

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:** September 23, 2022 @ 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 4-7***)
  - A. August 12, 2022
- IV. Nevada Commission on Judicial Discipline Presentation – NCJD Director Paul Deyhle (***Tab 2; pages 9-44***)
- V. Proposed Items for Commission Review
  - A. Action Item Recommendations for Commission Approval as Proposed by Judge Tammy Riggs\* (***Tab 3; pages 46-47***)
  - B. Current Procedural Rules & Additional Proposed Topics for Discussion (***Tab 4; pages 49-70***)
    1. Rules
      - a. Rule 3.6
      - b. Rule 6
      - c. Rule 12
      - d. Rule 16
      - e. Rule 18
      - f. Rule 24
      - g. Rule 26

- h. Rule 27
- 2. Additional Topics
  - a. Electronic Testimony of Witnesses
  - b. Oral Argument and Prescribed Time Limit for Ruling on Prehearing Motions
  - c. Commissioner Term Limits
  - d. Gender Equality in Panel Membership
  - e. Bifurcation of Commission Proceedings
  - f. Review of NJDC's Decision to Not Investigate Instances of Misconduct by Judicial Candidates During the 2020 Election Cycle
  - g. Review of Language Used

VI. 2023 Legislative Session – Proposed BDR (*Tab 5; page 72*)

VII. Other Items/Discussion

VIII. Next Meeting Date and Location  
A. TBD

IX. Public Comment

X. 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: 850 3788 7710  
Participant Passcode: 127936

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

# TAB 1

ADMINISTRATIVE OFFICE OF THE COURTS

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Director and State Court  
Administrator



JOHN MCCORMICK  
Assistant Court Administrator

**MEETING SUMMARY**

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

August 12, 2022

1:00 PM

*Summary prepared by: Jamie Gradick*

**Members Present**

Chief Justice Ron Parraguirre, Chair  
Justice James Hardesty, Vice-chair  
Judge Samuel Bateman  
Ms. Lyn Beggs  
Judge Bert Brown  
Judge Mark Denton  
Judge Richard Glasson  
Judge Elana Graham  
Judge David Hardy  
Judge Kevin Higgins  
Judge Tammy Riggs  
Judge T. Arthur Ritchie  
Judge Tom Stockard  
Judge Ann Zimmerman

**AOC Staff Present**

Angelina Arnold  
Jamie Gradick  
John McCormick  
Almeda Harper

**Guests Present**

Ms. Dominika Batten  
V. Carter  
Mr. Don Christensen  
Director Paul Deyhle  
Professor Keith Fisher  
Ms. Nancy Schreihans  
Mr. Thomas Wilson

I. Call to Order

- Chief Justice Parraguirre called the meeting to order at 1:00 pm.
- Ms. Harper called roll; a quorum was present.
- Opening Comments
  - Chief Justice Parraguirre welcomed attendees.
  - Chief Justice Parraguirre welcomed Professor Keith Fisher from the National Judicial College and thanked him for his willingness to participate in the Commission's efforts.

II. Public Comment

- No public comment was offered.

- III. Review and Approval of Previous Meeting Summary
- The summary of the June 20, 2022 meeting was approved.
- IV. Follow-Up Items from Previous Meeting
- A. “Judicial Perspectives on Judicial Discipline: Trends and Outlooks” (*Please see meeting material packet for additional information*)
- This presentation was offered at the recent Nevada Judicial Leadership Summit and provided for this meeting for informational purposes.
  - Justice Hardesty commented that the presentation provides a “nice outline” of the issues and commented that it’s interesting that, according to the breakdown of the “sources of complaints” on slide 16, complaints weren’t filed by other judges in 2021.
    - This issue came up a recent State Bar of Nevada meeting; judges on that panel indicated that they had, at some point in their career, participated in or witnessed judges referring other judges to NCJD.
    - Judge Stockard commented that there is caselaw that “reminds” judges of their duty to report misconduct by other judges.
    - Professor Fisher commented that interpretation of this duty varies based upon the language used. In some instances, the language requires “actual knowledge” and in some states, “awareness” is enough.
  - Justice Hardesty commented that it’s not surprising that criminal and family law are the areas drawing the largest number of complaints; however, he was surprised by how few cases required action to be taken given the number of complaints filed.
    - Professor Fisher commented that the presentation’s statistics are consistent with most other states; almost 90% of complaints are dismissed.
- B. NCJD Statistics Collection and Reporting
- Judge Denton provided a brief overview of the materials provided and suggested that Director Deyhle make a presentation on these subjects at the Commission’s next meeting.
    - Justice Hardesty supported this recommendation and added that Mr. Deyhle also be prepared to present on budgetary constraints on the NCJD, as well.
- C. NCJD Budgetary Constraints – no additional information provided; this will be addressed by Director Deyhle’s presentation in the next meeting.
- D. Update on Removal of Election Practices” from Standing Committee
- Chief Justice Parraguirre referred attendees to the materials under “Tab 4”.
  - Justice Hardesty commented that the change to this committee was result of resource concerns and the fact that these issues would be addressed under complaints lodged with NCJD during elections.
    - Justice Hardesty expressed concern that complaints have arisen since this Order was entered regarding election/campaign-based violations that the NCJD hasn’t addressed.
  - Chief Justice Parraguirre commented that there was also a developing body of caselaw, at the time, that impacted the change in the Committee’s focus.
    - Professor Fisher commented that this issue is common in states where judges are elected. *Minnesota v. White* played an important role in this; many judicial candidates have brought challenges against state codes of conduct on First Amendment grounds.

- Judge Stockard commented that the Code of Judicial Conduct applies to judges and judicial candidates; Section 21 of the Constitution gives Judicial Discipline authority to discipline only judges. This creates a tension in elections because under the Constitution, if a candidate in a judicial election isn't already a judge, he/she isn't subject to the NCJD unless/until he/she becomes a judge.
- Justice Hardesty asked whether this tension could be "cleared up" by some means and, if so, how? Would this require a statutory change? Chief Justice Parraguirre commented that the attorney candidates are subject to the Code of Professional Conduct and discipline via the Bar.
- Judge Hardy requested that Director Deyhle also include in his presentation information on what resources and rules would be needed in order for the NCJD to take on role in review of election practices. Chief Justice Parraguirre asked that Mr. Deyhle also include any suggestions he might have for addressing these issues as well.
- A suggestion was made that NCJD and the State Bar develop mechanisms for collaboration on election practice review issues; this is something that can be explored further following Mr. Deyhle's presentation.
- Judge Riggs suggested the Commission also look at campaign finance rules; a suggestion was made that the judicial election rules, in general, be reviewed, as well.
  - Chief Justice Parraguirre commented that, early on, it was contemplated that this Commission might also take on the Model Code; however, that is, likely, going to be outside the scope of this particular Commission and will need to be addressed by another body in the future.
- Judge Higgins commented that he would like to meet with Judge Riggs, Judge Glasson, and Director Deyhle and see what compromises regarding possible rule revisions can be reached.
- Chief Justice Parraguirre supported this; Professor Fisher agreed to act as a resource for discussion of these topics.

#### V. Proposed Items for Commission Review

- Judge Riggs presented "Gender Equity, Terms of Office, and Process for Appointment of Commissioners for the Nevada Commission on Judicial Discipline" (*Please see meeting material packet for presentation.*)
  - Women are underrepresented on the NCJD. This is not a "battle of the sexes" but the perception/experience is that women are treated differently.
    - A failure to consider diverse experiences can result in poor consequences.
  - The Nevada Constitution is silent on NCJD membership term limits and reappointment.
    - Implementing term limits would not require a Constitutional amendment; Judge Riggs commented that applying terms limits would be less onerous than what the Legislature has already done in this area and term limits would, likely, be upheld.
    - Ms. Beggs commented that there is value in the institutional knowledge of NCJD membership; there should be term limits but the limit should not be set to a single term.
  - Judge Riggs proposed that the Commission include measures to improve diversity and gender equity among its recommendations for the NCJD.

