

STATE OF VERMONT
VERMONT SUPREME COURT
_____ TERM, 2008

**Order Promulgating Amendments to the Vermont Rules of Supreme Court for
Disciplinary Control of Judges**

Pursuant to Chapter II, Section 37, of the Vermont Constitution and 12 V.S.A. § 1, it is hereby ordered:

1. That Rule 7(1) of the Rules of Supreme Court for Disciplinary Control of Judges be amended to read as follows (deleted matter struck through; new matter underlined):

Rule 7. Preliminary Proceedings

(1) Initial Inquiry. Upon receipt of a complaint, its own motion, or request of the Supreme Court, the Board shall order or make an initial inquiry. The Board shall send a copy of the complaint or its own motion to the judge, and shall inform the judge and the complainant that an initial inquiry is being undertaken. The chair may appoint a member of the Board or a screening committee to make that initial inquiry and report. If it is the opinion of the chair that the complaint is clearly unfounded, he/she may forward the complaint to one lay member and one judge member of the Board. If those three individuals unanimously agree that the complaint is clearly unfounded, the chair may notify the complainant and the judge of that fact and that the complaint has been dismissed. If one of the three Board members reviewing the complaint is not of the opinion that the complaint is clearly unfounded, the initial inquiry shall continue and any further action shall be taken by the entire Board. The initial inquiry may include contacting the complainant and the judge to determine the nature of the complaint and whether it can be resolved without further investigation. Following the initial inquiry and report, the Board may dismiss the complaint, require further inquiry, pursue a deferred discipline agreement, or order a preliminary investigation. If the Board determines that the complaint is unfounded, or that there is otherwise insufficient cause for further proceedings, it shall dismiss the complaint and advise the complainant and the judge in a written closure letter of its action and the reasons therefor. The closure letter shall not identify the complainant, the judge, or any other person by name, and shall contain a summary of the complainant's allegations, the Board's investigation, and the reasons for dismissal. The closure letter shall be a public record. This provision shall not apply to dismissals upon completion of a deferred discipline agreement under subsection (2) of this rule.

Reporters Note - 2008 Amendment

All incoming complaints to the JCB are received and reviewed first by the chair. It has long been the case that a significant portion of the complaints received (estimated at

15-20%) obviously do not articulate any grounds whatsoever for a determination of misconduct. Under existing rules, an initial inquiry must be undertaken nonetheless and any action taken upon that complaint must be by the entire Board.

Due to the fact that the Board meets, on average, only every 1.5 - 2 months, judges against whom such complaints are filed (who are immediately informed upon the filing of a complaint) must often wait several months before learning of the inevitable dismissal. This wait would be unnecessary if the authority to dismiss need not await action by the full Board. The proposed rule change addresses this issue.

- 2. That these rules and forms, as amended and added, are prescribed and promulgated effective _____, 2008. The Reporter's Notes are advisory.
- 3. That the Chief Justice is authorized to report these amendments to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this _____ day of _____, 2008.

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice