

STANDING COMMITTEE
ON
COMMISSIONERS OF ACCOUNTS
OF THE
JUDICIAL COUNCIL OF VIRGINIA

RULES FOR ADDRESSING COMPLAINTS
AGAINST COMMISSIONERS OF ACCOUNTS

The Standing Committee on Commissioners of Accounts has been charged by the Supreme Court of Virginia to investigate Complaints against Commissioners of Accounts.

These Rules establish and govern the procedures of the Standing Committee on Commissioners of Accounts for addressing and handling Complaints properly received against any Commissioner.

Members of the Standing Committee are appointed to serve as such by the Chief Justice of the Supreme Court of Virginia for a term set by the Chief Justice.

When the interests of justice or necessity require, the Chair of the Standing Committee may waive the requirements of any portion of these Rules.

All questions before the Standing Committee shall be resolved by majority vote of a Quorum of those present.

DEFINITIONS

A. Gender. The pronouns "he", "him", "his", "she", "her", "hers" or similar words as used in these Rules are intended to include both the masculine and the feminine, or vice versa.

B. "*Standing Committee*" shall mean the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia.

C. "*Member*" or "*Members*" shall mean a Member or Members of the Standing Committee or any Subcommittee thereof, duly appointed as such by the Chief Justice of the Supreme Court of Virginia.

D. "*Commissioner*" or "*Commissioner of Accounts*" shall mean the person, including a Commissioner of Accounts, an Assistant Commissioner of Accounts, a Deputy Commissioner of Accounts or an Acting Commissioner of Accounts appointed pursuant to a court order, concerning whom the Standing Committee is reviewing, investigating and evaluating a Complaint.

E. "*Meeting*" shall include a gathering of Members either in person, by electronic communication, internet conference or by telephone conference call.

F. "*Document*" shall mean any writing or true copy thereof, including, but not limited to, a letter, electronic communication, memorandum, writing, notice, exhibit, chart, table, photograph, transcript of sworn testimony, public record, private record or court record; or any of the above preserved in electronic form.

G. "*Chair of the Standing Committee*" shall mean a Member appointed as such by the Chief Justice of the Supreme Court of Virginia.

H. "*Vice Chair*" shall mean a Member appointed as such by a majority of the Members of the Standing Committee. The duly appointed Vice Chair, when so directed by the Chair, or

when the Chair is unavailable to act, shall enjoy the same rights, powers and authorities of the Chair.

I. *"Presiding Member"* shall mean the Chair, or Vice Chair, who presides at any meeting conducted by the Standing Committee.

J. *"Complainant"* shall mean an individual or entity having an interest in any estate or other matter pending before a Commissioner.

K. *"Complaint"* shall mean a written objection to an action taken by a Commissioner, or a written assertion of the failure of a Commissioner to take some required action, which is alleged to be in violation of the statutory duties imposed by the Code of Virginia, (1950), as amended, or the requirements of the Circuit Court exercising jurisdiction over the Commissioner.

L. *"Quorum"* shall mean a majority of all of the then appointed Members of the Standing Committee.

PROCEDURE FOR RECEIVING COMPLAINTS

A. All Complaints shall be submitted in writing to the Executive Secretary of the Supreme Court of Virginia, 100 North 9th Street, Richmond, VA 23219-2334.

B. Once the Complaint has been submitted, all correspondence regarding the Complaint shall be addressed only to the Chair of the Standing Committee or to the Chair of the Subcommittee to which the investigation has been assigned and not to the Executive Secretary's office.

C. A Complaint must be made in writing, name the Commissioner against whom the Complaint is being filed, be legible, state clearly and succinctly its basis, be signed by the individual or individuals, or on behalf of the entity making it, and be submitted with the name,

address and daytime telephone number of the Complainant. When a Complaint and any amplification is filed, the Complaint and amplification (if any) must include legible copies of any and all documents referred to in the Complaint and amplification (if any).

D. The Executive Secretary shall promptly acknowledge to the Complainant receipt of any Complaint and forward it to the Chair of the Standing Committee by written or electronic communication.

E. In the event the Chair, for any reason, declines to:

1. Participate in the review of a Complaint; or
2. Serve as Presiding Member over the Complaint; or
3. Participate in any other matter before the Standing Committee then the Chair

shall notify the Standing Committee of such decision and the Vice Chair will serve as Presiding Member with respect to the Complaint or such other matter.