- NCJD openings should be publicized and neutral language should be used.
  - Justice Hardesty requested that Judge Riggs reformat her action item requests into individual recommendations for the Commission to vote upon at a future meeting.
- A. Current Procedural Rules of the Nevada Commission on Judicial Discipline
- Justice Hardesty suggested this list of topics be included in the topics discussed offline between Judge Higgins, Judge Glasson, Judge Zimmerman, Judge Riggs, and Director Deyhle.
    - Chief Justice Parraguirre agreed and requested that Judge Higgins report back on this at the next meeting.
- B. Additional Proposed Topics for Review and Possible Rule Drafting
- Justice Hardesty suggested this list of topics be included in the topics discussed offline between Judge Higgins, Judge Glasson, Judge Zimmerman, Judge Riggs, and Director Deyhle.
    - Chief Justice Parraguirre agreed and requested that Judge Higgins report back on this at the next meeting.
- VI. Other Items/Discussion
- Attendees briefly discussed BDR processes and which proposed revisions would require legislative changes.
    - Changes to the Procedural Rules can occur outside of the BDR process.
    - A comment was made that the bifurcation issue may require legislative involvement.
      - Professor Fisher commented that a small number of states bifurcate and others have some kind similar approach.
    - Attendees briefly discussed the possibility of sending a “placeholder” BDR to LCB; John McCormick would prefer a more complete draft but a conceptual BDR could be submitted by September 1.
- VII. Next Meeting Date
- Chief Justice Parraguirre commented that he would like to hold the next meeting in a month.
    - Ms. Gradick will survey the Commission membership for meeting availability.
- VIII. Public Comment
- No public comment was offered.
- IX. Adjournment
- The meeting was adjourned at 2:45 pm.

# TAB 2





GARY VAUSE  
*Chairman*

STEFANIE HUMPHREY  
*Vice-Chair*

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PAUL C. DEYHLE  
*General Counsel and  
Executive Director*

## MEMORANDUM

**To:** Members of the ADKT 0582 Commission to Study the Rules Governing Judicial Discipline and Update, as Necessary, the Nevada Code of Judicial Conduct (“**ADKT Commission**”)

**From:** Paul C. Deyhle, General Counsel & Executive Director of the Nevada Commission on Judicial Discipline (“**NV Commission**”) and Executive Director of the Nevada Standing Committee on Judicial Ethics (“**Standing Committee**”)

**Date:** September 9, 2022

**Subject:** ADKT Commission Meeting and Agenda – September 23, 2022

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At the request of the ADKT Commission, this Memorandum will follow-up on and further address the research, data, analyses, forecasts, statistics and NV Commission practices contained in **Tab 3** (attached) of the Meeting Materials for the ADKT Commission Agenda discussed at the meeting held on August 12, 2022 (hereinafter referred to as the “**August 12<sup>th</sup> Agenda**” or the “**August 12<sup>th</sup> Meeting**”).<sup>1</sup>

Please note that this Memorandum will not replicate what is already addressed in **Tab 3** of the Meeting Materials of the August 12<sup>th</sup> Agenda, but rather will further expand upon and respond to the matters discussed therein, as warranted, based on the presentation given by District Court Judge Tammy Riggs and the materials submitted by her,<sup>2</sup> as well as other comments, questions and requests for additional information propounded by other ADKT Commissioners at the August 12<sup>th</sup> Meeting. During my presentation at the next ADKT Commission meeting to be held on September

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<sup>1</sup> **Tab 3** of the August 12<sup>th</sup> Agenda Meeting Materials contains two (2) emails (Email 1 of 2 and Email 2 of 2), along with several attachments, sent to each of the ADKT Commissioners on July 10, 2022, which address in detail the many proposals and issues being considered by the ADKT Commission. For ease of reference, **Tab 3** (excluding attachments) is attached as “**Exhibit 1**” to this Memorandum. If the ADKT Commissioners would like to further review the attachments to Email 2 of 2 (i.e., NV Commission’s Prehearing Order, NV Commission’s Answering Brief and NV Commission’s Order Denying Motion to Transfer Hearing to Las Vegas), please refer to **Tab 3** of the Meeting Materials for the August 12<sup>th</sup> Agenda which has been posted to the Nevada Supreme Court’s website.

<sup>2</sup> See **Tab 5** of the Meeting Materials of the August 12<sup>th</sup> Agenda entitled, “Gender Equity, Terms of Office, and Process of Appointment of Commissioners for the Nevada Commission on Judicial Discipline” (prepared and presented by Judge Tammy Riggs of the Second Judicial District Court), pp.214-244.

23, 2022, I will further address and elaborate on many of the issues discussed in this Memorandum and in **Tab 3** (attached) of the August 12<sup>th</sup> Agenda Meeting Materials, further respond to various comments and questions posed by the ADKT Commissioners at the last ADKT Commission meeting, as well as answer any additional questions from the ADKT Commissioners.

1. **Bifurcation of NV Commission Proceedings** [See August 12th Agenda Meeting Materials, **Tab 3**, pp.45-47 (attached)]<sup>3</sup>

The sections of Judge Riggs' presentation that relate to bifurcation are located at **Tab 5**, pp. 225-226 and 241 of the August 12<sup>th</sup> Agenda Meeting Materials under "Authority of the Structure of the Nevada Commission on Judicial Discipline".

Judge Riggs cites to the Nevada Constitution as authority for the creation of the "Permanent Panel" (as Judge Riggs describes it), and then cites to NRS 1.440(3) as authority for the appointment of limited jurisdiction judges to sit on formal, public proceedings against limited jurisdiction judges. Judge Riggs also cites to NRS 1.445(1), (2) as the authority for the creation of an "Alternate Panel."

**Response:** The "Permanent Panel" or regular NV Commissioners are appointed by virtue of the provisions of the Nevada Constitution, while "Alternate Members" are appointed under the authority of NRS Chapter 1. Accordingly, if Judge Riggs seeks to bifurcate the NV Commission and change the composition of the "Permanent Panel," it must be done by constitutional amendment, not statutory enactment. In fact, this was the actual conclusion of the Article 6 Commission formed by the Nevada Supreme Court in 2006, which painstakingly analyzed and evaluated this very issue, among others, for over two (2) years.

Judge Riggs further states on page 241 of her presentation that "NRS 1.440 (Appointment of JPs and MJs to the [NV] Commission) and NRS 1.445 (Appointment of Alternates to the [NV] Commission) were both promulgated and have been amended several times without a corresponding constitutional amendment."

**Response:** These appointments under NRS 1.440 and NRS 1.445 do not impact the composition of the regular NV Commission members with respect to their duties to make determinations and decisions on NV Commission investigations and adjudications in the normal course. To the contrary, the above statutory provisions relate solely to the alternate members. The justices of the peace and the municipal court judges under NRS 1.440 replace the regular NV Commission judicial members only when a public trial involving a justice of the peace or municipal court judge is ordered. Furthermore, NRS 1.445 applies to the appointment of alternate members only in circumstances when the regular member is disqualified, unable to serve or when a vacancy exists.

As noted by the Article 6 Commission, the justices of the peace and municipal court judges referred to in the above-referenced statutes are not becoming regular NV Commission

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<sup>3</sup> After each section title, there will be a citation, as warranted, to **Tab 3** (attached) of the August 12<sup>th</sup> Agenda Meeting Materials where the issues in that section are further discussed.

members taking part in and making determinations in every investigation or adjudication.<sup>4</sup> It is likely for this reason that the enactment of and amendments to the foregoing statutes did not require a constitutional amendment.

However, it could also be plausibly argued that NRS 1.440 is unconstitutional since the Nevada Constitution is silent on substituting alternate limited jurisdiction judges in the place of regular NV Commission members each time a trial is held involving a limited jurisdiction judge. Indeed, the Nevada Constitution requires all 7 members of the NV Commission to carry out trial functions, not just private (investigatory) determinations. Accordingly, this statute can also be viewed as usurping the authority of the regular NV Commission members to adjudicate trials involving limited jurisdiction judges which the Constitution does not contemplate. Accordingly, this statute could arguably be deemed unconstitutional and invalidated on such grounds.

