

**VIRGIN ISLANDS  
COMMISSION ON JUDICIAL CONDUCT  
INTERNAL OPERATING PROCEDURES**

**Section I. Applicability of Internal Operating Procedures**

**I.O.P. 1. Scope of and Authority to Establish Internal Operating Procedures.**

(a) **Scope of Internal Operating Procedures.** These Internal Operating Procedures (“IOPs”), together with Supreme Court Rule 209, shall govern the procedure in all proceedings before the Virgin Islands Commission on Judicial Conduct (“Commission”) initiated after October 15, 2010. Upon their approval by the Supreme Court pursuant to Supreme Court Rule 209.3.5(1)(a), the provisions of these IOPs shall govern all proceedings before the Commission brought pursuant to Supreme Court Rule 209.

(b) **Authority for Promulgation of IOPs.** These IOPs are promulgated pursuant to the authority granted to the Commission by Supreme Court Rule 209.3.5(1)(a).

(c) **Title and Citation.** These IOPs shall be known as the Virgin Islands Commission on Judicial Conduct Internal Operating Procedures, and may be cited as V.I. Comm’n Jud. Conduct I.O.P. in the long form and Cmn. I.O.P. in the short form.

(d) **Definitions.** All word and phrases defined in the “Terminology” section preceding Supreme Court Rule 209.1 shall have the same meaning when used in these IOPs.

**I.O.P. 2. Amendment; Adoption of Supplemental Procedures Permitted.**

(a) **Amendment of IOPs.** Any of these IOPs may, upon majority vote of the full Commission, be amended, provided that the amendments are approved by the Supreme Court pursuant to Supreme Court Rule 209.3.5(1)(a).

(b) **Supplemental Procedures.** For good cause shown, any investigative panel or hearing panel may, by majority vote of the panel members, supplement the requirements or provisions of any of these IOPs in a particular case without obtaining the approval of the full Commission or the Supreme Court, provided that any supplemental procedures adopted do not have the effect of suspending or otherwise altering any provision of Supreme Court Rule 209, these IOPs, or any rule adopted by the Supreme Court that is applicable to proceedings before the Commission.

**Section II. Commission Organization and Staff**

**I.O.P. 3. Commission Officers.**

(a) **Officers.** The officers of the Commission shall consist of a Chair, a Vice-Chair, and a Secretary-Treasurer, who shall perform the duties specified in Supreme Court Rule 209, these IOPs, and any other duties usually incident to such offices.

(b) **Term.** All officers shall serve for two calendar years beginning on January 1 and ending on December 31 of the second such year.

(c) **Succession.** No member of the Commission may serve more than two consecutive terms as

an officer.

(d) **Election of Officers.** At its fourth quarterly meeting of the second year of the term of the Chair, Vice-Chair, and Secretary-Treasurer, the members of the Commission shall elect, by secret ballot in executive session, the Chair, Vice-Chair, and Secretary-Treasurer for the following two calendar years. The Commission shall first elect the Chair, who must be a different category of member than the members who shall serve as the Vice-Chair and Secretary-Treasurer. After electing a Chair, the Commission shall elect the Vice-Chair, who must be a different category of member than the member who shall serve as the Chair. After electing a Chair and Vice-Chair, the Commission shall elect the Secretary-Treasurer, who must be a different category of member than the members who shall serve as the Chair and Vice-Chair.

(e) **Vacancies.**

(1) *Chair.* If, for any reason, the office of Chair becomes vacant on or before December 31 of the second calendar year of the Chair's term, the Vice-Chair shall automatically succeed to the position of Chair and serve the unexpired term of the Chair. However, if the position of Vice-Chair is also vacant, the unexpired term of the Chair shall be filled by a special election, which shall occur at the next quarterly meeting or within thirty days of the date of the vacancy, whichever is earlier.

(2) *Vice-Chair and Secretary-Treasurer.* If, for any reason, the offices of Vice-Chair or Secretary-Treasurer become vacant on or before December 31 of the second calendar year of the Vice-Chair or Secretary-Treasurer's term, a special election shall occur to fill the unexpired term of either position, which shall occur at the next quarterly meeting or within thirty days of the date of the vacancy, whichever is earlier; provided, however, that if the position becomes vacant after officers have been elected for the following calendar year pursuant to I.O.P. 3(d), the member elected to serve as Vice-Chair or Secretary-Treasurer, as the case may be, for the following calendar year shall automatically fill an unexpired term in the present calendar year. In the event a vacancy in the offices of Vice-Chair or Secretary-Treasurer occur within thirty days of the date of the fourth quarterly meeting of the second calendar year of the Vice-Chair or Secretary-Treasurer's term, the election for the position in which the vacancy has occurred shall be for both the unexpired term in the present calendar year and the full term for the following two calendar years.

(3) *Impact of Serving Unexpired Term on Succession.* Notwithstanding I.O.P. 3(c), a member who serves the unexpired term of any office shall not be deemed to have succeeded himself or herself as an officer if subsequently elected to serve a full term as an officer.

(f) **Exceptions.** Notwithstanding I.O.P. 3(c) and I.O.P. 3(d), the requirements that a member not serve more than two consecutive terms as an officer and that the positions of Chair, Vice-Chair, and Secretary-Treasurer each be filled by different categories of members may be suspended if every individual eligible to serve as Chair, Vice-Chair, or Secretary-Treasurer, as the case may be, declines, in writing or on the record, to serve in that position.

#### **I.O.P. 4. Meetings of Full Commission.**

(a) **Quarterly Meetings.** The full Commission shall, at a minimum, strive to meet every quarter.

(b) **Additional Meetings.** In addition to the quarterly meetings required by I.O.P. 4(a), the full

Commission shall meet:

- (1) to conduct the special elections mandated by I.O.P. 3(e)(1)-(2), provided that a quarterly meeting is not scheduled to occur within thirty days of the date of the vacancy;
- (2) when called by the Chair; and
- (3) upon the written request of three members of the Commission.

(c) **Place of Meeting.** All Commission meetings shall occur at the facilities of the Supreme Court of the Virgin Islands on either St. Thomas or St. Croix, or at such other locations as the Commission may select. The quarterly meetings mandated by I.O.P. 4(a) may be held alternatively in St. Thomas and St. Croix, while the location of the additional meetings provided for in I.O.P. 4(b) shall be at the discretion of the Chair. Members who do not reside on the island in which a meeting of the full Commission is held may attend by telephone or videoconference or, if teleconferencing or videoconferencing is not available for a particular meeting, shall have transportation arranged and paid for by the Supreme Court on behalf of the Commission.

(d) **Notice of Meeting.** The Chair shall provide members of the Commission with at least twenty-one days written notice of the time and place of the quarterly meetings mandated by I.O.P. 4(a) and fourteen days written notice of the time and place of the additional meetings provided for in I.O.P. 4(b)(1)-(3). Prior to providing written notice of any meeting pursuant to this I.O.P. 4(d), the Chair shall ascertain the availability of all members of the Commission and schedule the meeting to maximize attendance.

(e) **Per Diem.** In addition to any transportation or other expenses paid for pursuant to I.O.P. 4(c), each member who is not a governmental employee shall receive, from money appropriated for the Commission's operations, a \$100.00 per diem, which shall represent each member's reasonable and necessary expenses associated with the meeting of the full Commission. In the event a member's actual expenses associated with a meeting of the full Commission exceed the \$100.00 per diem, or if the member is not eligible for the per diem but has incurred expenses, the member shall submit to the Secretary-Treasurer, in writing, a description of the nature of the expenses, along with all applicable receipts, which the Secretary-Treasurer shall approve only upon a finding that the expenses were reasonably and necessarily incurred pursuant to the member's duties.

(f) **Presence of Non-Members.** Disciplinary Counsel shall attend all meetings of the full Commission except those portions held in executive session. Commission Counsel may attend a meeting of the full Commission, except for those portions held in executive session, if the Chair or at least three Commission members have expressly requested Commission Counsel's attendance. Members of the Commission whose terms have expired but who continue to serve on an investigative panel or hearing panel to which they have been previously assigned pursuant to Supreme Court Rule 209.2.4 may continue to attend and participate in meetings of the full Commission, but shall not be entitled to vote, may not attend portions of the meeting held in executive session, and shall not be eligible to receive the per diem provided for in I.O.P. 4(e) unless the Chair or at least three of Commission members expressly requested their attendance.

(g) **Court Reporter.** All meetings of the full Commission, excluding those held in executive session, shall be recorded by a court reporter or digitally recorded, with transcripts retained by the Commission pursuant to any procedures adopted pursuant to I.O.P. 17.

## **I.O.P. 5. Selection of Members to Serve on Investigative and Hearing Panels.**

(a) **Investigative Panel.** The three-member investigative panel required by Supreme Court Rule 209.3.1 shall be established in the following manner:

(1) Disciplinary Counsel shall maintain lists of all members of the Commission, organized by category of membership, for the purposes of selecting the members to serve on investigative panels. Within each category of membership, Disciplinary Counsel shall initially list each member in order based on expiration of term, with the member whose term is set to expire soonest placed at the top of the list. Once a member has been appointed to an investigative panel pursuant to I.O.P. 5(a)(2), Disciplinary Counsel shall place that member at the end of the list for that category of membership. Re-appointment of a Commission member to a subsequent term shall not affect the placement of that member on the lists maintained by Disciplinary Counsel pursuant to I.O.P. 5(a)(1). In the event a new member is appointed to the Commission, Disciplinary Counsel shall place that member on the list above all other members of that category of member who have already served on an investigative panel.

(2) At its first quarterly meeting, the Chair shall create the first investigative panel by assigning, for each category of members, the member who is at the top of the list maintained by Disciplinary Counsel. This group of members shall serve as the investigative panel for all complaints filed with the Commission during this six month after the investigative panel's creation, as well as for all complaints received before the first investigative panel was created. The Chair shall follow this same procedure to create a new investigative panel every six months or as needed. Once Disciplinary Counsel has referred a complaint to an investigative panel pursuant to I.O.P. 8(g), that panel shall retain jurisdiction over the complaint notwithstanding the subsequent creation of a new investigative panel.

