

and the local Bench and bar. It is further

ORDERED that, pursuant to V.I.S.CT.R. 37, the public as well as members of the local Bench and bar **MAY SUBMIT WRITTEN COMMENTS** on these proposed rules to the Clerk of the Court within sixty (60) days of entry of this order. It is further

ORDERED that copies of this order be directed to the appropriate parties.

SO ORDERED this 10th day of December, 2009.

_____/s/_____
IVE ARLINGTON SWAN
Associate Justice

_____/s/_____
MARIA M. CABRET
Associate Justice

_____/s/_____
RHYS S. HODGE
Chief Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court

EXHIBIT A

Virgin Islands Supreme Court Rule 209:

Virgin Islands Rules for Judicial Disciplinary Enforcement

Table of Contents

Preamble

Terminology

Section I. Organization and Structure

Rule 209.1. Establishment and Disciplinary Authority

Rule 209.2. The Commission on Judicial Conduct

1. Purpose
2. Jurisdiction
3. Appointment of Members
4. Terms
5. Vacancies
6. Funding.

Rule 209.3. Organization and Authority of the Commission

1. Panels and Meetings
2. Officers
3. Quorum
4. Expenses
5. Powers and Duties
6. Recusal
7. Complaints Against Members of the Commission

Rule 209.4. Disciplinary Counsel

1. Appointment
2. Powers and Duties

Rule 209.5. Commission Counsel

1. Appointment
2. Powers and Duties

Section II. General Provisions

Rule 209.6. Grounds for Discipline; Sanctions Imposed; Deferred Discipline Agreement

1. Grounds for Discipline
2. Sanctions

Rule 209.7. Proof

Rule 209.8. Civil Rules Applicable

Rule 209.9. Right to Counsel

Rule 209.10. Ex Parte Contacts

Rule 209.11. Confidentiality

1. Proceedings

2. Information

Rule 209.12. Immunity from Civil Suits

Rule 209.13. Service

Rule 209.14. Subpoena Power

1. Oaths

2. Subpoenas for Investigation

3. Subpoenas for Deposition or Hearing

4. Enforcement of Subpoenas

5. Quashing Subpoena

6. Witnesses and Fees

Rule 209.15. Interim Suspension

1. Criminal Prosecution

2. Other Misconduct

3. Motion for Reconsideration

4. Effect on Commission Action

Rule 209.16. Notification to Complainant

Section III. Disciplinary Proceedings

Rule 209.17. Screening and Investigation

1. Screening

2. Preliminary Investigation

3. Full Investigation

4. Disposition after Full Investigation

5. Immunity from Criminal Prosecution

Rule 209.18. Use of Allegations from Dismissed Cases

Rule 209.19. Formal Charges

Rule 209.20. Answer

1. Time

2. Waiver of Privilege

Rule 209.21. Failure to Answer/Failure to Appear

1. Failure to Answer

2. Failure to Appear

Rule 209.22. Discovery

1. Witnesses

2. Other Evidence

3. Exculpatory Evidence

4. Duty of Supplementation

5. Completion of Discovery

6. Failure to Disclose

7. Resolution of Disputes

8. Civil Rules Not Applicable

Rule 209.23. Discipline by Consent

1. Approval

2. Rejection of Sanction

3. Affidavit of Consent
4. Order of Discipline

Rule 209.24. Hearing

1. Scheduling
2. Hearing Panel
3. Conduct of Hearing
4. Dismissal or Recommendation for Sanction
5. Submission of the Report
6. Notice of Exceptions
7. Notice to the Ethics and Grievance Committee

Rule 209.25. Review by the Supreme Court

1. Expedited Consideration
2. Brief and Supplementary Filings
3. Stay for Further Proceedings
4. Decision

Section IV. Special Proceedings

Rule 209.26. Complaint Against a Member of the Supreme Court

1. Proceedings Generally
2. Special Supreme Court
3. Stipulated Dispositions
4. Final Disposition

Rule 209.27. Cases Involving Allegations of Mental or Physical Incapacity

1. Involuntary Retirement
2. Initiation of Incapacity Proceeding
3. Proceedings to Determine Incapacity Generally
4. Involuntary Commitment or Adjudication of Incompetency
5. Inability to Properly Defend in a Disciplinary Proceeding
6. Stipulated Disposition
7. Appointment to Fill Vacancy
8. Reinstatement from Incapacity Inactive Status

Preamble

The regulation of judicial conduct in the Virgin Islands is critical to preserving the integrity of the Virgin Islands's judiciary and enhancing public confidence in the judicial system. The purpose of these Rules is to provide a mechanism for the discipline of judicial officers of the Virgin Islands and was made necessary as a result of the decision of the United States Court of Appeals for the Third Circuit in *Kendall v. Russell*, 572 F.3d 126 (3d Cir. 2009), which nullified the Virgin Islands Commission on Judicial Disabilities established by Act 3876 and codified at 4 V.I.C. §§ 651-59.

