

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS  
Director and State Court  
Administrator



JOHN MCCORMICK  
Assistant Court Administrator

**AGENDA**

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

**Date and Time of Meeting:** January 18, 2023 at 2:00 PM

**Place of Meeting:** Remote Access via Zoom (Zoom.com or Zoom app, see “Notices” for access information)

***All participants attending remotely should mute their lines when not speaking; it is highly recommended that teleconference attendees use a landline and handset in order to reduce background noise.***

- I. Call to Order
  - A. Call of Roll
  - B. Determination of a Quorum
  - C. Welcome and Opening Remarks
- II. Public Comment
- III. Review and Approval of Previous Meeting Summary\* (*Tab 1; pages 3-8*)
  - A. November 1, 2022
- IV. Items for Commission Discussion and Possible Action
  - A. Comparison List of Resolved Matters (*Tab 2; pages 9-19*)
- V. 2023 Legislative Session – Amended BDR Language (*Tab 3; pages 20-21*)
- VI. Other Items/Discussion
- VII. Next Meeting Date and Location
  - A. TBD
- VIII. Public Comment
- IX. Adjournment

- Action items are noted by \* and typically include review, approval, denial, and/or postponement of specific items. Certain items may be referred to a subcommittee for additional review and action.
- Agenda items may be taken out of order at the discretion of the Chair in order to accommodate persons appearing before the Commission and/or to aid in the time efficiency of the meeting.
- If members of the public participate in the meeting, they must identify themselves when requested. Public comment is welcomed by the Commission but may be limited at the discretion of the Chair.
- The Commission is pleased to provide reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If assistance is required, please notify Commission staff by phone or by email no later than two working days prior to the meeting, as follows: Jamie Gradick, (775) 687-9808: [jgradick@nvcourts.nv.gov](mailto:jgradick@nvcourts.nv.gov)
- This meeting is exempt from the Nevada Open Meeting Law (NRS 241.030)
- At the discretion of the Chair, topics related to the administration of justice, judicial personnel, and judicial matters that are of a confidential nature may be closed to the public.
- **Notice of this meeting was posted in the following locations:** Nevada Supreme Court website: [www.nvcourts.gov](http://www.nvcourts.gov); Carson City: Supreme Court Building, Administrative Office of the Courts, 201 South Carson Street; Las Vegas: Nevada Supreme Court, 408 East Clark Avenue.

Meeting ID: 842 7977 7096

Passcode: 696110

Please Note: Those attending via mobile device should use the Zoom application to access the meeting.

# TAB 1

Supreme Court of Nevada  
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**MEETING SUMMARY**

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

November 1, 2022

3:00 PM

*Summary prepared by: Jamie Gradick*

**Members Present**

Chief Justice Ron Parraguirre, Chair  
Justice James Hardesty, Vice-chair  
Ms. Lyn Beggs  
Judge Bert Brown  
Judge Mark Denton  
Judge Richard Glasson  
Judge Kevin Higgins  
Mr. Dennis Kennedy  
Judge Tammy Riggs  
Judge T. Arthur Ritchie, Jr.

**AOC Staff Present**

Jamie Gradick  
Almeda Harper  
John McCormick

**Guests Present**

Ms. Dominika Batten  
Mr. Kevin Benson  
Ms. Valerie Carter  
Mr. Don Christensen  
Ms. Kim Farmer  
Professor Keith Fisher  
Mr. Daniel Hooge  
Ms. Stefanie Humphrey  
Mr. Joseph Sanford  
Ms. Nancy Schreihans  
Judge Diana Sullivan  
Mr. Thomas Wilson

- I. Call to Order
  - Chief Justice Parraguirre called the meeting to order at 3:05 pm.
  - Ms. Gradick called roll; a quorum was present.
  - Opening Comments
    - Chief Justice Parraguirre welcomed attendees.
- II. Public Comment
  - No public comment was offered.
- III. Review and Approval of Previous Meeting Summary
  - The summary of the September 23, 2022 meeting was approved.
- IV. Items for Commission Review and Discussion