(3) Immediately after receiving notice that a complaint has been filed from Disciplinary Counsel as provided for in I.O.P. 8(g), the members of the investigative panel assigned to the complaint shall review the complaint to determine whether recusal is required pursuant to Supreme Court Rule 209.3.6 and, if recusal is required, shall notify Disciplinary Counsel, the presiding member of the investigative panel, and the Chair in writing. (4) In the event one or more members of an investigative panel are disqualified, recused, or otherwise unable to serve on the investigative panel for a particular case, appointment of replacement panel members shall not be required unless

(1) the vacancies have caused the total number of panel members to fall below the number required for a quorum pursuant to Supreme Court Rule 209.3.3; or

(2) the remaining panel members agree that the interests of justice require that the matter be decided by a full investigative panel notwithstanding the presence of a quorum.

In the event it becomes necessary to appoint a replacement member of an investigative panel, the presiding member of the investigative panel shall immediately notify the Chair, who shall immediately appoint a replacement member from the same class of membership as the disqualified, recused, or unavailable member, pursuant to the procedures outlined in I.O.P. 5(a)(2), or as closely as possible given the circumstances.

(b) **Hearing Panel.** All members who did not serve on the investigative panel for a particular case shall automatically serve as members of the hearing panel for that particular matter. If

recusals or disqualifications cause the hearing panel to fall below the three members necessary for a quorum pursuant to Supreme Court Rule 209.3.3, the presiding member of the hearing panel shall immediately notify the Chair, who shall bring the matter to the attention of the Chief Justice for further action, if necessary, by the Supreme Court.

## **I.O.P. 6. Presiding Member of Investigative and Hearing Panels**

(a) **Designation of Presiding Member.** The Chair shall preside over any investigative panel or hearing panel of which he or she is a member at the time of the panel's creation. When the Chair is not a member of an investigative panel or a hearing panel, the Vice-Chair shall preside over the panel. In the event neither the Chair nor Vice-Chair are members of an investigative panel or a hearing panel, the Secretary-Treasurer shall preside over the panel. In the event neither the Chair, Vice-Chair, nor Secretary-Treasurer are members of an investigative panel or hearing panel, the most senior member of the panel, as determined by the date of the member's commission, shall preside over the panel. Where multiple members of an investigative panel or a hearing panel received their commission on the same day, the member whose term shall expire first in time shall be deemed most senior; however, in the event more than one member's term expires on the same day, the judge members whose terms expire on that date shall be deemed more senior than the lawyer members whose terms expire on the same date, who shall be deemed more senior than the public members whose terms expire on the same date.

(b) **Impact of Election of New Officers.** The member designated as presiding member of an investigative panel or a hearing panel at the time of the panel's creation shall continue to serve as presiding member of that panel notwithstanding the election of new officers pursuant to I.O.P. 3.

(c) **Delegation of Duties Permitted.** Any duty assigned to the presiding member of an investigative panel or a hearing panel pursuant to these IOPs or Supreme Court Rule 209, including the drafting of any written orders, may be delegated by the presiding member to another member of the panel.

## **I.O.P. 7. Appointment, Compensation, and Duties of Commission Staff**

### **(a) Disciplinary Counsel.**

(1) *Appointment.* The Supreme Court shall hire a full time or part time Disciplinary Counsel, who will serve the Committee, but as an employee of the Supreme Court.

(2) *Compensation.* The Supreme Court shall set the compensation for any full time or part time Disciplinary Counsel that it has hired, and pay that compensation from its budget.

(3) *Duties.* Any attorney acting as full time or part time Disciplinary Counsel shall perform the duties set forth in Supreme Court Rule 209 and these IOPs, as well as any other tasks assigned by the Chair, the Chief Justice, or the full Commission or the Supreme Court.

(4) *Continuation of Service.* In the event an attorney hired by the Supreme Court to serve as Disciplinary Counsel on a full time or part time basis ceases to be employed by the Supreme Court, the attorney may continue to serve as Disciplinary Counsel in all pending cases unless both the Supreme Court and the full Commission authorize or require Disciplinary Counsel to withdraw pursuant to Supreme Court Rule 209.4.1. An attorney

continuing to serve as Disciplinary Counsel pursuant to this I.O.P. 7(a)(4) shall be compensated at a reasonable rate.

(5) *Absence of Disciplinary Counsel.* In the event a complaint is filed prior to the hiring of Disciplinary Counsel by the Supreme Court, all duties assigned to Disciplinary Counsel shall be performed by the Chair or his or her designee on the Commission. A Chair or designee who has performed the duties of Disciplinary Counsel with respect to any particular proceeding, excluding ministerial duties related to the docketing of a complaint pursuant to I.O.P. 8, may not serve on the hearing panel for that complaint.

**(b) Commission Counsel.**

(1) *Appointment.* The Commission may hire, on an as-needed basis, a Commission Counsel, who shall not serve as an employee of the Supreme Court. An attorney hired as Commission Counsel pursuant to this section may hold other employment, subject to the conflict of interest rules applicable to members of the Virgin Islands Bar.

(2) *Compensation.* The Commission shall set the compensation for any Commission Counsel it has hired pursuant to I.O.P. 7(b)(1), provided that the compensation is reasonable. The Commission shall compensate Commission Counsel from the portion of the Supreme Court's budget appropriated for the Commission's operations.

(3) *Duties.* Any attorney acting as Commission Counsel shall perform the duties set forth in Supreme Court Rule 209 and these IOPs, as well as any other tasks assigned by the Chair or the full Commission.

**(c) Private Investigators.** The Commission may enter into contracts with private investigators to assist in conducting the preliminary or full investigations authorized by Supreme Court Rule 209.17; provided, however, that any hourly rate or other compensation paid to an investigator must be reasonable.

**(d) Other Staff.** The Commission may hire additional staff members, who shall not be employees of the Supreme Court. Such staff members shall be compensated from the portion of the Supreme Court's budget appropriated for the Commission's operations, provided that the compensation is reasonable.

### **Section III. Procedures for Investigation and Disposition of Complaints**

#### **I.O.P. 8. Docketing of Complaints**

(a) **Minimum Requirements for Complaint.** Every complaint must, at a minimum, be in writing, signed under penalty of perjury, and, in some way, identify the judge that is the subject of the complaint and provide the basis for the complaint. A complaint must be in English and conform as much as possible to the form provided for in this I.O.P. 8(e).

(b) **Docketing.** Every complaint that meets the minimum requirements specified in I.O.P. 8(a) shall be docketed by Disciplinary Counsel under the caption "Complaint of Judicial Misconduct re: Sealed Respondent" or, if the complaint alleges physical or mental incapacity, "Complaint of Judicial Disability re: Sealed Respondent," and be assigned a Commission case number by Disciplinary Counsel. Pursuant to Supreme Court Rule 209.11, all complaints and other filings shall be deemed filed under seal until review by the Supreme Court is sought pursuant to Supreme Court Rule 209.25, except that, pursuant to Supreme Court Rule 209.27.3(2), all filings in judicial disability proceedings shall remain under seal except for the orders provided for in

Supreme Court Rules 209.27.3(4) and 209.27.4. Neither Disciplinary Counsel nor the Commission may assess a fee for filing any complaint or other document with the Commission.

(c) **Complaint Made to Commission Member.** In the event a complaint is deposited with a member of the Commission or the Clerk of the Supreme Court rather than with Disciplinary Counsel, the individual who received the complaint shall immediately transmit the complaint and any other documents to Disciplinary Counsel for docketing, along with a notation of when the complaint was received.

(d) **Failure to Meet Minimum Requirements.** In the event a complaint does not meet the minimum requirements specified in I.O.P. 8(a), Disciplinary Counsel—or any other individual to whom the complaint was made pursuant to I.O.P. 8(c)—shall inform the complainant of the minimum requirements necessary for a complaint and refer the complainant to the model complaint form provided for in I.O.P. 8(e).

(e) **Model Complaint Form.** The full Commission shall approve a model complaint form that, if completed by a complainant, would satisfy the minimum requirements for a complaint under I.O.P. 8(a).

(f) **Transmission of Complaint.** Immediately after docketing, Disciplinary Counsel shall transmit a copy of the complaint and any other materials to all members of the investigative panel, excluding any judge members of the Commission who are the subject of the complaint and are disqualified from the matter pursuant to Supreme Court Rule 209.3.7.

(g) **Notice to Complainant of Docketing.** Disciplinary Counsel, after transmitting notice of a complaint pursuant to I.O.P. 8(g), shall notify the complainant, in writing, that the complaint has been docketed.

(h) **Subsequent Filings.** All subsequent filings in a matter docketed pursuant to I.O.P. 8(b) shall be docketed by Disciplinary Counsel and shall comply as closely as possible to the procedure for docketing filings in Supreme Court proceedings.

(i) **Notice to Supreme Court; Interim Suspension.** If a filing alleges that an indictment, information, or complaint has been filed charging the judge with a “serious crime” under Virgin Islands law, federal law, or the law of another United States jurisdiction, Disciplinary Counsel shall, in addition to docketing the complaint pursuant to I.O.P. 8(b), immediately transmit notice of the complaint and any other pertinent materials to the Supreme Court so that the Supreme Court may consider whether interim suspension is warranted pursuant to Supreme Court Rule 209.15. In the event the Supreme Court enters an order of interim suspension, the entry of the order of interim suspension shall not serve to unseal any complaint filed against the judge pursuant to Supreme Court Rule 209.11 or I.O.P. 8(b), and Disciplinary Counsel’s transmission of a complaint to the Supreme Court pursuant to this I.O.P. 8(j) shall not serve to stay any proceedings in the Commission with respect to that complaint.

