Supreme Court of Kentucky

2014-14

ORDER

IN RE: AMENDMENT TO ADMINISTRATIVE PROCEDURES OF THE COURT OF JUSTICE, PART XVI, CIRCUIT COURT CLERKS CONDUCT COMMISSION

Pursuant to Sections 110(5)(b) and 116 of the Constitution of Kentucky, it is HEREBY ORDERED that the Administrative Procedures of the Court of Justice, Part XVI, Circuit Court Clerks Conduct Commission, is hereby amended as follows:

Section 1. Statement of Purpose

Circuit court clerks play a key role in the administration of justice. From maintaining official records to collecting fees, fines, and costs, circuit court clerks perform a variety of duties prescribed by Kentucky's constitution, statutes, rules, and administrative procedures that are integral to Court of Justice operations. Therefore, it is essential that circuit court clerks uphold high standards of integrity, impartiality, and independence in order to promote public confidence in the judicial system.

As elected officials, circuit court clerks are ultimately accountable to the voters in their counties for their conduct in office. However, pursuant to KRS 30A.010, circuit court clerks are also state officers who are subject to the administrative control of the Chief Justice.

These rules and the Circuit Court Clerks Conduct Commission created herein are intended to assist the Chief Justice in determining whether disciplinary action and/or remedial measures against a circuit court clerk for alleged official misconduct or otherwise improper conduct is warranted. These rules shall govern the handling of complaints against circuit court clerks alleged to have engaged in such conduct.

Section 2. Definitions

For the purpose of these rules, unless the context or subject matter otherwise requires:

(1) "AOC" means the Administrative Office of the Courts.

(2) "Chairperson" and "Vice Chairperson" refer to members of the Circuit Court Clerks Conduct Commission who have been elected to these offices by vote of the Commission. Whenever used herein, the word "Chairperson" shall include, in the absence of the Chairperson, the Vice Chairperson or other member acting as Chairperson.

(3) "Chief Justice" means the Chief Justice of the Commonwealth of Kentucky.

(4) "Clerk" means anyone currently serving in the position of Circuit Court Clerk for the Commonwealth of Kentucky, whether elected or appointed, and whether serving in a permanent or temporary capacity.

(5) "Commission" means the Circuit Court Clerks Conduct Commission.

(6) "Complainant" means an individual, organization, or entity who has communicated to the Circuit Court Clerks Conduct Commission a complaint against a clerk.

(7) "Complaint" means a written statement from an individual, organization, or entity, to the Circuit Court Clerks Conduct Commission, alleging facts that might constitute official misconduct or otherwise improper conduct as identified in Section 6, pursuant to Kentucky's constitution, statutes, rules, and administrative procedures.

(8) "Disciplinary actions" means actions intended to be punitive in nature. Disciplinary actions shall consist of those sanctions and penalties set out in Section 6(1).

(9) "Final disposition" of an investigation conducted pursuant to these rules means all final disciplinary action(s) taken and/or remedial measure(s) imposed by the Chief Justice after reviewing the Commission's findings and recommendations.

(10) "Remedial measures" means actions intended to be corrective in nature and to serve, where relevant and appropriate under the circumstances, as alternatives or in addition to those disciplinary actions set out in Section 6(1). Remedial measures may include, but shall be not be limited to, those measures set out in Section 6(2).

(11) "Secretary" refers to a member of the Circuit Court Clerks Conduct Commission who has been elected to this office by vote of the Commission.

(12) "Special Investigator" means an investigator designated by the Circuit Court Clerks Conduct Commission to assist it in the investigation of a

complaint against a clerk, and to take any other action related thereto which the Commission may direct.

(13) "Supreme Court" means the Supreme Court of Kentucky.

Section 3. Composition of Commission

(1) The Commission shall consist of seven members, to include four clerks, one sitting or retired judge appointed by the Chief Justice, one lawyer in good standing with the Kentucky Bar Association appointed by the Chief Justice, and one citizen member appointed by the Kentucky Association of Circuit Court Clerks.

(2) For purposes of appointment of the clerk members, the President of the Kentucky Association of Circuit Court Clerks will submit a list of ten names to the Chief Justice to be considered for appointment. The Chief Justice will appoint four members from the list.

(3) An alternate member for each member of the Commission will be designated at the time of appointment in the same manner as delineated in Sections 3(1) and 3(2) of these Administrative Procedures.

(4) Each member and alternate member will serve a three-year term from the time of appointment.

(5) A member of the Commission will not participate in any investigation in which he or she has an interest, relationship or bias, such that his or her impartiality might reasonably be questioned. Disqualification pursuant to this subsection will be by majority vote of the Commission members present.