These Rules are adopted pursuant to section 21(c) of the Revised Organic Act of 1954, as amended, the inherent authority vested in this Court, and title 4, sections 32(b), 32(e), 32(f)(2) and 34(a) of the Virgin Islands Code. These Rules reflect a careful balance of competing interests: the rights of judges to fair treatment in the disposition of complaints against them; the judges' interest in the confidentiality of complaints for which the Commission finds there is not reasonable cause to believe that misconduct occurred; the public's concern that complaints against judges be given serious consideration and that judges be held to high standards of behavior; and the interest of the judges and the public in having judicial disciplinary complaints resolved promptly and accurately.

Terminology

For purposes of judicial disciplinary enforcement in the Virgin Islands the following definitions shall apply:

Commission Counsel: the lawyer drafting reports, providing legal advice to the Commission and performing other duties assigned by the Commission. See Rule 209.5.

Complaint: information in written form received by the Commission that alleges, or from which a reasonable inference can be drawn, that a judge committed misconduct or is incapacitated.

Deferred Discipline Agreement: a confidential agreement between the judge and an investigative panel of the Commission 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. See Rule 209.6.

Disciplinary Counsel: the lawyer in charge of screening and investigating complaints, prosecuting formal charges, and performing other duties assigned by the Commission. See Rule 209.4.

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

Hearing: the public proceeding at which the issues of law and fact raised by the formal charges and answer are tried. See Rule 209.24.

Hearing Panel: the panel of the Commission that conducts hearings on formal charges. See Rule 209.3.

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. See Rule 209.27.

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. See Rule 209.27.

Interim Suspension: temporary removal from office pending a final determination in any proceeding under these Rules. See Rule 209.15.

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 an investigative panel of the Commission. See Rule 209.17.

Investigative Panel: the panel of the Commission that determines whether full investigations will be conducted and whether formal charges will be filed. See Rule 209.3.

Judge: any lawyer who is a judicial officer of the Virgin Islands and who is eligible to perform judicial functions, including a justice of the Supreme Court or a judge or magistrate of the Superior Court, is a judge within the meaning of these Rules.

Misconduct: any conduct by a judge constituting grounds for discipline. See Rule 209.6.1.

Private Admonition: a non-public sanction imposed on a judge by an investigative panel of the Commission with the consent of the judge. See Rule 209.6.2(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 Commission who are neither lawyers, judges, nor former lawyers or judges. See Rule 209.2.3.

Public Reprimand: a reprimand by the Supreme Court in the form of a written decision which shall be imposed in person or served upon the respondent by certified mail. See Rule 209.6.2(5).

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 hearing panel, Commission, or Supreme Court.

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 Commission has jurisdiction. See Rule 209.17.

Serious Crime: any felony or lesser crime that reflects adversely on the judge's honesty, trustworthiness or fitness as a judge in other respects, or any crime in which a necessary element—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.” See Rule 209.15.

Section I. Organization and Structure

Rule 209.1. Establishment and Disciplinary Authority

There is hereby established a Commission on Judicial Conduct (“the Commission”). The disciplinary authority of the Commission extends to every judge. These rules shall supersede all other rules purporting to govern judicial disciplinary enforcement in the Virgin Islands.

Rule 209.2. The Commission on Judicial Conduct

1. *Purpose.* The Commission shall administer the judicial discipline and incapacity system.
2. *Jurisdiction.*
 - (1) Judges. The Commission has jurisdiction over judges regarding allegations that misconduct occurred before or during service as a judge and regarding allegations of incapacity during service as a judge.
 - (2) Former Judges. The Commission has continuing jurisdiction over former judges regarding allegations that misconduct occurred before or during service as a judge if a complaint is made within one year following service as a judge.
3. *Appointment of Members.* The Commission shall have nine members, who shall be residents of the Virgin Islands. The Supreme Court shall appoint two members, who shall be Superior Court judges and, the Presiding Judge of the Superior Court shall appoint one member, who shall be a Superior Court magistrate. The Virgin Islands Bar Association shall appoint three members, who shall be lawyers, but not judges or former judges, which are admitted to practice in the Virgin Islands for not less than five years. The remaining three members shall be public members, who shall not be lawyers, judges, or

former lawyers or judges. The Governor shall appoint two of the public members, while the President of the Legislature shall appoint one public member.

4. *Terms.* Commission members shall serve for a term of four years and shall be eligible for reappointment to a second full term. Initial appointments shall be made so that the terms of one member in each of the three categories shall expire every year. A member appointed to a term of less than four years or to fill an unexpired term may be reappointed for two full terms. A member shall continue to serve after the expiration of that member's term for purposes of participating until the conclusion of the matter relating to a judicial officer's suspension, retirement, or removal which began before the expiration of the member's term. A member's successor shall be appointed without regard to the predecessor member's continuation in service, but the successor may not participate in the matter for which the predecessor member's service has continued. The Commission members shall not be subject to removal except for cause. Removal shall be by the respective appointing authority.
5. *Vacancies.* A vacancy shall occur when a Commission member 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 appropriate appointing authority. If a vacancy is not filled by the appointing authority within sixty days from the date on which the appointing authority is notified of the vacancy by the Commission, the Chief Justice of the Supreme Court shall appoint, from the category to be represented, a member within the next fourteen days. That member will serve for the duration of the unexpired term.
6. *Funding.* The Commission shall prepare its own budget, and submit it to the Chief Justice of the Supreme Court for submission to the Legislature as part of the Supreme Court's budget. The Commission's operating expenses shall be paid from appropriations for the Commission to the Supreme Court through the budget of the Supreme Court.

