

***IN THE SUPREME COURT, STATE OF WYOMING***

***October Term, A.D. 2012***

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***In the Matter of Amendments to*** )  
***Rules 6, 7, 9, and 16 of the*** )  
***Rules Governing the Commission on*** )  
***Judicial Conduct and Ethics*** )

**ORDER AMENDING RULES 6, 7, 9, AND 16 OF THE RULES GOVERNING  
THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS**

**The Commission on Judicial Conduct and Ethics** has recommended that the Wyoming Supreme Court amend Rules 6, 7, 9, and 16 of the Rules Governing the Commission on Judicial Conduct and Ethics. The Court, having carefully reviewed the proposed amendments, finds that the proposed amendments should be adopted. It is, therefore,

**ORDERED** that the amendments to Rules 6, 7, 9, and 16 of the Rules Governing the Commission on Judicial Conduct and Ethics, attached hereto, be and hereby are adopted by the Court to be effective January 1, 2013; and it is further

**ORDERED** that this order and the attached amendments shall be published in the advance sheets of the Pacific Reporter; the attached amendments shall be published in the Wyoming Court Rules Volume; and that this order and the attached amendments shall be published online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>. The amendments shall thereafter be spread at length upon the journal of this Court.

**DATED** this 6<sup>th</sup> day of November, 2012.

**BY THE COURT:**

/s/

**MARILYN S. KITE**  
**Chief Justice**

## Rules Governing the Commission on Judicial Conduct and Ethics

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### **Rule 6. Organization and authority of Commission.**

(a) Commission; commission chair; commission vice chair; investigatory and adjudicatory panels. The full Commission shall select one of its members to serve as commission chair, and one of its members to serve as commission vice chair in the event the commission chair is unable to serve because of absence, illness, conflict, recusal, or other reason. The commission chair may divide the full Commission into investigatory panels of not less than three but not more than five ~~or more~~ members and adjudicatory panels of not less than three but not more than five ~~or more~~ members. ~~The commission chair shall prescribe the duration and time of panel membership.~~ The investigatory and adjudicatory panels shall include members from each category of membership lawyer, judge, and elector. Membership on the panels shall rotate in a manner determined by the Commission, provided that no member shall sit on both the investigatory and adjudicatory panel in the same proceeding. The full Commission shall meet periodically as determined by the commission chair to consider administrative and procedural matters and shall meet at the call of the commission chair on an ad hoc basis for disposition hearings.

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#### (f) Powers and duties of investigatory panel.

(1) The investigatory panel shall have the duty and broad authority to:

(A) review statements or complaints received by the Commission concerning allegations of judicial misconduct, criminal misconduct, civil misconduct, or disability; conduct reviews and make inquiries; conduct examinations; impose temporary discipline or interim suspension as provided for in these rules; refer violations of any of these rules concerning confidentiality to appropriate authorities; refer criminal violations to appropriate prosecuting authorities; issue subpoenas; ~~conduct hearings and other proceedings~~; make dismissals; issue letters of correction; issue or recommend deferred discipline agreements; issue stipulated private censures; and refer probable cause findings against a judge to an adjudicatory panel for formal proceedings.

(B) evaluate all information or allegations reaching the attention of the Commission from any source that reasonably gives rise to the need for further inquiry or investigation;

(C) commence investigations on its own motion on matters concerning alleged disability, judicial misconduct, criminal misconduct, or civil misconduct falling within the jurisdiction of the Commission;

(D) appoint disciplinary counsel ~~, if needed, to proceed with investigation, deferred discipline agreement, or formal proceedings; and~~

(E) maintain records and files confidentially in accordance with these rules and transmit files to the adjudicatory panel for formal proceedings as appropriate; and

(F) negotiate settlement agreements at any phase of the proceeding, subject to approval of the Commission as provided in these Rules.

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### **Rule 7. Staff for Commission and disciplinary counsel.**

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(b) The Commission may retain or contract for services with an attorney to serve as disciplinary counsel. Disciplinary counsel may not serve in a judicial capacity or maintain a practice of law that would conflict with the duties of disciplinary counsel. Disciplinary counsel shall be bound by the same rules of confidentiality as the Commission. Disciplinary counsel shall make no representations, statements, promises, or agreements to any person or entity other than as provided by these rules or without the express authority of the presiding officer of an investigatory panel ~~or adjudicatory panel~~, as the case may be, concerning any matter for which disciplinary counsel is retained and hired. Disciplinary counsel shall have the duty and authority to:

- (1) conduct investigations upon request of an investigatory panel;
  - (2) file and prosecute formal proceedings when directed to do so by an investigatory panel;
- and
- (3) perform other duties as may be assigned, including, but not limited to, presentation of information or evidence at any hearings or other proceedings before an ~~investigatory panel or an~~ adjudicatory panel, preparation of findings, recommendations, stipulations, settlement agreements, and orders of discipline.