PRELIMINARY REVIEW OF A COMPLAINT

A. The Chair of the Standing Committee shall have the right and power, at the Chair's discretion, to review the Complaint and determine if it is appropriate for referral to a Subcommittee. With the written concurrence of one other Member, who cannot be a Commissioner, the Chair of the Standing Committee may decline to accept the Complaint for investigation by a Subcommittee if the Chair determines, *inter alia*:

1. The Complaint is not against a specific Commissioner; or
2. The Complainant does not have an interest in the subject estate or in the subject

matter of the Complaint; or

3. The Complaint states only dissatisfaction with a decision of a Commissioner which is properly reviewable on exceptions to a Commissioner's report filed with the Circuit Court or could have been reviewed on exceptions to a Commissioner's report filed with the Circuit Court; or

4. The Complaint fails to allege a violation of, or failure to perform, a duty the Commissioner is obligated to perform; or

5. The facts, or issues, alleged in the Complaint have been the subject of a Circuit Court hearing on which the Judge of the Circuit Court has already ruled; or

6. The facts, or issues, alleged in the Complaint are at the time the subject of a pending Circuit Court proceeding; or

7. The Standing Committee has previously considered the facts of the Complaint;
or

8. The Complaint fails to clearly and succinctly state a claim for which relief can be granted by the Standing Committee.

9. The Complaint is not filed by, or on behalf of, an eligible Complainant.

B. In the event that after a preliminary review, the Chair determines that the Complaint is not appropriate for investigation by the Standing Committee, a letter from the Chair shall be addressed to the Complainant, with a copy to the Commissioner referenced in the Complaint and to the Executive Secretary of the Supreme Court of Virginia stating the reason(s) why the Standing Committee declines to take further action on the Complaint.

C. The Chair shall have the further discretion to make contact with a Complainant and/or the Commissioner before referring a Complaint to a Subcommittee to determine if an accommodation between the Complainant and Commissioner can be reached without the necessity

of further consideration of the Complaint. If an accommodation is reached, a written or electronic confirmation of the accommodation shall be consented to by both parties and upon such mutual consent the Complaint shall be considered resolved without further action to be taken by the Standing Committee. If the Complaint is resolved in this manner the Members of the Standing Committee shall be advised of such resolution.

REFERRAL OF A COMPLAINT TO A SUBCOMMITTEE

A. The Chair of the Standing Committee shall refer an appropriate Complaint, not otherwise resolved, to a Subcommittee consisting of three Members of the Standing Committee and shall specify which of the three shall be the Chair.

B. The Subcommittee shall consist of at least one Member of the Standing Committee who is a Commissioner of Accounts and at least one Member of the Standing Committee who is not a Commissioner.

C. The Chair of the Standing Committee shall send a copy of the full Complaint and all included documentation to all three Members of the Subcommittee.

D. Upon receipt of the Complaint from the Chair of the Standing Committee, the Subcommittee shall select one or more of its Members to collect the factual information which is either necessary or appropriate to investigate and analyze the Complaint. The Chair and Members of the Subcommittee shall have broad discretion as to the procedure which they shall employ in conducting the investigation.

1. One Subcommittee Member shall make contact with the Complainant, in person, by telephone, by electronic mail, in writing, or more than one of the above, and shall give the Complainant an opportunity to amplify the Complaint, by a date certain. The

Complainant shall be notified, in writing, of the Complainant's right to file an amplification.

2. Upon receipt by the Subcommittee, the Commissioner must be given a copy of the Complaint, and the amplification, if any, and any documents submitted therewith. In addition, the Commissioner shall be given the opportunity to respond to the Complaint and any amplification, in person, by telephone, by electronic mail, in writing, or more than one of the above, by a date certain.

3. Upon receipt by the Subcommittee, any response by the Commissioner, together with any documents submitted therewith, shall be provided to the Complainant, without the right of further reply unless specifically granted by the Subcommittee after a written request by the Complainant.

4. The Subcommittee may, in its sole discretion, attempt to reach a resolution by consulting with the Complainant and the Commissioner separately and/or together:

a. If the matters of disagreement between the Complainant and the Commissioner are resolved by agreement, a brief written summary of the agreement shall be signed by the Complainant, the Commissioner, and the Chair of the Subcommittee, and a copy shall be furnished to the Complainant and Commissioner.

b. A copy shall also be furnished by the Chair of the Subcommittee to the Chair of the Standing Committee who shall inform the other Members of the Standing Committee in summary manner that the Complaint has been resolved by agreement. Copies of the agreement may be circulated to the other Members of the Standing Committee, in the sole discretion of the Chair.

**CONSIDERATION OF THE COMPLAINT, AMPLIFICATION AND
COMMISSIONER'S REPLY**

A. Following the dates set for the Complainant's amplification of the Complaint and the Commissioner's reply, all information submitted shall be given to all Subcommittee Members for review, analysis and consideration.

B. In investigating and evaluating a Complaint, the Subcommittee may request written submissions from the parties and/or confer with the parties. Additional information may be obtained from outside sources. All written information obtained shall be made available to the Complainant and the Commissioner.

C. Members of the Subcommittee shall consult together, in a meeting, by telephone or internet conference, or by the exchange of written correspondence by mail, facsimile, private delivery or electronic communication.

