

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 1996

*In the Matter of the Amendment of
the Judicial Supervisory Commission
Rules so as to reflect that they are the
Rules for the Commission on
Judicial Conduct and Ethics, etc.*

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IN THE SUPREME COURT
STATE OF WYOMING
FILED
JAN 29 1997
JUDY PACHECO, CLERK
Judy Pacheco
by DEPUTY

**ORDER AMENDING THE JUDICIAL SUPERVISORY COMMISSION RULES
SO AS TO CONFORM THOSE RULES TO THE AMENDMENT TO ARTICLE 5, SECTION 6,
WYOMING CONSTITUTION, AND SO AS TO REFLECT THAT THEY ARE
THE RULES FOR THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS**

Art. 5, § 6(e) (i)(ii)(iii) and (iv), Wyo. Const., provide that the Supreme Court shall adopt rules implementing the Commission on Judicial Conduct and Ethics and providing for procedures. This Court has given due consideration to the rules recommended by a committee formed for that purpose and finds that the amended rules attached hereto should be adopted; it is therefore,

ORDERED that the Rules Governing the Commission on Judicial Conduct and Ethics be, and hereby are amended as shown in the true and correct copy of the rules attached to this order effective the date of this order; and it is,

FURTHER ORDERED that the amended rules adopted above be published in the advance sheets of the Pacific Reporter and the Wyoming Reporter and shall be spread at length upon the journal of this Court.

DATED this 29th day of January 1997.

FOR THE COURT:
William A. Taylor
William A. Taylor
Chief Justice

RULES GOVERNING THE COMMISSION
ON JUDICIAL CONDUCT AND ETHICS

Part I: Providing for election of judges; staggering of terms; removal and filling of vacancies; and, appointment of special supreme court.

Rules Providing for the Election of Judges to the Commission on Judicial Conduct and Ethics and Providing for the Staggering of Terms and for the Removal and Filling of Vacancies of Commission Members and Providing for the Appointment of a Special Supreme Court

Rule 1. Election of judges and staggering of terms of judges.

(a) On or before January 31, 1997, the full-time, active, Wyoming judges of the district courts shall elect two of their numbers as members of the Commission on Judicial Conduct and Ethics. One of those members shall be elected for a term of one year and the second shall be elected to a term of three years. Thereafter, the judges of the district courts shall meet, as necessary, on or before January 31st of each year so as to ensure that appointments to the commission are current and consistent with Art. 5, § 6 of the Wyoming Constitution.

(b) On or before January 31, 1997, the full-time, active, Wyoming judges of the county courts shall elect one of their numbers to a two year term as a member of the Commission on Judicial Conduct and Ethics. Thereafter, the judges of the county courts shall meet, as necessary, on or before the 31st of January of each year so as to ensure that appointments are current and consistent with Art. 5, § 6 of the Wyoming Constitution.

(c) In accordance with Rule 3(d)(1)(I) of the Rules for the Commission on Judicial Conduct and Ethics, the commission shall inform the President of the District Judges Division of the Judicial Council and the President of the County Court Judges

Division of the Judicial Council of vacancies on the Commission of judge members and new members shall thereafter be elected or appointed by the appropriate body within 30 days of the notification.

Rule 2. Staggering of terms of commission members appointed by the Wyoming State Bar and the Governor of Wyoming.

(a) On or before January 31, 1997, the Wyoming State Bar shall appoint three of its numbers as members of the Commission on Judicial Conduct and Ethics. One appointment shall be for a term of one year, the second shall be for a term of two years, and the third an appointment for a term of three years. Thereafter, upon notification of a vacancy of a member of the commission appointed by the bar, as provided for in Rule 3(d)(1)(I) of the Rules for the Commission on Judicial Conduct and Ethics, the Bar shall fill vacancies as necessary.

(b) As soon as is practicable, but in any event not later than the adjournment of the 1997 General Session of the Wyoming Legislature, the Governor of Wyoming shall appoint six electors of the state who are not active or retired judges or attorneys, which appointments shall be confirmed by the Wyoming Senate. Two of the appointments shall be for a term of one year, two of the appointments shall be for a term of two years, and two of the appointments shall be for a term of three years. Thereafter, upon notification of a vacancy of a member of the commission appointed by the governor, as provided for in Rule 3(d)(1)(I) of the Rules for the Commission on Judicial Conduct and Ethics, the governor shall fill vacancies as necessary.

