

State of Washington Commission on Judicial Conduct



CONFIDENTIALITY PROVISIONS

The Commission's duties and procedures are generally described in the State Constitution, Art. IV, Sec. 31. The Constitution declares that "the investigation and initial proceedings shall be confidential." The applicable statutes and Commission rules provide that the Commission conduct its investigations confidentially. Excerpts are provided on the other side of this page for your information.

Confidentiality applies to the Commission and its staff, court personnel, and lawyers, as officers of the court. Confidentiality is intended to encourage complainants to express their concerns without fear of reprisal or retribution. It is further intended to protect a judge's reputation and the integrity of the judicial process from unsubstantiated allegations.

We ask your cooperation in keeping the fact that you have filed a complaint confidential while we conduct the investigation, for the following reasons:

- *It is far more difficult to conduct an accurate and thorough investigation if it is not kept confidential.*
- *If you tell a judge you filed a complaint against him or her, case law is clear that **does not** require the judge to step down from your case.*

At any time, you **can** tell anyone about the facts on which you base your complaint or statement. In other words, while you are welcome to speak as you wish about what you think the judge did wrong, we ask that you not discuss the fact that you complained to our agency while we are investigating your complaint.

Confidentiality rules continue to apply to the Commission and its staff, regardless of the complaint's disposition. Commission files and records, which have not become public as provided by law, remain confidential.

If you have any questions concerning these rules, please contact the Commission's office for clarification.

Confidentiality Provisions Excerpts

CJCRP RULE 11. CONFIDENTIALITY

(a) Investigative and initial proceedings.

- (1) Before the commission files a statement of charges alleging misconduct by or incapacity of a judge, all proceedings, including commission deliberations, investigative files, records, papers and matters submitted to the commission, shall be held confidential by the commission, disciplinary counsel, investigative officers, and staff except as follows:
 - (A) With the approval of the commission, the investigative officer may notify respondent that a complaint has been received and may disclose the name of the person making the complaint to respondent pursuant to Rule 17(e).
 - (B) The commission may inform a complainant or potential witness of the date when respondent is first notified that a complaint alleging misconduct or incapacity has been filed with the commission. The name of the respondent, in the discretion of the commission, may not be used in written communications to the complainant.
 - (C) The commission may disclose information upon a waiver in writing by respondent when:
 - (i) Public statements that charges are pending before the commission are substantially unfair to respondent; or
 - (ii) Respondent is publicly accused or alleged to have engaged in misconduct or with having a disability, and the commission, after a preliminary investigation, has determined that no basis exists to warrant further proceedings or a recommendation of discipline or retirement.
 - (D) The commission has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice.
- (2) The commission and court personnel shall keep the fact that a complaint has been made, or that a statement has been given to the commission, confidential during the investigation and initial proceeding except as provided under Rule 11.
- (3) No person providing information to the commission shall disclose information they have obtained from the commission concerning the investigation, including the fact that an investigation is being conducted, until the commission files a statement of charges, dismisses the complaint, or otherwise concludes the investigation or initial proceeding.

(b) Hearings on statement of charges.

- (1) After the filing of a statement of charges, all subsequent proceedings shall be public, except as may be provided by protective order.
- (2) The statement of charges alleging misconduct or incapacity shall be available for public inspection. Investigative files and records shall not be disclosed unless they formed the basis for probable cause. Those records of the initial proceeding that were the basis of a finding of probable cause shall become public as of the date of the fact-finding hearing.
- (3) Disciplinary counsel's work product shall be confidential.

(c) Commission deliberations. All deliberations of the commission in reaching a decision on the statement of charges shall be confidential.

(d) General Applicability.

- (1) No person shall disclose information obtained from commission proceedings or papers filed with the commission, except that information obtained from documents disclosed to the public by the commission pursuant to Rule 11 and all information disclosed at public hearings conducted by the commission are not deemed confidential under Rule 11.
- (2) Any person violating Rule 11 may be subject to a proceeding for contempt in superior court.
- (3) A judge shall not intimidate, coerce, or otherwise attempt to induce any person to disclose, conceal or alter records, papers, or information in violation of Rule 11. Violation of Rule 11 (d)(3) may be charged as a separate violation of the Code of Judicial Conduct.
- (4) If the commission or its staff initiates a complaint under Rule 17 (b)(1), then Rule 11 (a)(1) as it applies to the commission shall govern the commission and its staff.
- (5) These confidentiality rules also apply to former commission members, disciplinary counsel, investigative counsel and staff with regard to information they had access to while serving the commission.

Comment on Rule 11:

The integrity of investigations would be harmed, the privacy interests of individuals, and the independence of the judiciary would be adversely affected without providing for limited restrictions of information learned or provided to the Commission during the investigation. Confidentiality is critical for the integrity of the Commission investigations, and often influences whether a person who works directly with a judge is willing to file a complaint or disclose misconduct in an investigation. Prohibiting disclosure that a complaint has been filed, or that a person has been interviewed, protects those persons from questioning by their supervising judge, or by others. The confidentiality required during the investigation of a complaint also protects the independence of the judiciary by preventing unfounded complaints from being used to threaten or distract judges. After considering alternate ways of providing this necessary protection, the Commission has concluded that the temporary restrictions on public disclosure in this rule are the narrowest restrictions that will provide the confidentiality needed for persons who disclose misconduct or file complaints and for the judges under investigation. The reason lawyers are covered by this rule is that they are officers of the court and are especially charged with maintaining the integrity and independence of the judiciary.

RCW 2.64.111 Exemption from public disclosure – Records subject to public disclosure, when. All pleadings, papers, evidence records, and files of the commission, including complaints and the identity of complainants, compiled or obtained during the course of an investigation or initial proceeding involving the discipline or retirement of a judge or justice, are exempt from the public disclosure requirements of chapter 42.56 RCW during such investigation or initial proceeding. As of the date of a public hearing, all those records of the initial proceeding that were the basis of a finding of probable cause are subject to the public disclosure requirements of chapter 42.56 RCW.

RCW 2.64.113 Confidentiality – Violations. The commission shall provide by rule for confidentiality of its investigations and initial proceedings in accordance with Article IV, section 31 of the state Constitution.

Any person violating a rule on confidentiality is subject to a proceeding for contempt in superior court.

Please Note: These confidentiality mandates prevent the Commission from providing copies of confidential materials to anyone, except as provided by law. If you need to maintain a record, please keep a copy.