

Sec. 51-51k-11. Mental infirmity or mental illness or drug dependency or alcohol addiction

(a) The Council shall investigate every referral by the chief court administrator of the mental infirmity or mental illness or drug dependency or alcohol addiction of a judge or family support magistrate.

(b) All proceedings hereunder shall be confidential unless the judge or family support magistrate requests that such proceedings be open.

(c) Not later than five days after receipt of such matter from the chief court administrator, the Council shall, by registered or certified mail, return receipt requested, notify the judge or family support magistrate under investigation by such referral.

(d) The Council may request the judge or family support magistrate to furnish access to or authorization for access to all medical and other records pertaining to said physical and mental condition, drug dependency or alcohol addiction of such judge or family support magistrate. If a judge or family support magistrate declines to furnish or submit such authorization or record, or if further information is needed, the Council may request the judge or family support magistrate to submit to independent medical or other examinations at the expense of the judicial department. A copy of the results of any independent examination shall be sent to the judge or family support magistrate by registered or certified mail, return receipt requested, within five business days of its receipt by the Council.

(e) Any medical records or reports generated or produced in such an investigation shall be maintained in a separate, locked file or file cabinet, accessible only by the executive director of the Council.

(f) If a judge or family support magistrate fails or refuses to submit to an independent examination requested by the Council, unless such failure or refusal is due to circumstances beyond the judge's or family support magistrate's control, the judge or family support magistrate shall be precluded from submitting reports of medical or other examinations done on the judge's or family support magistrate's behalf.

(g) The Council may consider such judge's or family support magistrate's refusal or failure to submit to such examination as evidence that the judge or family support magistrate has a mental infirmity or mental illness or drug dependency or addiction to alcohol.

(h) The Council shall conduct a hearing to determine if the judge or family support magistrate suffers from a mental infirmity or mental illness or drug dependency or alcohol addiction. Such hearing shall be closed to the public unless the person being investigated requests it be open.

(i) The hearing shall be scheduled at a time and place to be determined by the Council, but only after reasonable notice to the judge or family support magistrate.

(j) Such notice shall contain the information that the judge or family support magistrate may attend the hearing, be represented by counsel, may elect to testify, may call witnesses, present evidence and may examine or cross examine witnesses.

(k) A record shall be made of the hearings.

(l) Any reporter or language interpreter present at the hearing shall be sworn as to confidentiality.

(m) After all evidence and arguments have been presented at a hearing, the Council shall make its finding in executive session unless the respondent requests the finding be made in

a public session.

(n) If the Council finds that a judge or family support magistrate is suffering from a temporary mental infirmity, mental illness, drug dependency or addiction to alcohol which prevents the judge or family support magistrate from performing his or her judicial or magisterial duties, either on a full-time or part-time basis, the Council shall request the judge or family support magistrate to seek appropriate treatment.

(o) Upon completion of such treatment program, and a finding by the Council that such judge or family support magistrate can fully perform his or her duties, the Council shall report said finding to the chief court administrator within three business days of such finding.

(p) If the judge or family support magistrate refuses to seek treatment, or does not fully cooperate in the treatment program, the Council may (1) publicly censure the judge or family support magistrate, (2) suspend the judge or family support magistrate for a definite term not to exceed one year, (3) refer the matter to the supreme court with a recommendation that the judge or family support magistrate be suspended for a period longer than one year, or (4) refer the matter to the supreme court with a recommendation that the judge or family support magistrate be removed from office.

(q) If the Council finds that a judge is permanently incapable of adequately fulfilling his or her duties because of mental infirmity or mental illness or drug dependency or addiction to alcohol, the judge shall thereupon be retired.

(r) If the Council finds that a family support magistrate is permanently incapable of adequately fulfilling his or her duties because of mental infirmity or mental illness or drug dependency or addiction to alcohol, the family support magistrate shall be removed from office.

(Effective December 28, 1994)