

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

***October Term, A.D. 2016***

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***In the Matter of Amendments to                    )***  
***the Rules Governing the Commission on        )***  
***Judicial Conduct and Ethics                    )***

**ORDER AMENDING THE RULES GOVERNING THE COMMISSION ON  
JUDICIAL CONDUCT AND ETHICS**

**The Commission on Judicial Conduct and Ethics** has recommended that this Court amend the Rules Governing the Commission on Judicial Conduct and Ethics. This Court finds that the Commission's recommendations should be adopted. It is, therefore,

**ORDERED** that the amendments to the Rules Governing the Commission on Judicial Conduct and Ethics, attached hereto, be, and hereby are, adopted by the Court to be effective May 1, 2017; and it is further

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

**DATED** this 24<sup>th</sup> day of January, 2017.

**BY THE COURT:**

/s/

**E. JAMES BURKE**  
**Chief Justice**

# Rules Governing the Commission on Judicial Conduct and Ethics

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### Rule 2. Definitions.

In these rules, unless the context or subject matter otherwise requires:

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(i) “Disciplinary panel” refers to the panel charged with determining discipline and consists of all members of the Commission with the exception of the investigatory panel on any proceeding.

(j) “Formal proceedings” refers to the initiation of the process by which allegations against a judge are submitted, heard, and determined by an adjudicatory panel.

(k) “Judge” means any person or judicial officer performing judicial functions or exercising judicial powers in the judicial branch of Wyoming government, including, but not limited to, Wyoming Supreme Court justices, district court judges and commissioners, circuit court judges and magistrates, municipal judges and alternate municipal judges, whether serving full time or part time, including retired judges, commissioners or magistrates who have been given a general or special appointment to hear cases by the Wyoming Supreme Court.

(l) “Judicial misconduct” means any action occurring during the judge's tenure that constitutes a violation of the Wyoming Code of Judicial Conduct, including, but not limited to:

- (1) willful misconduct in office;
- (2) willful or persistent failure to perform duties;
- (3) habitual intemperance to include alcohol or substance abuse; or
- (4) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(m) “Judicial tenure” means service by a judge in any judicial capacity at any time.

(n) “Mail” and “mailed” include ordinary mail and personal delivery.

(o) “Oath” is synonymous with affirmation, and “swear” is synonymous with affirm.

(p) “Panel” refers to an investigatory panel or an adjudicatory panel.

(q) “Presiding officer” means the presiding member of an investigatory panel making administrative decisions, or the presiding member of an adjudicatory panel appointed to conduct a hearing or other proceeding.

(r) “Rules” means the Rules Governing the Commission on Judicial Conduct and Ethics.

(s) “Shall” is mandatory and “may” is permissive.

(t) “Verify” means to confirm or substantiate by oath or affirmation.

(u) “Wyoming Supreme Court” means the Wyoming Supreme Court or Special Wyoming Supreme Court as set forth in Wyo. Const. art. 5, § 6.

**Rule 3. Jurisdiction; temporary discipline or interim suspension; disposition.**

(a) The Commission or its panels shall receive, investigate, hear, and adjudicate allegations of judicial misconduct, criminal misconduct, civil misconduct, or disability; impose temporary discipline or interim suspension as provided for in these rules; approve discipline; and make recommendations to the Wyoming Supreme Court for appropriate discipline, including the assessment of costs and fees, ~~imposition of monetary sanctions~~, censure, removal or retirement of a judge.

(1) The Commission may recommend retirement of a judge for disability.

(2) The Commission may recommend censure or removal of a judge upon a finding that a judge has engaged in judicial misconduct, criminal misconduct or civil misconduct.

(3) The Commission may impose discipline in the form of private censure and such an imposition of discipline need not be recommended to or approved by the Wyoming Supreme Court.

(b) Temporary discipline or interim suspension. If there is probable cause to believe the judge poses an imminent threat of substantial harm to the public or any other person or any entity, a panel may order such temporary discipline or interim suspension as may be appropriate under the circumstances. Any such order shall set forth the full factual basis for the temporary discipline or interim suspension and shall be effective immediately upon issuance. The order shall be served upon the judge or upon the attorney for the judge as provided for by these rules. The judge shall have 20 days from the date of service of the order to request modification or dismissal of the order. The request and factual basis for modification or dismissal of the order shall be verified, in writing, and served upon the panel issuing the order via the executive director.

