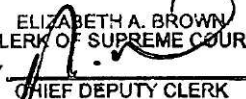


FILED

**Commission to Study the Statutes and Rules Governing the Commission on
Judicial Discipline and Update, as Necessary, the Code of Conduct**

Final Recommendations

APR 19 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

The Nevada Supreme Court convened the Commission to Study the Statutes and Rules of the Commission on Judicial Discipline and Update, as Necessary, the Nevada Code of Judicial Conduct on August 13, 2021 in response to the 2021 Legislative Session's AB43. Under the chairmanship of Justice Ron Parraguirre and vice-chairmanship of Senior Justice James W. Hardesty, the Commission was tasked with studying, and making recommendations concerning, the procedural and substantive statutes and rules of the Nevada Commission on Judicial Discipline. Commission membership is comprised of experienced legal professionals and members of the Nevada judiciary from across the state.

The following recommendations are the result of the Commission's efforts over the course of five meetings with extensive participation and guidance from stakeholders and professionals within the judicial discipline field. The Chairs would like to take this opportunity to offer sincere thanks to all participants for their input and collaboration.

The Nevada Supreme Court's Commission to Study the Statutes and Rules of the Commission on Judicial Discipline and Update, as Necessary, the Nevada Code of Judicial Conduct hereby makes the following recommendations:

1. To the Nevada Legislature, to ensure due process and fundamental fairness is afforded to all Nevada Judges, the Legislature takes the necessary steps and adopts rules to bifurcate Commission proceedings so that one panel of Commissioners will consider whether a formal disciplinary proceeding should be pursued and a different panel will preside over the formal hearing. This bifurcated process is currently followed in 32 states.

Vote: 10 in favor, 3 opposed.

The Nevada Supreme Court's Commission to Study the Statutes and Rules of the Commission on Judicial Discipline and Update, as Necessary, the Nevada Code of Judicial Conduct hereby makes the following recommendations to the Nevada Commission on Judicial Discipline [NJDC]:

Procedural Rules of the Nevada Commission on Judicial Discipline

Rule 2. Definitions. In these rules, unless the context requires otherwise:

1. "Alternate" means any judge designated by the Nevada Supreme Court to act in place of a specific judicial member of the Commission. "Alternate," when referring to a bar member, means any lawyer designated by the Board of Governors of the State Bar of Nevada to act in place of a specific lawyer member of the Commission. "Alternate," when referring to a lay member, means any lay member designated by the Governor to act in place of a specific lay member of the Commission.
2. "Commission" means the Nevada Commission on Judicial Discipline.
3. "Executive Director" means any person who serves in the administrative capacity as Executive Director of the Commission.
4. "General Counsel" means any person who serves in the capacity of legal advisor to the Commission.
5. "Formal Statement of Charges" means the document filed by the designated Prosecuting Officer.
6. "Judicial Misconduct" means commission of any act which is a ground for discipline set forth in NRS 1.4653.
7. "Member" shall include such Alternates who have been seated in any specific meeting, case, or proceeding.
8. "Special counsel" means an attorney designated by the commission to file and prosecute a complaint or a formal statement of charges.
9. "Judge" shall have the meaning as set forth in NRS 1.428.
10. "Reasonable Probability" means a finding by the Commission that there is a reasonable probability the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the Respondent named in the complaint.

11. "Respondent" means any supreme court justice, appellate court judge, district judge, justice of the peace, or municipal court judge or referee, master, or commissioner who is the subject of any disciplinary or removal proceedings instituted in accordance with these rules.

12. "Service" and "notice" mean service or notice by personal delivery or by registered mail or certified mail, return receipt requested, or by electronic means (email). "Serve" and "notify" have corresponding meanings.

Vote: 13 in favor, 0 opposed.

Rule 6. Formal Charges.

Upon the filing of the Formal Statement of Charges, said Statement and other documents and pleadings later formally filed with the Commission shall be posted on the website within forty-eight (48) hours of filing. Said documents shall also include any pleadings filed in the Supreme Court of Nevada, as well as any decisions by the Supreme Court of Nevada within forty-eight (48) hours of filing and/or publication. The Commission's deliberative sessions and meeting minutes must remain private and shall not be disclosed. The filing of the Formal Statement of Charges does not justify the Commission, its counsel or staff in making public any correspondence, notes, work papers, interview reports, or other evidentiary matter, except at the formal hearing or with explicit consent of the Respondent.

Vote: 13 in favor, 0 opposed.

Rule 12. Determination to Require an Answer.

1. The Commission shall review all reports of the investigation to determine whether there is sufficient reason to require the Respondent to answer. If there is insufficient reason to proceed, the Commission may dismiss a complaint with or without a letter of caution. A letter of caution is not to be considered an event of discipline. The Commission may take into consideration a dismissal with a letter of caution in subsequent complaints against a Respondent when considering the appropriate discipline to be imposed.

2. If the Commission determines that its investigator should schedule an interview before requiring an answer, the investigator shall provide, in writing, a description of the subject matter of the issue being investigated. If the Commission determines it could in all likelihood make a determination

that there is a Reasonable Probability the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action, it shall require the Respondent named in the complaint to respond.

3. The Commission shall serve the complaint upon the Respondent who shall have 30 days in which to respond to the complaint. Failure of the Respondent to answer the complaint shall be deemed an admission that the facts alleged in the complaint are true and establish grounds for discipline.

4. In preparing to respond to a determination of Reasonable Probability, the Respondent has the right to inspect all records of the Commission relating to the disciplinary action against the Respondent and to be fully advised as to the contents of such records. Privileged communications and work product of the Commission's counsel are not subject to inspection. To the extent practicable, the Respondent shall be supplied with all records of the Commission subject to inspection along with service of the complaint.

5. Amendment of allegations in the complaint, prior to a finding of Reasonable Probability, may be permitted by the Commission. The Respondent shall be given notice of any amendments, and additional time as may be necessary to respond to the complaint.

6. The commission investigator may compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents for purposes of investigation. Subpoenas must be issued by the executive director of the commission in the same manner as subpoenas are issued by clerks in the district courts of this state.

Vote: 13 in favor, 0 opposed.

Rule 18. Formal Hearing.

1. When the answer has been filed, a formal hearing shall be scheduled, if practicable, within 60 days unless waived by both the Commission and the Respondent. The Respondent and all counsel must be notified of the time and place of the hearing and must first be consulted concerning the scheduling thereof to accommodate, where possible, the schedules of the Respondent and counsel and those of their witnesses. Unless good cause is shown, the proper venue for judicial hearings and proceedings shall be the jurisdiction where the alleged misconduct occurred.

2. If the Respondent or counsel should fail to appear at the hearing, the respondent shall be deemed to have admitted the factual allegations contained in the formal complaint and shall be deemed to

have conceded the merits of the complaint. Absent good cause, the Commission shall not continue or delay proceedings because of the respondent's or counsel's failure to appear.

3. All documents required or permitted to be filed with the Commission in formal, public cases must strictly comply with the Commission's Public Case Filing Procedures attached hereto as Exhibit "A" and incorporated herein by reference.

Vote: 13 in favor, 0 opposed.

Rule 21. Witnesses.

Witnesses are entitled to appear with counsel, who may represent and advise them on matters affecting their rights. Upon a showing of good cause, remote testimony of witnesses shall be permitted.

Vote: 13 in favor, 0 opposed.

Rule 26. Cross-Examination, Evidence, and Time Restrictions.

The Commission and the Respondent are each entitled to present evidence and produce and cross-examine witnesses, subject to the rules of evidence applicable to civil proceedings. The Commission shall inquire of each party how much time will be required to present their case. Each party shall be allotted the reasonable amount of time necessary to present their case.

Vote: 13 in favor, 0 opposed.

Rule 27. Order of Dismissal.

If the Commission determines either that the charges against the Respondent have not been proven by clear and convincing evidence, or that discipline is not warranted in light of facts made to appear in mitigation or avoidance, it shall forthwith prepare and file its order publicly dismissing the charges against the Respondent with the Supreme Court of Nevada. Said Order of Dismissal shall also be published on the Commission's website within forty-eight (48) hours of filing. Any sitting member of the Commission who does not agree with the order, which has been approved by other Commission members, must be allowed ten (10) days in which to prepare and sign a concurring or dissenting opinion. All orders and opinions shall be concurrently filed.

Vote: 13 in favor, 0 opposed.

Nevada Commission on Judicial Discipline Public Case Filing Procedures

Procedure 2: Motions

1. Content of Motions: Response; Reply.

Unless another form is elsewhere prescribed by the Procedural Rules of the Commission, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of the Procedural Rules of the Commission or these Public Case Filing Procedures governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion within ten (10) days after service of the motion. A reply to the opposition to a motion shall be filed within three (3) days. The Commission may shorten or extend the time for responding to any motion. Upon the expiration of the time period as specified in this procedure or such other time periods as the Commission may order, motions shall be deemed submitted to the Commission. Decisions on motions may be made without oral argument unless otherwise requested by a party and ordered by the Commission. The Commission shall rule on all pre-hearing motions filed 60 days before the hearing at least 14 calendar days prior to hearing. The parties and Commission members shall be permitted to appear remotely for any pre-hearing motions.

Vote: 13 in favor, 0 opposed.

Recommendations Regarding Diversity, Equity, and Inclusion

The ADKT 0582 Commission recommends that the Nevada Commission on Judicial Discipline (NCJD) amend the Procedural Rules of the NCJD, pursuant to Rule 36, to include a rule stating the following: “When a Commissioner’s term is expiring, or when a vacancy occurs on the Commission, the Executive Director will inform the appointing authority in writing and/or via electronic communication of the expiration/vacancy. The Executive Director may not advise, recommend, or request that the appointing authority appoint a specific person (including the incumbent) to fill the expiring term/vacancy.”

Vote: 13 in favor, 0 opposed.

The Nevada Supreme Court's Commission to Study the Statutes and Rules of the Commission on Judicial Discipline and Update, as Necessary, the Nevada Code of Judicial Conduct hereby makes the following recommendations to the Nevada Governor, the Board of Governors of State Bar of Nevada, and the Nevada Supreme Court:

The ADKT 0582 Commission makes a finding that it is in the interest of fairness to the public and to judges who are subject to the processes of the Nevada Commission on Judicial Discipline that the Commission's members represent the diversity, including gender diversity, of the citizens of the State of Nevada and the judges who appear before it.

Vote: 13 in favor, 0 opposed.

The ADKT 0582 Commission recommends to the Nevada Governor, the Board of Governors of State Bar of Nevada, and the Nevada Supreme Court, when informed by the Executive Director of the Nevada Commission on Judicial Discipline that a Commissioner's term is expiring or that a vacancy has occurred, that the appointing entity advertise the vacancy through their own established modes of communicating with members of the public, the State Bar of Nevada, and members of the Nevada Judiciary (organization website advertisement, state and local bar association newsletters, e-mail, etc.) prior to making the appointment.

Vote: 13 in favor, 0 opposed.