- Consolidated List of Proposed Rule Changes
  - Chief Justice Parraguirre commented on the various rule proposals and responses submitted for the meeting.
    - Judge Higgins commented that he had not realized that Director Deyhle had submitted an additional response to the materials submitted for the meeting, but he would be happy to go through Director Deyhle's most recent document and offer his own response.
    - Ms. Gradick provided a brief overview of each document that was submitted.
      - ♦ After discussion, it was discovered that many Commission members hadn't had a chance to fully review all materials as the latest submission had just, recently, posted to the Commission's webpage.
      - ♦ Judge Riggs requested that the discussion be tabled until all members had a chance to fully review Director Deyhle's latest submission.
  - Chief Justice Parraguirre commented that this Commission's task was to meet, review the issues, and submit a report with recommendations; disappointment was expressed with the lack of progress towards completing that goal.
    - Judge Higgins commented that he doesn't believe any of the proposed rule changes (with the exception of the bifurcation issue, which would, likely, require a constitutional change) require Legislative action. It was his belief that the judges and Director Deyhle had made more progress towards reaching an agreement on some of these issues.
    - Justice Hardesty commented that the NCJD is in control of its rules, this ADKT Commission would be making rule change recommendations to the NCJD; it would be up to the NCJD to decide whether to act on the recommendation or not.
    - Justice Hardesty commented that there are a few issues, more systemic in nature, that this Commission, if it chose to do so, could continue to vet into the next year.
      - ♦ Justice Hardesty informed attendees that he had hoped the Commission would amend its BDR to include the things that would require legislative change; if there isn't a need for Legislative action, then, perhaps, the Commission needs to make its recommendations to the NCJD, make recommendations to the appointing bodies, and continue studying those issues that may require Constitutional amendment.
    - Chief Justice Parraguirre commented that the Commission may be "as far as it can go" with the Rule revisions and asked that all members fully review the latest meeting materials submissions.
      - ♦ The next meeting will focus on "hashing out" what has been agreed upon and what issues still need to be aligned, if they can be. From this, the group will create a list of recommended rule revisions to take action on.
- Chief Justice Parraguirre introduced Mr. Daniel Hooge with the State Bar of Nevada and informed attendees that he had invited Mr. Hooge to participate in a discussion regarding election and campaign practices and where discipline jurisdiction over non-judge candidates for judicial office lies.
  - Mr. Hooge commented that Rule 8.2(b) allows his office to "broaden its scope" to pull in certain candidates; however, his office wouldn't have jurisdiction over the non-lawyer, non-judge candidates running in the rural counties.

- Attendees discussed the procedures for processing complaints; Mr. Hooge commented that an investigation can take 90 days to 6 months. In an election, the timeliness of the process would pose a challenge.
  - Chief Justice Parraguirre commented that the deterrent of there being a consequence even after the election is over (if the candidate wins) could still be beneficial.
  - Attendees discussed circumstances under which the NCJD would “take over” jurisdiction of these cases.
    - ♦ Mr. Hooge commented that the NRS 1.440 states “exclusive jurisdiction” over discipline complaints lies with NCJD; this raises jurisdictional questions when lawyer candidates are being investigated for ethical violations and win the election – does jurisdiction of the complaint investigation transfer to NCJD?
    - ♦ Justice Hardesty asked whether the jurisdictional issue could be cured by Supreme Court Rule; Mr. Hooge agreed that could be helpful. Attendees confirmed that the “exclusive jurisdiction” language is not contained in the Constitution, only in the NRS.
    - ♦ Mr. Kennedy commented that there have been instances where the process has been abused and used as a campaign tactic.
- Term Limits and Appointment Issues – Continued Discussion
  - Chief Justice Parraguirre introduced Kevin Benson, with the Governor’s Office, and Kim Farmer with the State Bar of Nevada.
    - During previous meetings, Commission members requested that appointing authorities be included in discussions regarding diversity and equity issues as well as in conversations regarding the possibility of imposing term limits on NCJD membership.
  - Chief Justice Parraguirre asked Judge Riggs to provide a brief overview of her proposed recommendations as presented in the meeting materials. (*Please see meeting materials for additional information*)
    - Judge Riggs commented that a woman district judge or attorney has never been appointed to the standing Commission. As more and more women come before the NCJD, it’s important that diversity and gender equity is represented.
    - Judge Riggs provided a brief overview of her 4 recommendations.
      - ♦ In regards to the fourth recommendation, Judge Riggs clarified that Nevada lawyers and judges have ethics training requirements and already meet this proposed qualification. Additionally, as far as lay commissioners, anyone with any sort of fiduciary duty or professional responsibility should have no issue meeting this requirement.
    - Chief Justice Parraguirre clarified that the goal is to “bring these issues to the attention” of the appointing authorities, not to mandate any change. A “mandate” would likely require constitutional change.
    - Chief Justice Parraguirre asked Judge Riggs whether it is her understanding that the members of the NCJD have no “fundamental disagreement” with trying to improve diversity on the NCJD.
      - ♦ Judge Riggs commented that, while she cannot speak for Director Deyhle or the NCJD membership, she did receive correspondence from Director Deyhle addressing these topics.