## **I.O.P. 9. Dismissal for Lack of Jurisdiction**

(a) **Procedure on Motion of Disciplinary Counsel.** If Disciplinary Counsel, at any stage of the proceedings, believes that the Commission may lack jurisdiction over the complaint, Disciplinary Counsel shall file a memorandum with the investigative panel—or, if formal charges have been filed, the hearing panel—that explains the basis for this belief. Disciplinary Counsel shall file the memorandum required by this I.O.P. 9(a) *ex parte* only if the judge has not yet been served with the notice required by Supreme Court Rule 209.17.3(1). If a majority of the

members of the panel agree that the Commission lacks jurisdiction, the presiding member of the panel—or, if the presiding member is not in the majority, a member chosen by the members in the majority—shall enter a written order either dismissing the case or allowing the case to proceed, together with the reasons for the majority's decision. Any member of the panel who disagrees with the majority decision may dissent from any order entered pursuant to this I.O.P. 9(a).

(b) **Procedure on Motion of Panel Member.** If any member of an investigative panel or hearing panel, at any stage of the proceedings, believes that the Commission may lack jurisdiction over the complaint, the presiding member of the panel shall, without divulging which or how many members believe the Commission may lack jurisdiction, enter a written order directing Disciplinary Counsel to file a memorandum setting forth the basis for the Commission's jurisdiction over the complaint. No member of the investigative panel shall be permitted to note their dissent from an order requiring Disciplinary Counsel to file a memorandum on the issue of jurisdiction. Disciplinary Counsel shall file the memorandum required by this I.O.P. 9(b) *ex parte* only if the judge has not yet been served with the notice required by Supreme Court Rule 209.17.3(1). If, after reviewing Disciplinary Counsel's memorandum, a majority of the members of the panel agree that the Commission lacks jurisdiction, the presiding member of the panel—or, if the presiding member is not in the majority, a member chosen by the members in the majority—shall enter a written order either dismissing the case or allowing the case to proceed, together with the reasons for the majority's decision. Any member of the panel who disagrees with the majority decision to dismiss or not to dismiss for lack of jurisdiction may dissent from the order.

(c) **Review by Hearing Panel.** The hearing panel, upon its motion or by motion of Disciplinary Counsel, the complainant, or other interested party, may, within fifteen days of receipt of an order of the investigative panel dismissing a complaint for lack of jurisdiction, order review of the investigative panel's decision that the Commission lacks jurisdiction over the complaint.

(d) **Review by Supreme Court.** The Supreme Court, upon its motion or by motion of Disciplinary Counsel, the complainant, or other interested party, may, within fifteen days of receipt of an order of the hearing panel dismissing a complaint for lack of jurisdiction or affirming a dismissal for lack of jurisdiction by the investigative panel, order review of the hearing panel's decision that the Commission lacks jurisdiction over the complaint.

(e) **Notification to Other Agency.** In the event a complaint is dismissed for lack of jurisdiction and the hearing panel or the Supreme Court, as the case may be, does not order review pursuant to I.O.P. 9(c) or 9(d), Disciplinary Counsel shall forward to any agency that may have jurisdiction—including, but not limited to, the Ethics and Grievance Committee of the Virgin Islands Bar Association—a copy of the complaint, the dismissal order, and any other appropriate materials.

(f) **Notice of Dismissal.** Disciplinary Counsel shall serve the complainant and the judge who is the subject of the complaint with notice of any dismissal order entered pursuant to this I.O.P. 9, and shall thereafter close the matter if the hearing panel or the Supreme Court, as the case may be, does not order review pursuant to I.O.P. 9(c) or 9(d).

## **I.O.P. 10. Initial Screening of Complaints**

(a) **Notice to Complainant of Decision to Recommend Dismissal.** In the event Disciplinary

Counsel, after screening a complaint pursuant to Supreme Court Rule 209.17.1, decides to recommend dismissal to the investigative panel for a reason other than lack of jurisdiction, Disciplinary Counsel shall notify the complainant, in writing, of the decision, but provide the complainant with the opportunity to supplement the complaint with additional materials within fourteen days. Disciplinary Counsel shall make no recommendation of dismissal to the investigative panel until after this fourteen day period has lapsed or additional materials are filed, whichever is earlier.

(b) **Recommendation of Dismissal to Investigative Panel.** Subject to the provisions of I.O.P. 10(a), Disciplinary Counsel, after deciding that dismissal without preliminary investigation is warranted, shall file an *ex parte* memorandum explaining why, in the opinion of Disciplinary Counsel, the allegations in the complaint, if true, would not constitute misconduct or incapacity. If at least one member of the investigative panel believes the allegations, if true, could constitute misconduct or incapacity, the presiding member of the investigative panel shall, without divulging which or how many members believe a preliminary investigation is warranted, order Disciplinary Counsel to conduct a preliminary investigation. However, in the event the investigative panel unanimously agrees that the allegations of the complaint, if true, cannot constitute misconduct or incapacity, the presiding member of the investigative panel shall, by written order, dismiss the complaint. No member of the investigative panel shall be permitted to note their dissent from any order entered pursuant to this I.O.P. 10(b).

(c) **Decision to Conduct Preliminary Investigation.** Disciplinary Counsel need not provide the complainant notice of Disciplinary Counsel's intent to conduct a preliminary investigation.