(c) Disposition. Upon a finding of judicial misconduct, criminal misconduct, civil misconduct or disability of a judge, the disciplinary panel ~~full Commission~~ shall convene and shall have jurisdiction to make and transmit appropriate findings and recommendations for censure, removal or retirement, and assessment of costs and fees, ~~imposition of monetary sanctions~~, to the Wyoming Supreme Court or impose discipline in the form of private censure, including, but not limited to, assessment of costs and fees ~~imposition of monetary sanctions~~ where appropriate.

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**Rule 5. Organization and authority of Commission.**

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(d) 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 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) when authorized to do so by an investigatory panel, bring a motion before the adjudicatory panel to amend the allegations in the Notice of Formal Proceedings to add or remove allegations or contentions; and

(4-3) 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 adjudicatory panel, preparation of findings, recommendations, stipulations, settlement agreements, and orders of discipline.

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### **Rule 6. Powers and duties of the Commission.**

The Commission shall have the duty and broad authority, which may be delegated as provided in these rules or rules adopted by the Commission, to:

(a) Adopt its own rules of procedure for discipline and disability proceedings consistent with these rules and subject to the approval of the Wyoming Supreme Court, except in such instances or situations where the Commission chair declares, as approved by a majority vote of all members of the Commission, that an emergency exists which necessitates the issuance of a special rule or special rules.

(b) Adopt internal policies and procedures of operation, adopt official forms, and conduct its administrative functions as may be deemed appropriate by a majority vote of members of the Commission.

(c) Make findings, conclusions and recommendations to the Wyoming Supreme Court for sanctions, including assessment of costs and fees ~~imposition of monetary sanctions~~, or dismiss a case, pursuant to these rules.

(d) Consider and implement such other forms of discipline, including, but not limited to, temporary discipline or interim suspension as provided for in these rules, or permanent discipline as provided for in these rules.

(e) Appoint special masters in appropriate cases, review the findings of any special master, and make findings, conclusions, and recommendations to the Wyoming Supreme Court for sanctions, including assessment of costs and fees ~~imposition of monetary sanctions~~ as deemed appropriate, or dismiss a case, pursuant to these rules.

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### **Rule 8. Powers and duties of adjudicatory panel.**

(a) Upon the receipt of a written referral for the institution of formal proceedings from any investigatory panel, the executive director shall select three or more members of the Commission, who did not serve on the investigatory panel, to serve on an adjudicatory panel for the particular case, and shall, without delay, refer the file to disciplinary counsel for preparation and issuance of a written notice advising the judge of the institution of formal proceedings. Such written notice shall be served by certified mail addressed to the judge at the address provided by the judge for such purposes. If the adjudicatory panel or disciplinary counsel are informed that the judge is represented by counsel notice of any investigation or examination shall be served on counsel for the judge. Such proceedings shall be entitled:



~~(I) whether the judge cooperated fully and honestly with the Commission in the proceeding; and~~

~~(J) whether the judge was suffering from personal or emotional problems or physical or mental disability or impairment at the time of the misconduct.~~

~~(K) The ABA Standards for Imposing Lawyer Discipline may be considered in determining the appropriate sanction.~~

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### **Rule 15. Stipulated motion for order of discipline.**

(a) Conditional Admission. At any time after the filing of formal proceedings and before final adjudication, the judge may ~~agree with disciplinary counsel and admit any or all of the formal allegations made against the judge in exchange for a stated recommendation~~ tender a conditional admission of conduct constituting grounds for discipline in exchange for a stipulated form of discipline. The ~~agreement~~ conditional admission shall be submitted to the investigatory panel. If the investigatory panel accepts the ~~agreement~~ conditional admission it shall be submitted to the entire Commission, excluding the members of the adjudicatory panel, which shall:

(1) accept the conditional admission ~~agreement~~ and submit it to the Wyoming Supreme Court, if appropriate; or

(2) reject the conditional admission ~~agreement~~ at which time the matter shall proceed.

(b) Rejection of the conditional admission agreement. If the conditional admission agreement is rejected, ~~it the admission~~ may be withdrawn by the judge and, if withdrawn, cannot be used against the judge in any proceedings.

(c) Affidavit of consent. A judge who agrees to a conditional admission ~~admits any or all of the formal allegations made against the judge~~ shall sign an affidavit stating that:

(1) there is presently a pending proceeding involving allegations of judicial misconduct, criminal misconduct, civil misconduct or disability;

(2) the facts set forth in the conditional admission affidavit are true;

(3) the consent is freely, knowingly and voluntarily rendered under no improper influence and after the judge considered his or her rights under these rules and knowingly waived such rights;

(4) the judge consents to any recommended sanction; and

(5) the judge agrees to accept the final decision by the Wyoming Supreme Court, if appropriate.

