

STATE OF WYOMING
JUDICIAL SUPERVISORY COMMISSION

*RULES

*Promulgated
Sup Court Order
3-5-73*

*Comm. Terms 2/3/1/7
Ad eff Upon
Passage*

RULE 1. SCOPE OF TITLE.

These rules are promulgated pursuant to Art. 5, § 6(g), Wyo.Const. They apply to all proceedings before the Judicial Supervisory Commission involving the censure, removal, or retirement of judges.

RULE 2. DEFINITIONS.

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

- (a) "commission" means the Judicial Supervisory Commission;
- (b) "judge" means any supreme court justice or district court judge of this State;
- (c) "chairman" includes the acting chairman;
- (d) "examiner" means any person appointed by the commission to gather and present evidence before the commission;
- (e) "shall" is mandatory and "may" is permissive;
- (f) "mail" and "mailed" include ordinary mail and personal delivery;
- (g) "registered mail" means either registered or certified mail, deposited with the United States Postal Service, with postage prepaid and with a request for a return receipt;
- (h) the masculine gender includes the feminine gender;
- (i) "oath" is synonymous with "affirmation" and "swear" is synonymous with "affirm."

*Adopted by the Wyoming Supreme Court pursuant to Art. 5, § 6(g), Wyo.Const., March 5, 1973.

RULE 3. CHAIRMAN OF COMMISSION.

(a) The commission shall select one of its members to serve as chairman, and one of its members to serve as acting chairman in the event the chairman is unable to serve because of absence, illness, or other reason.

(b) The chairman and acting chairman are authorized to administer oaths or affirmations to all witnesses appearing before the commission.

RULE 4. STAFF FOR COMMISSION.

The Clerk of the Wyoming Supreme Court shall serve as secretary and other staff for the commission.

RULE 5. QUORUM OF COMMISSION.

A quorum for the transaction of business by the commission shall be five members, and no act of the commission shall be valid unless concurred in by no less than five members.

RULE 6. INTERESTED MEMBER OF COMMISSION.

A judge who is a member of the commission shall not participate as such member in any proceedings involving his own discipline, removal, or retirement.

RULE 7. PROCEEDINGS CONFIDENTIAL.

(a) Papers and Proceedings. All papers filed with and proceedings before the commission shall be confidential. Only a record filed by the commission with the supreme court loses its confidential character upon its filing. Any violation of the provision for confidentiality shall constitute an act of contempt and be punishable as such.

(b) Notices to Judge. All notices, pleadings and papers mailed to a judge pursuant to these rules shall be enclosed in a cover marked "Personal and Confidential."

(c) 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.

RULE 8. 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 which was privileged prior to its filing with the commission does not lose its privilege by the filing. A record filed by the commission in the supreme court continues to be privileged.

RULE 9. PRELIMINARY INVESTIGATION.

(a) Upon Receipt of Verified Statement. The commission, upon receiving a verified statement, not obviously unfounded or frivolous, alleging facts indicating that a judge is guilty of action occurring during, or not more than six years prior to the commencement of, his current term that constitutes willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute or that he has a disability that seriously interferes with the performance of his duties, and is, or is likely to become permanent, shall make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held.

(b) On Own Motion. The commission, without receiving a verified statement, may make such a preliminary investigation on its own motion.

(c) Complaints. Since all disciplinary actions concerning a judge shall be by this commission, complaints shall be addressed to the chairman of the commission.

(d) Notice of Investigation. The judge shall be notified of the investigation, the nature of the complaint, and the name of the person making the verified statement, if any, or that the investigation is on the commission's own motion, and shall be afforded reasonable opportunity in the course of the preliminary investigation to present such matters as he may choose. Such notice shall be given by registered mail addressed to the judge at his chambers and at his last known residence.

(e) Dismissal--Notice.

(1) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the judge shall be so notified.