Rule 209.3. Organization and Authority of the Commission

1. *Panels and Meetings.* The Commission shall divide itself into a hearing panel of at least five members and an investigative panel of three members. Investigative and hearing panels include members from each category of membership - lawyer, judge, and public members. Membership on the panels may rotate in a manner determined by the Commission provided that no member shall sit on both the hearing and investigative panel for the same proceeding. Panels shall meet when scheduled by the Commission. The full Commission shall meet periodically as determined by the Commission to consider administrative matters. Meetings of the Commission, 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 Commission.
2. *Officers.* The Commission shall elect one of its members to serve as chair and another member to serve as vice-chair, and such other officers as deemed appropriate, for such terms as the Commission shall determine. The vice-chair shall perform the duties of the chair whenever the chair is absent or is unable to act.
3. *Quorum.* Five members of the full Commission, three members of a hearing panel, and two members of an investigative panel shall constitute a quorum for the transaction of business. To the maximum extent practicable, a quorum of the Commission or any panel

should include one member from each category of membership. Alternate members should be appointed where necessary to fulfill the quorum requirements.

4. *Expenses.* Members shall be reimbursed for reasonable and necessary expenses incurred pursuant to their duties.
5. *Powers and Duties.*
 - (1) The Commission 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;
 - (b) propose amendments to the appropriate code of judicial conduct and these Rules for Judicial Disciplinary Enforcement to the Supreme Court;
 - (c) appoint Disciplinary Counsel as necessary; and
 - (d) appoint Commission Counsel.
 - (2) In addition to the duties assigned to Disciplinary Counsel and Commission Counsel in Rules 209.4 and 209.5, the Commission may delegate to either the disciplinary counsel or Commission Counsel the duty and authority to:
 - (a) maintain the Commission's records;
 - (b) maintain statistics concerning the operation of the Commission and make them available to the Commission and the Supreme Court;
 - (c) prepare the Commission's budget for its approval and monitor the funds;
 - (d) notify the appropriate appointing authority of vacancies on the Commission;
 - (e) prepare an annual report of the Commission's activities for presentation to the Supreme Court and the public; and
 - (f) inform the public of the existence and operation of the judicial discipline system, including the Commission's address and telephone number and the disposition of each matter in which public discipline is imposed.
 - (3) An investigative panel 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 209.17.4(2).
 - (4) A hearing panel shall have the duty and authority to:
 - (a) pursuant to Rule 209.24, rule on pre-hearing motions, conduct hearings on formal charges, and make findings, conclusions, and recommendations to the Supreme Court for sanctions, or it may dismiss the case;
 - (b) appoint a hearing officer or a subpanel of the hearing panel to conduct the hearing in appropriate cases; and
 - (c) review findings of the hearing officer or subpanel, if one has been appointed, and make findings, conclusions, and recommendations to the Supreme Court for sanctions, or it may dismiss the case.
6. *Recusal.* A member of the Commission shall recuse himself or herself in any matter in which recusal would be required of a judicial officer under the code of judicial conduct.

7. *Complaints Against Members of the Commission.* If a complaint is filed against a member of the Commission who is a judge subject to the jurisdiction of the Commission, the Commission member against whom the complaint has been filed shall not participate in the investigation or adjudication of the matter.

Rule 209.4. Disciplinary Counsel

1. *Appointment.* Unless there is a full time Disciplinary Counsel employed by the Supreme Court, the Commission may appoint Disciplinary Counsel to investigate and prosecute complaints filed with the Commission. Full-time Disciplinary Counsel shall not otherwise engage in the practice of law or serve in a judicial capacity. Disciplinary Counsel shall not be removed from a case except upon the concurrence of both the Supreme Court and the Commission.
2. *Powers and Duties.* Disciplinary Counsel shall have the authority and duty to:
 - (1) receive and screen complaints, refer complaints to other agencies when appropriate, conduct preliminary investigations, recommend to an investigative panel of the Commission and upon authorization conduct full investigations, notify complainants about the status and disposition of their complaints, make recommendations to an investigative panel on the disposition of complaints after full investigation, file formal charges when directed to do so by an investigative panel, prosecute formal charges, and file notices of exceptions to the hearing panel's findings, conclusions, recommendations for sanctions, or orders of dismissal;
 - (2) maintain permanent records of the Disciplinary Counsel office's operations, including receipt of complaints, screening, investigation, and filing of formal charges in judicial discipline and incapacity matters, subject to the requirements of Rule 209.18;
 - (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 Commission and administer the funds;
 - (5) employ and supervise other members of Disciplinary Counsel's staff;
 - (6) employ private investigators or experts as necessary to investigate and process matters before the Commission and the Supreme Court; and
 - (7) perform other duties at the direction of the Supreme Court or the Commission.

