

THE CONSTITUTION OF JAMAICA

REGULATIONS

(made under section 72 of the Jamaica (Constitution) Order in Council, 1959, preserved by section 2 of the Jamaica (Constitution) Order in Council, 1962)

THE JUDICIAL SERVICE REGULATIONS, 1961

(Made by the Governor, after consultation with the Judicial Service Commission, on the 1st day of June, 1961) L.N. 94/61

[1st June, 1961.]

PART I—Preliminary

1. These Regulations may be cited as the Judicial Service Regulations, 1961. Short title.

2. In these Regulations unless the context otherwise requires— Interpretation.

“authorized officer” means a member of the Commission or an authority or a public officer to whom the functions of the Governor-General have been delegated pursuant to section 71 of the Order;

“chairman” means chairman of the Commission and includes any member presiding at a meeting of the Commission;

“Commission” means the Judicial Service Commission established by section 68 of the Order;

“functions” includes powers and duties;

“judicial office” means the office of Resident Magistrate, Judge of the Traffic Court, Registrar of the Supreme Court or such other office connected with the Courts of Jamaica as, subject to the provisions of the Order, may be prescribed by any enactment of the Parliament of Jamaica;

“judicial officer” means the holder of a judicial office;

“member” means member of the Commission;

“Order” means the Jamaica (Constitution) Order in Council, 1959;

“perform” in relation to functions includes exercise;

“regulation” means one of these Regulations;

“relative office” means an office in respect of which the Commission is required to make recommendations for appointment to the Governor-General;

“secretary” means the secretary to the Commission appointed pursuant to regulation 4 and includes the person for the time being performing the functions of that office.

PART II—*Judicial Service Commission*

Oath of office.

3. The chairman and members and every officer appointed under regulation 4 shall on appointment take before a Justice of the Peace an oath in the appropriate Form in the Schedule.

Schedule.

Appointment of secretary and staff.

4.—(1) The Governor-General, after consultation with the Commission and with the Cabinet, may constitute the office of secretary to the Commission and such other offices as he may consider expedient for securing the due performance of the functions of the Commission.

(2) The Governor-General upon the recommendation of the Commission may from time to time appoint persons to the offices constituted pursuant to paragraph (1).

Functions of Commission.

5. Where the Order requires the Governor-General in the performance of any function to act on the recommendation of the Commission the Governor-General—

(a) may where that function has been delegated pursuant to section 71 of the Order; and

(b) shall in every other case, request the Commission to make its recommendation and it shall be the duty of the Commission to make the recommendation so requested.

Procedure and meetings.

6.—(1) The Commission shall meet as often and at such times and places as in the discretion of the chairman may be necessary or expedient for the purpose of performing its functions.

(2) In the absence of the chairman from any meeting the members present may elect one of their number to preside at that meeting.

(3) All decisions at a meeting of the Commission shall be by a majority of the votes of the members present and voting:

Provided that where the voting is equal the chairman shall have a casting vote as well as an original vote.

Record of meetings and decisions.

7.—(1) It shall be the duty of the secretary duly to record minutes of all meetings of the Commission.

(2) Copies of such minutes duly confirmed at a subsequent meeting or by the individual members on circulation thereof shall as soon as practicable thereafter be forwarded to the Governor-General.

(3) Any member of the Commission present when any decision is made who dissents therefrom may require that his dissent and his reasons for dissenting be recorded in the minutes.

8. Matters may also be decided by the Commission without a meeting upon circulation of the relevant papers among the members; but if on circulation of the papers relating to any matter a difference of opinion arises among the members, or if any member so requires, it shall be the duty of the secretary to reserve the matter for discussion at a meeting.

Decisions otherwise than at a meeting.

9. The Commission in considering any matter or question may consult with such public officer or other person as the Commission may consider proper and desirable and may require any public officer to attend and give evidence before it and to produce any official documents relating to such matter or question.

Consultation with other persons.

10. Any public officer who without reasonable cause fails to appear before the Commission when required to do so, or who fails to comply with any request properly made by the Commission, shall be guilty of a breach of discipline and the Commission may where appropriate recommend that disciplinary proceedings be instituted against him.

Failure to comply with Commission's request.

11. Except with the consent of the Governor-General signified in writing under the hand of the Governor-General's Secretary, a person shall not in any legal proceedings produce or be permitted to give secondary evidence of the contents or nature of any document, communication or information addressed, made or given—

Privileged information.

- (a) to the Commission by or on behalf of the Governor-General, the Chief Personnel Officer, a Permanent Secretary or the Head of any Government Department for the purpose of enabling the Commission to perform any of its functions; or
- (b) by the Commission to the Governor-General, the Chief Personnel Officer, a Permanent Secretary or the Head of any Government Department in relation to any matter concerning or arising out of the functions of the Commission.

Penalty for
supplying
false in-
formation to
Commission

12. Any person who in connection with any application by any person for employment or promotion in a relative office, or with any matter upon which it is the duty of the Commission to make any recommendation to the Governor-General or upon which it is the duty of the Commission or of an authorized officer to make any decision, wilfully gives to the Commission or to any member thereof, or to an authorized officer any information which he knows to be false or does not believe to be true, or which he knows to be false by reason of the omission of any material particular, shall be guilty of an offence, and upon summary conviction thereof before a Resident Magistrate shall be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and such imprisonment.

PART III—*Making and Termination of Appointment*

Principles
of selection.

13. For the purpose of making recommendations in relation to appointments to vacancies in any relative offices the Commission shall consider the eligibility of all officers for promotion, may interview candidates for such appointments and shall in respect of each candidate consider, amongst others, the following matters—

- (a) his qualifications;
- (b) his general fitness;
- (c) any previous employment of the candidate in the public service or in private practice.

Premature
retirement.

14.—(1) Where it appears to the Chief Justice that, pursuant to paragraph (b) of section 8 of the Pensions Act, a judicial officer who has attained the age of fifty years ought to be called upon to retire from the public service, the Chief Justice shall report the matter together with his reasons therefor to the Commission, and the Commission shall recommend to the Governor-General whether or not that officer ought to be called upon to retire.

(2) Any such officer shall be afforded an opportunity of submitting to the Commission any representations he may wish to make regarding his proposed retirement.

(3) A judicial officer may at any time after he attains the age of fifty years apply to the Governor-General for permission to retire pursuant to paragraph (i) of subsection (1) of section 6 of the Pensions Act, and shall in his application state the grounds on which it is based.

(4) The Commission shall recommend to the Governor-General whether or not an application under paragraph (3) ought to be granted.

15.—(1) Notwithstanding the provisions of regulation 29, where it is represented to the Commission or the Commission considers it desirable in the public interest that a judicial officer ought to be required to retire from the public service on grounds which cannot suitably be dealt with by the procedure prescribed by regulation 29, it shall call for a full report from the Chief Justice and from the Head of any Ministry or Department in which the officer has served during the immediately preceding ten years. Retirement in the public interest.

(2) If, after considering such reports and giving the officer an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and having regard to the conditions of the public service, the usefulness of the officer thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest so to do, it shall recommend to the Governor-General that the officer be required to retire on such date as the Commission may recommend.

16. Where the appointment of a judicial officer is terminated under regulation 14 or 15 his service shall terminate on such date as the Commission may recommend and the question of his pension shall be dealt with in accordance with the provisions of the Pensions Act. Pension.

PART IV—Discipline

17.—(1) The Commission shall deal with disciplinary proceedings against judicial officers. Functions respecting discipline.

(2) Subject to paragraph (3), where the Commission is of opinion that disciplinary proceedings ought to be instituted against a judicial officer, the Commission may recommend to the Governor-General that such proceedings be instituted against him.

(3) Where an offence against any enactment appears to have been committed by a judicial officer the Commission shall before making a recommendation under paragraph (2) obtain the advice of the Attorney-General as to whether criminal proceedings ought to be instituted against the officer concerned; and if the Attorney-General advises that criminal proceedings ought to be so instituted the Commission shall not recommend the initiation of disciplinary proceedings before the determination of the criminal proceedings so instituted.

Regulations to govern disciplinary procedure.

18.—(1) Any report of misconduct on the part of a judicial officer shall be made to the secretary and shall be dealt with under this Part as soon as possible thereafter.

(2) Any case not covered by these Regulations shall be reported to the secretary and the Commission may issue instructions as to how the case is to be dealt with; and the case shall be dealt with accordingly.

