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Sequence Number: 05-33-23
Rule ID(s): 9881
File Date: 5/24/2023
Effective Date: 8/22/2023

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission: Board of Judicial Conduct
Division: N/A
Contact Person: Judge Dee David Gay
Address: Sumner County Criminal Justice Center, 117 West Smith Street, Gallatin TN
Zip: 37066
Phone: (615) 452-5526
Email: Judge.Dee.Gay@tncourts.gov

Revision Type (check all that apply):

☒ Amendment
☐ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0787-01	General
Rule Number	Rule Title
0787-01-.04	Records Retention

Chapter Number	Chapter Title
Rule Number	Rule Title

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.in.gov/products/division-publications/rulemaking-guidelines>.

Rule 0787-01-.04 is amended by deleting the rule in its entirety and substituting the following, so that as amended, the rule shall read:

(1) The purpose of this rule is to create a records retention policy as directed by T.C.A. § 17-5-202(e).

(2) Administrative records of the board shall be maintained by disciplinary counsel and kept at the board's office. Examples of administrative records include notices of board meetings, agendas of board meetings, minutes of board meetings, transcripts of board meetings, the designation of investigative and hearing panels, statistical reports, financial records, rules governing practice and procedure before the board, and other official documents generated in the ordinary course of essential board business. These records shall be permanently kept in both physical and electronic form.

(3) Historical records documenting the essential functions of the board, such as minute books, dockets, statistical reports or summaries, and letters of appointment and board membership lists, as well as other historically significant documents pertaining to board business, shall be maintained by disciplinary counsel and kept at the board's office. These records shall be permanently kept in both physical and electronic form.

(4) Records related to the receipt, screening, investigation, and prosecution of complaints, whether from an outside source or internally created, shall be maintained by disciplinary counsel, in both physical and electronic form, and kept at the board's office. Examples of such records include the complaint and any relevant supporting documentation, correspondence to and from the complaining party and the subject judge, votes of investigative panel members, statutorily required notices, pleadings, case dispositions, extensions of time granted by the board chair, and referrals to other agencies. The electronic file shall be permanently kept, except when destruction of the records is required by T.C.A. § 17-5-304 upon a determination that the complaint is frivolous, unfounded, or beyond the permissible scope of the board's inquiry. The physical file shall be destroyed consistent with state law but no sooner than one year after the final action taken in the case, except when it is determined that deletion of the records is required by T.C.A. § 17-5-304. When deletion of records is required by T.C.A. § 17-5-304, both paper and electronic records shall be destroyed as quickly as reasonably possible after the complaint has been determined to be frivolous, unfounded, or beyond the permissible scope of the board's inquiry.

(5) Records related to the adjudication of a case initiated by the filing of a formal charge shall be kept and housed by the clerk of the Supreme Court. These records include all public documents pertaining to the case, such as pleadings, motions, orders, transcripts, and the board's decision. These records shall be permanently kept in both physical and electronic form.

(6) Temporary records, defined in T.C.A. § 10-7-301(13) as material which can be disposed of in a short period of time as being without value in documenting the functions of an agency, need not be kept. Examples of such records include drafts of documents, notes, emails, voice or text messages, and other communication media with no significant or permanent administrative, historical, or legal value.

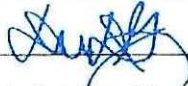
Authority: T.C.A. §§ 17-5-201(f). -202(e).

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dee David Gay	X				
Andrew G. Brigham	X				
Jeffrey M. Atherton	X				
H. Allen Bray	X				
Rodney Brown	X				
Edwena L. Crowe	X				
Vacant					
William C. Koch, Jr.	X				
Camille R. McMullen	X				
Benjamin Purser, Jr.	X				
Dan Springer	X				
Terica Smith	X				
Valerie L. Smith	X				
Bishop Edward Stephens	X				
John Whitworth	X				
Robert W. Wilkinson				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board of Judicial Conduct (board/commission/other authority) on 02/28/2023 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 4/17/2023

Signature: 

