact that the complaint is clearly unfounded, frivolous, or could not be the basis for a charge within the jurisdiction of the commission. If the judicial officer or employee has been given notice of the initial inquiry as contemplated in rule 52.10(4), the judicial officer or employee shall likewise be informed of the dismissal of the complaint.

52.10(8) If after the initial inquiry the complaint appears to be substantiated in whole or in part but does not warrant application to the supreme court the commission may dispose of the complaint informally by conference with or communication to the judicial officer or employee. The complainant shall be notified of such action.

52.10(9) The commission shall direct that an investigation of the complaint be made if the initial inquiry indicates that the complaint may constitute a charge within the commission's jurisdiction and formal proceedings have not been initiated.

52.10(10) The commission may formulate a charge and institute formal proceedings if the initial inquiry indicates that the matter investigated appears to be substantiated and, if true, would warrant application to the supreme court.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.11 Investigation and disposition.

52.11(1) The commission may direct an investigation on its own motion, without any initial inquiry under rule 52.10.

52.11(2) The judicial officer or employee involved shall be notified of the investigation and the nature of the complaint. The commission in its discretion may disclose the name of the complainant or that the investigation is on the commission's own motion. Notification shall be by prepaid certified or registered mail marked "confidential" and addressed to the judicial officer's chambers, employee's business address or last known residence of the judicial officer or employee. The judicial officer or employee may be requested to provide in writing a report to the commission concerning matters referred to in the complaint. The judicial officer or employee shall be notified that it is not mandatory that the judicial officer or employee provide such report.

52.11(3) In the event the investigation indicates that the complaint has merit, then the commission in its discretion may grant to the judicial officer or employee an opportunity to present to the commission such information relevant to the complaint as the judicial officer or employee may desire to submit.

52.11(4) The commission shall dismiss the complaint and so inform the judicial officer or employee and the complainant if the investigation shows it to be groundless.

52.11(5) After the investigation, if the complaint appears to be substantiated in whole or in part but does not warrant application to the supreme court, the commission may dispose of the complaint informally by conference with or communication to the judicial officer or employee. The complainant shall be notified of such action.

52.11(6) The commission shall formulate a charge and institute formal proceedings if the investigation indicates that the matter investigated appears to be substantiated and, if true, would warrant application to the supreme court.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.12 Formal proceedings.

52.12(1) The service of the notice of charge(s) shall constitute the commencement of formal proceedings against a judicial officer or employee.

52.12(2) Formal proceedings to inquire into a charge shall be entitled "Before the Commission on Judicial Qualifications, State of Iowa. Inquiry Concerning (name of judicial officer or employee)."

52.12(3) The notice of charge(s) shall specify the charge(s) against the judicial officer or employee with a concise, general summary of the alleged facts on which it is based, and shall state the time and place of hearing. The hearing shall be held in the county where the judicial officer or employee resides unless the commission and the judicial officer or employee agree to a different location.

52.12(4) The notice of charge(s) shall be signed by the chairperson of the commission or on the chairperson's behalf by the executive secretary of the commission pursuant to the express direction of the chairperson.

52.12(5) The notice of charge(s) shall be sent by prepaid certified or registered mail addressed to the judicial officer or employee at the judicial officer's or employee's residence and marked "confidential," at least 20 days prior to the time set for the hearing.

52.12(6) A copy of the complaint upon which the notice of charge(s) is based and the complete investigative file shall be sent to the judicial officer or employee with the notice of charge(s). The investigative file of the commission does not include the recommendations of the attorney general to the commission. The recommendations of the attorney general to the commission are privileged and are not to be transmitted.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.13 Answer. Within 15 days after service of the notice of formal proceedings, the judicial officer or employee may file a verified answer at the office of the commission in the Iowa Judicial Branch Building in Des Moines.

[Court Order November 9, 2001, effective February 15, 2002; April 9, 2003]

Rule 52.14 Allowable motions — prehearing conference.

52.14(1) The following prehearing motions may be filed:

a. A judicial officer or employee may request that the hearing be held at a place other than the county where the judicial officer or employee resides. Such motion shall be contained in the answer or filed with the commission in the time for filing an answer. The chairperson or a member of the

commission designated by the chairperson shall have authority to rule on this motion. A hearing need not be held prior to entering a ruling. Any hearing may be held telephonically and without a record being made of the hearing.

b. Either party may file a motion regarding discovery disputes which shall be governed by rule 52.15.

c. Either party may request a prehearing conference. The chairperson or a member of the commission designated by the chairperson may conduct the prehearing conference. The prehearing conference may be held telephonically and without a record being made of the hearing. The commission on its own motion may require a prehearing conference.

d. Either party may file a motion for a continuance which may be granted pursuant to rule 52.16.

52.14(2) The commission will not consider any other prehearing motions or applications.

52.14(3) The commission will not consider any dispositive motions prior to the close of all the evidence of a hearing.

52.14(4) The action of the chairperson or a single member of the commission designated by the chairperson under rule 52.14, 52.15 or 52.16 may be reviewed by the commission on its own motion or a motion of a party. A motion by a party for review of an action of the chairperson or a single member of the commission designated by the chairperson shall be served and filed within ten days after the filing of the challenged order.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.15 Discovery.

52.15(1) In any formal proceeding taken by the commission, discovery shall be permitted as provided in Iowa Rs. Civ. P. 1.501 to 1.517 inclusive; 1.701 and 1.702; and in 1.714 to 1.717. The judicial officer or employee against whom a notice of charge(s) has been filed, in addition to the restriction stated in Iowa R. Civ. P. 1.503(1), shall not be required to answer an interrogatory pursuant to Iowa R. Civ. P. 1.509, a request for admission pursuant to Iowa R. Civ. P. 1.510, a question upon oral examination pursuant to Iowa R. Civ. P. 1.701, or a question upon written interrogatories, pursuant to Iowa R. Civ. P. 1.710, if the answer would be self-incriminatory. In addition thereto, evidence and testimony may be perpetuated as provided in Iowa Rs. Civ. P. 1.721 to 1.728.

