

FOR INFORMATION ONLY

OPERATING MANUAL OF THE STANDING JUDICIAL COMMISSION AMENDMENTS ADOPTED BY THE 46th GENERAL ASSEMBLY 2018

ITEM 1. Amend the following sections of OMSJC regarding Provisions related to Concurring and Dissenting opinions

- 12.10** After a decision has been reached by the full Commission, any member may file by mail or electronic means, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which ~~if it is couched in temperate language (see OMSJC 18.12) shall be appended to the decision.~~ if it conforms with the requirements of OMSJC 18.12, shall be promptly sent to the parties as an appendix to the decision.
- 13.7** After a decision has been reached by the full Commission, any member may file by mail or electronic means, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which ~~if it is couched in temperate language (see OMSJC 18.12) shall be appended to the decision.~~ if it conforms with the requirements of OMSJC 18.12, shall be promptly sent to the parties as an appendix to the decision.
- 14.7** After a decision has been reached by the full Commission, any member may file by mail or electronic means, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which ~~if it is couched in temperate language (see OMSJC 18.12) shall be appended to the decision.~~ if it conforms with the requirements of OMSJC 18.12, shall be promptly sent to the parties as an appendix to the decision
- 15.9** After a decision has been reached by the Full Commission, any member may file, within 20 days after the day the decision is reached, a concurring or dissenting opinion, which ~~shall be appended to the decision.~~ if it conforms with the requirements of OMSJC 18.12, shall be promptly sent to the parties as an appendix to the decision.
- 17.8.k** After a decision has been reached by the Full Commission, any member may file, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which ~~if it is couched in temperate language (see OMSJC 18.12) shall be appended to the decision.~~ if it conforms with the requirements of OMSJC 18.12, shall be promptly sent to the parties as an appendix to the decision.

Rationale:

The current language unduly highlights one of multiple standards for such opinions set forth in *OMSJC* 18.12. The amendment directs attention to the entire provision and further directs that concurring concurring or dissenting opinions be sent to the parties.

The amended sections will now read:

12.10 After a decision has been reached by the full Commission, any member may file by mail or electronic means, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which, if it conforms with the requirements of *OMSJC* 18.12, shall be promptly sent to the parties as an appendix to the decision.

13.7 After a decision has been reached by the full Commission, any member may file by mail or electronic means, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which, if it conforms with the requirements of *OMSJC* 18.12, shall be promptly sent to the parties as an appendix to the decision.

14.7 After a decision has been reached by the full Commission, any member may file by mail or electronic means, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which, if it conforms with the requirements of *OMSJC* 18.12, shall be promptly sent to the parties as an appendix to the decision.

15.9 After a decision has been reached by the Full Commission, any member may file, within 20 days after the day the decision is reached, a concurring or dissenting opinion, which, if it conforms with the requirements of *OMSJC* 18.12, shall be promptly sent to the parties as an appendix to the decision.

17.8.k After a decision has been reached by the Full Commission, any member may file, within 14 days after the date the text of the decision is sent by the Secretary to the members of the Commission, a concurring or dissenting opinion, which, if it conforms with the requirements of *OMSJC* 18.12, shall be promptly sent to the parties as an appendix to the decision.

ITEM 2. Amend *OMSJC* 4.1 (first sentence and next to last sentence) as follows:

4.1 The stated meetings of the Commission shall begin on the first Thursday of ~~March~~ February and on the third Thursday of October in each year.... Ordinarily these stated meetings shall be scheduled to begin at ~~1 p.m.~~ 9 a.m. on Thursday and to conclude no later than noon on ~~Saturday~~ Friday....

Rationale:

The proposed change allows for more time to prepare the SJC report to the General Assembly (thus facilitating concurring and dissenting opinion procedures) and further brings the *OMSJC* into conformity with our practice of long-standing.

The amended section will now read:

- 4.1** The stated meetings of the Commission shall begin on the first Thursday of February and on the third Thursday of October in each year.... Ordinarily these stated meetings shall be scheduled to begin at 9 a.m. on Thursday and to conclude no later than noon on Friday....

ITEM 3. Amend *OMSJC* 10.11.a.(2)I. by the addition of a sentence:

10.11.a (2)

- I.** A Summary of the Facts. (A presentation in chronological order of the relevant history and facts that bear on the case. This Summary, and the summaries of facts mentioned elsewhere in this Manual, may also include a separate “Case Summary” paragraph summarizing the Case and Decision.)