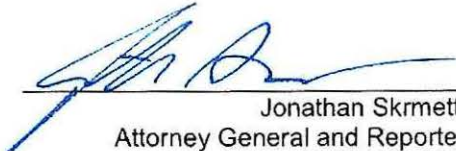
Name of Officer: Judge Dee David Gay

Title of Officer: Chairman

Agency/Board/Commission: Board of Judicial Conduct

Rule Chapter Number(s): 0787-01 General

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Jonathan Skrametti
Attorney General and Reporter

5/17/2023

Date

Department of State Use Only

Filed with the Department of State on: 5/24/2023

Effective on: 8/22/2023


Tre Hargett
Secretary of State

RECEIVED

May 24 2023, 1:57 pm

Secretary of State
Division of Publications

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule will not affect small businesses.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

This rule will have minimal impact on local government.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The proposed rule divides the Board's records into five categories: administrative, historical, pre-formal charge, post-formal charge, and temporary, and gives examples of each. The Rule specifies who is responsible for keeping the various types of records, in what format, where, and for how long. The proposed rule provides more specificity than the current rule.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

111 Tenn. Pub. Acts., ch. 496 (codified as T.C.A. §§ 17-5-101, *et seq.*).

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule most directly affects Tennessee's judiciary. The Board has received no objections to this proposed rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Board of Judicial Conduct does not expect that there will be any significant changes to either state or local government revenues or expenditures resulting from the promulgation of these rules. The Board also believes that its fiscal impact will be minimal.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Judge Dee David Gay-Chairman, Board of Judicial Conduct
Marshall L. Davidson, III, Disciplinary Counsel, Board of Judicial Conduct

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Judge Dee David Gay-Chairman, Board of Judicial Conduct
Marshall L. Davidson, III, Disciplinary Counsel, Board of Judicial Conduct

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Judge Dee David Gay
117 West Smith Street
Gallatin, Tennessee 37066
(615) 452-5526
Judge.Dee.Gay@tncourts.gov

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Tennessee Board of Judicial Conduct
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**RULES
OF THE
BOARD OF JUDICIAL CONDUCT**

**CHAPTER 0787-01
GENERAL**

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0787-01-.01 MEETINGS.

(1) TIME AND PLACE OF MEETING – The Board shall meet at 10:00 a.m. on the fourth (4th) Tuesday in February and the fourth (4th) Tuesday in July in the conference room of the Administrative Office of the Courts and at such other times and places as the chairperson or a majority of the members of the Board may deem necessary. Members finding it more convenient may also attend the meeting by video or phone conference.

(2) NOTICE OF MEETING – The chairperson shall give a minimum of ten (10) days' notice of the time and place of meetings to all members of the Board.

(3) QUORUM – Nine (9) member of the Board, whether meeting in person or by video or phone conference, shall constitute a quorum.

Authority: T.C.A. § 17-5-201(f). Administrative History: Emergency rules filed October 7, 2019; effective through April 4, 2020. Emergency rules expired effective April 5, 2020. Original rules filed February 3, 2020; effective May 3, 2020.

0787-01-.02 CHAIRPERSON AND VICE-CHAIR OF THE BOARD.

(1) CHAIRPERSON ELECTION AND REMOVAL – The Board, at its meeting on the fourth (4th) Tuesday in July of each year, shall elect a chairperson to serve for a period of one (1) year. The chairperson shall be elected from the members of the Board by a majority present and voting. The chairperson may be removed by a two-thirds vote of the members of the Board, with or without cause.

(2) VICE-CHAIR ELECTION, REMOVAL, AND DUTIES – The Board, at its meeting on the fourth (4th) Tuesday in July of each year, shall elect a vice-chair to serve for a period of one (1) year. The vice-chair shall be elected from the members of the Board by a majority present and voting. The vice-chair may be removed by a two-thirds vote of the members of the Board, with or without cause. If at any meeting the chairperson is not present, the vice-chair shall act as chairperson for that meeting. If the chairperson is recused with respect to a matter, the vice-chair shall act as chairperson with respect to that matter.

(3) CHAIRPERSON DUTIES – In addition to the duties and responsibilities set forth in T.C.A. §§ 17-5-101, et seq., the chairperson shall preside at all meetings of the Board and at trials. The chairperson shall rule upon the admission or exclusion of evidence. However, the chairperson's ruling upon the admission or exclusion of evidence may be appealed to the full hearing panel. The chairperson and only the chairperson shall be the spokesperson for all matters pending before the Board, except that if the chairperson is recused with respect to a matter pending before the Board, the vice-chair and only the vice-chair shall be the spokesperson for the Board with respect to that matter. After the trial of any matter, the chairperson shall write or shall designate a member of the

hearing panel that heard the matter to write the majority opinion. Any member of the hearing panel that heard the matter may write a concurring or dissenting opinion. The chairperson shall have such other duties and responsibilities as are necessary in fulfilling the office.

Authority: T.C.A. § 17-5-201(f). Administrative History: Emergency rules filed October 7, 2019; effective through April 4, 2020. Emergency rules expired effective April 5, 2020. Original rules filed February 3, 2020; effective May 3, 2020.

0787-01-.03 CONFIDENTIALITY.

- (1) Except as required under T.C.A. § 17-5-303(f), matters that come before the Board are confidential. Individual members of the Board will not discuss any matter pending before the Board, except with other members of the Board and with the Board's disciplinary counsel. However, nothing in this rule shall prohibit the complainant, respondent-judge, or any witness from disclosing the existence or substance of a complaint, matter, investigation, or proceeding before the Board or from disclosing any documents or correspondence filed by, served on, or provided to that person. In addition, if it becomes apparent that allegations of misconduct by a judge have become a matter of public record independent of any action by the Board and that continued silence by the Board may be detrimental to the public interest, may lead to bringing the judiciary into public disrepute, or may adversely affect the administration of justice, the chairperson in his or her discretion may (a) confirm that an investigation is in progress, (b) clarify the procedural aspects of any proceedings, and (c) explain the rights of the subject of the investigation to a fair hearing without prejudgment.

Authority: T.C.A. §§ 17-5-201(f), 17-5-202(e), and 17-5-303(f). Administrative History: Emergency rules filed October 7, 2019; effective through April 4, 2020. Emergency rules expired effective April 5, 2020. Original rules filed February 3, 2020; effective May 3, 2020.

0787-01-.04 RECORDS RETENTION.

~~(1) —When a complaint is received from an outside source or is created internally, both a physical and an electronic file shall be created. The physical file shall contain the complaint and all relevant documentation and correspondence pertaining to the complaint. Relevant portions of all complaints and documentation, including correspondence, shall be scanned and maintained in the electronic filed. Correspondence generated by the office to either the complainant or the subject judge shall also be maintained in an electronic file in word processing format, without the necessity of scanning the printed document. Voluminous public records such as transcripts, court dockets, or pleadings filed in any court, which are retrievable by other means, need not be scanned into the electronic filed. The Board's disciplinary counsel shall maintain a backup copy of all electronic files that shall be backed up daily and kept on storage media apart from the computers' internal hard drive. A physical file may be destroyed by an appropriate secure method, such as a commercial shredding service, no sooner than one (1) year after the final action and closing of that file, but the electronic file should never be destroyed, regardless of the disposition of the case.~~

(1) The purpose of this rule is to create a records retention policy as directed by T.C.A. § 17-5-202(e).

(2) Administrative records of the board shall be maintained by disciplinary counsel and kept at the board's office. Examples of administrative records include notices of board meetings, agendas of board meetings, minutes of board meetings, transcripts of board meetings, the designation of investigative and hearing panels, statistical reports, financial records, rules governing practice and procedure before the board, and other official documents generated in the ordinary course of essential board business. These records shall be permanently kept in both physical and electronic form.

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Authority: T.C.A. §§ 17-5-201(f) and 17-5-202(e). Administrative History: Emergency rules filed October 7, 2019; effective through April 4, 2020. Emergency rules expired effective April 5, 2020. Original rules filed February 3, 2020; effective May 3, 2020.