RULES GOVERNING THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

IN THE SUPREME COURT, STATE OF WYOMING

OCTOBER TERM, A.D. 2013

In the Matter of the Repeal of the Existing	)
Rules Governing the Commission on	)
Judicial Conduct and Ethics and the	)
Adoption of Revised Rules Governing the	)
Commission on Judicial Conduct and Ethics	)

ORDER REPEALING THE EXISTING RULES GOVERNING THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS
AND
ORDER ADOPTING REVISED RULES GOVERNING THE COMMISSION ON JUDICIAL CONDUCT AND ETHICS

The Commission on Judicial Conduct and Ethics has recommended that the Court repeal the existing Rules Governing the Commission on Judicial Conduct and Ethics and adopt revised Rules Governing the Commission on Judicial Conduct and Ethics. The proposed revised rules are attached hereto. The Court, having carefully reviewed the proposed revisions, finds that the proposed revised Rules Governing the Commission on Judicial Conduct and Ethics should be adopted. It is, therefore,

ORDERED that effective April 1, 2014, the existing Rules Governing the Commission on Judicial Conduct and Ethics; and it is further

ORDERED that 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, 2014; and it is further

ORDERED that this order and the attached rules be published in the advance sheets of the Pacific Reporter and in the Wyoming Court Rules Volume. This order and the attached rules shall also be made available online at this Court's website, http://www.courts.state.wy.us. The amendments shall thereafter be spread at length upon the journal of this Court.

DATED this 8th day of January, 2014.

BY THE COURT:

/s/

MARILYN S. KITE
Chief Justice

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Rule 1. Scope of title.

These rules are promulgated pursuant to Wyo. Const. art. 5, § 6(e)(iv), and constitute the procedures for the operation of the Commission on Judicial Conduct & Ethics (Commission) including exercise of the Commission's disciplinary powers.
(Amended January 8, 2014, effective April 1, 2014.)

Rule 2. Definitions.

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

(a) "Civil misconduct" means a finding by any court, tribunal, agency, or commission of any local, state or federal authority, of misconduct, contempt, or refusal to comply with lawful orders or mandates.

(b) "Clear and convincing evidence" means that kind of proof which must persuade the members of the adjudicatory panel that the truth of a contention is highly probable.

(c) "Commission" means the Commission on Judicial Conduct and Ethics.

(d) "Commission chair" means the person who presides over the full Commission and includes a Commission vice chair when acting in the capacity as the Commission chair.

(e) "Conduct prejudicial to the administration of justice that brings the judicial office into disrepute" includes, without limitation, a violation of the Wyoming Code of Judicial Conduct.

(f) "Criminal misconduct" means a conviction arising from a violation of any local, state or federal criminal law, statute, regulation, rule, or ordinance.

(g) "Disability" means a mental or physical condition, or mental and physical conditions combined, that seriously interferes with a judge's performance of duties and is, or is likely to become, permanent.

(h) "Disciplinary counsel" means any attorney appointed by the Commission or a panel to gather and present evidence before the Commission or a panel and perform other duties assigned by the Commission or a panel pursuant to these rules.

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

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

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

(1) willful misconduct in office;

(2) willful or persistent failure to perform duties;

(3) habitual intemperance to include alcohol or substance abuse; or

(4) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(l) "Judicial tenure" means service by a judge in any judicial capacity at any time.

(m) "Mail" and "mailed" include ordinary mail and personal delivery.

(n) "Oath" is synonymous with affirmation, and "swear" is synonymous with affirm.

(o) "Panel" refers to an investigatory panel or an adjudicatory panel.

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

(q) "Rules" means the Rules Governing the Commission on Judicial Conduct and Ethics.

(r) "Shall" is mandatory and "may" is permissive.

(s) "Verify" means to confirm or substantiate by oath or affirmation.

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

(Amended January 8, 2014, effective April 1, 2014.)

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 imposition of monetary sanctions, censure, removal or retirement of a judge.

