

CHAPTER 3

COMPLAINTS AGAINST COMMISSIONERS

The Standing Committee on Commissioners of Accounts has been charged by the Supreme Court of Virginia with seven functions, one of which is the investigation of complaints against commissioners of accounts. This charge specifically requires the Standing Committee:

To receive complaints and inquiries concerning the performance of commissioners of accounts and to evaluate the complaints and inquiries; attempt to resolve the issues and for any complaint deemed worthy, refer the complaint with or without recommendations, to the chief judge of the circuit court having jurisdiction over the commissioners of accounts, with a copy of the referral being sent to the Chief Justice of the Supreme Court of Virginia.

Based on the complaints received over the years, the Committee observes that they fall into several categories, including:

1. Failure to employ the enforcement tools (e.g., the Summons, the Report to the Court, and the Petition to Show Cause) that are available to commissioners to enforce timely filing of inventories and accounts, which ensures that interested parties are informed as to the progress of administration;

- 2 Failure to resolve issues or objections by conducting hearings (e.g., on inventories and accounts pursuant to Va. Code § 64.2-1204 or 64.2-1209) with reports to the court to which disgruntled beneficiaries can file exceptions with the court; and

- 3 Failure to have a viable system to allow lay fiduciaries, attorneys, and accountants to communicate cooperatively with commissioners about the often complicated task of completing filings (e.g., staff reluctance to provide instructional information, failure to return telephone calls, and use of enforcement procedures rather than preliminary communication efforts).

The manner in which a commissioner's office interacts with fiduciaries, beneficiaries, creditors, or other's having an interest in an estate can be instrumental in avoiding a complaint and the additional time, embarrassment, and effort required of a commissioner in resolving it.

Paragraph 2.202 of this Manual describes the duties of a commissioner, which include educating users about the system, and lists a number of aspirational characteristics. These traits include "high quality service"; "a temperament that is patient and understanding, yet firm and impartial"; "an

ability to deal courteously with the public and fiduciaries of all types” as well as court personnel, attorneys, and the court; and “the ability to find practical solutions to problems.”

This chapter contains the “Rules for Addressing Complaints and Inquiries to the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia.” As the introduction shows, these rules were developed pursuant to an additional charge received by the Standing Committee from the Chief Justice of the Supreme Court of Virginia and additional instructions from the Judicial Council. The rules set forth in this chapter were given final approval by the Standing Committee on June 2, 2004 and were approved by the Judicial Council on June 21, 2004.

RULES FOR ADDRESSING COMPLAINTS AND INQUIRIES TO THE STANDING COMMITTEE ON COMMISSIONERS OF ACCOUNTS OF THE JUDICIAL COUNCIL OF VIRGINIA

I. INTRODUCTION

By letter of June 18, 2002, the Chief Justice of the Supreme Court of Virginia added an additional charge to the six charges already given the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia with regard to the performance of Commissioners of Accounts. In that charge he enjoined the Standing Committee:

To review and investigate complaints concerning the performance of Commissioners of Accounts.

To implement the additional charge, the Judicial Council resolved:

(1) that the Standing Committee’s charge be expanded to give it authority to receive, directly or by referral from the Virginia State Bar, complaints and inquiries concerning the performance of Commissioners of Account, (2) authorize it to evaluate such complaints and inquiries, (3) authorize it to attempt to resolve the issues with the Commissioners of Accounts, and (4) authorize it to refer the complaint or inquiry with or without recommendations to the chief judge of the circuit court having jurisdiction over the Commissioner of Accounts with a copy of the referral being sent to the Chief Justice.

The following Rules have been adopted by the Standing Committee on Commissioners of Accounts in order to implement in an orderly way the additional charge of the Chief Justice and the resolution of the Judicial Council.

II. RULES

A. Applicability. These Rules shall govern procedures for addressing Complaints and Inquiries to and handling them by the Standing Committee on Commissioners of Accounts.

B. Gender. The words “he,” “him,” “his,” or similar words as used in these Rules are intended to include both the feminine and the masculine.

C. Exceptions. When the interests of justice require and for good cause, the Standing Committee may waive the requirements of all or any portion of these Rules.

III. DEFINITIONS

A. Standing Committee shall mean the Standing Committee on Commissioners of Accounts of the Judicial Council of Virginia.

B. Member or Members shall mean a member or members of the Standing Committee.

C. Commissioner or Commissioner of Accounts shall mean the person, including a Commissioner of Accounts, an Assistant Commissioner of Accounts, or a Deputy Commissioner of Accounts, concerning whom the Standing Committee is reviewing, investigating and evaluating a complaint or inquiry.

D. Meeting shall include a gathering of individuals either in person or by telephone conference call.

E. Document shall mean any writing including but not limited to a letter, notice, exhibit, chart, table, photograph or any of the above preserved in electronic form.

F. Presiding member shall mean the Chair or any other Standing Committee member who presides at any meeting conducted by the Standing Committee or a Subcommittee thereof pursuant to these Rules.

IV. PROCEDURE FOR HANDLING COMPLAINTS AND INQUIRIES

A. The Standing Committee requests that all Complaints and Inquiries be submitted in writing to the Executive Secretary of the Supreme Court of Virginia, 100 N. 9th Street, Richmond, VA 23219. A Complaint or Inquiry must be made in writing, be legible, state as clearly and succinctly as possible its basis, be signed by the person or persons making it, and be

submitted with the name, address and daytime telephone number of the Complainant. If a Complaint or Inquiry shall come into the possession of the Standing Committee from a source other than the Executive Secretary of the Supreme Court, the Standing Committee shall, at its discretion, handle the Complaint or return it to the Complainant with instructions that it be sent to the Executive Secretary of the Supreme Court.