Rule 3. Removal of members of the Commission on Judicial Conduct and Ethics.

(a) Upon a showing of good cause, sufficient notice, an opportunity for hearing, and in accordance with the procedures set out for the discipline of judicial officers, a member or members of the commission may be removed by a majority vote of the members of the commission, except the member or members of the commission affected by that vote. Review of such an action removing a member or members of the commission shall be as set

out in the Rule 22 of the Rules for the Commission on Judicial Conduct and Ethics. In addition, the governor may remove any member he appoints as provided in W. S. § 9-1-202; members elected by the judges may be removed by majority vote, respectively, of all full-time, active district judges or full-time, active county judges; and the Wyoming State Bar may remove any member it appoints by action of its governing body.

(b) Except for a member or members appointed by the governor, a member or members may be removed by the other appointing or electing authorities in the same manner as that member or those members were appointed or elected.

Rule 4. Appointment of a special supreme court.

(a) 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 Art. 5, § 6 of the Wyoming Constitution.

Part II: Providing for procedures for the operation of the commission including exercise of the commission's disciplinary powers.

State of Wyoming
~~Rules for the Judicial Supervisory Commission~~ Rules on
Judicial Conduct and Ethics

Rule 1. Scope of title.

These rules are promulgated pursuant to Article 5, § 6-(g) (e)(iv), Wyoming Constitution (amended effective November 18, 1996). They apply to all proceedings before the ~~judicial supervisory~~ Commission on Judicial Conduct and Ethics involving the censure, suspension, removal, ~~or~~ retirement, or other discipline 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 on Judicial Conduct and Ethics;
- (b) "Judge" means any person or judicial officer performing judicial functions or exercising judicial powers in the judicial branch of Wyoming government, whether serving full time or part time, including a retired judge who has been given a general or special appointment to hear cases by the Wyoming Supreme Court;
- (c) "Presiding commissioner" presides over the full commission and includes an acting presiding commissioner;
- (d) "Presiding officer" means the presiding member of the investigatory or adjudicatory panel;
- (e) "Disciplinary counsel" means any person appointed by the commission to gather and present evidence before the commission and perform other duties assigned by the commission pursuant to these rules;
- (f) "Shall" is mandatory and "may" is permissive;
- (g) "Mail" and "mailed" include ordinary mail and personal delivery;
- (h) "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;

- (i) "Oath" is synonymous with "affirmation" and "swear" is synonymous with "affirm"; and
- (j) "Conduct prejudicial to the administration of justice that brings the judicial office into disrepute" means, in addition to other things, a violation of the Wyoming Code of Judicial Conduct.

Rule 3. Organization and authority of commission.

(a) *Commission; presiding commissioner; investigatory and adjudicatory panels.* - The full commission shall select one of its members to serve as presiding commissioner, and one of its members to serve as acting presiding commissioner in the event the presiding commissioner is unable to serve because of absence, illness, or other reason. From time to time, the presiding commissioner or acting presiding commissioner shall divide the full commission into investigatory panels of three or more members and adjudicatory panels of four-five or more members. The full commission presiding chairman or acting presiding commissioner shall prescribe the duration and time of panel membership; provided that the investigatory and adjudicatory panels shall include members from each category of membership--lawyer, judge, and public 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 presiding commissioner to consider administrative matters and shall meet at the call of the presiding commissioner on an ad hoc basis for disposition hearings.

(b) *Presiding commissioner.* - The presiding commissioner shall preside over meetings and hearings of the full commission. In the event formal proceedings are commenced, the presiding commissioner shall appoint a member (who may be the presiding commissioner) to serve as the hearing officer. The presiding commissioner shall from time to time designate presiding officers of all panels. The presiding commissioner, acting presiding commissioner and hearing officer are authorized to administer oaths or affirmations to all witnesses appearing before the commission.