As the Article 6 Commission concluded, “[t]he Constitution does not provide for alternative members. Appointing members to sit occasionally on cases when a regular member is disqualified or otherwise unable to sit (which is the current practice) is inherent in the constitutional power of appointment, [citing the *Moseley* Supreme Court opinion] but turning them into regular members taking part in every investigation or adjudication to avoid having to amend the Constitution cannot be justified.” (Emphasis added).

The NV Commission was originally created by Legislative action in 1973 and 1975, and that action was ratified during the 1976 general election by the citizens of Nevada. This Constitutional Amendment created Article 6, Section 21 of the Nevada Constitution. The NV Commission’s constitutional powers and jurisdiction were substantially amended by Legislative action again in 1991 and 1993, and again ratified by the citizens of Nevada during the 1994 general election. The Commission’s constitutional powers and jurisdiction were substantially amended a third time in 1995 and 1997 by Legislative action and presented for ratification to Nevada voters in 1998.

Accordingly, there is absolutely no authority or precedent in the State of Nevada for the NV Commission’s composition (one tier), term limits or procedural rules to be amended by statutory enactment. As history in the State of Nevada demonstrates, such changes must be accomplished by constitutional amendment. In fact, the few states that have transitioned from a 1-tier to a bifurcated structure did so via constitutional amendments. It is also important to note that the strongest, most effective and independent judicial discipline commissions are those which have been formed by constitutions, not by statutes or court

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<sup>4</sup> Creating panels out of alternate members to sit as regular members during the investigatory (confidential) phase of the judicial discipline process, as previously suggested, would usurp the authority of the regular NV Commission members to make those decisions, which was conferred on them (as regular members) by the Nevada Constitution. Panels of alternate members would effectively exclude the regular NV Commission members who were constitutionally authorized to perform those functions. Moreover, as noted above, the regular members of the NV Commission are authorized and appointed by virtue of the Nevada Constitution whereas the alternate members are not.

rules. This view is universally shared by experts in the field of judicial discipline throughout the U.S.

As such, it is very concerning to hear comments at the August 12<sup>th</sup> Meeting about efforts to propose a Bill Draft Request to “remove the [NV Commission’s] constitutional obstacles.” These “obstacles” so to speak are what make the NV Commission strong, effective and independent. Any efforts to remove these “obstacles” would unquestionably weaken the NV Commission and threaten its independence, thereby harming the very people that the Nevada Constitution has empowered the NV Commission to protect.

Moreover, bifurcation requires even more Commissioners to be appointed and we cannot find enough members to serve as it is. There needs to be a lot more interest from the bench, bar and public to serve on a bifurcated NV Commission, which is simply not the case at the current time. Most importantly, however, there is no evidence that bifurcated, 2-tier or 2-panel structures are any more effective or equitable in their disciplinary outcomes than 1-tier or combined commissions, such as the NV Commission. What is evident, however, is that bifurcated structures are unnecessarily more costly to taxpayers and often take longer to reach a resolution causing even more delays in the judicial discipline process.

2. **NV Commission Term Limits** [See August 12<sup>th</sup> Agenda Meeting Materials, **Tab 3**, pp.45-46 (attached)]

The sections of Judge Riggs’ presentation that relate to term limits are located at **Tab 5**, pp.229, 237-238 and 241 of the August 12<sup>th</sup> Agenda Meeting Materials.

On page 229 of her presentation under “Terms and Term Limits,” Judge Riggs states that “[t]he Nevada Constitution is silent on the issue of term limits and reappointment.”

**Response:** There are no provisions in the Nevada Constitution that restrict or prohibit the appointing authorities to reappoint NV Commission members. Members have been reappointed to the NV Commission by each appointing authority since the late 1970s, and no constitutional objections or concerns to this practice have ever been raised in the past, including among the Article 6 Commission formed by the Nevada Supreme Court in 2006.<sup>5</sup>

If reappointments to the NV Commission were not permitted, then the Nevada Constitution would have expressly stated such prohibitions. It does not. Interestingly, the provisions of the California Constitution cited by Judge Riggs on page 230 of her presentation actually include the very language that is missing in the Nevada Constitution.

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<sup>5</sup> The NV Commission is a constitutionally created Court under Article 6 of the Nevada Constitution. No Article 6 judge of any court in Nevada is subject to term limits. Furthermore, the body of law concerning judicial conduct/discipline has been developing nationwide at an enormous rate, a fact that would seem to further discourage term limits. Moreover, if the Nevada Constitution prohibits reappointments to the NV Commission, as Judge Riggs suggests, then the practical effect of such an interpretation would mean the invalidation of decades of discipline imposed against judges by the NV Commission dating back to the 1970s.

The California Constitution states as follows: “Except as provided in subdivisions (b) and (c), all terms are for four years. *No member shall serve more than two four-year terms, or for more than a total of 10 years if appointed to fill a vacancy.*” (Emphasis added). Likewise, *see* Nevada Supreme Court Rules Governing the Standing Committee on Judicial Ethics, Part VIII of the Supreme Court Rules. Pursuant to Rule 1(2)(a), “[a]ppointments or reappointments are for a two-year term of office. The initial membership shall have staggered terms. *No member shall be appointed to more than four consecutive full terms.*” (Emphasis added). In both examples above, the governing Constitution and Rules expressly address term and year restrictions on reappointments. The Nevada Constitution, however, does not contain such express provisions. Moreover, when adding term restrictions to constitutional provisions, amending the constitution is required. Seeking statutory enactments to accomplish this end is unconstitutional.

On page 237 of her presentation under “Why are multiple consecutive terms for NCJD a problem?”, Judge Riggs states that “[t]hey do not allow for participation by more women in the discipline process. (Potential new women members ‘boxed out’.)”

**Response:** There is no evidence to support this statement. It is entirely up to the appointing authorities (Nevada Supreme Court, State Bar Board of Governors and the Governor) to appoint/reappoint members to the NV Commission. The NV Commission does not appoint/reappoint NV Commission members. Moreover, Judge Riggs’ opinion does not account for the following factors:

- The difficulty of filling seats on commissions and boards throughout Nevada. There are many vacancies! There are hundreds of boards and commissions in Nevada, many of which have recurring vacancies that go unfilled for years. As Justice Hardesty noted at the August 12<sup>th</sup> Meeting, it is a real problem and challenge to find people to serve on the NV Commission, including many women who were asked to serve but were simply not interested and, thus, declined the appointments.
- The challenge and difficulty of appointing authorities in finding people who are qualified and willing to serve on these boards and commissions, as well as make the necessary commitments to fulfill their respective constitutional and statutory duties, as opposed to those who are pressured to do so or are merely looking for another bullet point on their resume. The goal should not be to simply find a warm body to fill these positions, but rather people (men or women) who the appointing authorities believe would best serve the NV Commission and the public. Longer tenured appointees (men or women) bring continuity, historical knowledge and breadth of experience to the boards and commissions on which they serve, which in turn is critical to the ongoing effectiveness of such organizations.<sup>6</sup>

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<sup>6</sup> It is also noteworthy to point out that many limited jurisdiction judges are from rural Nevada and either are not lawyers or have very minimal law training, which also presents difficulties in finding qualified members to serve on the NV Commission.

- Stripping the discretion of the appointing authorities (which they have had for decades) would deprive these boards and commissions of such ongoing knowledge and experience, which in turn would undermine their effectiveness.

Moreover, each of the appointing authorities (including the women who serve thereon) have either appointed or reappointed the current members of the NV Commission (both regular and alternate members). Specifically, the Nevada Supreme Court<sup>7</sup> has either appointed or reappointed the following women as regular and alternate judicial members of the NV Commission since 2013:

Supreme Court Justice Stiglich – District Court Judge (2<sup>nd</sup> JD), Alternate Commissioner  
Janiece Marshall – JOP (Las Vegas Township), Alternate LJ Commissioner  
Heidi Almase – Municipal Court (Las Vegas Township), Alternate LJ Commissioner  
Dorothy Nash Holmes – Municipal Court (Reno), Alternate LJ Commissioner  
Patricia Lynch – JOP (Reno Township), Alternate LJ Commissioner  
Kristin Luis – JOP/Muni Court (Carson City), Alternate LJ Commissioner  
Natalie Tyrrell – JOP (North Las Vegas), Alternate LJ Commissioner

Justice Pickering, Justice Stiglich, Justice Silver and Justice Cadish (along with the other male Justices of the Supreme Court) unanimously voted for the most recent appointments and reappointments of Judges Hardy, Denton and Stockard, respectively, as judicial members of the NV Commission.