B. The Executive Secretary shall promptly acknowledge receipt of the Complaint or Inquiry and forward it to the Chair of the Standing Committee.

C. The Chair of the Standing Committee shall refer the Complaint or Inquiry to a Subcommittee consisting of three members of the Standing Committee and shall specify which of the three shall be the Chair. The Subcommittee shall consist of one Member of the Standing Committee who is a Commissioner of Accounts and two Members of the Standing Committee who are not Commissioners of Accounts. The Chair of the Standing Committee shall send a copy of the Complaint or Inquiry to all three Members of the Subcommittee.

D. Upon receipt of a referral from the Chair of the Standing Committee, the Chair of the Subcommittee shall begin the Investigation or Evaluation. The Chair and Members of the Subcommittee shall have broad discretion as to the procedure which they shall employ in conducting the investigation. At a minimum, however, one or more Members (a Member of the Subcommittee noted herein shall include the Chair of the Subcommittee) must make contact with the Complainant either personally, by telephone, in writing, or more than one of the above, and must give the Complainant a full opportunity to amplify his Complaint or Inquiry. The Commissioner must be given a copy of the Complaint or Inquiry and the amplification furnished the Subcommittee. Upon receipt of the amplification of the Complaint or Inquiry, the Members of the Subcommittee shall consult with one another, either in a meeting or by an exchange of written correspondence forwarded by mail, facsimile, private delivery or e-mail, at the conclusion of which a vote shall be taken on the question of whether or not the Investigation shall proceed further. The question shall be resolved by majority vote.

E. If the Subcommittee shall decide not to proceed further, it shall prepare a Report to that effect to the Standing Committee, which Report will embody enough detail of the Subcommittee's Findings to inform the Standing Committee of the grounds for its decision. Thereafter, the Standing Committee shall decide by majority vote whether to confirm or reject the Report of the Subcommittee. If the Standing Committee shall decide to confirm the Report of the Subcommittee, the Chair of the Standing Committee shall

instruct the Subcommittee to draft a letter to the Complainant for the signature of the Chair of the Standing Committee setting out the decision of the Subcommittee and the Standing Committee. The Chair of the Standing Committee shall have the power to make editorial changes and changes in style to the letter before it is sent to the Complainant. A copy of the letter shall be sent to the Commissioner of Accounts. If the Standing Committee shall decide to reject the Report of the Subcommittee, the Chair of the Standing Committee shall, following the Instructions of the Standing Committee, re-refer the matter to the same Subcommittee or refer the matter to another Subcommittee with the Instructions that the Commissioner of Accounts be asked for a response.

F. In investigating and evaluating the Complaint or Inquiry, the Subcommittee may request written submissions from the parties and/or confer with the parties. Additional information—verbal, written, or both—may be obtained from outside sources. All information obtained shall be made available to the Complainant and the Commissioner. The Subcommittee, in carrying out the authority granted the Standing Committee in Paragraph (3) of the Resolution of the Judicial Council (“ . . . to attempt to resolve the issues with the Commissioners of Account”) may attempt to reach such a resolution by consulting with the Complainant and the Commissioner separately and/or convening them together for one or more mediation sessions.

G. If the matters of disagreement between the Complainant and the Commissioner are resolved by agreement between the Complainant and the Commissioner, 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 each person. 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 that the matter has been resolved by agreement but shall not circulate copies of the Document to the other Members of the Standing Committee unless he finds there is a particular reason to do so.

H. If the matters of disagreement are not resolved by agreement between the Complainant and the Commissioner, the Subcommittee shall proceed with its Investigation and Evaluation and reach a decision based thereon. The decision shall be reached by a majority vote of the Subcommittee.

I. When the Subcommittee has reached a decision, the Chair of the Subcommittee shall prepare or request another Member of the Subcommittee to prepare a Report setting forth the Subcommittee’s decision and its reasons therefor. The Report shall be submitted to the Subcommittee, and when it shall have been approved by the Subcommittee—either as originally drafted

or as subsequently revised—it shall be submitted to the Chair of the Standing Committee. Any Member of the Subcommittee who voted against the Report shall have the right to submit a Minority Report to the Chair of the Standing Committee.

J. The Chair of the Standing Committee shall promptly circulate the Report to all Members of the Standing Committee who are not Members of the Subcommittee. At the following meeting of the Standing Committee, whether a regularly scheduled meeting or a meeting called specifically for the purpose, the Standing Committee, including the Members of the Subcommittee, shall consider the Subcommittee Report and the Minority Report, if any. The Standing Committee may approve the Report; conduct a further investigation following which it may approve the original Report or amend the Report and approve it as amended; or reject the Report and either prepare its own Report, recommit the matter to the Subcommittee which has previously acted, or refer the matter to another Subcommittee with such instructions as it shall decide to give. The Reports of the Subcommittee and the Standing Committee must contain a recommendation as to whether the matter should be referred to the Chief Judge of the Circuit from which the Commissioner has been appointed, and if so whether or not such Report shall contain a recommendation.

V. PROCEDURE FOR REFERRING A DECISION OF THE STANDING COMMITTEE

Regardless of the Decision of the Standing Committee in its final Report, the Report shall be transmitted by Certified Mail, Return Receipt Requested, to the Complainant and the Commissioner of Accounts. In addition to those notifications, 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 Certified Mail, Return Receipt Requested, to such Chief Judge and to the Chief Justice of the Supreme Court of Virginia.

VI. EFFECTIVE DATE

These Rules shall be effective July 1, 2004.