(c) *Presiding officer.* - The presiding officer of each panel shall schedule, convene and preside over panel hearings and shall appoint a member of the panel (who may be the presiding officer) to serve as the hearing officer of any hearing of the panel. The presiding officer and hearing officer of any panel are authorized to administer oaths or affirmations to all witnesses appearing before the commission or panel.

(d) *Powers and duties of the commission.*

- (1) 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 incapacity proceedings not inconsistent with these rules and subject to the approval of the Wyoming Supreme Court;
 - (B) retain disciplinary counsel and other staff;
 - (C) conduct investigations and review the recommendations of disciplinary counsel after preliminary investigation and either authorize a full investigation or dismiss the complaint;
 - (D) rule on prehearing motions, conduct hearings on formal charges, make findings, conclusions and recommendations to the Wyoming Supreme Court for sanctions, or dismiss the case, pursuant to Rule 9;
 - (E) consider and implement such other forms of discipline as are provided for by these rules;
 - (F) appoint masters in appropriate cases, review the findings of the masters, and make findings, conclusions, and recommendations to the Wyoming Supreme Court for sanctions or dismiss the case, pursuant to Rule 9;
 - (G) maintain the commission's records;

- (H) prepare the commission's budget for its approval and administer the funds;
- (I) notify the appropriate appointing authority of vacancies on the commission;
- (J) prepare an annual report of the commission's activities and maintain statistics concerning the operation of the commission and make the report and statistics available to the commission, the Wyoming Supreme Court, the legislature, the governor, the Wyoming State Bar, and the public;
- (K) inform the public of the existence and operation of the judicial discipline system, including the commission's address and telephone number and the disposition of each matter in which public discipline is imposed;
- (L) perform such other supervisory functions as the Wyoming Supreme Court may from time to time direct; and
- (M) make assignment to the investigatory and adjudicatory panels.

(e) *Powers and duties of investigatory panel.*

- (1) The investigatory panel shall have the duty and authority to:
 - (A) review statements or complaints received by the commission staff concerning allegations of judicial misconduct or incapacity, conduct reviews and make inquiries, conduct preliminary examinations, make dismissals, recommend letters of correction and deferred discipline agreements, and make findings to the adjudicatory panel concerning formal proceedings;

- (B) evaluate all information or allegations reaching the attention of the commission or from other sources that reasonably give rise to the need for further inquiry or investigation;
 - (C) commence investigations on its own motion on matters concerning alleged judicial misconduct falling within the jurisdiction of the commission;
 - (D) appoint disciplinary counsel upon approval of the commission if needed to proceed with preliminary investigation or deferred discipline agreement; and
 - (E) maintain records and files confidentially in accordance with these rules and transmit files to the adjudicatory panel for formal proceedings as appropriate.
- (f) *Powers and duties of adjudicatory panel.*

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

- (A) rule on prehearing motions, conduct hearings on formal charges and make findings, conclusions and recommendations to the Wyoming Supreme Court or dismiss the case;
- (B) adopt its own internal rules of procedure for convening adjudicatory hearings; and
- (C) conduct full adjudicatory hearings and make adjudicatory findings.

(g) *Expenses.* - Members shall be reimbursed for reasonable and necessary expenses incurred pursuant to their duties.

Rule 4. Staff for commission and disciplinary counsel.

(a) The commission shall employ an administrative assistant who shall receive and process inquiries, maintain custody of the commission's records and files, transmit files between the commission and its panels at the direction of the presiding commissioner or otherwise as provided by these rules, and perform such other duties as may be assigned by the commission. The commission may employ other staff to assist in the performance of duties assigned to the commission.

(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 have the duty and authority to:

- (1) conduct initial and preliminary investigations upon request of the investigatory panel;
- (2) conduct full investigations upon authorization of the investigatory panel;
- (3) file and prosecute formal charges when directed to do so by the investigatory panel; and
- (4) perform other duties as may be assigned by the commission, including preparation of findings, recommendations, stipulations, settlement agreements, and orders of discipline.

Rule 5. Quorum of commission.