(2) Frivolous or trivial complaints may be dismissed forthwith by the commission. Matters requiring correction but, in the view of the commission, not warranting disciplinary action may be disposed of by calling the matter to the attention of the judge involved and, if necessary, by directive in writing, indicating the appropriate corrective measures. Matters disposed of under this rule need not be entered of record.

RULE 10. FORMAL PROCEEDINGS--NOTICE.

(a) In Writing--Title of Proceedings. After the preliminary investigation has been completed, if the commission decides that formal proceedings should be instituted, the commission shall without delay issue a written notice to the judge advising him of the institution of formal proceedings to inquire into the charges against him. Such proceedings shall be entitled:

"Before the Judicial Supervisory Commission

"Inquiry Concerning a Judge, No. _____"

(b) Content--Opportunity to Reply. The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of his right to file a written answer to the charges against him within fifteen days after service of the notice upon him.

(c) Service. The notice shall be served by personal service of a copy thereof upon the judge by a member of the commission, or by some person designated by the chairman, and the person serving the notice shall promptly notify the commission in writing of the date on which the same was served. If it appears to the chairman upon affidavit that, after reasonable effort for a period of ten days, personal service could not be had, service may be made upon the judge by mailing, by registered mail, a copy of the notice addressed to him at his chambers and a copy thereof addressed to him at his last known residence.

RULE 11. ANSWER.

Within fifteen days after service of the notice of formal proceedings, the judge may file with the commission a legible answer which shall be verified.

RULE 12. HEARING.

(a) Setting Time and Place Before Commission. Upon the filing of an answer or upon the expiration of the time for its filing, the commission shall order a hearing to be held before it, setting a time and place for the hearing and giving notice of such hearing by registered mail to the judge at least twenty days prior to the date set.

✓ (b) Issuance, Service, and Return of Subpoenas.

(1) The chairman shall, at the written request of the judge or of the examiner or other authorized person presenting the case in support of the charges, issue a subpoena for any witness or witnesses.

(2) The style of the subpoena shall be "The State of Wyoming." It shall state the style of the proceeding as in Rule 10(a), that the proceeding is pending before the commission, the time and place at which the witness is required to appear, and the person or official body at whose instance the witness is summoned. It shall not name the judge against whom complaint is pending. It shall be signed by the chairman, and the date of its issuance shall be noted thereon. It shall be addressed to a person designated by the chairman to make service thereof.

(3) A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or other tangible things designated therein.

(4) Subpoenas may be executed and returned at any time, and shall be served by delivering a copy of such subpoena to the witness.

(5) Witnesses shall be entitled to receive the same witness fees and mileage as are provided for witnesses in the district courts.

(c) Proceeding on Time--Absence of Answer or Appearance. At the time and place set for hearing, the commission shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing.

(d) Presentation of Case--Failure to Answer, Appear, or Testify. The examiner shall present the case in support of the charges set forth in the notice of formal proceedings. The failure of the judge to answer or to appear at the hearing shall

not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for censure, removal, or retirement. The failure of the judge to testify in his own behalf or to submit to a medical examination requested by the commission may be considered, unless it appears that such failure was due to circumstances beyond his control.

(e) Record of Hearing. The proceedings at the hearing shall be reported verbatim stenographically or by any other appropriate means determined by the commission chairman.

(f) Number of Commission Members at Hearing. Not less than five members shall be present when the evidence is produced.

(g) Evidence--Rulings Thereon. At a hearing before the commission, legal evidence only shall be received, and oral evidence shall be taken only on oath or affirmation. The chairman, when present, the acting chairman, in the absence of the chairman, and the member designated by the chairman, in the absence of both the chairman and the acting chairman, shall preside. Procedural and other interlocutory rulings shall be made by the person presiding and shall be taken as consented to by the other members, unless one or more calls for a vote, in which latter event such rulings shall be made by a majority of those present.