Grounds for criminal prosecution.

19. Where upon a preliminary investigation or a disciplinary enquiry an offence against any enactment appears to have been committed by a judicial officer, the Chief Justice shall, unless action by the Police has been or is about to be taken, consult the Attorney-General as to whether criminal proceedings ought to be instituted.

No disciplinary proceedings while criminal proceedings pending.

20.—(1) Where criminal proceedings have been instituted in any court against a judicial officer, proceedings for his dismissal upon any grounds arising out of the criminal charge shall not be taken until after the court has given judgment and the time allowed for an appeal from the judgment has expired; and where a judicial officer after conviction has appealed, proceedings for his dismissal shall not be taken until after the withdrawal or determination of the appeal.

(2) Nothing in this regulation shall prevent the officer being interdicted from duty pursuant to regulation 21.

Interdiction.

21.—(1) Where there have been or are about to be instituted against a judicial officer—

- (a) disciplinary proceedings; or
- (b) criminal proceedings,

and the Commission is of opinion that the public interest requires that that officer should forthwith cease to perform the functions of his office, the Commission may recommend his interdiction from such performance.

(2) An officer so interdicted shall, subject to the provisions of regulation 25, be permitted to receive such proportion of the salary of his office, not being less than three-fourths, as the Commission may recommend to the Governor-General.

(3) If disciplinary proceedings against any such officer result in his exculpation, he shall be entitled to the full amount of the salary which he would have received if he had not been interdicted but if the

proceedings result in any punishment other than dismissal the officer shall be allowed such salary as the Commission may recommend.

(4) A judicial officer who is under interdiction from duty may not leave the Island without the permission of the Governor-General acting on the recommendation of the Commission.

22. A judicial officer in respect of whom a disciplinary enquiry is to be held shall be entitled without charge to him to receive copies of or to be allowed access to any documentary evidence relied on for the purpose of the enquiry. He may also be given a copy of notes of the evidence (including copies of documents tendered in evidence) on applying therefor within thirty days of the report of the enquiry.

Copies of evidence of enquiries.

23. A judicial officer acquitted of a criminal charge shall not be dismissed or otherwise punished in respect of any charge of which he has been acquitted, but nothing in this regulation shall prevent his being dismissed or otherwise punished in respect of any other charge arising out of his conduct in the matter, unless such other charge is substantially the same as that in respect of which he has been acquitted.

Disciplinary action after acquittal of a criminal charge.

24. If a judicial officer is convicted of a criminal charge, the Commission may consider the relevant proceedings of the court and if it is of opinion that the officer ought to be dismissed or subjected to some lesser punishment in respect of the offence of which he has been convicted the Commission may thereupon recommend the dismissal or other punishment of the officer without the institution of any disciplinary proceedings under these Regulations.

Officer convicted of a criminal charge.

25. A judicial officer convicted of a criminal charge involving dishonesty, fraud or moral turpitude or convicted of a criminal charge and sentenced to imprisonment shall not receive any of his emoluments after the date of such conviction pending consideration of his case by the Commission.

Non payment of emolument on conviction of certain criminal charges.

26.—(1) The penalties which may be imposed on a judicial officer against whom a disciplinary charge has been established are—

Disciplinary penalties.

- (a) dismissal;
- (b) reduction in rank;
- (c) a fine;
- (d) a reprimand.

(2) The amount of any fine imposed on a judicial officer shall be deducted from his salary by such instalments as may be specified at the time the fine is imposed.

(3) A judicial officer who is absent from the Island without permission shall be liable to summary dismissal.

Investigation of reported misconduct.

27.—(1) A judicial officer charged with any misconduct shall be entitled to know the whole case made against him and to have an adequate opportunity of making his defence thereto.

(2) Where it is represented to the Commission that a judicial officer has been guilty of misconduct, the Commission may appoint one or more than one person who holds or has held substantive judicial office to be a tribunal for the purpose of investigating the matter and furnishing a report thereon to the Commission.

Proceedings for misconduct not warranting dismissal.

28. Where—

- (a) it is represented to the Commission that a judicial officer has been guilty of misconduct; and
- (b) the Commission is of opinion that the misconduct alleged is not so serious as to warrant proceedings under regulation 29, with a view to dismissal; and
- (c) the Commission is of opinion that the allegation has been proved,

the Commission may recommend such punishment other than dismissal as may seem just.