Except as provided in Rule 16 a quorum for the transaction of commission business shall be 65% of the commission members eligible to participate in the matter being considered, but in no event fewer than four members, and the vote of the majority of the commission at any meeting with a quorum present shall be the act of the commission. Except as provided in Rule 12, commission members may participate in any meeting by telephone. If there are insufficient members eligible to decide any case before the commission, the presiding commissioner shall make written request

to the appointing authority of recused or ineligible members to appoint replacement commission members for that case. If the replacements are not named by the appointing authority within 15 days, the presiding commissioner shall appoint the replacement members from the same category as the recused or ineligible member.

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 the judge's own discipline, removal, or retirement. No member of the commission shall serve in the capacity both as member of the investigatory panel and the adjudicatory panel in the same proceeding. Members of the commission shall recuse themselves in any matter in which recusal would be required of a judicial officer under the Wyoming Code of Judicial Conduct. 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 charges in a case, the commission may communicate with the disciplinary counsel as may be required to perform their duties in accordance with these rules. For administrative purposes only, the presiding commissioner or the hearing officer may confer with disciplinary counsel and the judge's counsel or the judge if *pro se*. There shall be no voir dire examination of commission members and no other form of challenge of commission members shall be permitted.

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 Wyoming 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. Provided, however, 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.

(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 that 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 Wyoming Supreme Court continues to be privileged.

Rule 9. Jurisdiction; preliminary investigation.

(a) *Commission.* - The commission or its panels shall receive, investigate, hear, and adjudicate allegations of judicial misconduct and make recommendations to the Wyoming Supreme Court for censure, removal or retirement of a judge.

- (1) The commission may recommend retirement of a judge for disability that seriously interferes with the performance of duties and is, or is likely to become, permanent in accordance with Rule 19(d). For purposes of these rules, disability means "a mental or physical condition, or mental and physical condition combined, that seriously interferes with a judge's performance of duties and is, or is likely to become, permanent."
- (2) The commission may recommend censure or removal of a judge upon a finding that a judge has engaged in judicial misconduct. For purposes of these rules, judicial misconduct means "action occurring during,

or not more than six years prior to the commencement of, the judge's current term that constitutes:

- (A) willful misconduct in office,
- (B) willful and persistent failure to perform duties,
- (C) habitual intemperance, or
- (D) conduct prejudicial to the administration of justice that brings the judicial office into disrepute, including but not limited to conduct violative of the Wyoming Code of Judicial Conduct."

(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 supreme court or a special supreme court.

(b) *Investigatory panel.* - The investigatory panel shall, on behalf of the commission, have jurisdiction to receive allegations of judicial misconduct and make initial inquiry, conduct preliminary investigations, make dismissals of unfounded, frivolous or trivial complaints and upon a finding of reasonable cause to believe judicial misconduct occurred, make a determination that formal proceedings should be instituted.

(c) *Adjudicatory panel.* - The adjudicatory panel shall, on behalf of the commission, have jurisdiction to conduct formal proceedings upon receipt of a determination from the investigatory panel that formal proceedings should be instituted. The adjudicatory panel shall make findings and adjudications concerning allegations of judicial misconduct:

- (1) where none is proven by clear and convincing evidence, shall dismiss the case; and

(2) where proven by clear and convincing evidence, shall make an adjudication and submit findings to the full commission for disposition.

(d) *Disposition.* - Upon a finding of judicial misconduct, the full commission shall convene and shall have jurisdiction to make and transmit appropriate findings and recommendations for censure, removal or retirement to the Wyoming Supreme Court or impose discipline in the form of private censure.

Rule 10. Preliminary investigation.

(a) *Complaints.* - Complaints shall be verified and addressed to the commission. By presenting to the commission (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(b) *Investigation.* - Upon receiving a verified statement alleging facts indicating that a judge has engaged in judicial misconduct or that the judge has a disability that seriously interferes with the performance of duties, and is or is likely to

become permanent, the investigatory panel shall review the information and shall act as follows:

- (1) *Dismissal.* It may forthwith dismiss unfounded, frivolous or trivial complaints.
- (2) *Initial Inquiry.* For complaints not dismissed forthwith and after notifying the judge informally, the investigatory panel shall make an initial inquiry or direct disciplinary counsel to make an initial inquiry to determine whether or not the complaint contained in the verified statement warrants further examination. In making that initial inquiry, the investigatory panel or disciplinary counsel may obtain and consider any information deemed pertinent. Upon its own motion without receiving a verified statement, the investigatory panel may make, or require disciplinary counsel to make, an initial inquiry on the basis of information coming to the commission's attention from other sources that, if substantiated, would constitute judicial misconduct.
- (3) *Preliminary Investigation.* If, after the initial inquiry, the investigatory panel concludes that further investigation is warranted, the investigatory panel shall require disciplinary counsel to conduct a preliminary investigation, after first notifying the judge in writing of the nature of the charge and that a preliminary investigation has been authorized. In the course of the preliminary investigation, the accused judge shall be afforded reasonable opportunity to present matters. In conducting the investigation, disciplinary counsel may consider any information obtained during the course of the initial inquiry.
- (4) *Physical or Mental Evaluation.* If the preliminary investigation indicates that the physical or mental health of the judge is in issue, the investigatory panel may order and give the judge notice of physical and/or mental examinations of the judge by

independent examiners. The results of the examination shall be transmitted directly to the judge and to the presiding commissioner for determination by the entire commission under Rule 19(d) and the rules of procedure adopted under Rule 3(c)(1)(A) of these rules. Service of such written notice and results of examination shall be in accordance with Rules 7(b) and 10(d).

- (5) If the preliminary investigation discloses sufficient cause to warrant further proceedings, the investigatory panel may:
 - (A) continue the case for further action, investigation or review; or
 - (B) request or allow a personal appearance of the judge before the investigatory panel.
- (6) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the case shall be dismissed and the judge and the complainant shall be so notified.
- (7) If after preliminary investigation, the investigatory panel finds reasonable cause to believe that the judge engaged in judicial misconduct, then formal proceedings shall be instituted and the file shall be referred to the adjudicatory panel. The investigatory panel shall not receive any evidence, nor shall it make any recommendations relative to sanctions, censure or removal.

(c) *Notice of investigation.* - The judge shall be notified of any investigation or examination by registered mail addressed to the judge at the judge's chambers and the judge's last known residence.

Rule 11. Settlement and corrective notice.

(a) *Settlement.* - A judge accused of misconduct who wishes to propose a settlement of the case, whether or not admitting misconduct, may present a settlement proposal to disciplinary counsel. Disciplinary counsel has no authority to settle any case, but may comment upon a judge's proposal. Any proposal shall 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 accused judge which, if acceptable to the judge, may be referred to the commission. A judge who proposes a settlement or agrees to a settlement proposal made by disciplinary counsel waives any complaint that consideration of settlement compromises the commission or any of its members in later proceedings.

(b) *Corrective notice.* - Matters requiring correction but, in the view of the investigatory panel 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. Such matters may also be addresses by the commission in the form of a private censure.

Rule 12. Formal proceedings; notice.

(a) *In writing; title of proceedings.* - Upon receipt of a referral for institution of formal proceedings from the investigatory panel, the administrative assistant of the commission 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 to inquire into the charges. Such proceedings shall be entitled:

State of Wyoming
Before the ~~Judicial Supervisory Commission~~ on Judicial Conduct
and Ethics

An Inquiry Concerning

}

No. _____

(Name of Judge)

NOTICE _____

(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 the right to file a written answer to the charges within 15 days after service of the notice upon the judge.

(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 presiding commissioner, 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 presiding commissioner upon affidavit that, after reasonable effort for a period of 10 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 the judge at the judge's chambers and a copy thereof addressed to the judge's last known residence.

(d) *Answer.* - Within 15 days after service of the notice of formal proceedings, the judge may file with the commission a legible answer which shall be verified.

Rule 13. 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 adjudicatory panel 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 20 days prior to the date set.

(b) *Issuance, service, and return of subpoenas.*

(1) The presiding officer of the adjudicatory panel shall, at the written request of the judge or of disciplinary counsel 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 12(a), that the proceeding is

pending before the adjudicatory panel of 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 presiding officer, and the date of its issuance shall be noted thereon. It shall be addressed to a person designated by the presiding officer 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 adjudicatory panel 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.* — Disciplinary counsel 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 suspension, censure, removal, or retirement. The failure of the judge to testify 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 the judge's control.

(e) *Record of hearing.* — The proceedings at the hearing shall be reported verbatim, stenographically or by any other means determined appropriate by the adjudicatory panel.

(f) *Number of adjudicatory panel members at hearing.* - Not less than ~~three-five~~ members shall be present when the evidence is produced.

(g) *Evidence; rulings thereon.* - At a hearing before the adjudicatory panel, legal evidence only shall be received, and oral evidence shall be taken only on oath or affirmation. The person presiding over the hearing shall determine all evidentiary and procedural matters at the hearing.

(h) *Use of allegations from dismissed cases.* - If a complaint has been dismissed, the allegations made in that complaint shall not be used for any purpose in any judicial or lawyer disciplinary proceedings against the judge. If additional information becomes known to disciplinary counsel regarding a complaint that has been dismissed before the filing of formal charges, the allegations may be reinvestigated at the direction of an investigative panel.

(i) *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 presiding officer. Such order may be made on stipulation of the parties or after hearing on five days' notice. Any such order of the presiding officer is subject to review and change by the panel.

Rule 14. Discovery.

(a) *Witnesses.* - Within 20 days of the filing of an answer, disciplinary counsel and respondent shall exchange the names and addresses of all persons known to have knowledge of the relevant facts. Disciplinary counsel or the respondent may withhold such information only with permission of the presiding officer of the adjudicatory panel or designee, who can authorize withholding of the information only for good cause shown, taking into consideration the materiality of the information possessed by the witness and the position the witness occupies in relation to the judge. The presiding officer's review of the withholding request is to be in camera, but disciplinary counsel must advise respondent of the request without disclosing the subject of the request. The adjudicatory panel shall set a date for the exchange of the names

and addresses of all witnesses the parties intend to call at the hearing. Disciplinary counsel and respondent may take depositions only of witnesses to be called at the hearing and other witnesses who are unavailable to testify. Depositions of other persons may be taken only with permission of the presiding officer of the adjudicatory hearing panel or designee and only for good cause shown.

(b) *Other evidence.* - Disciplinary counsel and respondent shall exchange:

- (1) non-privileged evidence relevant to the formal charges, documents to be presented at the hearing, witness statements and summaries of interviews with witnesses who will be called at the hearing; and
- (2) other material only upon good cause shown to the presiding officer of the adjudicatory panel.

(c) *Duty of supplementation.* - Both parties have a continuing duty to supplement information required to be exchanged under this Rule.

(d) *Completion of discovery unless extended by the presiding officer.* - All discovery shall be completed within 60 days of the filing of the answer.

(e) *Failure to disclose.* - The adjudicatory panel may preclude either party from calling a witness at the hearing if the party has not provided the opposing party with the witness's name and address, any statements taken from the witness or summaries of any interviews with the witness.

(f) *Resolution of disputes.* - Disputes concerning discovery shall be determined in the sole discretion of the presiding officer.

(g) *Civil rules not applicable.* - Proceedings under these rules are not subject to the Wyoming Rules of Civil Procedure regarding discovery except those rules relating to depositions and subpoenas.

Rule 15. Procedural rights of judge.

(a) *To evidence; counsel; witnesses.* - Once a formal proceeding has commenced, 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. The judge 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 counsel in connection with the proceedings, or the judge may purchase a copy. Upon payment therefor the judge shall have the right, without any order or approval of the commission, to have all or any testimony in the proceedings transcribed at the judge's 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 home, unless the judge requests otherwise, and a copy thereof shall be mailed to the judge's 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 the judge is not competent, the commission shall appoint a guardian ad litem unless the judge has a guardian. 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 16. 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 a defense against the matters charged thereby.

Rule 17. 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 10 days prior to the date of hearing.

Rule 18. Order of discipline.

(a) *Approval.* - At any time after the filing of formal proceedings and before final adjudication, the judge may agree with disciplinary counsel to admit any or all of the formal charges in exchange for a stated agreed recommendation for sanction to the Wyoming Supreme Court. The agreement shall be submitted to the entire commission which shall either:

- (1) reject the agreement; or
- (2) submit the agreement to the Wyoming Supreme Court for approval.

(b) *Rejection of sanction.* - If the stated sanction is rejected by the commission or the Wyoming Supreme Court, the admission will be withdrawn and cannot be used against the judge in any proceedings.

(c) *Affidavit of consent.* - A judge who consents to a stated sanction shall sign an affidavit stating that:

- (1) the judge consents to the sanction;

- (2) the consent is freely and voluntarily rendered;
- (3) there is presently pending a proceeding involving allegations of misconduct;
- (4) the facts set forth in the affidavit are true; and
- (5) the judge consents to a de novo consideration by all commission members should the discipline agreement be rejected by the full commission or Wyoming Supreme Court.

(d) *Order of discipline.* - The commission shall file the affidavit with the Wyoming Supreme Court. The affidavit shall remain confidential until it is accepted by the Wyoming Supreme Court. The Wyoming Supreme Court shall either reject the agreement or enter the order disciplining the judge. The final order of discipline shall be based upon the formal charges and the conditional admission.

Rule 19. Final adjudication.

(a) *Final adjudication in favor of the judge.* - If the adjudicatory panel by majority vote fails to find judicial misconduct 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 by clear and convincing evidence, then the adjudicatory panel shall set forth and transmit its findings to the entire commission for disposition.

(c) *Disposition.* - Upon receipt of an adjudicatory panel's findings against a judge, the entire commission shall convene to determine the nature of the sanction to be imposed against the judge. Upon a vote of 65% of the entire panel, the commission shall make its recommendation for censure, removal or retirement and transmit its record and recommendations forthwith to the Wyoming Supreme Court.

(d) *Retirement for disability.* - In a proceeding involving a judge's disability, if after hearing before the full commission, a majority of the commission members finds by a greater weight of the evidence that a judge suffers from a disability that seriously interferes with the performance of the judge's duties which is, or is likely to become permanent, it shall recommend that the Wyoming Supreme Court retire the judge for disability.

Rule 20. 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 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 as to costs of service of process, witness fees and mileage, and deposition costs incurred or paid by the commission.

Rule 21. Certification of commission recommendation to Wyoming 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 presiding commissioner, 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 the judge's counsel notice of such filing, together with a copy of such recommendation, findings and conclusions.

Rule 22. Review procedure in Wyoming Supreme Court.

(a) *Petition.* - A petition to the Wyoming Supreme Court to modify or reject 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 verified petition 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 disciplinary counsel and the presiding commissioner at the commission address. Within 20 days after service on the commission, disciplinary counsel shall serve and file a respondent's brief. Within 15 days after service of such brief, the petitioner may file a reply brief, of which a copy shall be served on disciplinary counsel and the presiding commissioner.

(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 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.

Rule 23. Contempt.

The presiding commissioner and the hearing officer shall have the same contempt powers as the Wyoming district courts. Contempt proceedings shall be governed by Rule 42, Wyoming Rules of Criminal Procedure.

AMENDMENT TO RULES FOR THE
COMMISSION ON JUDICIAL CONDUCT AND ETHICS

PART III: Rules of procedure for discipline and incapacity proceedings before adjudicatory panels; duty of cooperation; right to appear before full commission.

Rule 1. Authority for adoption of rules.

These rules are promulgated pursuant to Part II, Rule 3(d)(1)(A) of the Rules Governing the Commission on Judicial Conduct and Ethics which provides in part that the commission shall have the duty and broad authority to adopt its own rules of procedure subject to the approval of the Wyoming Supreme Court.

Rule 2. Designation of adjudicatory panel; designation of presiding officer.

Upon the receipt of a written referral for the institution of formal proceedings from any investigatory panel, the presiding commissioner shall select five or more members of the commission (who were not involved in serving on the investigatory panel) to serve on an adjudicatory panel for the particular case. The presiding commissioner shall further designate the member of the panel to act as the presiding officer. The same person may serve as both the presiding officer and the hearing officer.

Rule 3. Duties of the presiding officer of adjudicatory panel.

The presiding officer shall have the following powers and responsibilities:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas, and receive, hear and determine all motions pertaining to the quashing of subpoenas;
- (c) Open and officially close any hearing or other formal proceeding;
- (d) Sign the written decision and order at the conclusion of the proceedings and sign all other orders necessary to facilitate the orderly disposition of the case.

Rule 4. Duties of the hearing officer of an adjudicatory panel.

The hearing officer shall have the following duties and responsibilities:

- (a) Administer oaths and affirmations;
- (b) Preside over and set the time for such prehearing conferences as the hearing officer deems necessary;
- (c) Establish the terms, conditions and limitations of discovery and rule upon all discovery motions, including those pertaining to depositions, and when requested by a party or a member of the adjudicatory panel, to preside over a deposition;
- (d) Preside over the hearing and regulate its proceedings;
and
- (d) Rule upon the admissibility of all relevant evidence, and receive all relevant evidence.

Rule 5. Prehearing conference.

Within 20 days after the filing of the formal charges and the answer by the respondent, the hearing officer shall decide whether to conduct a prehearing scheduling conference at which time the schedule for the proceedings will be established and the adjudicatory panel will decide whether to adopt additional rules of procedure applicable to the case before it pursuant to Part II, Rule 3(f)(B) and decide which, if any, of the Wyoming Rules of Civil Procedure may apply in the particular case.

Rule 6. Prehearing proceedings.

The hearing officer shall determine whether and to what extent any prehearing matter should be heard in a teleconference or submitted for decision in writing without a hearing or teleconference. The hearing officer's disposition of motions shall be subject to review by the full adjudicatory panel.

Rule 7. Request for recusal.

Notice of the charges pursuant to Part II, Rule 12(b) shall include the names of the adjudicatory panel members. The respondent may file a written request for recusal requesting the recusal of any adjudicatory panel member at the time of filing an

answer under Part II, Rule 12(b). The request shall be in writing. The grounds shall be set forth in the request. In the event that the adjudicatory panel member refuses to act upon the request for recusal, the adjudicatory panel shall, at the pre-hearing conference or within ten (10) days thereafter, determine whether the adjudicatory panel member subject to the request for recusal should be disqualified from participating in the adjudicatory panel.

Rule 8. Rules of evidence and due process.

The Wyoming Rules of Evidence applicable to civil proceedings apply at the hearing and the respondent must be accorded due process of law.

Rule 9. Burden of proof.

Counsel appointed by the commission to present the evidence against the respondent has the burden of proving, by clear and convincing evidence, the facts justifying discipline in conformity with the averment of the formal statement of charges.

Rule 10. Cross-examination and evidence.

The respondent is entitled to present evidence and cross-examine witnesses, subject to the Rules of Evidence applicable to civil proceedings.

Rule 11. Right to counsel.

Respondent may retain and have the assistance of counsel at the respondent's own expense. Appearance of counsel constitutes an appearance by respondent.

Rule 12. Ex parte contacts.

Following the filing of formal proceedings with the adjudicatory panel, members of the commission shall not engage in ex parte communications regarding a case with the respondent, the respondent's counsel, 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.

Rule 13. Confidentiality.

Unless otherwise permitted by these rules, or from public documents, or from a public hearing, no person shall disclose information obtained by that person during the commission proceedings or from papers filed with the commission. In the event of a private censure, the complainant shall be advised in general terms that appropriate corrective action has been taken. Any person violating confidentiality rules may be subject to a proceeding for contempt in any district court in the State of Wyoming which contempt proceeding shall be conducted pursuant to Rule 42 of the Wyoming Rules of Criminal Procedure.

Rule 14. Duty of cooperation.

A judge, clerk, court employee, member of the bar, or other officer of the court, shall comply with a reasonable request made by the commission in aid of any investigation or any proceeding involving any judge.

Rule 15. Enforcement of subpoenas.

The commission, on its own or by and through disciplinary counsel, may bring an action to enforce a subpoena in the district court of any county in which the hearing or proceeding is conducted or in which the person resides or is found.

Rule 16. Submission of record and decision by the adjudicatory panel to the commission.

Within 90 days following the hearing before the adjudicatory panel, the adjudicatory panel shall submit to the full commission 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 respondent.

Rule 17. Right to appearance before full commission.

The respondent is not entitled to a full evidentiary hearing before the full commission following the submission of the record and decision by the adjudicatory panel. The respondent has the right to appear, at the respondent's sole election, in person, through counsel and in writing, at or prior to the full commission

hearing at which the full commission takes any action relative to the respondent's case.