Rule 209.5. Commission Counsel

1. *Appointment.* The Commission may appoint a Commission Counsel to assist the Commission.
2. *Powers and Duties.* The Commission may delegate functions to the Commission Counsel, including but not limited to the duty and authority to:
 - (1) advise the hearing panel during its deliberations and draft decisions, orders, reports, and other documents on behalf of the hearing panel;

- (2) employ and supervise other staff necessary to the performance of the Commission's duties; and
- (3) perform other duties at the direction of the Commission.

Section II. General Provisions

Rule 209.6. Grounds for Discipline; Sanctions Imposed; Deferred Discipline

1. *Grounds for Discipline.*

(1) The grounds for discipline are:

- (a) any conduct constituting a violation of the appropriate code of judicial conduct, the rules of professional conduct governing attorneys in the Virgin Islands, or other applicable legal ethics codes;
- (b) a willful violation of a valid order of the Supreme Court, the Commission, or the panels of the Commission 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 related to the practice of law;
- (c) conviction of any felony or any crime which involves moral turpitude, or conduct that adversely affects the ability to perform the duties of judicial office;
- (d) willful and persistent failure to perform duties;
- (e) willful misconduct in office;
- (f) willful misconduct unrelated to judicial office which brings such office into disrepute;
- (g) habitual intemperance; or
- (h) conduct prejudicial to the administration of justice, including the repeated failure to adhere to the rules of procedure.

(2) A judge removed from office by the Supreme Court under an order of discipline, excluding retirement or disability, shall be ineligible for judicial office and, pending further order of the Supreme Court, shall be suspended from the practice of law in the Virgin Islands.

(3) These Rules shall not be construed to impair any vested right or benefit of a judge, now or hereafter existing, as provided by law.

2. *Sanctions.* One or more of the following sanctions may be imposed upon a respondent who has committed misconduct:

- (1) removal by the Supreme Court;
- (2) suspension by the Supreme Court;
- (3) imposition of limitations on the performance of judicial duties by the Supreme Court;
- (4) imposition of lawyer discipline by the Supreme Court;
- (5) public reprimand by the Supreme Court;
- (6) private admonition by an investigative panel of the Commission 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 209.17.4(1); and

(7) deferred discipline agreement.

Rule 209.7. 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 209.8. Civil Rules Applicable

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

Rule 209.9. 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 209.10. *Ex Parte* Contacts

Members of the Commission, 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 209.17.4(2), members of the investigative panel assigned to that case may communicate with Disciplinary Counsel as required to perform their duties in accordance with these Rules.

Rule 209.11. Confidentiality

1. Proceedings.

(1) Prior to 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 209.27.2(2).

2. Information.

(1) Prior to the filing and service of formal charges, all information relating to a complaint which has not been dismissed shall be held confidential by the Commission, Disciplinary Counsel, and their staffs, except that the Commission may disclose information under the following circumstances:

(a) when the Commission has determined that there is a need to notify another person to protect that person, or to notify a government agency to protect the public or the administration of justice; or

(b) upon waiver in writing by the judge.

(2) All information relating to a complaint that has been dismissed without formal charges having been filed shall be held confidential by the Commission, Disciplinary Counsel, and their staffs.

(3) Disciplinary Counsel's work product, the Commission's deliberations, and records of the Commission's deliberations shall not be disclosed.

Rule 209.12. Immunity from Civil Suits

Communications to the Commission, Commission Counsel, Disciplinary Counsel, or their staffs relating to misconduct or incapacity, as well as testimony given in all proceedings arising under these Rules, shall be absolutely privileged; and no civil lawsuit predicated thereupon may be instituted against any complainant or witness. Members of the Commission, Commission Counsel, Disciplinary Counsel, and their staffs shall be absolutely immune from civil suit for all conduct in the course of their official duties.

Rule 209.13. 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 Commission, or shall be made 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 rules of civil procedure applicable to the Superior Court of the Virgin Islands.

Rule 209.14. Subpoena Power

1. *Oaths.* Oaths and affirmations may be administered by any member of the Commission, Disciplinary Counsel in matters under full investigation, or any other person authorized by law.
2. *Subpoenas for Investigation.* After a full investigation is authorized pursuant to Rule 209.17.2(3), Disciplinary Counsel may compel by subpoena the attendance of the judge or witnesses and the production of pertinent books, papers, and documents for purposes of investigation. The investigative panel may issue subpoenas for specific witnesses or documents at the request of a judge under investigation.
3. *Subpoenas for Deposition or Hearing.* After formal charges are filed, Disciplinary Counsel and the respondent may compel by subpoena the attendance of witnesses and the production of pertinent books, papers, and documents at a deposition or hearing held under these Rules.
4. *Enforcement of Subpoenas.* Upon proper application, the Superior Court may enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.
5. *Quashing Subpoenas.* Any attack on the validity of a subpoena shall be heard and determined by the investigative or hearing panel before which the matter is pending or by the court wherein enforcement of the subpoena is being sought. Any resulting order is not appealable prior to entry of a final order in the proceeding.
6. *Witnesses and Fees.* Subpoena fees and costs shall be the same as those provided for in civil proceedings in the Superior Court.