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

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

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

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

(c) Disposition. Upon a finding of judicial misconduct, criminal misconduct, civil misconduct or disability of a judge, the full Commission shall convene and shall have jurisdiction to make and transmit appropriate findings and recommendations for

censure, removal or retirement, and imposition of monetary sanctions, to the Wyoming Supreme Court or impose discipline in the form of private censure, including, but not limited to, imposition of monetary sanctions where appropriate.

(d) A judge, clerk, court employee, member of the bar, or other officer of the court shall comply with a request made by the Commission, the Commission chair, the presiding officer of an investigatory panel, the presiding officer of an adjudicatory panel, or disciplinary counsel in aid of any investigation or any proceeding pertaining to any judge.

(Amended January 8, 2014, effective April 1, 2014.)

Rule 4. Selection and removal of Commission members.

(a) The Commission shall inform the presiding officer of the District Judges' Division of the Judicial Council, the presiding officer of the Circuit Court Judges' Division of the Judicial Council, the Wyoming State Bar, and the Governor's office of vacancies on the Commission and new members shall thereafter be selected or appointed by the appropriate body 30 days before the current term expires.

(b) Wyoming judges of the district courts shall select two judges to serve as members of the Commission. The judges of the district courts shall ensure that appointments to the Commission are current and consistent with Wyo. Const. art. 5, § 6.

(c) Wyoming judges of the circuit courts shall select one judge to serve as a member of the Commission. The judges of the circuit courts shall ensure that appointments are current and consistent with Wyo. Const. art. 5, § 6.

(d) The Wyoming State Bar shall appoint three members to serve as members of the Commission. Upon notification of a vacancy of a member of the Commission appointed by the bar, as provided for in these rules, the bar shall fill vacancies as necessary.

(e) 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. Upon notification of a vacancy of a member of the Commission appointed by the governor, as provided for in these rules, the governor shall fill vacancies as necessary.

(f) Upon a showing of good cause, sufficient notice, and after an opportunity for hearing before the Commission, a member or members of the Commission may be removed by a majority vote of the members of the Commission, excluding the member or members of the Commission subject to that vote. The governor may remove any member he appoints as provided in Wyo. Stat. Ann. § 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 circuit court judges; and the Wyoming State Bar may remove any member it appoints.

(Amended January 8, 2014, effective April 1, 2014.)

Rule 5. Organization and authority of Commission.

(a) The full Commission shall select one member to serve as Commission chair, and one member to serve as Commission vice chair in the event the Commission chair is unable to serve because of absence, illness, conflict, recusal, or other reason. The Commission chair shall preside over meetings and hearings of the full Commission. The full Commission shall meet as determined by the Commission chair to consider administrative and procedural matters and shall meet at the call of the Commission chair on an ad hoc basis for disposition hearings.

(b) The Commission shall employ an executive director 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 Commission chair or as otherwise provided by these rules, and perform such other duties assigned by the Commission. The executive director shall assign investigatory panels of not less than

three but not more than five members and adjudicatory panels of not less than three but not more than five members. The investigatory and adjudicatory panels shall include members from each category of membership, lawyer, judge, and elector. Membership on the panels shall rotate in a manner determined by the executive director, provided that no member shall sit on both the investigatory and adjudicatory panel in the same proceeding.

(c) The presiding officer of any adjudicatory panel shall be an attorney.

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

(1) conduct investigations upon request of an investigatory panel;

(2) file and prosecute formal proceedings when directed to do so by an investigatory panel; and

(3) 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.

(e) Except as otherwise provided in these rules, a quorum for the transaction of Commission business shall be two-thirds of the Commission members eligible to participate in the matter under consideration, 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. Commission members may participate in any meeting by telephone except that Commission members who are part of the adjudicatory panel shall appear in person at the adjudicatory hearing. If there are an insufficient number of members eligible to decide any case before the Commission, the Commission chair shall make written request to the appointing authority of recused or ineligible members to appoint temporary replacement Commission members for that case. If the replacements are not named by the appointing authority within 15 days of the request, the Commission chair may appoint the temporary replacement members from the same category as the recused or ineligible member.

(f) Members of the Commission shall be reimbursed for reasonable and necessary expenses incurred pursuant to their duties.

(Amended January 8, 2014, effective April 1, 2014.)

Rule 6. Powers and duties of the Commission.

