

**Rule 16. Special Provisions for Cases Involving Disability**

**(a) Proceedings in General.** When it appears that a judge may have a disability as defined in these rules, the board shall follow the same procedures used with respect to misconduct, except as modified by this rule.

**(b) Initiation of Inquiry.** The board may initiate an inquiry into a case involving disability:

- (1) upon receiving a complaint alleging conduct that may be due to a disability;
- (2) when an investigation indicates the alleged conduct may be due to disability;
- (3) when the judge asserts inability to defend in a disciplinary proceeding due to a disability;
- (4) upon request of the Chief Justice of the Supreme Court; or
- (5) upon the board's own motion.

**(c) Evaluation.** Upon initiation of an inquiry into a case involving disability, the executive secretary shall conduct an evaluation pursuant to Rule 6(c).

**(d) Investigation; Notice; Medical Privilege.**

(1) If upon review of the preliminary evaluation, or on its own motion, the board authorizes an investigation under Rule 6(d), the board shall give notice pursuant to Rule 6(d)(2) to the judge alleged to have a disability. The notice shall instruct the judge that when providing a written response under Rule 6(d)(5), the judge shall admit or deny the disability.

(2) The purpose of an investigation conducted under this rule is to determine whether there is reasonable cause to believe the judge has a disability.

(3) If the judge admits to a disability or provides affirmative evidence of a disability as a defense in a disciplinary proceeding, the admission or provision of evidence shall constitute reasonable cause to believe the judge has a disability and waiver of medical privilege as to records relevant to the alleged disability.

If the judge denies the disability, the board shall determine whether there is credible evidence of a disability. The board may consult with a qualified professional in the area of the alleged disability to determine whether the evidence before the board constitutes credible evidence. If there is credible evidence of a disability, the denial constitutes a waiver of medical privilege as to records relevant to the alleged disability. If there is not credible evidence of a disability, the judge does not waive medical privilege, and the board shall continue the investigation under Rule 6 as a disciplinary proceeding.

(4) If medical privilege is waived, the board may require the judge to provide medical records relevant to the alleged disability. Disputes concerning the relevancy of medical records shall be determined by the Supreme Court or its designee.

(5) If medical privilege is waived, the board may request that the judge consent to a physical or mental examination by a qualified medical practitioner designated by the board. The purpose of the examination is to assist the board in determining whether there is reasonable cause to believe the judge has a disability. The report of the medical practitioner shall be furnished to the board and the judge. If the judge fails or refuses to submit to a medical examination, the judge may not present as evidence the results of any medical examinations done on the judge's behalf, and the board may consider the judge's refusal or failure as evidence that the judge has a disability.

The judge has the right to an additional independent medical examination provided by experts other than those designated by the board, but the examination shall be at the sole expense of the judge, and written reports of any examination shall be provided to the board as soon as medically feasible.

**(e) Disposition After Investigation.**

(1) If the board determines there is not reasonable cause to believe the judge has a disability, the board shall determine whether a disciplinary disposition under Rule 6(f) is appropriate.

(2) If the board determines there is reasonable cause to believe the judge has a disability, the board may:

- (i) enter into a deferred disposition agreement as provided in Rule 6(f)(5)(i); or
- (ii) issue a Formal Statement of Disability Proceeding.

**(f) Hearing.** Upon issuance of a Formal Statement of Disability Proceeding, a hearing shall be held under Rules 10 and 11 to determine whether there is clear and convincing evidence the judge has a disability. If the board has also filed a Formal Complaint, the panel shall determine whether there is clear and convincing evidence that the judge committed misconduct and whether the misconduct was related to a disability. The panel may exclude the public from portions of the proceedings to hear evidence on psychological or medical materials or other evidence that would not be accessible to the public.

(1) If the panel finds clear and convincing evidence of a disability, the panel may:

- (i) enter into a deferred disposition agreement as provided in Rule 11(b)(1); or
- (ii) recommend any of the following actions to the Supreme Court:

- (A) Removal;
- (B) Disability retirement if the disability is or is likely to become permanent;
- (C) Imposition of limitations or conditions on the performance of judicial duties;
- (D) Suspension with or without pay; or
- (E) Any combination of the above actions.

(2) The panel may also impose or recommend a disciplinary disposition with regard to misconduct, if applicable, pursuant to Rule 11(b).

(3) Any disposition of the panel is public.

(4) The board or judge may appeal the decision of the panel as provided in Rule 11(d).

**(g) Petition for Reinstatement After Disability Suspension.**

(1) A judge suspended by the Supreme Court due to disability may petition the board for reinstatement. Reinstatement may only be effected by order of the Supreme Court.

(2) The judge shall provide to the board the name of each qualified medical, psychological, or other expert, or qualified program or referral by whom or in which the judge has been examined or treated relevant to the disability since suspension. The judge shall furnish to the board written consent to the release of information and records from these sources.

(3) Upon the filing of a petition for reinstatement, the board may take or direct whatever action it deems necessary to determine whether the disability has been removed, including requesting the judge to consent to a physical or mental examination by a qualified professional in the area of the disability designated by the board.

(4) If the board determines, after conducting a review under paragraph (3), the judge has been restored to capacity to perform judicial duties, the board shall recommend to the Supreme Court that the judge be reinstated. If the board determines that the judge continues to have a disability, it shall notify the judge of its determination. The judge shall have 20 days after service of the notice to either accept the determination of the board or request a formal hearing on the petition. If the judge accepts the determination of the board, there will be no further proceedings on the petition. If the judge requests a formal hearing, proceedings will continue under Rule 16(f), but the petition shall replace the Formal Statement of Disability Proceeding.

**(h) Representation by Counsel.** If the judge in any proceeding under this rule is not represented by counsel, the board or, if a panel has been appointed, the presider shall appoint an attorney to represent the judge at public expense.

(Amended effective January 1, 1996; amended effective July 1, 2009; amended effective July 1, 2016.)