Rule 209.15. Interim Suspension

1. *Criminal Prosecution.* Without the necessity of action by the Commission, the Supreme Court may immediately place a judge on interim suspension upon notice of the filing of an indictment, information, or complaint charging the judge with a "serious crime" under Virgin Islands law, federal law, or the law of another United States jurisdiction.
2. *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 may transfer the judge to incapacity inactive status or suspend the judge pending a final determination in any proceeding under these Rules.
3. *Motion for Reconsideration.* A judge suspended or transferred to incapacity inactive status may apply to the Supreme Court for reconsideration of the order within a reasonable time given the circumstances.
4. *Effect on Commission Action.* Interim suspension of a judge shall not preclude action by the Commission on the same conduct that was the basis for the felony or misdemeanor charge. Acquittal, dismissal, or conviction of the criminal charge shall not preclude proceedings by the Commission on the conduct that was the basis for the charge.

Rule 209.16. Notification to Complainant

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

Section III. Disciplinary Proceedings

Rule 209.17. Screening and Investigation

1. *Screening.* Disciplinary Counsel shall evaluate all information coming to Disciplinary Counsel's attention by written complaint which alleges judicial misconduct or incapacity. If the information, if true, would not constitute misconduct or incapacity, Disciplinary Counsel shall dismiss the complaint, subject to review by an investigative panel, or, if appropriate, refer the matter to another agency. If the information, if true, raises allegations that would constitute judicial misconduct or incapacity, Disciplinary Counsel shall conduct a preliminary investigation.
2. *Preliminary Investigation.*
 - (1) Disciplinary Counsel may conduct interviews and examine evidence to determine if grounds exist to believe the complaint's allegations, provided that no subpoena shall issue to compel testimony or evidence until an investigative panel of the Commission authorizes a full investigation pursuant to Rule 209.17.3.
 - (2) When Disciplinary Counsel believes that there is evidence supporting the allegations against a judge, he or she shall recommend to the appropriate investigative panel of the Commission that the panel authorize a full investigation. Disciplinary Counsel may recommend a full investigation when there are grounds

to believe that evidence supporting the allegations could be compelled by subpoena or obtained by further investigation. In all other cases, Disciplinary Counsel shall recommend that the matter be dismissed.

(3) Upon reviewing the Disciplinary Counsel's recommendations, the investigative panel shall either dismiss the complaint or authorize a full investigation.

3. *Full Investigation.*

(1) Within ten days after the investigative panel authorizes a full investigation, Disciplinary Counsel shall give notice of the following to the judge:

- (a) a specific statement of the allegations being investigated and the canons or rules allegedly violated, together with a statement that the investigation can be expanded if appropriate;
- (b) the judge's duty to respond pursuant to Rule 209.17.3(3);
- (c) the judge's opportunity to meet with Disciplinary Counsel pursuant to Rule 209.17.3(4); and
- (d) the name of the complainant, unless the investigative panel determines that there is good cause to withhold that information.

(2) The investigative panel may defer giving notice, but when notice is deferred Disciplinary Counsel must give notice to the judge prior to making a recommendation as to a disposition.

(3) Disciplinary Counsel may request that the judge file a written response within thirty days after service of the notice under Rule 209.17.3(1).

(4) Before the investigative panel determines its disposition of the complaint under Rule 209.17.4, 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 Disciplinary Counsel requests the judge's appearance, it must give the judge twenty days notice, and the testimony shall be sworn.

(5) Once a full investigation has been approved, Disciplinary Counsel is authorized to issue subpoenas pursuant to Rule 209.14.2. Disciplinary Counsel shall conduct all investigations.

4. *Disposition after Full Investigation.*

(1) Upon concluding a full investigation, Disciplinary Counsel may issue the following recommendations to the investigative panel:

- (a) dismissal of the complaint;
- (b) a private admonition or a 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 investigative panel may adopt, reject, or modify Disciplinary Counsel's recommendations. If the investigative panel finds a violation arising under Rule 209.6, for which the imposition of discipline is not warranted, it may dismiss the complaint. If the investigative panel finds that there is reasonable cause to believe the judge committed misconduct, it may take one of the following actions:

- (a) propose a private admonition or a deferred discipline agreement to the judge, and

- (i) if the judge consents, the panel shall admonish the judge or implement the deferred disciplinary agreement; in addition, the panel may assess costs against the judge as a condition of the private admonition or the deferred disciplinary agreement; or
 - (ii) if the judge does not consent, the investigative panel may direct disciplinary counsel to either file formal charges against the judge or dismiss the complaint;
 - (b) immediately direct Disciplinary Counsel to file formal charges against the judge.
5. *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 Division of the Superior Court for a grant of immunity from criminal prosecution and shall give notice of the application to the Virgin Islands Department of Justice. If the court grants immunity, the witness may no longer refuse to testify or produce evidence on the basis of the witness's privilege against self-incrimination. However, no testimony or other evidence compelled under such circumstances shall be used against the witness in any criminal case. The witness may be prosecuted for perjury or held in contempt for falsely answering, failing to answer, or refusing to produce evidence.