(6) If a Commission member cannot participate in a particular investigation by reason of temporary disqualification or inability to serve for any reason, one or more alternate members may serve to maintain the same membership composition of the Commission.

(7) If a Commission member ceases to be qualified for membership, resigns or becomes permanently unable to serve for any reason, either the Chief Justice or the Kentucky Association of Circuit Court Clerks will fill the vacancy for the duration of the unexpired term in the same manner as delineated in Sections 3(1) and 3(2) of these Administrative Procedures.

Section 4. Organization of Commission

(1) A Chairperson, Vice-Chairperson, and Secretary will be elected annually by the members of the Commission.

(2) Meetings of the Commission will be held upon the call of the Chairperson or the written request of at least two members of the Commission. Meetings will not be held on less than two days' notice, unless otherwise agreed upon by all Commission members. The Chairperson shall preside at meetings of the Commission. The Vice Chairperson shall act in the absence or disqualification of the Chairperson. In the absence or disqualification of both the Chairperson and the Vice Chairperson, the members shall select one among them as acting Chairperson.

(3) A quorum of the Commission shall consist of five (5) members, including at least two members who are clerks. A majority vote of the Commission members present is required to make recommendations to the Chief Justice regarding a disciplinary action and/or remedial measure. A meeting may be held and a vote may be taken by telephone or video conference unless any member objects.

Section 5. Special Investigator

At any stage of the investigation, and upon approval by the Chief Justice, the Commission may designate a special investigator to gather and present evidence before the Commission, and to take any other action related to the investigation as the Commission may direct.

Section 6. Authority of the Commission

The Commission will have authority to recommend to the Chief Justice the following disciplinary action(s) and/or remedial measure(s). Remedial measures may be used, where relevant and appropriate under the circumstances, as alternatives or in addition to those disciplinary actions set out below in subsection (1).

(1) Disciplinary actions:

(a) Temporary suspension of a clerk from the performance of his or her duties, without affecting his or her pay status, when: (i) there is pending in any state or federal court of the United States an indictment or information charging him or her with a crime punishable as a felony; or (ii) it would be in the best interest of the public that he or she be suspended from acting in his or her official capacity as a clerk until final disposition of an investigation.

(b) Sanctions, separately or collectively, of public or private reprimand, suspension with pay, or institution of removal proceedings before the Supreme Court, when the Commission finds sufficient evidence of any one or more of the following:

(i) Misconduct in office, as defined in the Circuit Court Clerk Code of Conduct.

(ii) Any willful refusal or persistent failure to perform the duties and obligations as set forth in the Constitution of Kentucky, Kentucky Revised Statutes, Kentucky Supreme Court Rules, including the Kentucky Rules of Civil and Criminal Procedure, and applicable portions of the Administrative Procedures of the Court of Justice, Part III.

(iii) Professional incompetence.

(iv) Habitual intemperance.

(v) Any willful refusal or persistent failure to conform to official policies and directives adopted by the Supreme Court or issued by the Chief Justice in his constitutional capacity as Chief Executive Officer of the Court of Justice.

(vi) Conviction of a crime.

(c) Institution of removal proceedings before the Supreme Court of Kentucky against a clerk whom it finds to lack the qualifications for the office of Kentucky Circuit Court Clerk pursuant to the Constitution of Kentucky, Kentucky Revised Statutes, and Rules of the Supreme Court of Kentucky.

(2) Remedial measures may include but shall not be limited to:

(a) Training, education, and/or development.

(b) Counseling or support groups.

(c) Implementation of a plan addressing the misconduct.

(d) Monitoring the clerk's conduct.

(e) Mentoring.

(f) Referral to relevant policies.

Section 7. Confidentiality

(1) Except as otherwise provided in these rules, information regarding the existence and details of a complaint, any and all information related to an investigation conducted pursuant thereto, and all other records, files, and reports of the Commission must be kept confidential and will not be disclosed, except as follows:

(a) Upon inquiry by a state or federal agency conducting a criminal investigation, but only information relevant to the investigation will be provided;

(b) Upon order of a court of competent jurisdiction for good cause shown; or

(c) As otherwise required by law.

(2) Except as provided in subsection (1) above, the Commission shall only be authorized to release, upon receiving written request, final disciplinary action(s) taken and/or remedial measure(s) imposed by the Chief Justice against a clerk, and the date of such action(s). The Commission shall provide written notice to a clerk of all such third party requests.

(3) Breach of confidentiality may be deemed grounds for removal of a Commission member and for discharge of any of its agents. Any member so removed, or agent so discharged, shall not be eligible thereafter to serve on the Commission or at its direction.

(4) If, in the course of its proceedings, the Commission becomes aware of credible evidence that any person has committed a crime, the Commission may report such evidence to the appropriate law enforcement agency.