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

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

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

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

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

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

(f) Approve or reject such negotiated settlements as have been recommended by an investigatory panel. Such approvals may be granted by a majority of the Commission exclusive of members of the adjudicatory panel and those members who have recused.

(g) Refer potential violations of law by a judge or by any other individual or entity, or evidence thereof, to the appropriate authorities.

(h) Maintain the Commission's records.

(i) Prepare the Commission's budget and administer the funds.

(j) Notify the appropriate appointing authority of vacancies on the Commission.

(k) Prepare an annual report of the Commission's activities and maintain data concerning the operation of the Commission and make public the report and statistics which are not confidential.

(l) Inform the public of the existence and operation of the judicial discipline system, including the Commission's address and telephone number.

(m) Perform such other supervisory functions as the Wyoming Supreme Court may from time to time direct.

(Amended November 6, 2012, effective January 1, 2013; amended January 8, 2014, effective April 1, 2014.)

Rule 7. Powers and duties of investigatory panel.

(a) The investigatory panel shall review complaints received by the Commission concerning allegations of judicial misconduct, criminal misconduct, civil misconduct, or disability to determine whether an investigation is warranted. All complaints shall be in writing and verified, and addressed to the Commission.

(b) In the absence of a written complaint, the investigatory panel may commence investigations on its own motion when it becomes aware of information from any source that is deemed reasonably reliable on matters concerning alleged disability, judicial misconduct, criminal misconduct, or civil misconduct falling within the jurisdiction of the Commission.

(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. 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.

(d) When a judge is ordered to submit to an examination, such notice or order shall be given by certified mail addressed to the judge at the address provided by the judge for such purposes. If the investigatory panel or disciplinary counsel are informed that the judge is represented by counsel notice of any investigation or examination shall be served on counsel for the judge.

(e) The investigatory panel may issue subpoenas.

(f) If the investigation does not disclose sufficient cause to warrant further proceedings, the case shall be dismissed. In such event, the complainant shall be notified that the case is closed.

(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, the investigatory panel may issue a letter of correction, issue or recommend 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, 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.

(i) The investigatory panel shall maintain records and files in accordance with these rules and transmit the Notice of Commencement of Proceedings to the adjudicatory panel for formal proceedings as appropriate.

(Amended November 6, 2012, effective January 1, 2013; amended January 8, 2014, effective April 1, 2014.)

Rule 8. Powers and duties of adjudicatory panel.

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

State of Wyoming
Before the Commission on Judicial Conduct and Ethics

An Inquiry Concerning)
)
_____,) No. _____
(Name of Judge)

NOTICE OF COMMENCEMENT OF FORMAL PROCEEDINGS

(b) The notice shall specify in ordinary and concise language the nature of the allegations made against the judge, shall include the names of the adjudicatory panel members, and shall advise the judge of the right to file a written, verified answer to the allegations made against the judge within 20 days after service of the notice upon the judge. Disciplinary counsel has an obligation to timely supplement the allegations made against the judge contained in the notice as discovery and additional information becomes available.

(c) The judge shall file a written, verified answer to the notice of commencement of formal proceedings and to any supplemental allegations. Any request for recusal of a

member of the adjudicatory panel shall be filed at the time of filing an answer and the grounds therefore shall be set forth in the request. In the event the adjudicatory panel member refuses to act upon the request for recusal, the adjudicatory panel shall determine whether the panel member should be recused. There shall be no voir dire examination of any members of the adjudicatory panel.

(d) Following a hearing, the adjudicatory panel shall make findings and adjudications concerning allegations of judicial misconduct, criminal misconduct, civil misconduct and disability, and:

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

(2) where proven by clear and convincing evidence, shall make an adjudication and submit findings to the full Commission for disposition which may include, but is not limited to, temporary discipline or interim suspension as provided in these rules, letters requiring remedial action, issuing or recommending deferred discipline agreements, or stipulated private censure. In determining the appropriate sanction, the adjudicatory panel may consider the following, nonexclusive factors:

(A) the nature, extent, and frequency of the misconduct;

(B) the judge's experience and length of service on the bench;