Although the NV Commission does not currently have female attorneys, the State Bar Board of Governors is presently comprised of 6 female members and 9 male members (15 total) who have voted unanimously for the most recent male attorney appointments/reappointments to the NV Commission. Moreover, the President, President-Elect and the immediate past President of the Board of Governors are also all women.

The following female lay members have also been appointed/reappointed by the Governor since 2013:

Mary Lau – Carson City, Regular Commissioner  
Stefanie Humphrey – Carson City, Regular Commissioner (current Vice-Chair)  
JoAnn Elston – Reno, Alternate Commissioner  
Mary Kinner – Reno, Regular Commissioner<sup>8</sup>

The Governor recently appointed yet another woman, Ms. Christine McGill of Lyon County, as of August 24, 2022.

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<sup>7</sup> The Nevada Supreme Court currently is comprised of a majority of women Justices, which will remain even considering the recent retirement of Justice Silver given the addition to the Court of Judge Linda Bell.

<sup>8</sup> Ms. Kinner resigned within 13 months of being appointed to the Commission. The Governor filled this vacancy with a male lay member.

Accordingly, the foregoing information and facts do not support the proposition that the Nevada Supreme Court Justices, State Bar Board of Governors or the Governor lack awareness or perception. To the contrary, it is likely that the Governor and the State Bar Board of Governors have experienced the very same challenges and problems, as Justice Hardesty noted with respect to the Supreme Court, in finding anyone to serve on the NV Commission, whether they be men or women.

Consequently, the terms of the NV Commissioners should ultimately be determined at the discretion of the appointing authorities which are in the best position to make such decisions. When you have current members (men or women) who want to serve on the NV Commission, have passion to serve, will make the necessary commitments to serve, and are qualified to serve, then those members should be retained at all costs. Breadth of experience matters. Historical knowledge matters. Willingness to serve matters.

There are currently 600 vacancies statewide in Nevada. This is alarming! The State cannot find enough people to work for money, let alone for free as a volunteer on boards and commissions throughout Nevada, especially on the NV Commission, which is not a fun job. If judges are members of the NV Commission, they necessarily have to sit in judgement of their judicial colleagues, which have led some former judges on the NV Commission to be (in their own words) “shunned as the enemy,” “ostracized by the judicial community” and “not invited to lunches and gatherings at judicial conferences.”<sup>9</sup> Moreover, whether a judicial, attorney or lay member on the NV Commission, they should expect to be sued individually in state and federal courts, have process servers come to your personal residence to deliver to them and their families litigation hold letters, be vilified and attacked in the press as bigots, misogynists, violators of laws and rules, as well as have their integrity and reputations impugned.

As such, existing and long-tenured members on the NV Commission (men or women) should not be replaced because of some arbitrary term limits imposed on the appointing authorities based on unfounded perceptions. If the appointing authorities desire to impose term limits, then they can do so at their discretion. But to force them to get rid of long-standing members (men or women), particularly when there may not be qualified and interested members to replace them is simply unwise and dangerous! Having anyone serve on the NV Commission who is uninterested, believes that it is an inconvenience or, worse yet, hates the NV Commission or judges, or has an agenda, would most certainly lead to bad decisions. What would the perception of the NV Commission be then under those circumstances? Simply put, what is most important is a member’s character, work ethic and willingness to serve, not what they look like.

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<sup>9</sup> This had led to certain judges not seeking reappointment to the NV Commission, as well as many other judges who have likely declined appointments for the same reasons.

On page 238 of her presentation under “Why are multiple consecutive terms for NCJD a problem?”, Judge Riggs further states that consecutive terms for NV Commission members “[m]ay result in ‘confirmation bias’”.

**Response:** Judge Riggs does not explain what she means by “confirmation bias” and gives the example of grand juries that “sit for a limited time,” which cannot be compared to judicial discipline commissions. Judicial discipline commissions throughout the U.S., as well as a multitude of other disciplinary authorities that govern other professionals, such as doctors, accountants, etc., allow for consecutive terms for its members. Interestingly, on page 238 of her presentation, Judge Riggs concedes that “[b]ias at NCJD [has] not [been] anecdotally observed or statistically verified.” Indeed, as is often the case, perception is not reality. Opinions, beliefs and perceptions are subjective and personal, facts are not.

On page 241 of her presentation under “Term Limits”, Judge Riggs further states that “[t]he ADKT 0582 Commission can request that a BDR be drafted to require term limits for NCJD members.” She further states that “[a]n amendment to the Nevada Constitution would not be required.”

**Response:** This would be unconstitutional. A constitutional amendment is required to amend the Nevada Constitution. See **Tab 3**, pages 45-47 of the August 12<sup>th</sup> Agenda Meeting Materials where the issue of the constitutionality of imposing term limits without constitutional amendment is discussed.

3. **NV Commission’s Budgetary Constraints** [See August 12<sup>th</sup> Agenda Meeting Materials, **Tab 3**, p.49 (attached)]

**Response:** On p.49 referenced above, it is stated that “[a]s one of the smallest agencies in the State of Nevada, and as noted by Justice Hardesty during the June 20<sup>th</sup> ADKT Commission meeting, budgetary funding and resources have always been and will continue to be a challenge for the [NV] Commission even under present circumstances, but even more so if significant changes are made to the [NV] Commission’s duties and responsibilities going forward.”

In the June 20<sup>th</sup> ADKT Commission Meeting Summary, Tab 1, Section VI of the August 12<sup>th</sup> Agenda Meeting Materials, p.7, it states that “Justice Hardesty would like to know whether the Nevada Commission on Judicial Discipline is laboring under the view that it is under ‘ongoing budget constraints’ and requested specifics and recommendations for what measures this [ADKT Commission] could include in its report to the Legislature.” Chief Justice Parraguirre also asked those members of the NV Commission, who are sitting on the ADKT Commission, to report back ... regarding the “budgetary constraints/concerns and how these issues impact the Nevada Commission on Judicial Discipline’s ability to operate.”



Justice Hardesty also commented at the June 20<sup>th</sup> ADKT Commission meeting that “[c]oncern has also been expressed regarding inadequate funding for the Nevada Commission on Judicial Discipline; the [NV] Commission is ‘underfunded’ to meet the demands placed upon it.” Justice Hardesty further stated that “the lack of appropriate funding is something that should be made a ‘priority’ with the Legislature.” See June 20<sup>th</sup> ADKT Commission Meeting Summary, **Tab 1**, Section I of the August 12<sup>th</sup> Agenda Meeting Materials, p.5.

**Response:** As mentioned previously, the NV Commission is one of the smallest agencies in the State of Nevada with very limited budgetary resources and staff. Members of the Nevada Legislature have even referred to the NV Commission’s budget as “budget dust” (compared to other Nevada agencies). In recent years, the NV Commission has had to expend valuable staff time and resources to request vital Interim Finance Committee (“**IFC**”) funds, as well as request supplemental appropriations during past legislative sessions (sometimes multiple requests per session), to continue its constitutional and statutory mandates to protect the public.

The NV Commission’s work is very unpredictable! In some years, the NV Commission is inundated with numerous legal actions filed against the NV Commission in connection with ongoing judicial discipline cases, including state and federal court litigation and various writs and appeals filed with the Nevada Supreme Court. These legal actions require a significant amount of resources, which have led to the NV Commission having to seek additional emergency funds over the past several legislative sessions.

From time to time, the NV Commission also experiences significant increases in the number of complaints filed with the NV Commission and well as those requiring an investigation. For example, from FY 16 to FY 18, the NV Commission saw a 59% increase in the number of complaints it received. With that increased case load, the complexity and litigious nature of certain cases also increased. Additionally, during FY 2020, the NV Commission was in the process of investigating twenty (20) complaints, nearly double the amount in all FY 2019 combined. Many of these investigations involved complex allegations and circumstances which consumed much of the NV Commission’s case-related financial resources. Some of these cases were approaching statute of limitations deadlines, thereby necessitating immediate action and budgetary funding.