(5) Nothing in this section shall preclude the Commission from taking such action(s) as may be necessary to conduct inquiries and investigations in accordance with Section 8.

Section 8. Complaint / Preliminary Inquiry / Investigation

(1) All complaints must be in writing; include the complainant's name, address, and telephone number; be signed by the complainant; and allege specific facts demonstrating why the complainant believes that official misconduct or otherwise improper conduct has occurred. The complaint may be on the form provided by the Administrative Office of the Courts. The complaint may be initiated by the Commission itself or by any individual, organization, or entity.

(2) Upon receiving a written complaint concerning a clerk, the Commission shall determine whether the complaint states facts which, if true, would constitute official misconduct or otherwise improper conduct for which the clerk may be subject to disciplinary action(s) and/or remedial measure(s) under Section 6. If it appears to the Commission that no such conduct has occurred even if the alleged facts are true, no further inquiry shall be made, and the Commission shall report same to the Chief Justice.

(3) If it appears to the Commission that the complaint states facts which, if true, would constitute official misconduct or otherwise improper conduct for which the clerk may be subject to disciplinary action(s) and/or remedial measures under Section 6, it shall make preliminary inquiry as follows: Notice of the complaint shall be given to the clerk by certified mail, return receipt requested, and will be marked "Personal and Confidential." The notice shall:

(a) include the name of the complainant and a written statement that no retaliation shall be taken against the complainant;

(b) include a copy of the complaint;

(c) instruct the clerk that he or she shall provide a written response to the complaint, to be postmarked no later than twenty ~~ten (10)~~ days after receipt of the notice;

(d) instruct the clerk to include in the response the names of persons who may have relevant information pertaining to the allegations contained in the complaint; and

(e) instruct the clerk that he or she has the right to retain legal counsel at his or her own expense.

(4) If, after reviewing the clerk's response, the Commission determines there is not good cause to proceed with an investigation, it shall report same to the Chief Justice. If, however, the Commission determines there is good cause to proceed with an investigation, or in the event the clerk fails to timely provide the response required in subsection (3) above, the Commission shall commence an investigation to determine whether disciplinary action(s) and/or remedial measure(s) should be recommended. In either event, the clerk shall be notified in writing.

(5) At any stage of the investigation, the Commission or its special investigator may conduct interviews or take statements, whether or not

taken under oath. Interviews should include all relevant persons, including but not limited to, the complainant, the clerk, and witnesses.

(6) Upon conclusion of its investigation, the Commission shall submit written findings of fact and recommendation(s) to the Chief Justice. The Chief Justice shall be entitled to view the file of the matter if he so desires.

(7) The Commission shall make its recommendation(s) to the Chief Justice within ninety days of the commencement of the investigation. An investigation is "commenced" upon the Commission's determination that there is good cause to proceed with an investigation. The Commission may request in writing an extension of time not to exceed thirty days, which extension may be granted by the Chief Justice for good cause shown.

(8) Final action(s) taken by the Chief Justice shall be placed in the Commission's file of the matter.

Section 9. General Provisions

(1) The Kentucky Court of Justice shall provide legal representation for the defense of any civil action brought against an individual member or agent of the Committee, including the special investigator, in his official or individual capacity, or both, on account of an act made in the scope and course of his performance of legal duties as a Committee member or agent thereof. Members and agents of the Commission, including the special investigator, shall be absolutely immune from suit for all conduct in the course of their official duties. A complaint submitted to the Commission, and communications related thereto, shall be absolutely privileged, and no civil action predicated on the complaint or on such communications may be instituted against any complainant or witness or their counsel; provided, however, such immunity from suit shall apply only to communications to the Commission and shall not apply to public disclosure of information contained in or relating to the complaint.

(2) In the event that a clerk under investigation resigns, the Commission may, upon a finding that the integrity of the judicial branch and the interest of the administration of justice would be served, continue its investigation in order to make recommendation(s) to the Chief Justice.

(3) Members of the Commission shall not be compensated but shall be reimbursed for actual expenses incurred by them in attending Commission meetings and conducting investigations, in accordance with the current travel regulations of the Court of Justice.

(4) The Commission shall keep a file of all complaints and investigations concerning a clerk. All such files shall be maintained in the Office of the Chief Justice. No person, including the clerk, shall have access to such files except as provided in Section 7 above.

Section 10. Powers of Chief Justice

(1) Nothing in these rules shall limit the administrative powers of the Chief Justice pursuant to Section 110(5)(b) of the Constitution of Kentucky and KRS 30A.010(2).

(2) Recommendations made by the Commission pursuant to Section 8 herein shall not be binding upon the Chief Justice, nor shall any such recommendations raise a presumption in any proceeding before any court of the Commonwealth.

Entered this 28th day of July 2014.

CHIEF JUSTICE