Rationale:

The proposed change allows for, but does not require, the inclusion of a summary of the case as a part of the summary of the facts.

The amended section will now read:

10.11.a (2)

- I.** A Summary of the Facts. (A presentation in chronological order of the relevant history and facts that bear on the case. This Summary, and the summaries of facts mentioned elsewhere in this Manual, may also include a separate “Case Summary” paragraph summarizing the Case and Decision.)

ITEM 4. Amend *OMSJC* 19.2.f. as follows:

19.2.

- f.** Any concurring and/or dissenting opinions of any members of the Standing Judicial Commission, and any SJC answer to them, which have been ~~approved~~ received under *OMSJC* 18.12.

Rationale:

The proposed change makes explicit the relatively new possibility of an SJC answer to a concurring or dissenting opinion, and clarifies the reference to *OMSJC* 18.12.

The amended section will now read:

19.2.

- f. Any concurring and/or dissenting opinions of any members of the Standing Judicial Commission, and any SJC answer to them, which have been received under *OMSJC* 18.12.

ITEM 5. Amend *OMSJC* 18.12.c by adding a sentence:

18.12.

- c. At the request of four SJC members within 14 days after the date the text of the Concurring or Dissenting Opinion is sent by the Secretary to the members of the SJC, the Chairman shall call a special meeting of the Commission, upon at least fourteen (14) days' notice, by telephone or video conference to consider either (1) a motion to adopt an Answer to any Concurring or Dissenting Opinion or (2) a motion to strike the Opinion for failing to meet the standards in 18.12.b. With respect to (1) above, although all members may participate in discussion, only those members voting with the prevailing side may vote on the adoption of an Answer. Upon the adoption of an Answer to a Concurring or Dissenting Opinion by the Commission, no further Concurring or Dissenting Opinion shall be permitted; neither shall any amendment to the Concurring or Dissenting Opinion in question be permitted. A Concurring or Dissenting Opinion may be withdrawn.

Rationale:

A voting restriction with respect to item (1) is justified in that it has to do with an expression of the majority's view, and thus clearly it should be their will alone expressed. The motion to strike, item (2), presents a different question: whether the concurring/ dissenting opinion conforms to the *OMSJC* standards. There is no reason why the concurring/dissenting proponents should not have a right to vote in the matter.

The amended section will now read:

18.12.

- c. At the request of four SJC members within 14 days after the date the text of the Concurring or Dissenting Opinion is sent by the Secretary to the members of the SJC, the Chairman shall call a special meeting of the Commission, upon at least fourteen (14) days' notice, by telephone or video conference to consider either (1) a motion to adopt an Answer to any Concurring or Dissenting Opinion or (2) a motion to strike the Opinion for failing to meet the standards in 18.12.b. With respect to (1) above, although all members may participate in discussion, only those members voting with the prevailing side may vote on the adoption of an Answer. Upon the adoption of an Answer to a Concurring or Dissenting Opinion by the Commission, no further Concurring or Dissenting Opinion shall be permitted; neither shall any amendment to the Concurring or Dissenting Opinion in question be permitted. A Concurring or Dissenting Opinion may be withdrawn.

ITEM 6. Amend *OMSJC* 18.10.b by addition and deletion of words:

18.10.

- b. Documents required or permitted to be filed by a party shall be filed with the Stated Clerk. Such filing shall not be timely unless the documents are received in the office of the Stated Clerk within the time fixed for such filing, except that papers shall be deemed filed on the day of mailing if sent by certified, registered, priority, or express mail of the United States Postal Service or any ~~private~~ delivery service where verifying receipt is utilized....

Rationale:

Increasingly we are seeing filings sent by Priority Mail of the U. S. Postal Service. While the Manual only specifies “certified, registered or express mail,” Priority Mail does provide a verifying receipt. In previous cases, the officers have allowed Priority Mail to qualify. This amendment simply makes clear that Priority Mail qualifies.

The amended section will now read:

18.10.

- b. Documents required or permitted to be filed by a party shall be filed with the Stated Clerk. Such filing shall not be timely unless the documents are received in the office of the Stated Clerk within the time fixed for such filing, except that papers shall be deemed filed on the day of mailing if sent by certified, registered, priority, or express mail of the United States Postal Service or any delivery service where verifying receipt is utilized....