

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

*October Term, A.D. 2019*

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*In the Matter of the* )  
*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 the Wyoming Supreme Court amend the Rules Governing the Commission on Judicial Conduct and Ethics. After careful review of the proposed amendments, the Court finds the proposed amendments 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 April 1, 2020; 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 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 22<sup>rd</sup> day of January, 2020.

**BY THE COURT:**

/s/

**MICHAEL K. DAVIS**  
**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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(p) “Panel” refers to an investigatory panel, ~~or~~ an adjudicatory panel, or a disciplinary panel.

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### 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 reasonable costs and fees, censure, removal or retirement of a judge.

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(c) Disposition. Upon a finding of judicial misconduct, criminal misconduct, civil misconduct or disability of a judge, the disciplinary panel shall convene and shall have jurisdiction to make and transmit appropriate findings and recommendations for censure, removal or retirement, and assessment of reasonable costs and fees, to the Wyoming Supreme Court or impose discipline in the form of private censure, including, but not limited to, assessment of reasonable costs and fees 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. All authority and duties assigned to disciplinary counsel shall be reasonable and proportional to the allegations and the judge’s response. 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;
- (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) 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: \*\*\*\*\*

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

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(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 reasonable costs and fees as deemed appropriate, or dismiss a case, pursuant to these rules.

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#### **Rule 7. Powers and duties of investigatory panel.**

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(c) The investigatory panel may appoint disciplinary counsel to assist in an investigation. In making an investigation, the investigatory panel or disciplinary counsel may obtain and consider any information deemed pertinent to the allegations. If an investigation indicates the physical or mental health of the judge is in issue, the investigatory panel may require that the judge submit to physical and/or mental examinations by independent examiners. The results of the examination shall be transmitted to the judge and the presiding officer for consideration by the panel. Service of the results of examination shall be in accordance with these rules. The failure of the judge to testify or to submit to an examination ordered by a panel may be considered, unless it appears that such failure was due to circumstances beyond the judge's control.

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(g) If after investigation, the investigatory panel finds reasonable cause to support a finding that the judge engaged in judicial misconduct, criminal misconduct, civil misconduct, or that the judge has a disability, and before referral to an adjudicatory panel, the investigatory panel may issue a letter of correction, ~~issue or recommend~~ enter a deferred disciplinary agreement, issue a stipulated private censure, or formal proceedings may be instituted and the matter will be referred to the adjudicatory panel.

(h) ~~At any phase of the proceeding,~~ After referral to the adjudicatory panel, the investigatory panel may recommend a negotiated settlement, including the judge's voluntary retirement in lieu of discipline, 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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#### **Rule 16. Final adjudication.**

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(e) *Disposition.* After receipt of an adjudicatory panel's finding of violation of the Wyoming Code of Judicial Conduct, and after affording the judge reasonable notice and a reasonable amount of time to appear before the panel as provided by these rules, the disciplinary panel shall convene to determine the nature of the sanction to be imposed against the judge. Any discipline or sanction shall require a majority vote of the disciplinary panel. ~~after affording the judge reasonable notice and a reasonable amount of time to appear before the panel as provided by these rules. Upon a majority vote of the disciplinary panel,~~ The disciplinary panel may impose discipline in the form of private censure, or any other form of private discipline provided for in these rules, including the assessment of reasonable costs and fees where appropriate. Alternatively, the disciplinary panel may, on behalf of the Commission, make a recommendation to the Wyoming Supreme Court for censure, removal or retirement, including assessment of reasonable costs and fees., ~~shall be made on behalf of the Commission and~~ Such recommendation shall be transmitted, along with the 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 A)~~ the nature, extent, and frequency of the misconduct;
- ~~(2 B)~~ the judge's experience and length of service on the bench;
- ~~(3 C)~~ whether the conduct occurred in the judge's official capacity or private life;
- ~~(4 D)~~ the nature and extent to which the acts of misconduct injured other persons or respect for the judiciary;
- ~~(5 E)~~ whether and to what extent the judge exploited his or her position for improper purposes;
- ~~(6 F)~~ whether the judge has recognized and acknowledged the wrongful nature of the conduct and manifested an effort to change or reform the conduct;
- ~~(7 G)~~ whether there has been prior disciplinary action concerning the judge, and if so, its remoteness and relevance to the present proceeding;
- ~~(8 H)~~ whether the judge complied with prior discipline or requested and complied with a formal ethics advisory opinion;
- ~~(9 I)~~ whether the judge cooperated fully and honestly with the Commission in the proceeding; and
- ~~(10 J)~~ whether the judge was suffering from personal or emotional problems or physical or mental disability or impairment at the time of the misconduct.
- ~~(11 K)~~ The ABA Standards for Imposing Lawyer Discipline may be considered in determining the appropriate sanction.