(C) whether the conduct occurred in the judge's official capacity or private life;

(D) the nature and extent to which the acts of misconduct injured other persons or respect for the judiciary;

(E) whether and to what extent the judge exploited his or her position for improper purposes;

(F) whether the judge has recognized and acknowledged the wrongful nature of the conduct and manifested an effort to change or reform the conduct;

(G) whether there has been prior disciplinary action concerning the judge, and if so, its remoteness and relevance to the present proceeding;

(H) whether the judge complied with prior discipline or requested and complied with a formal ethics advisory opinion;

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

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

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

(e) The presiding officer of the adjudicatory panel shall have the power and responsibility to:

(1) administer oaths and affirmations;

(2) conduct such proceedings or conferences as may be necessary, set and establish dates for exchange of information, conferences, and hearings; issue subpoenas; receive, hear and determine all motions;

(3) 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;

(4) open and officially close any hearing or other formal proceeding and preside over the hearing and regulate its proceedings;

(5) rule upon the admissibility of all evidence, and receive all relevant evidence; and

(6) 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.

(Amended January 8, 2014, effective April 1, 2014.)

Rule 9. Procedural and evidentiary rules applicable.

(a) Rules 5-8, 10-11, 15-16, 29-30, 32-37, 42, 45-46, 56, 58 and 60-61 of the Wyoming Rules of Civil Procedure shall apply to all proceedings before the Commission or its panels so far as the provisions in those rules are in their nature applicable and consistent with these rules.

(b) All hearings before the adjudicatory panel shall be conducted in accordance with the Wyoming Rules of Evidence.

(c) By presenting to the Commission or its panels, 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 non-frivolous 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.

(Amended November 6, 2012, effective January 1, 2013; amended January 8, 2014, effective April 1, 2014.)

Rule 10. Hearings.

(a) *Setting time and place.* — Upon the filing of an answer or upon the expiration of the time for its filing, the presiding officer of the adjudicatory panel shall order a scheduling conference to be held, setting a time and place for the hearing and giving notice of such hearing by certified mail to the judge at least 30 days prior to the date set. In the event the hearing must be rescheduled and/or held at a different location than was originally noticed, the presiding officer of the adjudicatory panel shall give reasonable notice to the parties consistent with due process rights.

(b) *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.

(c) *Presentation of case; failure to answer, appear, or testify.* — Disciplinary counsel has the burden of proving, by clear and convincing evidence, the facts justifying discipline in conformity with the formal statement of allegations made against the judge. Disciplinary counsel shall present the case in support of the allegations made against the judge set forth in the notice of formal proceedings together with such supplementation of allegations made against the judge as have been made and noticed prior to the date of the hearing. 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 an examination ordered by a panel may be considered, unless it appears that such failure was due to circumstances beyond the judge's control.

(d) The proceedings at the hearing shall be reported verbatim, stenographically or by any other means determined appropriate by the presiding officer of the adjudicatory panel.

(e) All members of the adjudicatory panel shall be present at the adjudicatory hearing.

(f) If a complaint has been dismissed, the allegations made in that complaint shall not be used for any purpose in any judicial disciplinary proceedings against the judge

unless it forms a basis of an allegation or set of allegations indicating a pattern of misconduct or disability. If additional information becomes known to disciplinary counsel regarding a complaint that has been dismissed before the filing of formal proceedings, the allegations may be reinvestigated at the direction of an investigatory panel.

(Amended January 8, 2014, effective April 1, 2014.)

Rule 11. Discovery.

(a) *Scheduling conference.* — Within 30 days of the date when the filing of the answer was due, the presiding officer of the adjudicatory panel shall hold a scheduling conference, which shall be recorded by such means as the presiding officer shall determine, with disciplinary counsel and the judge or counsel for the judge. At the scheduling conference, the presiding officer shall set dates by which the parties shall exchange information as to identification of witnesses and relevant documents as provided for in these rules. The date and place of the hearing may be set at the scheduling conference. The presiding 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.