(h) Depositions--Use as Evidence. Depositions, either on oral examination or on written interrogatories, of witnesses who reside out of the State or whose personal attendance at the hearing cannot, for good reason, be procured, may be taken and used in evidence upon application to and order of the chairman. Such order may be made on stipulation of the parties or after hearing on five days' notice. Any such order of the chairman is subject to review and change by the commission.

RULE 13. PROCEDURAL RIGHTS OF JUDGE.

(a) To Evidence--Counsel--Witnesses. In a proceeding under Rules 10 to 12, inclusive (formal proceeding), a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matters.

(b) To Transcript of Testimony. When a transcript of the testimony has been prepared at the expense of the commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to procure a copy at his expense. The judge shall have the right, without any order or approval, to have all or any testimony in the proceedings transcribed at his expense.

(c) Notice--Copy to Counsel. Except as herein otherwise provided, whenever these rules provide for giving notice or sending any matter to the judge, such notice or matters shall be sent to the judge at his residence, unless he requests otherwise, and a copy thereof shall be mailed to his counsel of record.

(d) Judge Insane or Incompetent. If the judge has been adjudged insane or incompetent by a court of competent jurisdiction or if it appears to the commission at any time during the proceedings that he is not competent to act for himself, the commission shall appoint a guardian ad litem unless the judge has a guardian who will represent him. In the appointment of such guardian ad litem, consideration shall be given to the wishes of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to the guardian or guardian ad litem.

RULE 14. AMENDMENTS TO NOTICE OR ANSWER.

At any time prior to its determination the commission may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given a reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

RULE 15. HEARING ADDITIONAL EVIDENCE.

The commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it.

The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by registered mail to the judge at least ten days prior to the date of hearing.

RULE 16. COMMISSION VOTE.

(a) Finding Against Judge. If the commission finds good cause, it shall recommend to the supreme court the censure, retirement, or removal of the judge.

(b) Adjudication in Favor of Judge. Should less than five of the members present at the hearing or hearings of the commission vote affirmatively for the censure, retirement, or removal when the question is put to the commission for a vote, the record shall show an adjudication in favor of the judge for fees paid or incurred by him for the service of subpoenas, for witness fees and mileage, and for depositions. Such costs shall be paid to the judge by the commission.

RULE 17. RECORD OF COMMISSION PROCEEDINGS.

The commission shall keep a record of all proceedings concerning a judge. The commission's determination shall be entered in the record and notice thereof shall be sent by registered mail to the judge. In all proceedings resulting in a recommendation to the supreme court for censure, removal, or retirement, 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 as to costs of service of process, witness fees and mileage, and deposition costs incurred or paid by the commission.

✓ RULE 18. CERTIFICATION OF COMMISSION RECOMMENDATION TO SUPREME COURT.

Upon making a determination recommending the censure, retirement, or removal of a judge, the commission shall promptly file a copy of the recommendation, certified by the chairman, together with the transcript and the findings and conclusions, with the Clerk of the Wyoming Supreme Court and shall immediately send by registered mail to the judge and to his counsel notice of such filing, together with a copy of such recommendation, findings, and conclusions.

RULE 19. REVIEW PROCEDURE IN WYOMING SUPREME COURT.

(a) Petition. A petition to the supreme court to modify or reject the recommendation of the commission for censure, removal, or retirement, may be filed within thirty days after the filing with the Clerk of the Wyoming Supreme Court of a certified copy of the recommendation complained of. The petition shall be verified, and in six copies, shall be based on the record, shall specify the grounds relied on, and shall be accompanied by petitioner's brief in six copies and proof of service of a copy of the petition and of the brief on the chairman of the commission at his place of business or residence. Within twenty days after service on the commission, the commission shall serve and file a respondent's brief. Within fifteen days after service of such brief, the petitioner may file a reply brief, of which a copy shall be served on the chairman of the commission at his place of business or residence.

(b) Failure to File Petition. Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the commission.

(c) Applicable Rules. The Rules of the Supreme Court of Wyoming shall apply to proceedings in the 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.