(d) Order of discipline. If a conditional admission ~~stipulated motion~~ for public discipline is accepted ~~approved~~, the Commission shall file the conditional admission and affidavit of consent with the Wyoming Supreme Court, ~~– both of which~~ The affidavit shall remain confidential until ~~it is~~ accepted by the Wyoming Supreme Court. The Wyoming Supreme Court may accept ~~enter the order as recommended~~ or reject the recommendation and enter an order it deems appropriate. The final order shall be based upon the formal allegations made against the judge and any admission. Rule 19(f) shall apply.

### **Rule 16. Final adjudication.**

(a) Final adjudication in favor of the judge. If the adjudicatory panel by majority vote fails to find judicial misconduct, criminal misconduct, civil misconduct or disability by clear and

convincing evidence, then the proceedings shall be dismissed and the record shall show an adjudication in favor of the judge.

(b) *Final adjudication against the judge.* If the adjudicatory panel by majority vote finds judicial misconduct, criminal misconduct, civil misconduct or disability by clear and convincing evidence, then the adjudicatory panel shall set forth and transmit its findings to the ~~entire Commission~~ disciplinary panel for disposition.

(c) Within a reasonable time following the hearing before the adjudicatory panel, the adjudicatory panel shall submit to the ~~full Commission~~ disciplinary panel the record of proceedings, including a full transcript of the testimony and all matters received in evidence, and submit the decision setting forth the finding of facts, conclusions of law and any minority opinions. A copy of the decision shall be served on the judge or counsel for the judge.

(d) The judge is not entitled to a full evidentiary hearing before the ~~full Commission~~ disciplinary panel following the submission of the record and decision by the adjudicatory panel. The judge has the right to appear, at the judge's sole election, in person, through counsel, or in writing, at or prior to the ~~full Commission~~ disciplinary panel hearing at which the ~~panel full Commission~~ takes any action relative to the judge's case.

(e) *Disposition.* After receipt of an adjudicatory panel's finding of violation of the Wyoming Code of Judicial Conduct, the disciplinary panel ~~entire Commission~~ shall convene to determine the nature of the sanction to be imposed against the judge after affording the judge reasonable notice and a reasonable amount of time to appear before the panel ~~Commission~~ as provided by these rules. Upon a majority vote of the ~~entire Commission~~ disciplinary panel, ~~the Commission shall make its~~ a recommendation for censure, removal or retirement, including assessment of costs and fees imposition of monetary sanctions, shall be made on behalf of the Commission and transmitted with the ~~its~~ record and recommendations forthwith to the Wyoming Supreme Court consistent with these rules.

(f) In determining the appropriate sanction, the panel may consider the following, nonexclusive factors:

- (1) the nature, extent, and frequency of the misconduct;
- (2) the judge's experience and length of service on the bench;
- (3) whether the conduct occurred in the judge's official capacity or private life;
- (4) the nature and extent to which the acts of misconduct injured other persons or respect for the judiciary;
- (5) whether and to what extent the judge exploited his or her position for improper purposes;
- (6) whether the judge has recognized and acknowledged the wrongful nature of the conduct and manifested an effort to change or reform the conduct;
- (7) whether there has been prior disciplinary action concerning the judge, and if so, its remoteness and relevance to the present proceeding;
- (8) whether the judge complied with prior discipline or requested and complied with a formal ethics advisory opinion;
- (9) whether the judge cooperated fully and honestly with the Commission in the proceeding; and
- (10) whether the judge was suffering from personal or emotional problems or physical or mental disability or impairment at the time of the misconduct.
- (11) The ABA Standards for Imposing Lawyer Discipline may be considered in determining the appropriate sanction.

(g f-) *Retirement for disability.* In a proceeding involving a judge's alleged disability, if after a hearing before the ~~Commission disciplinary panel~~, a majority of the ~~Commission~~ members finds by clear and convincing evidence that a judge suffers from a disability, it shall recommend the Wyoming Supreme Court retire the judge for disability. The matter shall then proceed pursuant to Rule 18.