In only takes one or two cases to exhaust the NV Commission’s operating budget. In FY 21, just one case exhausted more than 75% of the NV Commission’s entire case-related budget for the fiscal year. The NV Commission also expends valuable staff time and resources (in terms of correspondence, meetings, phone calls, memorandums, analysis, forecasting, etc.) to move budgetary funds from other budget Categories (such as the Personnel Services, In-State Travel, Information Services and Training Categories) to the Operating Category [through the Work Program process governed by the Governor’s Office of Finance] to enable the NV Commission to continue to carry out its constitutional and statutory functions.

Under certain circumstances, moving budgetary funds from Category to Category requires approval by the Board of Examiners (“**BOE**”) and, at times, the IFC. Moreover, BOE and IFC meetings are typically held monthly so any requests to move funds within budget Categories or request Contingency Funds from the IFC require an additional waiting period. The COVID-19 Pandemic exacerbated the foregoing budgetary challenges as the NV Commission had to submit budget reductions which resulted in the NV Commission having to operate at a reduced budget as did many agencies during the Pandemic.

Accordingly, the NV Commission is significantly constrained by its budget under present circumstances. If additional legal and operating hurdles are erected and further duties added to the Commission’s workload , such as reconstituting the Election Practices Committee of the Standing Committee (which will result in a multitude of state and federal lawsuits filed against the NV Commission/Standing Committee as in the past, as confirmed by ADKT Commissioner Dennis Kennedy, Esq. at the June 20<sup>th</sup> ADKT Commission meeting), the budgetary challenges will only get worse and the NV Commission’s operating capabilities will be severely hampered.

With respect to recommendations as to what measures the ADKT Commission could include in its report to the Legislature (as per Justice Hardesty’s suggestion), the number one priority would be the creation of a budgetary reserve or contingency fund account that the NV Commission could tap into when its funds are in the process of being depleted. This would save the NV Commission an inordinate amount of time and resources seeking emergency funds from the BOE and IFC during the middle of investigations, prosecutions, defense of federal and state lawsuits, as well as writs and appeals to the Nevada Supreme Court.

4. **NV Commission’s Statistics Collection and Reporting** [See August 12<sup>th</sup> Agenda Meeting Materials, **Tab 3**, pp.56-57 (attached)]

**Response:** On page 56 referenced above, gender statistics were provided in reference to Agenda item C discussed at the ADKT Commission meeting held on June 20, 2022. Also included on pages 56-57 are statistics on the number of complaints filed against district court judges compared to those filed against limited jurisdiction judges, as well as the number of times from 2013 to 2021 that the NV Commission disciplined district court judges compared to limited jurisdiction judges.

As discussed at the bottom of page 56 to the top of page 57, “[o]ther statistics and reporting information gathered by the [NV] Commission are set forth in the body of and exhibits to its Annual and Biennial Reports located on the [NV] Commission’s website under the ‘Annual and Biennial Reports’ tab.” See Exhibit “B” of the NV Commission’s Annual and Biennial Reports for the numerous statistics gathered by the NV Commission on an annual and biennial basis.

Moreover, the body of the foregoing Reports also contain additional information and statistics gathered by the NV Commission, including the following:

- Number of formal proceedings/public actions and a brief summary of each;
- Number of informal resolutions of complaints pursuant to deferred discipline agreements;
- Number of letters of caution issued and a brief description of the Code Rules implicated (without identifying the judge);
- Number of complaints filed, requests for reconsideration received, investigations authorized and public cases authorized;
- Number of open cases;
- Average case duration;
- Average length of time to complete investigations;
- Percent of operating budget expended on investigations; and
- Total number of disciplinary actions imposed by the NV Commission.

The NV Commission also tracks and reports the number of judicial ethics inquiries and requests for guidance received every year from judicial officers and judicial candidates. Many of these inquiries and requests require detailed research, follow up discussions and numerous staff hours to address.

*See*, for example, the “Statistical Information” on pages 11-12 of the NV Commission’s FY 2020-FY 2021 Biennial Report located on its website. Pursuant to NRS 1.462, the NV Commission files a copy of its Biennial Report with the Governor, the Majority Leader of the Senate, the Speaker of the Assembly, the Chief Justice of the Supreme Court of Nevada, the Chair of the Senate Standing Committee on Judiciary, the Chair of the Assembly Standing Committee on Judiciary and the State Bar of Nevada. The information and statistics contained in the NV Commission’s Annual and Biennial Reports are also reported regularly to the Governor’s Office of Finance/Legislature through the Performance Measure Reporting process.

**5. Update on Removal of ‘Election Practices’ from Standing Committee** [*See* August 12<sup>th</sup> Agenda Meeting Materials, **Tab 3**, Paragraph 6, p.49 (attached)]

**Tab 4** of the August 12<sup>th</sup> Agenda Meeting Materials, pp.199-212, contains the Petition and Order Amending Part VIII of the Supreme Court Rules (ADKT 0458), which abolished the Election Practices Committee of the Standing Committee.

**Response:** In addition to annual fiscal support, the Standing Committee was required to defend litigation brought against the Election Practices Committee by candidates challenging the Supreme Court’s Rules Governing the Standing Committee. As noted above, at the ADKT Commission meeting on June 20, 2022, ADKT Commissioner Dennis Kennedy, Esq. shared with the ADKT Commissioners the many resource and budgetary concerns of the NV Commission/Standing Committee when the Election Practices Committee was in existence, namely the numerous lawsuits filed against the Standing Committee upon issuance of its election practices determinations. These also included personal lawsuits filed against individual Standing Committee members. This would

undoubtedly occur again if the Election Practices Committee were to be reestablished, thereby requiring a substantial increase to the NV Commission's budget and resources.

Please note that aggrieved candidates more often resorted to the federal courts to interpret the Nevada Revised Code of Judicial Conduct ("NCJC"). The federal courts are venues typically and increasingly unsympathetic with state court ethical rules that attempt to regulate judicial campaign practices, and especially judicial speech restrictions. These cases tended to be very contentious and litigious which, in the past, have led to various judicial spectacles being played out in jurisdictions throughout the U.S.

As was also discussed at the June 20<sup>th</sup> ADKT Commission meeting, the Election Practices Committee was used by judicial candidates as a weapon against their judicial opponents during election campaigns. An election complaint would be filed with the Election Practices Committee against a judicial opponent (often a judicial incumbent), then the press would be contacted and media articles and television coverage would soon follow, which would be used to sully the reputation of the judicial opponents based solely on the filing of the election complaint before any decision was made by the Election Practices Committee.

When it comes to press coverage and public opinion, that may be all that is necessary to sway an election, irrespective of the veracity of the allegations or the subsequent determination(s) of the Election Practices Committee. In other words, the Election Practices Committee was often viewed as a vehicle to be used by judicial candidates to further propagate potentially false allegations against opponents to influence election campaigns and impact the outcomes. As is often the case in election campaigns, the public may have already formed an opinion by the time the Election Practices Committee came to a determination based solely on the filing of an election complaint and the resulting negative press coverage.

The budgetary funding of the Election Practices Committee was also extremely limited so there was little to no opportunity or time to conduct a thorough investigation, particularly in such an expedited timeframe before an election.

Other reasons why the Election Practices Committee was abolished:

- The Election Practices Committee's orders and determinations were in conflict with developing case law relating to judicial election practices and ethical issues.
- The Election Practices Committee was seen a threat to political free speech and because it intruded upon the constitutional functions of the NV Commission.
- The factual and legal issues considered by the Election Practices Committee routinely implicated First Amendment rights and the developing case law was becoming increasingly complex. The Election Practices Committee was considered as having no authority to say what the law is with respect to constitutional rights.
- Many of the Justices of the Nevada Supreme Court believed that the election practices disputes considered by the Election Practices Committee would be better handled by the judiciary itself rather than an administrative body. Accordingly, some of the Justices

felt that it would be better for candidates to go to court because many of the disputes were becoming legal issues on which the Election Practices Committee could not render opinions. Other Justices thought it best for the candidates to go to the NV Commission.