Proceedings for dismissal.

29.—(1) A judicial officer may be dismissed only in accordance with the procedure prescribed by this regulation.

(2) The following procedure shall apply to an investigation with a view to the dismissal of a judicial officer—

- (a) The Commission (after consultation with the Attorney-General if necessary) shall cause the officer to be notified in writing of the charges and to be called upon to state in writing before a specified day (which day shall allow a reasonable interval for the purpose) any grounds upon which he relies to exculpate himself.
- (b) The Commission shall inform the officer charged that on a specified day the charges against him will be enquired into by the Commission or by a tribunal appointed under regula-

tion 27 and that upon such enquiry he will be permitted to appear and defend himself.

- (c) Where—
- (i) the investigation of matters other than those forming the subject of charges is incomplete at the time of the making of the charges; and
 - (ii) the Commission desires that the charges already made should be expeditiously disposed of,
- the notification of charges under sub-paragraph (a) may include a notice that further matters then under investigation may form the subject of additional charges.
- (d) If witnesses are examined by the Commission or tribunal the officer shall be given an opportunity of being present and of putting questions to the witnesses on his own behalf, and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto.
- (e) The Commission or tribunal may in its discretion permit the judicial officer charged or the person or authority preferring the charges to be represented by a public officer, or by a counsel or solicitor.
- (f) If during the course of the enquiry further grounds which may justify dismissal are disclosed, and the Commission or tribunal thinks fit to proceed against the officer upon such further grounds, the Commission or tribunal shall cause the officer to be furnished with charges in writing and the same steps shall be taken as those prescribed by this regulation in respect of the original charges.
- (g) If the Commission after holding the enquiry or, as the case may be, upon consideration of the report of the tribunal, is of opinion—
- (i) that the officer ought to be dismissed the Commission shall recommend to the Governor-General that an order be made accordingly;
 - (ii) that the officer deserves some punishment other than dismissal, it shall recommend to the Governor-General what other penalty should be imposed;
 - (iii) that the officer does not deserve to be dismissed by reason of the charges alleged, but that the proceedings

disclose other grounds for removing him from the service in the public interest, it may recommend to the Governor-General that an order be made accordingly, without recourse to the procedure prescribed by regulation 15.

When
enquiry
unnecessary.

30. Where an officer charged under regulation 29 admits in writing the facts giving rise to the charges, it shall not be necessary to hold an enquiry or investigation under that regulation unless in the opinion of the Commission such enquiry or investigation is likely to find such circumstances as may modify the view taken of and the punishment to be imposed for the offence.

SCHEDULE

(Regulation 3)

FORM 1

OATH OF OFFICE

I,
 _____ chairman
 having been appointed (to act) as _____ of the Judicial Service Commission, do
 member
 swear

_____ that I will freely and without fear or favour,
 solemnly and sincerely declare and affirm
 affection or ill-will give my counsel and advice to the Governor-General of
 Jamaica in connection with all such matters as may be referred to the Judicial
 Service Commission under the Jamaica (Constitution) Order in Council, 1959,
 and that I will not directly or indirectly reveal any such matters to any
 unauthorized person or otherwise than in the course of duty.

Sworn
 _____ before me this _____ day of _____, 19 ____
 Declared

.....
Justice of the Peace

FORM 2

OATH OF SECRETARY OR OTHER OFFICER

I,
 having been appointed (to act) as *(secretary) to the Judicial Service Commission,
 do swear

_____ that I will faithfully perform my duties in that
 solemnly and sincerely declare and affirm
 office in accordance with the provisions of the Judicial Service Regulations, 1961,
 and without partiality, fear, favour, affection or ill-will, and that I will not
 directly or indirectly without permission of the Commission reveal to any person
 otherwise than in the exercise of my functions under the said Regulations any
 information which comes to my notice in the course of my duties in respect
 of any matter referred to the Commission or to any authority or public officer
 to whom the functions of the Governor-General have been delegated.

Sworn
 _____ before me this _____ day of _____, 19 ____
 Declared

.....
Justice of the Peace

*Title of officer to be inserted as may be appropriate.