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**Rule 18. Certification of Commission recommendations to Wyoming Supreme Court.**

Upon making a determination recommending the censure, retirement, or removal of a judge, including any recommendation for assessment of costs and fees ~~imposition of monetary sanctions~~, the Commission shall, ~~in a timely manner~~, file a copy of the recommendation, certified by the Commission chair, together with the transcript and the findings and conclusions and an itemization of costs and fees incurred or paid by the Commission, with the clerk of the Wyoming Supreme Court and shall concurrently send by certified mail to the judge or to the judge's counsel notice of such filing, together with a copy of the ~~such~~ recommendation, findings and conclusions and an itemization of costs and fees incurred or paid by the Commission, if any. ~~This constitutes a final appealable order for purposes of appellate review.~~

**Rule 19. Review procedure in Wyoming Supreme Court.**

(a) ~~Respondent's objection to report and recommendation~~ Petition. ~~A petition to the Wyoming Supreme Court to modify or reject~~ Respondent may file objections to the recommendation of the Commission for censure, removal or retirement ~~may be filed~~ within 30 days after the filing with the clerk of the Wyoming Supreme Court of a certified copy of the recommendation. The objection shall be based on the record and shall comply with W.R.A.P. 7.01 through 7.03 except that instead of the statement of issues required by 7.01(d), the respondent shall set forth the specific exceptions to the recommendation. ~~verified petition shall be based on the record, shall specify the grounds relied on, and shall be accompanied by petitioner's brief and proof of service of a copy of the petition and of the brief on disciplinary counsel and the Commission.~~ The ~~petitioner~~ respondent shall file with the clerk of the Wyoming Supreme Court the original and six copies of ~~both the petition and the brief.~~ the objection, a copy of which shall be served on disciplinary counsel and the Commission. Within 20 days after service on the Commission, disciplinary counsel shall ~~serve and file (along with six copies)~~ the original and six copies of petitioner's response and shall serve a copy on a respondent's brief. Within 15 days after service of such response ~~brief~~, the respondent ~~petitioner~~ may file ~~(along with six copies)~~ the original and six copies of a reply brief, of which a copy shall also be served on disciplinary counsel and the Commission.

(b) Calendaring. If respondent files an objection to the Commission's report and recommendation, the Court shall calendar the matter as it may deem appropriate and shall thereafter enter an order.

(c ~~b-~~) Failure to file an objection ~~petition.~~ Failure to file a response to the recommendation ~~petition~~ within the time provided may be deemed as consent to a determination on the merits based upon the record filed by the Commission.

(d ~~e-~~) Applicable rules. The Wyoming Rules of Appellate Procedure shall apply to proceedings in the Wyoming Supreme Court for review of a recommendation of the

Commission, except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate or inconsistent.

(~~e~~) Special supreme court. Upon the occurrence of a circumstance necessitating the appointment of a special supreme court, the Wyoming Supreme Court will designate five district judges who are not members of the Commission to act in the place of the supreme court for the limited purposes contemplated by Wyo. Const. art. 5, § 6(e)(iv). Filings shall be made with the clerk of the court.

(f) Publication of Orders. The clerk of the court shall release for publication orders imposing public discipline. Orders of suspension or removal shall be transmitted to all courts in the state. All orders of public discipline shall be published in the Pacific Reporter and are a permanent record of the Court.

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**Rule 22. Proceedings confidential; exceptions to confidentiality; public release of information.**

(a) *Proceedings.* Unless otherwise permitted by these rules, or unless revealed in public documents or a public hearing, all proceedings before the Commission and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the Commission in the course of its work, shall be confidential. No member of the Commission or its staff and no employee or agent of the Commission, disciplinary counsel and disciplinary counsel's staff, no attorney, and no testifying witness shall disclose such proceeding, information, communications, materials, papers, files, or transcripts, except in the course of official duty or as otherwise authorized by these rules. Any violation of the provision for confidentiality shall constitute an act of contempt and be punishable as such. Any violation by any person of the requirements of confidentiality shall be dealt with in accordance with these rules, and the Commission may refer any violation to the appropriate tribunals, authorities, agencies, commissions, or bodies. A recommendation filed by the Commission with the Wyoming Supreme Court loses its confidential character upon its filing, subject to the procedures, rules or orders of the Court. However, the record which is the basis of the recommendation remains confidential unless otherwise ordered. In the event of a private censure, except when the complaint was initiated by a member of the Commission or by the Commission, the complainant shall be advised in general terms that appropriate corrective action has been taken. In the event that a complaint has been dismissed, except when the complaint was initiated by a member of the Commission or by the Commission, the complainant shall be advised that the matter has been closed. The Commission may, in its discretion, release statistical information that does not identify judges whose cases are confidential. The deliberations of the Commission, whether oral or written, shall remain confidential.

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