- The overriding concern about impinging on federal and state constitutional First Amendment rights outweighed any other issues, so it was determined that the courts would have to resolve disputes over future violations.

Furthermore, it was extremely difficult to find people interested in serving on the Election Practices Committee. This was a problem then and would most certainly be a problem again if the Election Practices Committee were to be reconstituted. Committee members were required to be on call on a 12-hour basis during the last three weeks of both the primary and general elections. Simply put, nobody wanted to be on the Election Practices Committee. Many members did not care to serve, were not fully committed or viewed their service as a big inconvenience. These are the people that should not be on such committees. There is too much at stake! Based on all the foregoing factors, this is precisely why Mr. Keith Fisher stated at the August 12<sup>th</sup> Meeting that the judicial election/campaign landscape is “very complex,” and warned the ADKT Commissioners to “PROCEED WITH CAUTION” when delving into this area.

Moreover, the Nevada Secretary of State (“**SOS**”), which governs the enforcement of Nevada’s Campaign Practices Act under NRS Chapter 294A, is better equipped to take immediate action on campaign violations by virtue of a much larger staff and significantly more budgetary resources than the NV Commission. By law, the SOS is the Nevada agency tasked with the enforcement of NRS Chapter 294A. *See* August 12<sup>th</sup> Agenda Meeting Materials, **Tab 3**, Paragraph 6, p.49 (attached). In addition, the Nevada State Bar, operating under the Rules of the Nevada Supreme Court, has jurisdiction over attorneys committing campaign violations under the Nevada Rules of Professional Conduct.<sup>10</sup> Notwithstanding the foregoing, however, if either a judicial incumbent or a judicial candidate who is elected commits campaign violations, then the NV Commission would investigate the allegations at the appropriate time and proceed forward by law, as warranted.

With respect to any proposals to confer jurisdiction to the NV Commission over “judicial candidates” (non-judges), this would also require a constitutional amendment. *See* NV Constitution, Art. 6, Sec. 21(1), which governs only judges, not attorneys or laypersons. *See also* NRS 1.428 (“Judge” defined). Moreover, if election complaints were to be expedited (assuming that would pass constitutional muster on due process grounds), as some have proposed, then the NV Commission would need significantly more operating funds, resources and staff.

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<sup>10</sup> *See* Nevada Rules of Professional Conduct, Rule 8.2(a) (“A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.”) (Emphasis added); and Rule 8.2(b) (“A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.”) (Emphasis added).

By expediting the process and diverting critical resources and staff to focus on election complaints, this would likely result in untenable backlogs in the disposition of the NV Commission's cases and investigations. Please note that in 2013, there was over a two (2)-year backlog of cases and investigations! Another problem area for the NV Commission is that many election allegations are not expressly dealt with in the NCJC (including the Comments), thereby further complicating NV Commission action.

6. **Review of NV Commission's [Alleged] Decision to Not Investigate Instances of Misconduct by Judicial Candidates During the 2020 Election Cycle** [See August 12<sup>th</sup> Agenda Meeting Materials, **Tab 3**, Paragraph 5, pp.47-49 (attached)]

**Response:** In addition to the detailed response provided in the above-referenced citation to the August 12<sup>th</sup> Agenda Meeting Materials, there were also election complaints that were filed with the NV Commission that were dismissed without investigation because the complaints were filed against non-judicial officers over which the Commission has no jurisdiction to proceed against by law. The complainants in those cases were told to re-file their complaints with the NV Commission if the non-judicial candidate wins the election, because it is only then that the NV Commission has jurisdiction over the prevailing judicial officer. The NV Commission also keeps track of the complaints filed against non-judicial officers in case the non-judicial officers prevailed in the election, thereby conferring jurisdiction to the NV Commission and entitling it to investigate and proceed forward as warranted by law.

Below is a further explanation of the comment set forth on page 48 of **Tab 3** of the August 12<sup>th</sup> Agenda Meeting Materials, which states as follows: "Of the remaining five (5) complaints filed over which the Commission had jurisdiction during the 2020 election cycle, they were dismissed by the [NV] Commission without investigation for various reasons, including lack of evidence rising to the requisite "objectively verifiable evidence" standard set forth in NRS 1.4657(1), or because the Nevada Revised Code of Judicial Conduct (including the Comments) did not expressly prohibit or address the conduct alleged."

Some of the reasons why certain complaints would not satisfy the requisite "objectively verifiable evidence" standard are (i) the allegations in the complaints were made against non-judicial officers in violation of the Nevada Constitution and the definition of "judge" set forth in NRS 1.428; (ii) the complaints involved "he-said, she-said" allegations which could not be verified; and/or (iii) the allegations in the complaints implicated First Amendment issues, which the NV Commission does not weigh in on during election campaigns.

It is also noteworthy to point out that the NCJC (including the Comments) is, in many respects, either vague or completely silent with regards to certain issues (particularly in the election landscape which has changed significantly), thereby further complicating the NV Commission's work and making it extremely more problematic to act. Accordingly, the

NV Commission is of the opinion, as suggested by Justice Hardesty, that the NCJC needs to be revised and updated.

## 7. **Gender Equality in Panel Membership**

The sections of Judge Riggs' presentation that relate to gender equality in panel membership are located at **Tab 5**, pp.219, 220, 240 and 242 of the August 12<sup>th</sup> Agenda Meeting Materials.

On page 219 of her presentation under "Why is This a Problem?", Judge Riggs states that "[t]here is a perception among some members of the bar, some members of the judiciary, and some members of the public (based on negative press coverage) that women get treated differently in the discipline process than men."

**Response:** There is no evidence to support this statement. The NV Commission does not discipline judges based on gender. To the contrary, the NV Commission disciplines based on misconduct in violation of the NCJC. As noted above, the NV Commission has no control over the appointing authorities and does not appoint or reappoint its members. That is the role of the three (3) appointing authorities (the Nevada Supreme Court (for judges), State Bar Board of Governors (for attorneys) and the Governor (for lay persons)). Accordingly, any "negative press coverage" directed at the NV Commission with respect to this issue is simply misplaced. Moreover, upon information and belief, a few members of the press in past cases were acquaintances of the very judges being held accountable by the NV Commission, thereby relegating such "negative press coverage" to highly questionable status in terms of accuracy and unbiased reporting.

On page 219 of her presentation, Judge Riggs further states, "TMR opinion: Cases that would otherwise receive private discipline are passing through to the formal complaint/public hearing process for women judges."

**Response:** Again, there is no evidence to support this opinion. The NV Commission does not impose private discipline. Private discipline was discontinued as a result of the Whitehead cases back in the 1990s. Furthermore, while letters of caution are confidential and privately issued to judges, they are not considered to be an imposition of discipline by law. In fact, over the years, many more male jurists have received letters of caution compared to female jurists. The only other process for the NV Commission to informally (privately) resolve a complaint is by means of a deferred discipline agreement pursuant to NRS 1.468 (Deferral of formal disciplinary action). This is a very rare course of action taken by the NV Commission which has only been utilized sparingly over the past decades under limited circumstances. Since 2013, only one (1) deferred discipline agreement was entered into by the NV Commission.

On page 240 of her presentation under "How Can the Chances of Appointing Women to the NCJD be Improved?", Judge Riggs states, "Awareness of the Issue: The ADKT 0582

Commission can make a finding that gender equity (and diversity in general) on the NCJD are important and should be the goal of the NCJD.”

**Response:** Judge Riggs’ statement above incorrectly intimates and presupposes that the NV Commission lacks awareness of gender equity (and diversity in general) and that such matters are not important to the NV Commission. This is patently untrue. Diversity in all forms is very important to the NV Commission! However, as noted above, it is the appointing authorities, not the NV Commission, that appoint/reappoint members.

On page 242 of her presentation under “How Can the Chances of Appointing Women to the NCJD be Improved?”, Judge Riggs is proposing that the ADKT Commission advise the appointing authorities to publicize openings for the NV Commission in various publications. Judge Riggs is also proposing that the ADKT Commission advise the NV Commission to include certain language in its staff letters to the appointing authorities notifying them of the expiration of NV Commission terms, as well as advising the NV Commission to adopt a policy for doing so.