(d) **Notice of Dismissal.** Disciplinary Counsel shall serve the complainant and the judge who is the subject of the complaint with notice of any dismissal order entered pursuant to I.O.P. 10(b), and shall thereafter close the matter.

## **I.O.P. 11. Preliminary Investigation of Complaints**

(a) **Recommendation After Preliminary Investigation.** After conducting a preliminary investigation pursuant to Supreme Court Rule 209.17.2, Disciplinary Counsel shall draft a report summarizing any interviews conducted and all evidence examined and submit the report *ex parte* to the investigative panel together with an *ex parte* memorandum explaining why, in the opinion of Disciplinary Counsel, the investigative panel should either authorize a full investigation or dismiss the complaint. If a majority of the members of the investigative panel believe that further investigation is warranted, the presiding member of the investigative panel shall, without divulging which or how many members believe a full investigation is warranted, order Disciplinary Counsel to conduct a full investigation. However, if a majority of the members of the investigative panel believe that further investigation is not warranted, the presiding member of the investigative panel shall, without divulging which or how many members believe a full investigation is warranted, dismiss the complaint by written order. No member of the investigative panel shall be permitted to note their dissent from any order entered pursuant to this I.O.P. 11(a).

(b) **Notice to Complainant Not Required.** If Disciplinary Counsel, after conducting a preliminary investigation, decides to recommend dismissal to the investigative panel rather than a full investigation, Disciplinary Counsel shall not be required to notify the complainant of Disciplinary Counsel's decision or give the complainant the opportunity to submit supplemental

materials.

(c) **Notice of Dismissal.** Disciplinary Counsel shall serve the complainant and the judge who is the subject of the complaint with notice of any dismissal order entered pursuant to I.O.P. 11(a), and shall thereafter close the matter.

## **I.O.P. 12. Full Investigation of Complaints**

(a) **Model Subpoena Form.** Disciplinary Counsel shall submit to the full Commission, for its approval, a model subpoena form that, once completed and signed by Disciplinary Counsel, shall constitute the subpoena Disciplinary Counsel may issue pursuant to Supreme Court Rule 209.14.2. The same form, once completed by the judge under investigation and signed by the presiding member of the investigative panel, shall constitute the subpoena the investigative panel may issue at the request of the judge pursuant to Supreme Court Rule 209.14.2. All subpoenas issued pursuant to Supreme Court Rule 209.14.2 or this I.O.P. 12(a) shall, to the extent practicable, not divulge the name of the judge under investigation.

(b) **Motions to Quash Subpoena.** Any motions to quash a subpoena issued after a full investigation has been authorized but before formal charges have been filed shall be filed no later than fourteen days of the date of issuance, and any opposition to a motion to quash must be filed no later than seven days after the date of service of the motion to quash. For purposes of this I.O.P. 12(b), time shall be computed the same as in the Rules of Appellate Procedure applicable to Supreme Court proceedings. The presiding member of the investigative panel may resolve any motion to quash a subpoena pursuant to this I.O.P. 12(b). Any party adversely impacted by an order entered by the presiding member of the investigative panel may, within seven days of the date of entry of the presiding member's order, request that the entire investigative panel review the presiding member's decision. Arguments and supporting materials that could have been, but were not, provided to the presiding member as part of the original motion shall not form the basis for overturning an order entered by the presiding member.

(c) **Recommendation After Full Investigation.** After concluding a full investigation pursuant to Supreme Court Rule 209.17.2, Disciplinary Counsel shall draft a report summarizing the results of the investigation and submit the report to the investigative panel together with a memorandum recommending what action, in the opinion of Disciplinary Counsel, the investigative panel should take pursuant to Supreme Court Rule 209.17.4(1). A copy of the report and memorandum shall be served by Disciplinary Counsel on the judge who is the subject of the complaint, and the judge may, within fourteen days of the date of service, file a response to Disciplinary Counsel's filing. The investigative panel may, upon its own motion or the motion of the judge, order Disciplinary Counsel and the judge to appear before the full investigative panel or the presiding member of the investigative panel to present oral argument on their respective filings. Pursuant to Supreme Court Rule 209.17.4(2), a majority of the investigative panel may adopt, reject, or modify Disciplinary Counsel's recommendations and, if it finds there is reasonable cause to believe the judge committed misconduct, may take any of the actions listed in Supreme Court Rule 209.17.4(2)(a)-(b). Any member of the panel who disagrees with the majority decision may dissent from any order entered pursuant to this I.O.P. 12(c). In the event a majority of the investigative panel is unable to agree as to whether dismissal, a private admonition or deferred disciplinary agreement, or formal charges are appropriate, the issue of whether a private admonition or deferred disciplinary agreement is warranted shall be

referred to the hearing panel and, if rejected, Disciplinary Counsel shall file formal charges against the judge.

(d) **Notice to Complaint.** Disciplinary Counsel shall serve the complainant and the judge who is the subject of the complaint with notice of any order entered pursuant to I.O.P. 12(c). In the event the order entered pursuant to I.O.P. 12(c) results in dismissal or otherwise terminates the proceeding, Disciplinary Counsel shall thereafter close the matter.