52.15(2) The time to respond to any discovery allowed under rule 52.15(1) shall be 15 days, regardless of time allowed by the Iowa Rules of Civil Procedure.

52.15(3) All discovery shall be timed so that it is completed, including the time to receive responses to all propounded discovery, no later than 50 days after service of the notice of charge(s).

52.15(4) All motions or applications pertaining to discovery shall be filed with the commission as soon as practicable. The chairperson or a member of the commission designated by the chairperson shall have authority to rule on any motions or applications. A hearing need not be held prior to entering a ruling. Any hearing may be held telephonically and without a record being made of the hearing.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.16 Continuances. The commission may grant reasonable continuances but only upon written application supported by affidavit. The motion for continuance shall be filed with the commission as soon as the reason for continuance becomes apparent to the movant. The chairperson or a member of the commission designated by the chairperson shall have authority to rule on any motion for continuance. A hearing need not be held prior to entering a ruling. Any hearing may be held telephonically and without a record being made of the hearing.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.17 Final hearing.

52.17(1) The commission may proceed with the final hearing at the time and place set, whether or not the judicial officer or employee has filed an answer or appears at the hearing.

52.17(2) The chairperson of the commission shall preside over and conduct the final hearing. The presentation of evidence shall conform to the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence insofar as such rules may be applicable to cases tried in equity.

52.17(3) All evidence received shall be taken only on oath or affirmation.

52.17(4) The attorney general, on behalf of the state, shall present the case in support of the charge(s) before the commission.

52.17(5) A complete record of the evidence shall be made by a certified shorthand reporter.
[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.18 Procedural rights of judicial officer or employee.

52.18(1) The judicial officer or employee may defend and shall have the right to participate in the proceedings in person and by counsel, to cross-examine, to be confronted by witnesses, and to present evidence in accordance with the Iowa Rules of Civil Procedure and the Iowa Rules of Evidence.

52.18(2) A judicial officer shall continue judicial duties during the pendency of any complaint, charge(s), investigation, or formal proceeding unless otherwise ordered by the commission. An employee shall continue his or her duties during the pendency of any complaint, charge(s), investigation, or formal proceeding unless otherwise ordered by the commission.
[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.19 Amendment to notice of charge(s) or answer. Amendments shall be governed by the Iowa Rules of Civil Procedure.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.20 Subpoena power.

52.20(1) The commission shall have subpoena power during any investigation conducted on its behalf compelling the appearance of persons or the production of documents before the person designated to conduct the investigation on behalf of the commission.
[Court Order November 9, 2001, effective February 15, 2002]

52.20(2) The commission shall have subpoena power on behalf of the state and the judicial officer or employee compelling the appearance of persons or the production of documents during discovery and the final hearing.

52.20(3) Disobedience of the commission's subpoena shall be punishable as contempt in the district court in and for the county in which the hearing is to be held or where the investigation is being conducted.

52.20(4) Any application for a subpoena shall be made to the commission's executive secretary or chairperson.
[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.21 Privilege in defamation actions. The making of charges before the commission, the giving of evidence or information before the commission or to its investigator and the presentation of transcripts, extensions of evidence, briefs, and arguments in the supreme court shall be privileged in actions for defamation.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.22 Physical or mental examinations. Where a judicial officer's or employee's physical or mental health is in issue, the commission may order the judicial officer or employee to submit to a physical or mental examination by a duly licensed health care professional designated by the commission. The failure of the judicial officer or employee to submit to a physical or mental examination ordered by the commission may be considered by the commission, unless it appears that such failure was due to circumstances beyond the control of the judicial officer or employee.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.23 Compensation of witnesses. Each witness compelled to attend any proceedings under this chapter, other than an officer or employee of the state 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 the commission's funds.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.24 Findings and determination by commission.

52.24(1) In accordance with its findings on the evidence at the hearing, the commission shall dismiss the charge(s) or make application to the supreme court to retire, discipline, or remove the judicial officer or employee. A copy of the application shall be sent to the judicial officer or employee by prepaid certified or registered mail. Copies shall also be provided to the attorneys of record.

52.24(2) Any application by the commission to the supreme court or any action by the commission which affects the final disposition of a complaint shall require the affirmative vote of at least four commission members who were present at the hearing.

52.24(3) Any person filing a complaint with the commission shall be notified by ordinary mail of its final disposition.

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.25 Application to supreme court. If the commission makes application to the supreme court to retire, discipline, or remove a judicial officer or employee, it shall promptly file in the supreme court all items set forth in rule 52.5(2).

[Court Order November 9, 2001, effective February 15, 2002]

Rule 52.26 Letters of caution and warning. In some cases, the commission may conclude that a judicial officer's or employee's conduct has been questionable but does not amount to misconduct, or that misconduct of a very minor nature has occurred which does not warrant formal discipline. In these cases, the commission may inform the judicial officer or employee that no present formal disciplinary action will be taken but that the judge should avoid similar conduct in the future.

[Court Order November 9, 2001, effective February 15, 2002]

Historical notes from Third Edition of the Iowa Court Rules:

[Court Order December 26, 1985, effective February 3, 1986; April 30, 1987, effective June 1, 1987; August 31, 1987, effective October 1, 1987; January 10, 1990; July 5, 2000]