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### **Rule 17. Costs and fees.**

(a) When a judge is privately disciplined, except in the case of a letter of correction, the Commission may assess against the judge reasonable costs incurred in connection with the disciplinary proceeding, together with the administrative fee.

(b) "Costs" means actual expenses incurred by the Commission in connection with a disciplinary proceeding, including but not limited to, the cost of depositions used in a proceeding, hearing transcripts, unusual copying costs, fees for service of process and subpoenas, witness fees, and costs associated with travel, meals and lodging for an adjudicatory panel or disciplinary panel and necessary Commission staff. Costs shall not include attorney fees.

(c) "Fees" means a reasonable administrative fee of up to one thousand dollars (\$1000.00). Except in the case of a letter of correction, the administrative fee may be imposed by the Commission in cases of private discipline. When public discipline is recommended, the Commission may recommend to the Wyoming Supreme Court the assessment of reasonable costs incurred in connection with the disciplinary proceeding, together with the administrative fee. The Commission shall certify to the Wyoming Supreme Court the costs incurred in connection with the disciplinary proceeding, together with the administrative fee. If the Wyoming Supreme Court imposes discipline, it may assess all or any part of the certified costs, together with the administrative fee, against the judge. In any case where costs and fees are assessed, they shall be paid to the Commission.

(d) When costs are assessed or recommended, the Commission shall prepare an itemized statement of costs for review by the judge who may object to those costs.

**Rule 17 18. Record of Commission proceedings.**

The Commission shall keep a record of all proceedings. In all proceedings resulting in a recommendation to the Wyoming Supreme Court for discipline, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings. Such findings shall include a finding, with specific itemized billing, as to reasonable costs or fees incurred or paid by the Commission in connection with any proceedings concerning a judge.

**Rule 18 19. 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 reasonable costs and fees, the Commission shall, file a copy of the recommendation, certified by the Commission chair, together with the transcript and the findings and conclusions and an itemization of reasonable 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 recommendation, findings and conclusions and an itemization, with detailed billing, of reasonable costs and fees incurred or paid by the Commission, if any.

**Rule 19 20. Review procedure in Wyoming Supreme Court.**

(a) *Respondent's objection to report and recommendation.* Respondent may file objections to the recommendation of the Commission for censure, removal or retirement, including for costs and fees, 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. The respondent shall file with the clerk of the Wyoming Supreme Court the original and six copies of 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 file the original and six copies of petitioner's response and shall serve a copy on respondent. Within 15 days after service of such response, the respondent may file the original and six copies of a reply, of which a copy shall be served on disciplinary counsel and the Commission.

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**Rule 20 21. Contempt.**

Any violation by any person of the requirements of the Commission's rules and orders shall constitute contempt and shall be punishable as such. The Commission may initiate a proceeding pursuant to Rule 42 of the Wyoming Rules of Criminal Procedure, before any district judge, requiring any person accused of violating the Commission's rules or orders to appear and show cause why such person should not be held in contempt.

**Rule 21 22. Recusal of Commission members; ex parte communication.**

(a) A judge who is a member of the Commission shall not participate in any proceedings involving the judge's own discipline, removal, or retirement.

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**Rule 22 23. 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. The deliberations of the Commission, whether oral or written, shall always remain confidential.

(b) *Supreme Court proceedings.* 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 by the Court.