- Judge Riggs commented that Director Deyhle does not appear to agree with all of her recommendations; however, Director Deyhle is not an appointed member of this ADKT Commission.
  - ♦ Judge Denton commented that Director Deyhle has considered these issues extensively and has consulted with the NCJD membership on them.
  - ♦ Judge Denton expressed agreement with Director Deyhle’s observations as presented in his correspondence.
- Chief Justice Parraguirre asked Mr. Benson and Ms. Farmer if they had any comments or questions.
  - Mr. Benson commented that the Governor is committed to diversity in the many appointments he makes.
  - Ms. Farmer asked for clarification regarding whether ethnicity and race are also part of the component that the Commission would like the Board to consider.
    - ♦ Judge Riggs commented that that her recommendations are “looking for complete diversity” as judiciary diversity continues to increase.
    - ♦ Ms. Farmer explained that the process being described is the process the Board of Governors currently uses; this feedback will be useful as the Board is preparing to make an appointment.
- Professor Fisher cautioned against being unduly prescriptive. Several states experience difficulty in filling these positions.
  - Implementing term limits and credentialing requirements could be counterproductive if too prescriptive.
  - Justice Hardesty commented that, in his opinion, Judge Riggs’s recommendations are, mostly, expansive. With the exception of part of number 4, the recommendations seek to expand the group of potential appointees.
    - ♦ Requiring specific ethical credentialing or backgrounds could be too prescriptive.
    - ♦ The appointment issue is completely within the purview of the appointing bodies; the NCJD doesn’t play a role in the appointment of its members other than notifying the appointing bodies that an appointment needs to be made.
  - Attendees briefly discussed the role of the NCJD in offering recommendations regarding potential appointments.
    - ♦ Judge Denton commented that an appointment recommendation made by the NCJD is not binding.

V. 2023 Legislative Session – Proposed BDR

- Chief Justice Parraguirre asked Mr. John McCromcik to provide an overview of the BDR amendment process.
  - Mr. McCormick informed attendees that, because of the LCB’s deadlines and the the timing of the submission, the deadline to amend the BDR “placeholder” language has passed. However, the BDR can be amended using the formal bill amendent process once the Legislative session begins.
    - If the only change we want to make is to add in the amending of NRS 1.440 language from “exclusive” to “concurrent”, we may be able to work with LCB to get that done ahead of session.
    - Justice Hardesty made a motion that the ADKT Commission’s BDR be revised to include an amendment of NRS 1.440 language from “exclusive jurisdiction” to “concurrent jurisdiction”.

- ♦ Mr. Dennis Kennedy seconded the motion.
- ♦ A general consensus vote of all present members was taken, the motion passed. No opposition or abstentions were recorded.

VI. Other Items/Discussion

- Chief Justice Parraguirre commented that Commission membership will take action on recommendations at the next meeting.
  - Judge Higgins was asked to create a list of “resolved” matters and those issues still needing “alignment” and to provide a list of proposed motions on the rule revisions for the Commission to consider at the next meeting.
  - Mr. McCormick was asked to redraft the BDR to include the “concurrent jurisdiction” language.

