

**PROCEDURES FOR THE CONDUCT OF INVESTIGATIONS AND
DISCIPLINARY HEARINGS BY THE SUPERIOR COURT
CRIMINAL JUSTICE ACT INVESTIGATORS SUBCOMMITTEE**

1. Pursuant to SCR Criminal 44- I(g), the Superior Court Criminal Justice Act Investigators Subcommittee (“the Subcommittee”) shall consider any allegations of misconduct made against investigators appointed under the District of Columbia Criminal Justice Act. SCR Criminal 44-I(g)(1)(B). After reviewing the allegations, the Subcommittee may take any further action it deems appropriate, including, but not limited to, any of the following:

(a) close the file;

(b) send the investigator a letter discussing the alleged misconduct and close the file;

(c) conduct a further investigation;

(d) notify the investigator of the alleged misconduct and invite the investigator to meet with members of the Subcommittee and/or to respond to the Subcommittee in writing;

(e) with the approval of the Chief Judge, enter into a specified agreement with the investigator for resolving the misconduct charges;

(f) with the approval of the Chief Judge, refer the matter for possible criminal prosecution; and

(g) recommend to the Chief Judge the appointment of an *ad hoc* hearing committee.

The Subcommittee may not enter an order of suspension or removal of an investigator unless the investigator has been given an opportunity for a hearing before an *ad hoc* hearing committee.

2. An *ad hoc* hearing committee appointed by the Chief Judge shall be made up of three judges, one of whom shall be a member of the committee, who shall serve as chairperson.

3. At least 21 days before the hearing, the *ad hoc* hearing committee shall send the investigator notice of the hearing by both certified and first class mail, along with a clear and concise statement of the Complaint that will be considered at the hearing and an invitation to

submit a written response, if the investigator so chooses. Along with the notice, the *ad hoc* hearing committee shall enclose a copy of these procedures .

4. An attorney from the Attorney Advisor s Division or an attorney designated by the Chief Judge shall present the complaint (“the Prosecuting Attorney”).

5. After receiving notice of the hearing, the investigator shall have access to all materials in the files of the *ad hoc* hearing committee or the Prosecuting Attorney that will be relied upon during the hearing, other than materials that are either privileged or work product. The investigator may orally request access to such materials, which shall be provided within three business days, or as soon thereafter as possible.

6. The hearing shall be recorded electronically by the Central Recording Office, and the investigator may request a transcript prepared at the investigator’s expense.

7. The hearing shall be conducted in an informal fashion. The investigator shall be allowed to present any relevant evidence in response to the Complaint or in mitigation of the alleged misconduct and may cross-examine any witness called to testify by the Prosecuting Attorney.

8. The investigator has the right to be present at the hearing and to be represented by counsel.

9. The investigator may present witnesses, but neither the Prosecuting Attorney nor the investigator will be able to compel witnesses to appear.

10. All testimony shall be under oath or affirmation to be administered by the chairperson of the *ad hoc* hearing committee.

11. The chairperson of the *ad hoc* hearing committee shall decide the admissibility of evidence at the hearing, consistent with paragraph 7 above, and shall make rulings concerning the conduct of the hearing in consultation with other Subcommittee members.

12. The hearing shall not be open to the public.

13. Any request for a continuance of a hearing shall be submitted in writing at least three business days before the hearing. The chairperson of the *ad hoc* hearing committee may for good cause grant a continuance.
14. Upon finding that there is not clear and convincing evidence of any misconduct, the *ad hoc* hearing committee shall promptly report its finding to the Subcommittee, which shall promptly notify the investigator in writing and close the file.
15. Upon finding clear and convincing evidence of misconduct, the *ad hoc* hearing committee shall recommend a sanction to the Subcommittee. Normally, the *ad hoc* hearing committee shall make its recommendation within thirty days of completion of the hearing. The sanction may include a letter of private or public reprimand; suspension with or without conditions for reinstatement; a permanent ban from further appointments ; or such other sanction as the *ad hoc* hearing committee deems appropriate.
16. In determining an appropriate sanction, the Subcommittee may consider, inter alia, the gravity of the offense; any prior misconduct of the investigator; information concerning the investigator's character and competence; any other mitigating or aggravating factors; and the sanctions imposed in other cases.
17. The Subcommittee normally shall communicate its decision in writing to the investigator within sixty days of the conclusion of the hearing.
18. To protect against the improper payment of funds under the Criminal Justice Act, the Subcommittee may recommend to the Chief Judge that he/she direct the Finance Office to suspend some or all further payments to the investigator until the Complaint against the investigator has been finally resolved. Ordinarily, the Subcommittee shall not make such a recommendation before first giving the investigator written notice of the allegations of misconduct and an opportunity to respond in writing to the allegations within a time frame specified. In an extraordinary case where the Subcommittee determines there is clear and

convincing evidence that payments to the investigator will result in the improper payment of funds under the Criminal Justice Act, the Subcommittee may recommend suspension of further payments at any time after receipt of the allegations of misconduct.