(c) *Private correction or censure.* In the event of a private correction or 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.~~

(~~d~~) *Exceptions to confidentiality.* The Commission may release otherwise confidential information under the following circumstances:

(1) Statistical information relating to the number of complaints filed, the general disposition of cases, and similar statistical information that does not identify judges or confidential facts of an individual case;

(2) When the judge who is the subject of the complaint, or who has been disciplined, consents in writing to the disclosure;

(3) When the Commission determines there is good cause to believe other judges may make similar errors and the disclosure serves an educational purpose, and the disclosure can be made without directly or indirectly identifying the judge:

(4) refer When the Commission becomes aware of potential violations of law by a judge or by any other individual or entity, ~~or evidence thereof,~~ it may refer the potential violations to the appropriate authorities.

(5) The Commission may disclose information to any committee, commission, agency, or body within or outside the State of Wyoming empowered to investigate, regulate, or adjudicate matters incident to the legal profession, ~~(excluding matters involving criminal conduct);~~ However, except in matters of criminal conduct, the Commission shall send the judge a copy of all documents or other matters disclosed.

(6) The Commission may disclose information upon inquiry by any state or federal appointment authority, committee, commission, agency, or body empowered to conduct investigations in connection with the selection or appointment of judges.

(7e) Public release of information. In any pending case in which the subject matter of an investigation, proceeding, or determination becomes public through independent sources or through a waiver of confidentiality by the judge, or in extreme circumstances when the confidence of the public in the judiciary is involved, or when the interests of the judge involved would be adversely affected, or when the interests of the Commission would be adversely affected, the Commission may issue statements ~~as deemed appropriate in order to confirm;~~

(A) the pendency of an investigation,

(B) to explain the process, ~~clarify the procedural aspects of the proceedings,~~

(C) to explain the right of the judge to a fair hearing without pre-judgment, and/or,

(D) to state that the judge denies the allegations, -

(E) ~~The~~ statement shall be first be submitted to the judge involved for comment or criticism prior to its release, but the Commission, in its discretion, may release the statement as originally prepared or as the Commission deems appropriate.

(8) Any other public statement by the Commission which directly or indirectly identifies the judge shall first be submitted to the Wyoming Supreme Court for its approval, with an explanation why the Commission believes the presumption of confidentiality is overcome.

(e d) Notices, pleadings, documents, correspondence, and communications. All notices, pleadings, documents, letters, and papers mailed or otherwise transmitted in any form directed to a judge, counsel for a judge, members of the Commission, staff of the Commission, disciplinary counsel, or any other person or entity pursuant to these rules shall be enclosed in a cover marked "Personal and Confidential".

(f e) Oath of witnesses. Every witness in every proceeding under these rules shall be sworn to tell the truth and not to disclose the existence of the proceeding or the identity of the judge until the proceeding is no longer confidential under these rules. Violation of the oath shall be an act of contempt and punishable as such.

(g f) Review of file contents. Investigatory panel members shall have the authority to investigate facts through letters, information obtained by subpoena and other means of inquiry directed to the complainant, the judge, court officials, attorneys and all others. The investigatory panel may, in

its discretion, share the information and responses with the parties. Otherwise, the confidentiality of these matters as provided by these rules shall apply.

**Rule ~~23~~ 24. Defamatory material.**

The filing of papers with or the giving of testimony before the Commission shall be privileged in any action for defamation. A writing that was privileged prior to its filing with the Commission does not lose its privilege by the filing. A recommendation filed by the Commission in the Wyoming Supreme Court retains its privilege and is an affirmative defense in an action for defamation.

**Rule 24 ~~25~~. Disposition of subsequent complaints.**

(a) When the Commission is presented with a complaint which is the same or substantially similar to a previous complaint from the same complainant against the same judge, the matter shall be presented to the presiding officer of the investigatory panel which investigated the original complaint, or in the event the presiding officer is no longer a Commission member, the Commission chair. The presiding officer or Commission chair shall consider whether the subsequent complaint presents new issues of fact material to judicial conduct and ethics not previously addressed. If the subsequent complaint presents no such new issues, then the matter may be disposed of summarily by the presiding officer or Commission chair.

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**Rule ~~25~~ 26. Closure of case.**

When a complaint has been dismissed, the case is closed. No information concerning a closed case shall be released to anyone other than Commission members, except as may be otherwise authorized in these rules. When a complaint has been dismissed, the complainant shall be notified that the case is closed.

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