Rule 209.18. 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 relating to a complaint that has been dismissed before the filing of formal charges, the allegations may be reinvestigated with permission of an investigative panel.

Rule 209.19. 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 Commission. Disciplinary Counsel shall cause a copy of the formal charges to be served upon the respondent or respondent's counsel pursuant to Rule 209.13 and shall file proof of service with the Commission.

Rule 209.20. Answer

1. *Time.* The respondent shall file a written answer with the Commission and serve a copy on Disciplinary Counsel within twenty days after service of the formal charges, unless the time is extended by the hearing panel.
2. *Waiver of Privilege.* The raising of a mental or physical condition as a defense constitutes a waiver of medical privilege pursuant to Rule 209.27.4(4).

Rule 209.21. Failure to Answer/Failure to Appear

1. *Failure to Answer.* The respondent's failure to answer the formal charges shall constitute an admission of the factual allegations contained therein.
2. *Failure to Appear.* If the respondent should fail to appear when specifically so ordered by the hearing panel or the Supreme Court, 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 hearing panel or Supreme Court shall not continue or delay proceedings due to the respondent's failure to appear.

Rule 209.22. Discovery

1. *Witnesses.* Within twenty days of the filing of an answer, Disciplinary Counsel and the 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 chair of the hearing panel, or the chair's designee, who can authorize withholding of the information only for good cause shown, after taking into consideration the materiality of the information possessed by the witness and the position the witness occupies in relation to the judge. The chair's review of the request to withhold shall be in camera, but Disciplinary Counsel must advise the respondent of the request without disclosing the subject of the request. The hearing panel shall set a date for the exchange of the names and addresses of all witnesses the parties intend to call at the hearing. Disciplinary Counsel and the respondent may take depositions only of witnesses to be called at the hearing and other witnesses who are unavailable to testify at the hearing. Depositions of other persons may be taken only with permission of the chair of the hearing panel, or the chair's designee, and only for good cause shown.
2. *Other Evidence.* Disciplinary Counsel and the respondent shall exchange the following:
 - (1) non-privileged evidence relevant to the formal charges, documents to be presented at the hearing, witness statements, and summaries of interviews with witnesses who will be called at the hearing; and
 - (2) other material only upon good cause shown to the chair of the hearing panel.
3. *Exculpatory Evidence.* Disciplinary Counsel shall provide the respondent with any exculpatory evidence relevant to the formal charges.
4. *Duty of Supplementation.* Both parties have a continuing duty to supplement information required to be exchanged under this Rule.
5. *Completion of Discovery.* All discovery shall be completed within sixty days of the filing of the answer.
6. *Failure to Disclose.* The hearing panel 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, any statements taken from the witness, or summaries of any interviews with the witness.
7. *Resolution of Disputes.* Disputes concerning discovery shall be resolved by the hearing panel before which the matter is pending. The decisions of the hearing panel are not appealable before the entry of a final order in the proceedings.

8. *Civil Rules Not Applicable.* Proceedings under these Rules are not subject to the rules of civil procedure applicable to the Superior Court of the Virgin Islands regarding discovery, except those rules relating to depositions and subpoenas to the extent not inconsistent with these Rules.

Rule 209.23. Discipline by Consent

1. *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 proposed sanction. The agreement shall be submitted to the appropriate hearing panel of the Commission, which shall either:
 - (1) reject the agreement; or
 - (2) submit the agreement to the Supreme Court for approval.
2. *Rejection of Sanction.* If the proposed sanction is rejected by the hearing panel or the Supreme Court, the admission shall be withdrawn and cannot be used against the respondent in any proceedings.
3. *Affidavit of Consent.* A respondent who consents to a proposed sanction shall sign an affidavit stating each of the following:
 - (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.
4. *Order of Discipline.* The Commission 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 or enter a final order disciplining the respondent, which shall be based upon the formal charges and the conditional admission.

Rule 209.24. Hearing

1. *Scheduling.* Upon receipt of the respondent's answer or upon expiration of the time to answer, the hearing panel of the Commission shall schedule a public hearing and notify Disciplinary Counsel and the respondent of the date, time, and place of the hearing.
2. *Hearing Panel.* The hearing shall be conducted by the hearing panel of the Commission, a subpanel of the hearing panel, or a hearing officer. See Rule 209.3.5.
3. *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 the respondent, Disciplinary Counsel, a member of the hearing panel, or the Supreme Court, a transcript of the hearing shall be produced promptly and shall be provided to the respondent without cost.

- (6) Disciplinary Counsel and the respondent may submit to the hearing panel proposed findings, conclusions, and recommendations for sanctions, or a proposed order of dismissal.
- (7) If a subpanel or hearing officer is used, the findings of the subpanel or hearing officer are to be submitted to the hearing panel.
4. *Dismissal or Recommendation for Sanction.* The hearing panel shall either dismiss the case or recommend sanctions to the Supreme Court. The hearing panel shall decide a matter only upon the concurrence of a majority of all members of the panel.
 5. *Submission of the Report.* Within thirty days after the hearing or after the filing of the transcript, if one was requested, the hearing panel 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 either a recommendation for sanction or an order of dismissal. The hearing panel shall at the same time serve the report upon the respondent and Disciplinary Counsel.
 6. *Notice of Exceptions.* Within ten days of receipt of the hearing panel's report, the respondent and Disciplinary Counsel may file with the Supreme Court notice of any exceptions to the hearing panel's findings, conclusions, recommendations for sanctions, or order of dismissal. The failure to file notice of exceptions constitutes acceptance of the findings of fact, conclusions of law, and order of dismissal or recommendations for sanctions.
 7. *Notice to the Ethics and Grievance Committee.* Whenever the hearing panel recommends the suspension or removal of a respondent, it shall serve a copy of its report on the Ethics and Grievance Committee of the Virgin Islands Bar Association at the same time that the report is filed with the Supreme Court. The Ethics and Grievance Committee may file with the Supreme Court recommendations for imposing lawyer disciplinary sanctions on the respondent. Recommendations from the Ethics and Grievance Committee shall be filed in the form of a brief, in accordance with Rule 209.25.2.

Rule 209.25. Review by the Supreme Court

1. *Expedited Consideration.*
 - (1) The clerk of the Supreme Court shall docket for expedited consideration any case in which the Commission recommended a sanction or in which a notice of exceptions was filed.
 - (2) In a case dismissed by the Commission to which no exceptions were filed, the dismissal shall be final unless the Supreme Court has ordered a review within fifteen days of receipt of the Commission's decision.
2. *Brief and Supplementary Filings.*
 - (1) Disciplinary Counsel, the respondent, and the Ethics and Grievance Committee, if it is entitled to file a brief pursuant to Rule 209.24.7, shall be entitled to file briefs with the Supreme Court. The normal briefing times provided for regular appeals shall be reduced in half, unless otherwise ordered by the Supreme Court.
 - (2) If the Supreme Court desires an expansion of the record or additional findings, it shall remand the case to the hearing panel with appropriate instructions, 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 any specified issues.
3. *Stay for Further Proceedings.* If, during review by the Supreme Court, the Commission receives another complaint against the same respondent, Disciplinary Counsel shall promptly advise the Supreme Court. The Supreme Court may exercise its discretion to stay its review pending the Commission's determination of the subsequent complaint. The Supreme Court may impose a single sanction against a respondent which covers all recommendations for discipline from the Commission.
4. *Decision.*
 - (1) The Supreme Court may accept, reject, or modify, in whole or in part, the findings and conclusions of the Commission.
 - (2) 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 in the official reports for the guidance of other judges and for public information.
 - (3) The Supreme Court may assess costs, other than attorney's fees, against the respondent upon a finding that the respondent has committed misconduct.

Section IV. Special Proceedings

Rule 209.26. Complaint Against a Justice of the Supreme Court

1. *Proceedings Generally.* A complaint against a justice of the Supreme Court shall proceed in the same manner as a complaint against any other judge, except as set forth in this Rule.
2. *Special Supreme Court.* Upon either a motion by Disciplinary Counsel or the Supreme Court's own motion for interim suspension of a justice of the Supreme Court pursuant to Rule 209.15.1, or upon a finding of reasonable cause to believe misconduct was committed by a justice of the Supreme Court pursuant to Rule 209.17.2(2), a special supreme court shall be constituted. The special supreme court shall consist of the number of judges equal to the number of justices on the Supreme Court, and shall be comprised as follows:
 - (1) At the time the motion is filed, all justices of the Supreme Court, except the Chief Justice, shall recuse themselves from the proceedings. Should the Chief Justice, for any reason, including that he or she is the subject of the motion, be unable to participate in such proceedings, the most senior member of the Supreme Court, not otherwise disqualified, shall continue to serve. The Chief Justice or the justice of the Supreme Court continuing to serve under this provision shall be the presiding member of the special supreme court for all proceedings relating to the motion.
 - (2) The vacancies on the special supreme court, which are created by the above procedure, shall be filled for the limited purpose of the judicial disciplinary proceedings by active judges of the Superior Court who are not members of the Commission chosen pursuant to this Rule. The required number of judges of the Superior Court shall be randomly selected, in equal numbers where possible, by the Clerk of the Supreme Court and the Clerk of the Superior Court. Notice of the

Superior Court judges selected under this procedure shall be given to the Commission and the subject justice.