**Response:** With respect to advising the appointing authorities to publicize openings for the NV Commission in various publications, I do not believe that the NV Commission would object to such a proposal. The appointing authorities can carry out their responsibilities in any manner that they deem necessary and appropriate under the circumstances. Regarding the proposal to include certain language in staff letters to appointing authorities, the NV Commission’s staff already notifies the respective appointing authorities of the expiration of Commissioner terms and requests appointments/reappointments accordingly. Likewise, I do not believe that the NV Commission would object to the incorporation of diversity language in such letters.

**8. Judge Zimmerman’s Proposed Changes to the Procedural Rules of the NV Commission** [See August 12<sup>th</sup> Agenda Meeting Materials, **Tab 3**, pp.51-56 (attached)]

Judge Zimmerman’s proposed changes to the Procedural Rules of the NV Commission are located at **Tab 6**, pages 261-267, entitled “Top Rule Changes for Procedural Rules of the Nevada Commission on Judicial Discipline”; and Supplemental Materials Judge Zimmerman Proposed Revisions entitled “DRAFT RULE CHANGES for Procedural Rules of the Nevada Commission on Judicial Discipline”, as set forth in the August 12<sup>th</sup> Agenda Meeting Materials. *See also* June 20<sup>th</sup> ADKT Meeting Summary, **Tab 1**, Section IV, pages 5-6 of the August 12<sup>th</sup> Agenda Meeting Materials.

**Response:** Detailed comments, responses, corrections and rebuttals of Judge Zimmerman’s statements and proposed procedural rule changes are addressed in **Tab 3**, pages 51-56, which will not be reproduced here. These include NV Commission **Procedural Rules 4, 6, 12, 16, 18, 24, and 26.**

A further explanation regarding Judge Zimmerman’s proposal in **Procedural Rule 26** to require the NV Commission to approve *each party’s* amount of time requested to present



their case at trial: This is not advisable because it negates the NV Commission's discretion to limit the amount of time requested based on evidentiary objections, such as duplicity and relevance. As a constitutional court of judicial performance created under Article 6 of the Nevada Constitution, the NV Commission should retain the same discretion as other judges in courts throughout the State.<sup>11</sup> At times, inordinate and disproportionate amounts of time are requested relative to the issues to be tried which, in the experience of the NV Commission, are attempted for the purpose of inappropriately delaying Commission trials due to availability issues among the NV Commissioners, prosecuting officers, witnesses and trial venues. Such tactics also significantly impact the NV Commission's budget, thereby increasing the likelihood that the NV Commission would have to delay a trial to request emergency operating funds from the Board of Examiners and the Interim Finance Committee as discussed above.

Please note that **Procedural Rules 3(6) and 27** were added to the August 12<sup>th</sup> Agenda but were not discussed in the July 10<sup>th</sup> emails to the ADKT Commissioners located in **Tab 3** of the August 12<sup>th</sup> Agenda Meeting Materials. Accordingly, the proposals to these Procedural Rules will be discussed below.

Judge Zimmerman is proposing that NV Commission **Procedural Rule 3(6)** be amended to require a disinterested third party to decide motions to disqualify NV Commission members pursuant to challenges for cause.

**Response:** Under current **Procedural Rule 3(6)**, a challenge for cause is heard by the full NV Commission, and the NV Commission as a whole decides whether to “disqualify any commissioner who by reason of actual or implied bias would, in the opinion of a majority of the members present, either be prevented from adjudicating the matter in a fair and impartial manner or, by reason of facts creating an appearance of impropriety, be prevented from adjudicating the matter in a manner consistent with maintenance of public confidence in the [NV] Commission.”

The NV Commission's **Procedural Rule 3(6)** is consistent with the rules and practices of judicial discipline commissions throughout the U.S. and is modeled after the American Bar Association's (“**ABA**”) Model Rules for Judicial Discipline and Disability Retirement and the Model Code of Judicial Disciplinary Enforcement promulgated decades ago. With respect to the appointment of a disinterested party as proposed by Judge Zimmerman, it is unknown who that would be and how they would be appointed. This proposal would also further delay NV Commission proceedings and increase the budgetary funds required for the NV Commission to carry out its constitutional and statutory functions, thereby compounding even more the ongoing challenges faced by the NV Commission.

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<sup>11</sup> For example, under NRCP 16.1, district court judges are responsible for issuing scheduling orders and any further discovery and trial continuances will be determined by the judge, not the *parties*. Similarly, the new NRCP Rules adopt the federal standard of limiting discovery to a party's claims or defenses and are *proportional* to the needs of the case. See NRCP 26(b)(1). Moreover, judges throughout Nevada have discretion to administer and carryout trials in accordance with the terms set forth in scheduling and pretrial orders that they prepare themselves. It is important to note that the terms of such orders are not incorporated into their respective court's rules.

With respect to Judge Zimmerman's proposed changes to **Procedural Rule 27** that Orders of Dismissal issued by the NV Commission be filed with the Clerk of the Nevada Supreme Court and posted on the NV Commission's website, this would implicate website issues of the NV Commission, namely functionality and storage capacity limitations, which are discussed in detail in **Tab 3**, page 51 of the August 12<sup>th</sup> Agenda Meeting Materials. In addition, from a practical perspective, if Orders of Dismissal are posted on the NV Commission's website, then it would also be necessary to post the corresponding Formal Statements of Charges that relate to the Orders of Dismissal. Since Formal Statements of Charges often contain more factual information and allegations than a stipulation or final order after trial, many judges prefer that the formal charges be removed after a trial or the issuance of a negotiated stipulation. Moreover, it is unclear what the Nevada Supreme Court would do with filings of Orders of Dismissal.<sup>12</sup>

#### 9. **Judge Zimmerman's Proposed New Procedural Rules for the NV Commission**

Judge Zimmerman's proposed *new* Procedural Rules for the NV Commission are located in the June 20<sup>th</sup> Meeting Summary, **Tab 1**, p.6, under "Proposed New Rules", and in the August 12<sup>th</sup> Agenda, Sections V(B)(1) [Electronic Testimony of Witnesses] and V(B)(2) [Oral Arguments during pre-hearing motion practice]. *See also* Supplemental Materials\_Judge Zimmerman's Proposed Revisions entitled "DRAFT RULE CHANGES for Procedural Rules of the Nevada Commission on Judicial Discipline", p.2, as set forth in the August 12<sup>th</sup> Agenda Meeting Materials.

**Response:** Judge Zimmerman is proposing the addition of a procedural rule requiring the NV Commission to permit electronic testimony of witnesses at the discretion of the parties and for the parties and NV Commission members to appear remotely. In other words, Judge Zimmerman does not want the NV Commission to have discretion to make those determinations. Every court in Nevada, at all levels of the judiciary, have discretion to require personal appearances or electronic testimony. *See* the Nevada Supreme Court Rules Governing Appearance By Audiovisual Transmission Equipment ("**Audiovisual Transmission Rules**"). The Audiovisual Transmission Rules grant courts throughout Nevada the discretion to modify the rule and require personal appearances upon a showing of good cause.

Even the Nevada Rules of Civil Procedure ("**NRCP**") Rule 43 (which mirrors Rule 43 of the Federal Rules of Civil Procedure) provides "[f]or good cause shown in compelling circumstances and with the appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." *See also* NV Commission's Order Denying Motion To Transfer Hearing to Las Vegas, Nevada Or, In The Alternative To Do Said Hearing By Video issued by District Court Judge Jerome Polaha (Presiding Judge) and filed on April 4, 2018, located in **Tab 3**, pages 184-197 of the August 12<sup>th</sup> Agenda Meeting Materials. *See also* pages 195-196 of the August 12<sup>th</sup> Agenda

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<sup>12</sup> Please note that since 2013, only one (1) Order of Dismissal was filed by the NV Commission in a public disciplinary case.

Meeting Materials for Judge Polaha’s discussion on electronic testimony and the bases for his decision to deny. Accordingly, the NV Commission should retain discretion to make these determinations as every court has in Nevada, which is consistent with the Supreme Court’s Audiovisual Transmission Rules, the NRCP, the ABA’s Model Codes and the long-standing practices of judicial discipline commissions throughout the U.S.