VII. Next Meeting Date

- Chief Justice Parraguirre commented that he would like to hold the next meeting as soon as practicable.

VIII. Public Comment

- No public comment was offered.

IX. Adjournment

- The meeting was adjourned at 4:35 pm.



# TAB 2

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

1. To ensure due process and fundamental fairness is afforded to all Nevada Judges, the NJDC 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. *See Tab 4, June 24, 2022 Meeting Materials.*

2. Rule 2.8. Replace the phrase “Prosecuting Officer” with “Special counsel” to comport with NRS 1.4295.

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.

3. Rule 6. Replace “Upon the filing of the Formal Statement of Charges, said Statement and other documents later formally filed with the Commission shall be made accessible to the public, and hearings shall be open.” with “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.”

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.

4. Rule 12.2. Add new language “The Commission shall provide a courtesy copy of the complaint and all corresponding documents to the Respondent prior to scheduling an interview or requiring an Answer.”

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. **The Commission shall provide a courtesy copy of the complaint and all corresponding documents to the Respondent prior to scheduling an interview or requiring an Answer.** 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.

5. Rule 18.1. Replace “The Respondent and all counsel must be notified of the time and place of 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.” with “The hearing shall be scheduled at a time that is mutually agreed upon by the parties and the Commission.”

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 hearing shall be scheduled at a time that is mutually agreed upon by the parties and the Commission.** The proper venue for judicial hearings and proceedings shall be determined by the Commission at its sole discretion.
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.

6. Rule 18.1. Replace “The proper venue for judicial hearings and proceedings shall be determined by the Commission at its sole discretion.” with “The proper venue for judicial hearings and proceedings shall be the jurisdiction where the alleged misconduct occurred.”

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 hearing shall be scheduled at a time that is mutually agreed upon by the parties and the Commission. 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.

7. Rule 26. Replace “The Commission may limit the time each party is allowed to present evidence.” with “The Commission shall inquire of each party how much time will be required to present their case. Each party shall be allotted the amount of time that was requested to present their case.”

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 amount of time that was requested to present their case**



8. Rule 27. Replace “...it shall forthwith prepare and file its order publicly dismissing the charges against the Respondent.” with “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.”

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.

9. Rule 21: Add new language “Remote testimony of witnesses shall be permitted.”

Rule 21. Witnesses.

Witnesses are entitled to appear with counsel, who may represent and advise them on matters affecting their rights. **Remote testimony of witnesses shall be permitted.**

10. Procedure 2. Motions: Add new language “The Commission shall rule on all pre-hearing motions at least 14 calendar days prior to hearing. Pre-hearing motions shall be afforded oral argument in public unless the parties stipulate otherwise. The parties and Commission members shall be permitted to appear remotely for any pre-hearing 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 shall be made without oral argument unless otherwise 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. Pre-hearing motions shall be afforded oral argument in public unless the parties stipulate otherwise. The parties and Commission members shall be permitted to appear remotely for any pre-hearing motions.**

# TAB 3

NRS 1.440 is hereby amended to read as follows:

**Section 1.** 1. The Commission has ~~(exclusive)~~ jurisdiction over the public censure, removal, involuntary retirement and other discipline of judges which is coextensive with its jurisdiction over justices of the Supreme Court and must be exercised in the same manner and under the same rules. *The Commission's jurisdiction with respect to attorney judges begins when the judge is sworn in. The State Bar of Nevada retains jurisdiction over matters that occurred prior to the assumption of office.*

2. Any complaint or action, including, without limitation, an interlocutory action or appeal, filed in connection with any proceeding of the Commission must be filed in the Supreme Court. Any such complaint or action filed in a court other than the Supreme Court shall be presumed to be frivolous and intended solely for the purposes of delay.

3. The Supreme Court shall appoint two justices of the peace and two municipal judges to sit on the Commission for formal, public proceedings against a justice of the peace or a municipal judge, respectively. Justices of the peace and municipal judges so appointed must be designated by an order of the Supreme Court to sit for such proceedings in place of and to serve for the same terms as the regular members of the Commission appointed by the Supreme Court.

**Commented [MJ1]:** Do we need to remove exclusive with the clarifying addition below?