(3) In the event that all justices of the Supreme Court are unable to participate in a judicial disciplinary proceeding, the Clerk of the Supreme Court and the Clerk of the Superior Court shall randomly select the necessary number of Superior Court judges to serve in such proceedings. The most senior Superior Court judge shall serve as the presiding member of the special supreme court for all proceedings relating to the motion.

(4) In the event that all active judges of the Superior Court are unable to participate in a judicial disciplinary proceeding, the Clerk of the Supreme Court and the Clerk of the Superior Court shall randomly select the necessary number of members to serve on the special supreme court from the available senior or retired judges of the Superior Court, Supreme Court, or other court of record of the Virgin Islands.

(5) The Supreme Court, by promulgation of additional rules, may further provide for the establishment of and the procedures governing such special supreme court.

3. *Stipulated Dispositions.* Final review of any discipline by consent, authorized by Rule 209.23, shall be by the full Commission.
4. *Final Disposition.* If neither Disciplinary Counsel nor the respondent objects to the decision of the hearing panel made pursuant to Rule 209.24.4, the decision shall be final and the special supreme court shall not review the matter. If either Disciplinary Counsel or the respondent objects, the hearing panel shall file its report, conclusions, any minority opinions, and the record of the proceedings with the special supreme court, which shall review the matter in accordance with Rule 209.25.

Rule 209.27. Cases Involving Allegations of Mental or Physical Incapacity

1. *Involuntary Retirement.* A judge may be involuntarily retired when a physical or mental disability seriously interferes with the performance of judicial duties. A judge involuntarily retired by the Supreme Court shall be considered to have retired voluntarily.
2. *Initiation of Incapacity Proceeding.* An incapacity proceeding can be initiated by a complaint, a claim of inability to defend in a disciplinary proceeding, or an order of involuntary commitment or adjudication of incompetency.
3. *Proceedings to Determine Incapacity Generally.* All incapacity proceedings shall be conducted in accordance with the procedures for disciplinary proceedings, except that:
 - (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 Commission 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 one or more of the following:
 - (a) retiring the judge;

- (b) transferring the judge to judicial incapacity inactive status;
 - (c) transferring the judge to lawyer incapacity inactive status if the Supreme Court concludes that the judge is incapacitated to practice law; or
 - (d) deferring the disciplinary proceeding, pursuant to Rule 209.27.5(2), if a judicial disciplinary proceeding against the judge is pending and the Supreme Court concludes that the judge is incapacitated to defend.
4. *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 following 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 directed by the Supreme Court, upon the judge, his or her guardian, or the director of the institution to which the judge has been committed.
5. *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 his or her defense due to mental or physical incapacity, Disciplinary Counsel shall promptly notify the Supreme Court. The Supreme Court shall immediately transfer the judge to lawyer and judicial incapacity inactive status pending a determination by the Commission of the judge's incapacity pursuant to Rule 209.27.3. A determination by the Commission that the judge is able to assist in his or her own defense is interlocutory and is not appealable prior to entry of a final order in the proceeding.
 - (2) If, pursuant to Rule 209.27.3, the Commission determines that 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 remain on lawyer and judicial incapacity inactive status until such time as the Supreme Court grants a petition for reinstatement to active status as a lawyer or judge. If the Supreme Court, in 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 209.27.3, the Commission 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 remain on judicial incapacity inactive status until such time as the Supreme Court grants a petition for reinstatement to active status as a judge.
 - (4) The raising of mental or physical condition as a defense to, or in mitigation of, formal charges constitutes a waiver of medical privilege.
6. *Stipulated Disposition.*
- (1) The hearing panel shall designate one or more qualified medical, psychiatric, or psychological experts to examine the judge prior to the hearing on the matter. The hearing panel may designate an expert agreed upon by Disciplinary Counsel and the judge. The expert or experts shall report to the hearing panel and the parties.
 - (2) After receipt of the examination report, Disciplinary Counsel and the judge may agree upon proposed findings of fact and conclusions of law, and a proposed order. The stipulated disposition shall be submitted to the hearing panel, which

shall recommend to the Supreme Court that the proposals be approved or rejected. 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 the terms of the stipulation. If the stipulated disposition is rejected by the Supreme Court, the stipulation shall be withdrawn, and its contents may not be used against the judge in any proceedings.

(4) If the Supreme Court rejects the stipulated disposition, the Supreme Court shall order that the hearing proceed.

7. *Appointment to Fill Vacancy.* Upon ordering a judge transferred to judicial incapacity inactive status pursuant to Rule 209.27.3 or 209.27.4, a replacement judge may be appointed to serve during the period of incapacity, whether the incapacity is temporary or permanent, in accordance with local law.

8. *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 its order, or any modifications thereof, transferring the judge to incapacity inactive status.

(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 ordering an examination of the judge by qualified medical or psychological experts designated by the Supreme Court.

(4) Along 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 was ordered. The judge shall furnish to the Supreme Court written consent to the release of information and records relating to the incapacity upon receipt of such a request by the Supreme Court or by court-appointed medical or psychological experts.

(5) If a judge whom has been transferred to lawyer incapacity inactive status on the basis of a judicial determination of incompetence has been judicially declared 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.