(b) *Witnesses.* — By the date set by the presiding officer of the adjudicatory panel, the parties shall exchange the names and addresses of all persons known to have knowledge of the relevant facts. A party may withhold such information only with permission of the presiding officer of the adjudicatory panel 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 the party requesting the information be withheld must advise the other party of the request without disclosing the subject of the request. The presiding officer of the adjudicatory panel shall set a date for the exchange of the names and addresses of all witnesses the parties may intend to call at the hearing.

(c) *Depositions.* — Any witness testifying at a deposition shall be informed of the confidentiality of the proceedings and such witness shall be required to swear or affirm as part of the oath that such witness shall not disclose the existence of the proceeding, the identity of the judge, or the subject of the testimony or evidence.

(d) By the date set by the presiding officer of the adjudicatory panel, the parties shall exchange:

(1) non-privileged evidence relevant to the formal allegations made against the judge including any supplementation of allegations made against the judge, documents to be presented at the hearing, witness statements and summaries of interviews with witnesses who may be called at the hearing; and

(2) other material only upon good cause shown to the presiding officer of the adjudicatory panel.

(e) Both parties have a continuing duty to supplement information required to be exchanged under this rule.

(f) All discovery shall be completed by the date determined by the presiding officer of the adjudicatory panel.

(g) *Failure to disclose.* — The presiding officer of 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, if any exist, taken from the witness or any summaries, if any exist, of any interviews with the witness.

(h) Disputes concerning discovery shall be determined in the sole discretion of the presiding officer, who shall apply such provisions of Rule 26 of the Wyoming Rules of Civil Procedure as may be appropriate.

(i) Anything to the contrary notwithstanding, attorney notes or attorney work product are not discoverable. All communications of disciplinary counsel with an investigatory panel, including but not limited to disciplinary counsel's investigative report, shall be and remain confidential, and shall not be discoverable.
(Amended January 8, 2014, effective April 1, 2014.)

Rule 12. Issuance and form of subpoenas.

(a) Subpoenas may be issued by the presiding officer of the adjudicatory or investigatory panel, his or her designee, the Commission chair, or his or her designee, or the executive director of the Commission.

(b) Every subpoena shall:

(1) be styled "The State of Wyoming";

(2) state that the proceeding is pending before the Commission or a panel of the Commission;

(3) name the judge who is the subject of the matter pending before the Commission or a panel, and contain, in bold type, the admonition that the proceeding is confidential pursuant to the Rules Governing the Commission on Judicial Conduct and Ethics;

(4) set forth the text of subdivisions (c) (d) and (e) of Rule 45 of the Wyoming Rules of Civil Procedure.

(c) 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 or entity subject to a subpoena resides or is found.
(Amended January 8, 2014, effective April 1, 2014.)

Rule 13. 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 allegations made against the judge by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. Such proceeding shall be governed by the Wyoming Rules of Evidence. The judge may retain and have the assistance of counsel at the judge's own expense. Appearance of counsel constitutes an appearance by the judge. The judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, documents, tangible things, and other evidentiary matters in accordance with these rules.

(b) *Transcript of testimony.* — When a transcript of the testimony has been prepared at the Commission's expense, a copy thereof shall, upon request, be available for purchase by the judge and counsel in connection with the proceedings. In the event the Commission does not order a transcript, 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) *Judge incompetent.* — If the judge has been adjudged 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 may appoint legal counsel unless the judge has a guardian. In the appointment of such legal counsel, consideration shall be given to the wishes of the judge's immediate family. 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 counsel for the judge.
(Amended January 8, 2014, effective April 1, 2014.)

Rule 14. Hearing additional evidence.

The Commission or a panel 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 certified mail to the judge or counsel for the judge giving reasonable notice thereof prior to the date of hearing. The record shall be deemed closed when the adjudicatory hearing ends, and shall not be reopened absent a showing of extraordinary circumstances.
(Amended January 8, 2014, effective April 1, 2014.)

Rule 15. Stipulated motion for order of discipline.

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

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

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

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

(c) *Affidavit of consent.* — A judge who admits any or all of the formal allegations made against the judge shall sign an affidavit stating that:

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

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

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

(4) the judge consents to any sanction; and

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

(d) *Order of discipline.* — If a stipulated motion for public discipline is approved, 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 may enter the order as recommended or reject the recommendation and enter an order it deems appropriate. The final order shall be based upon the formal allegations made against the judge and any admission.
(Amended January 8, 2014, effective April 1, 2014.)