### **I.O.P. 13. Proceedings Before Hearing Panel.**

(a) **Model Subpoena Form.** The same form authorized by I.O.P. 12(a) shall also constitute the subpoena for deposition or hearing after formal charges pursuant to Supreme Court 209.14.3, except that such a subpoena, when issued by the respondent, need not be signed by any member of the hearing panel in order to be effective.

(b) **Discovery Disputes.** The presiding member of the hearing panel may resolve any discovery dispute pursuant to Supreme Court Rule 209.22, including a motion to quash a subpoena. The deadlines for filing a motion or opposition pursuant to this I.O.P. 13(b) shall be the same as those established for motions to quash subpoenas pursuant to I.O.P. 12(b). Any party adversely impacted by an order entered by the presiding member of the hearing panel pursuant to this I.O.P. 13(b) may, within seven days of the date of entry of the presiding member's order, request that the entire hearing panel review the presiding member's decision. Arguments and supporting materials that could have been, but were not, provided to the presiding member as part of the original motion shall not form the basis for overturning an order entered by the presiding member.

(c) **Failure to Disclose Exculpatory Evidence.** If, during the course of the proceedings, the hearing panel discovers that Disciplinary Counsel failed to provide the respondent with exculpatory evidence relevant to the formal charges as required by Supreme Court Rule 209.22.3, the hearing panel shall refer Disciplinary Counsel to the Ethics and Grievance Committee of the Virgin Islands Bar Association.

(d) **Extensions of Time.** Either party may, upon a showing of good cause, move to extend any of the discovery deadlines set forth in Supreme Court Rule 209.22, provided that the motion is filed within five working days of the deadline sought to be extended. Opposition, if any, to a motion for extension of time pursuant to this I.O.P. 13(b) must be filed within three days of service of the motion. A motion for extension of time pursuant to this I.O.P. 13(b) may be ruled upon by the presiding member of the hearing panel. Any party adversely impacted by an order entered by the presiding member of the hearing panel pursuant to this I.O.P. 13(b) may, within three days of the date of entry of the presiding member's order, request that the entire hearing panel review the presiding member's decision. Arguments and supporting materials that could have been, but were not, provided to the presiding member as part of the original motion shall not form the basis for overturning an order entered by the presiding member.

(e) **Amendment of Filings.** At any time before the hearing provided for in Supreme Court Rule 209.24, Disciplinary Counsel and the respondent may move the hearing panel to amend formal charges or the answer, as the case may be, provided that the opposing party shall be given reasonable time to respond to the amendment. A motion brought pursuant to this I.O.P. 13(e) may be decided by the presiding member, whose order may be reviewed pursuant to the procedure outlined in I.O.P. 13(b).

(f) **Court Reporter.** All proceedings before the hearing panel shall be recorded digitally or by a court reporter and transcribed by a court reporter or transcription service.

(g) **Impact of Failure of Majority of Hearing Panel to Agree.**

(1) *Majority Recommending Sanction.* Cases in which at least three members of the hearing panel agree that a matter should not be dismissed but in which at least three members cannot agree as to the particular sanction to recommend pursuant to Supreme Court Rule 209.24.4 shall, for purposes of Supreme Court Rule 209.25, be deemed cases in which the Commission has recommended a sanction. For purposes of Supreme Court Rule 209.25.6, the respondent shall file exceptions to each separate opinion that recommends a sanction to which the respondent does not consent.

(2) *Majority Recommending Dismissal.* Cases in which at least three members of the hearing panel agree that a matter should be dismissed but in which at least three members cannot agree as to the reasons for dismissal shall, for purposes of Supreme Court Rule 209.25, be deemed cases in which the Commission has dismissed the complaint. For purposes of Supreme Court Rule 209.25.6, Disciplinary Counsel shall file exceptions to each separate opinion that recommends dismissal for reasons to which Disciplinary Counsel does not consent.

## **Section IV. Panel Deliberations and Orders**

### **I.O.P. 14. Panel Conference.**

(a) **Meeting of Panel.** Whenever it is necessary for an investigative panel or hearing panel to rule upon any memorandum, motion, or other filing, or to prepare a report, the presiding member of the panel shall establish a date for the panel members to confer and exchange views on the merits of the issues before the panel. By unanimous agreement of the panel, the panel conference may be held through telephone, videoconference, electronic mail, or other method.

(b) **Presence and Duties of Commission Counsel.** Commission Counsel, if any, shall attend all panel conferences, unless the panel has agreed to exclude Commission Counsel from their deliberations for a particular matter. Prior to the panel conference, Commission Counsel, if any, shall review the memorandum, motion, or other filing that is the subject of the conference, and circulate to the panel members a confidential memorandum that summarizes the filings and recommends a disposition. After deliberations, Commission Counsel, if any, shall assist the panel and its individual members in drafting any written order, report, or other document the panel agrees to issue after the panel conference. In the absence of a Commission Counsel, the presiding member of the panel, or a member designated by the presiding member, may perform the duties of Commission Counsel, including circulating a memorandum prior to the panel conference.

(c) **Exclusion of Disciplinary Counsel and Other Members.** Under no circumstances shall Disciplinary Counsel, members of the Commission who are not a member of the particular investigative panel or hearing panel, or any other individuals attend a panel conference or otherwise assist with or participate in the panel's deliberations.

(d) **Per Diem.** Panel members other than governmental employees who attend a panel conference or other meeting of an investigative panel or hearing panel shall be entitled to the per diem established in I.O.P. 4(e), except that members continuing to serve on a panel to which they

had been previously assigned after expiration of their term pursuant to Supreme Court Rule 209.2.4 shall also be eligible for the per diem.

### **I.O.P. 15. Orders Entered by Panel.**

(a) **Oral Orders Prohibited.** Except for rulings on objections or oral motions at the hearing provided for in Supreme Court Rule 209.24, all orders, opinions, reports, and other documents entered by an investigative panel or hearing panel must be in writing, and shall have no force or effect until memorialized in written form and submitted to Disciplinary Counsel for filing.

(b) **Form of Written Orders.** Orders, opinions, reports, and other documents entered by an investigative panel or hearing panel shall conform as closely as possible in form to orders and opinions entered by the Supreme Court in other matters. Commission Counsel, if available, shall assist the investigative panel or hearing panel in ensuring that their filings comply with the Supreme Court's style and formatting requirements.

(c) **Redactions.** Orders, opinions, reports, and other documents entered by an investigative panel or hearing panel shall redact all personal data identifiers, including social security numbers, names of minor children and sexual assault victims, dates of birth, financial account numbers, and home addresses. In addition, such documents should not identify the complainant, the judge against whom the complaint was made, or the respondent by name unless the document has been entered after the matter has been unsealed pursuant to Supreme Court Rule 209.11 or use of names is necessary to effectuate the purpose of the document. For instance, orders of private admonition entered pursuant to Supreme Court Rule 209.6.2(6) and any additional findings authorized by Supreme Court Rule 209.25.2(2) may contain the name of the judge.

(d) **Service of Orders.** Unless otherwise specified in Supreme Court Rule 209 or these IOPs, Disciplinary Counsel shall serve all orders entered by an investigative panel or hearing panel on the appropriate parties.

### **I.O.P. 16. Commission Counsel Testimony and Work Product Inadmissible.**

Commission Counsel, when performing the duties outlined in Supreme Court Rule 209.5.2(1), I.O.P. 14(b), and I.O.P. 15(b), shall be deemed to be performing work equivalent to that of an attorney representing a client. Accordingly, Commission Counsel shall be prohibited from testifying during the hearing mandated by Supreme Court 209.24, and no work product or other documents prepared by Commission Counsel may be subpoenaed or entered into evidence.

### **I.O.P. 17. Record Retention**

The Commission, with the input of Disciplinary Counsel and Commission Counsel, if any, shall develop a record retention policy, which shall include a description of the materials that are to be stored, a list of the time for which specific materials must be maintained, and procedures for the disposal of records.

## **Section V. Miscellaneous Duties of Commission**

### **I.O.P. 18. Annual Report**

Disciplinary Counsel shall assist the Chair and the full Commission in preparing the annual report mandated by Supreme Court Rule 209.3.5(2)(e). No later than April 1 of each calendar year, the Chair shall provide a copy of the Commission's annual report to the Chief Justice, for inclusion in the written report on the state of the court system and judiciary provided for in 4 V.I.C. § 31(d)(4)(A).

### **I.O.P. 19. Budget Requests**

Disciplinary Counsel shall assist the Chair and the full Commission in preparing the budget request mandated by Supreme Court Rule 209.2.6, including Disciplinary Counsel's expenses pursuant to Supreme Court Rule 209.4.2(4). No later than April 1 of each calendar year, the Chair shall submit to the Chief Justice an accounting of the Commission's expenditures for the prior fiscal year, its projected expenditures for the current fiscal year, and its funding request for the next fiscal year. Upon request, the Chair and Disciplinary Counsel shall provide the Chief Justice and the Administrative Director of the Supreme Court with any additional information and, if necessary, shall be prepared to testify before the Legislature.

### **I.O.P. 20. Education and Outreach**

(a) **Generally.** Disciplinary Counsel shall assist the Chair and the full Commission in informing the public about the extension and operation of the Commission and the judicial discipline system pursuant to Supreme Court Rule 209.3.5(2)(f).

(b) **Ethics Materials and Programs.** The Commission, together with Disciplinary Counsel and Commission Counsel, if any, shall collaborate with the Virgin Islands Bar Association, the Supreme Court, and the Superior Court to develop educational materials and programs that are designed to assist judges in maintaining an awareness and understanding of their ethical obligations.

Adopted by the Virgin Islands Commission on Judicial Conduct on December 8, 2010.

/s/ \_\_\_\_\_  
Sharmane Brookes, Chair

Approved by the Supreme Court of the Virgin Islands on December 20, 2010.

/s/ \_\_\_\_\_  
Rhys S. Hodge, Chief Justice