D. At such time as all information has been fully considered, the Subcommittee shall vote on the following question: "whether or not the investigation shall proceed further?".

E. The question shall be resolved by majority vote.

REPORT OF THE SUBCOMMITTEE

A. The Subcommittee shall report its findings to the Chair of the Standing Committee by written report.

B. All reports of a Subcommittee or the Standing Committee shall embody enough detail of the facts determined and findings made during the investigation to reasonably inform the Complainant and Commissioner of the grounds for its decision.

C. The report of the Subcommittee, in addition to stating the facts and findings supporting the decision, shall include one of the following recommendations:

1. "The investigation should not proceed further"; or

2. "The investigation should proceed further"; in which event the report may include a recommendation as to the action believed appropriate to respond to the Complaint; and including, but not limited to, a recommendation as to whether or not the findings should be referred to the Chief Judge of the Circuit Court having jurisdiction over the Commissioner.

3. A dissenting report may be made by any Subcommittee Member, which shall be submitted to the Chair of the Standing Committee at the same time as the majority report of the Subcommittee.

CONSIDERATION OF THE SUBCOMMITTEE REPORT
BY THE FULL STANDING COMMITTEE

A. The Chair of the Standing Committee, within a reasonable period of time after receipt of the report(s) of the Subcommittee, shall send copies of the report(s), and any documentation made a part of a report, to all Members of the Standing Committee for review, analysis and consideration.

B. The Standing Committee, at a regular or special meeting, shall consider the report(s) and shall decide whether to confirm, amend or reject the report approved by a majority of the Subcommittee.

1. A Quorum shall be required for the consideration of any report(s) by the Standing Committee. A Quorum shall be a majority of all of the then appointed Members of the Standing Committee.

2. Provided there is a Quorum, the majority vote of those Members in attendance at a meeting of the Standing Committee shall prevail.

In the event there is no Quorum or majority vote, a subsequent meeting shall be scheduled for consideration of the Subcommittee report(s).

3. If the Standing Committee shall vote to confirm, with or without amendment, the findings and recommendation set forth in the majority or minority report, the report may be adopted, as submitted or as amended by the Standing Committee, in whole or in part. If a report is adopted, the Chair of the Standing Committee shall draft a letter to the Complainant and Commissioner advising of and enclosing the report of the Standing Committee.

The Chair of the Standing Committee shall have the power to make editorial changes and changes in style to the report before it is sent to the Complainant and Commissioner.

4. If the Standing Committee shall vote to reject the report(s) of the Subcommittee, the Chair of the Standing Committee shall re-refer the Complaint to the same Subcommittee, or refer the Complaint to another Subcommittee for reconsideration and a new report, to be thereafter re-considered by the Standing Committee, all in accordance with the foregoing procedures.

ADVISING OF DECISION AND REPORT OF THE STANDING COMMITTEE

The decision of the Standing Committee and its final report shall be transmitted to the Complainant and the Commissioner of Accounts via any one or more of the following methods: (1) regular mail; (2) registered mail; (3) certified mail, return receipt requested; (4) a recognized overnight delivery service, such as (a) the United States Postal Service; (b) Federal Express; (c) United Parcel Service (d) DHL, etc.

If the Standing Committee shall decide to refer the Complaint, with or without recommendations, to the Chief Judge of the Circuit Court having jurisdiction over the Commissioner, the report shall be transmitted by: (1) regular mail; (2) registered mail; (3) certified mail, return receipt requested; (4) a recognized overnight delivery service, such as (a) the United States Postal Service; (b) Federal Express; (c) United Parcel Service; (d) DHL, etc., to such Chief Judge with a copy to the Chief Justice of the Supreme Court of Virginia.

RECONSIDERATION OF A COMPLAINT AFTER REPORT

Once a Complaint has been considered by the Standing Committee, no written report of the Standing Committee, or its findings and/or recommendations, shall be subject to reconsideration unless determined proper, in the sole discretion of the Chair of the Standing Committee. Upon such determination, the Chair of the Standing Committee shall so advise the Complainant, the Commissioner and the Standing Committee Members of such decision.

EFFECTIVE DATE

These Rules shall supersede and replace the Rules for Addressing Complaints and Inquiries to the Standing Committee on Commissioners of Accounts effective July 1, 2004 and shall be in effect as to all Complaints filed on or after April 1, 2021 (Effective Date). Complaints filed prior to the Effective Date of April 1, 2021 shall continue to be handled, governed and covered by the July 1, 2004 Rules for Addressing Complaints and Inquiries to the Standing Committee on Commissioners of Accounts.

ADOPTION DATE

These Rules were adopted by Resolution of the Judicial Council of the Supreme Court of Virginia on October 22, 2020.

Attest:



Executive Secretary of the Supreme Court of Virginia