Rule 16. Final adjudication.

(a) *Final adjudication in favor of the judge.* — If the adjudicatory panel by majority vote fails to find judicial misconduct, criminal misconduct, civil misconduct or disability by clear and convincing evidence, then the proceedings shall be dismissed and the record shall show an adjudication in favor of the judge.

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

(c) Within a reasonable time 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 findings of facts, conclusions of law and any minority opinions. A copy of the decision shall be served on the judge or counsel for the judge.

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

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

(f) *Retirement for disability.* — In a proceeding involving a judge's alleged disability, if after a hearing before the Commission, a majority of the Commission members finds by clear and convincing evidence that a judge suffers from a disability, it shall recommend the Wyoming Supreme Court retire the judge for disability.

(Amended November 6, 2012, effective January 1, 2013; amended January 8, 2014, effective April 1, 2014.)

Rule 17. 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 as to costs or fees incurred or paid by the Commission in connection with any proceedings concerning a judge.

(Amended January 8, 2014, effective April 1, 2014.)

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

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

(Amended January 8, 2014, effective April 1, 2014.)

Rule 19. 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 shall be based on the record, shall specify the grounds relied on, and shall be accompanied by petitioner's brief and proof of service of a copy of the petition and of the brief on disciplinary counsel and the Commission. The petitioner shall file with the clerk of the Wyoming Supreme Court the original and six copies of both the petition and the brief. Within 20 days after service on the Commission, disciplinary counsel shall serve and file (along with six copies) respondent's brief. Within 15 days after service of such brief, the petitioner may file (along with six copies) a reply brief, which shall also be served on disciplinary counsel and the Commission.

(b) *Failure to file petition.* — Failure to file a petition within the time provided may be deemed as consent to a determination on the merits based upon the record filed by the Commission.

(c) *Applicable rules.* — The Wyoming Rules of Appellate Procedure shall apply to proceedings in the Wyoming Supreme Court for review of a recommendation of the Commission, except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate or inconsistent.

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

(Amended January 8, 2014, effective April 1, 2014.)

Rule 20. 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.

(Amended January 8, 2014, effective April 1, 2014.)

Rule 21. 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.

(b) No member of the Commission shall serve in the capacity as a member of both the investigatory panel and the adjudicatory panel in the same proceeding.

(c) 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. Once a member of the Commission is recused from a proceeding for any reason, such member shall not subsequently be permitted to consider any aspect of such proceeding.

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

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

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

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

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

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

(Amended January 8, 2014, effective April 1, 2014.)

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

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

(b) *Exceptions to confidentiality.* — The Commission may refer potential violations of law by a judge or by any other individual or entity, or evidence thereof, to the appropriate authorities. 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, the Commission shall send the judge a copy of all documents or other matters disclosed. 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.

(c) *Public release of information.* — In any 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 the pendency of an investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing without pre-judgment, and to state that the judge denies the allegations. The statement shall be first 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.

(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".

(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.

(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.

(Amended January 8, 2014, effective April 1, 2014.)

Rule 23. 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.

(Amended January 8, 2014, effective April 1, 2014.)

Rule 24. 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.

(b) When the Commission is presented with a complaint or when an investigatory panel or disciplinary counsel learns of conduct by a judge which does not in and of itself give probable cause that judicial misconduct, criminal misconduct, or civil misconduct has occurred, but is of such nature which indicates that a potential pattern of judicial misconduct, criminal misconduct, or civil misconduct may be indicated, the Commission chair may assign the matter to an investigatory panel.

(Amended January 8, 2014, effective April 1, 2014.)

Rule 25. 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.
(Amended January 8, 2014, effective April 1, 2014.)

Rule 26. [Repealed].

[Repealed January 8, 2014, effective April 1, 2014.]

Rule 27. [Repealed].

[Repealed January 8, 2014, effective April 1, 2014.]

Rule 28. [Repealed].

[Repealed January 8, 2014, effective April 1, 2014.]