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**Rule 9. Interested member of eCommission; ex parte communication ~~contacts~~.**

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~~(d) Members of the Commission shall not engage in ex parte communications regarding a case with the judge, judge's counsel, disciplinary counsel, or any witness, except that before making a determination to file formal proceedings in a case, a panel may communicate with the disciplinary counsel as may be required to perform its duties in accordance with these rules. For administrative purposes only, the commission chair or a presiding officer or hearing officer of a panel may confer with disciplinary counsel and the judge's counsel or the judge, if pro se. Members of the Commission are permitted to engage in ex parte communications with persons seeking information from them only to the extent that such persons are provided with a means of contacting the Commission, obtaining a copy of these rules, or informing such persons or entities of the dismissal of a case or that appropriate action was taken by the Commission, as permitted by these rules. Following the filing of formal proceedings, members of the Commission shall not engage in ex parte communications regarding a case with the judge, counsel for the judge, disciplinary counsel, or any witness, except that staff may communicate with disciplinary counsel and others as required to perform their duties in accordance with these rules. Anything to the contrary notwithstanding, the commission chair, the investigatory panel, or the presiding officer of a panel may communicate with disciplinary counsel; and the commission chair, the investigatory panel, the presiding officer of a panel, and the hearing officer of the adjudicatory panel may communicate with disciplinary counsel, the judge, or counsel for the judge only as expressly permitted by these rules.~~

(d) Unless otherwise provided in these Rules, members of the Commission shall not engage in ex parte communications regarding a case with the judge, judge's counsel, disciplinary counsel, or any witness, except as follows:

(1) Before making a determination to file formal proceedings in a case, the investigatory panel may communicate with Disciplinary counsel as may be required to perform its duties in accordance with these rules;

(2) Disciplinary counsel may communicate with the members of the investigatory panel in the conduct of settlement negotiations pursuant to Rule 16;

(3) Following the filing of formal charges, the staff, the commission chair, a presiding officer, or hearing officer of an adjudicatory panel may confer with disciplinary counsel and the judge's counsel or the judge, if pro se, for administrative purposes only;

(4) Members of the Commission are permitted to engage in ex parte communications with persons seeking information from them only to the extent that such persons are provided with a means of contacting the Commission or obtaining a copy of these rules;

(5) The Commission or its Staff may inform complainants or other interested persons or entities of the dismissal of a case or the fact that appropriate action was taken by the Commission, as permitted by these rules.

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### **Rule 16. Settlement.**

~~A judge accused of judicial misconduct, criminal misconduct, or civil misconduct or who is alleged to have a disability who wishes to propose a settlement of a complaint, complaints, or formal proceedings, whether or not admitting judicial misconduct, criminal misconduct, civil misconduct, or disability, may present a settlement proposal to disciplinary counsel, or if no disciplinary counsel has been appointed, to the presiding officer of a panel. If no presiding officer of the adjudicatory panel has been appointed, it may be presented to the commission chair. Disciplinary counsel or the presiding officer of the adjudicatory panel or the commission chair have no authority to settle any case, but may comment upon a judge's proposal. Any proposal may be referred to the full Commission which may accept it, reject it, or propose an alternative, with or without a hearing. Disciplinary counsel may propose a settlement to the judge after consultation and approval of the presiding officer of the investigatory panel or the presiding officer of the adjudicatory panel if formal proceedings have been commenced which, if acceptable to the judge, may be referred to the Commission. A judge who proposes or agrees to a settlement proposal waives any complaint that consideration of settlement compromises the Commission or any of its members in any proceedings.~~

A judge accused of judicial misconduct, criminal misconduct, or civil misconduct or who is alleged to have a disability may at any stage of the proceeding present a settlement proposal to disciplinary counsel, or if no disciplinary counsel has been appointed, to the presiding officer of the investigatory panel. At any stage in the proceeding, Disciplinary counsel may propose a settlement to the judge after consultation with and approval of the investigatory panel. Any settlement negotiated as a result of this process must be referred for approval to the full Commission, exclusive of members of the adjudicatory panel and members who have recused. In the event the full Commission rejects a settlement proposal the matter shall proceed to final adjudication as provided in these Rules. A judge who proposes or agrees to a settlement proposal waives any complaint that consideration of settlement compromises the Commission or any of its members in any further proceedings.

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