Judge Zimmerman is also proposing to require the NV Commission to hold oral arguments on all prehearing motions unless the *parties* stipulate otherwise. Again, Judge Zimmerman is proposing to strip the NV Commission of all discretion to make these determinations. Under the NV Commission’s Public Case Filing Procedures (Exhibit “A” to the NV Commission’s Procedural Rules), Procedure 2(1) (Motions) provides that “[d]ecisions on motions shall be made without oral argument unless otherwise ordered by the [NV] Commission.” This Procedure is consistent with every court in Nevada (at all judicial levels). All courts in Nevada have the sole discretion to determine whether oral arguments on motions are necessary. *See* NRCP Rule 78 and all Local Rules of Practice for every court throughout Nevada. The NV Commission should not be stripped of its discretion in administering its own procedural rules in such a manner as it deems necessary.

**10. “Judicial Perspectives on Judicial Discipline: Trends and Outlooks” [See Tab 2, pp.10-42, of the August 12<sup>th</sup> Agenda Meeting Materials]**

**Response:** Below are a few corrections and further explanations regarding this presentation given by District Court Judges Freeman and Bell at the Nevada Judicial Leadership 2022 Summit:

- Page 13 (2<sup>nd</sup> bullet point) under “Judicial Discipline Staff” – There are 2 Associate Counsels, not 3.
- Page 19 (2<sup>nd</sup> bullet point) under “What Next?” – There are only 3 lawyers at the NCJD, not 4.
- Page 25 (1<sup>st</sup> bullet point) under “How are Complaints Dismissed” – Further Explanation > All administrative dismissals are reviewed by the NV Commission at its next meeting and ratified.
- Page 26 (1<sup>st</sup> bullet point) under “Dismissal” – Further Explanation > Judges receive notices of dismissal if an investigation is authorized by the NV Commission. If an investigation is not authorized and the complaint is dismissed, then no notice of dismissal is sent.
- Page 38 (2<sup>nd</sup> bullet point) under “Determination of Discipline” – Further Explanation > If both the Prosecuting Officer and Judge’s counsel utilize their respective peremptory challenges, then only 5 Commissioners are permitted to deliberate.

**11. “Review of Language Used” [See Tab 6, pages 246-267 [proposed redline of NV Commission’s Procedural Rules]]. *See also* June 20<sup>th</sup> Meeting Summary, Section VI (bottom of p.7) and August 12<sup>th</sup> Agenda, Section V(B)(7), p.2 of the August 12<sup>th</sup> Agenda Meeting Materials.**

**Response:** Judge Glasson is proposing to change the NV Commission’s Procedural Rules as set forth in **Tab 6**. Specifically, the references to “Complaint” have been changed to “Accusation” and the references to “Formal Statement of Charges” have been changed to “Complaint.” Please note that this terminology was handed down from the ABA’s Model Rules for Judicial Discipline and Disability Retirement promulgated in 1979 and the ABA’s Model Rules for Judicial Disciplinary Enforcement promulgated in 1994, and all commissions throughout the U.S. have similar definitions. It could cause confusion among the public since this terminology has been utilized since the 1970s. In addition to having to revise the NV Commission’s Procedural Rules and NRS Chapter 1, there would also be an expense to the NV Commission in terms of operating funds and staff time to change the complaint form, the NV Commission’s website, as well as all correspondence, recommendation and public document templates used by NV Commission staff in carrying out its duties. It would also render the changed terms inconsistent with current provisions of the Nevada Constitution, NRS Chapter 1 and Nevada Supreme Court Rules.

**12. Proposal for an Informal, Non-Disciplinary and Confidential Process to Timely Address Emerging Patterns of Ongoing Non-Compliance with the Law and Court Rules by Judges**

As noted during the August 12<sup>th</sup> Agenda Meeting and confirmed by Mr. Keith Fisher, over 90% of all complaints filed with judicial discipline commissions throughout the U.S. are dismissed on decisional grounds. If litigants/complainants are not happy with the decision of the judge, their only recourse by law is to appeal. However, when judges do not follow the law or court rules, fail to timely prepare and file orders for months and, in some cases, years, or fail to prepare orders at all (incorrectly relying on minute orders which have no legal effect under the law), this results in a substantial loss of time, money (in terms of missed work or additional attorney’s fees that must be paid) and resources (both court and public) among litigants, attorneys, families and children, as well as causes havoc, frustration, aggravation and despair, particularly in family law and child custody cases.

This also has a disparate impact on low-income individuals who do not have the resources, time or money to address these types of situations. Telling these people that their only recourse is to appeal is outdated and inequitable. The judiciary can do better!

This proposal is a proactive approach to timely address these issues, which have become increasingly problematic in recent years. As discussed previously, the judicial discipline process is necessarily lengthy and very time consuming based on due process requirements and protections afforded to judges under the law. However, this proposal would require an informal and confidential intervention of either the Judicial Education Unit or other department/division of the Administrative Office of the Courts to meet and speak with judges who are developing patterns of ongoing non-compliance with the law and court rules. This would not be a disciplinary action. The goal of such a proposal is to address these situations quickly before they become more prevalent and problematic, thereby

preventing continuing harm to litigants, attorneys, families and others appearing before them.<sup>13</sup>

It is quite common for courts throughout the State, including the Court of Appeals and Nevada Supreme Court, to be made aware of these circumstances while performing their judicial and administrative duties. Having the ability to refer judges to the above-referenced organization would not only alert the judge on a more-timely basis that there is an emerging problem that needs fixing (prior to the time the NV Commission could effectively act under the law), but also hopefully impress upon them the urgency of making the necessary changes required. If the judge does not cooperate with the above-mentioned organization and/or such conduct continues, then courts and/or individual judges/justices of such courts could confidentially refer those judges to the NV Commission as part of their reporting requirements under the NCJC. I would be happy to further discuss this proposal during the ADKT Commission meeting on September 23, 2022.

**13. Commission's Website** [See August 12<sup>th</sup> Agenda Meeting Materials, **Tab 3**, pp.51-52 (attached)]

On pages 51-52 referenced above, the NV Commission's website, and its related capabilities and functionality, are discussed in detail.

In addition to the comments set forth on pages 51-52, and in accordance with the Memorandum issued by EITS (Enterprise IT Services Division) on August 15, 2022, EITS has been working for several years on a project to replace Ektron, the State's end-of-life website content management system with a modern, robust, secure, cloud-based, and feature rich platform with improved accessibility options that all executive branch agencies will be able to use. However, the project was paused in July 2022 to assess a technical misalignment between the new platform and the State's environment and additional potential project risks. The original timeline estimated that this project would be complete was June 2023; however, due to the complexity of these types of projects, EITS has instructed all agencies to continue using Ektron until a suitable solution can be identified.

As noted previously, the NV Commission does not administer its website. The NV Commission cannot afford IT staff and website administrators (who have the experience and technical abilities to carry out their respective functions) as does the Nevada Supreme Court and Nevada Legislature.

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<sup>13</sup> The NV Commission is constrained by law and due process protections to act quickly in many cases. Moreover, the NV Commission may not be made aware of such misconduct for years after it has become a problem either because a complaint was not filed with the NV Commission, or the problems only surfaced publicly years later during the appellate process, at which time the statute of limitations period may have already elapsed.

# **NV Commission – Exhibit 1**

# **NV Commission – Exhibit 1**

**From:** [Paul Deyhle](#)  
**To:** [Parraguirre, Justice Ron](#)  
**Cc:** [Gradick, Jamie](#); ["Denton, Mark"](#)  
**Subject:** ADKT 0582 - Commission to Study the Rules Governing Judicial Discipline and Update, as Necessary, the Nevada Code of Judicial Conduct  
**Date:** Monday, July 25, 2022 4:26:29 PM  
**Attachments:** [image001.png](#)  
[ADKT 0582 Commission - Reply to Judge Tammy Riggs" Request for Information dated June 30 2022 \(Email 1 of 2\).msg](#)  
[ADKT 0582 Commission - Reply to Judge Tammy Riggs" Request for Information dated June 30 2022 \(Email 2 of 2\).msg](#)

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**[NOTICE: This message originated outside of the Supreme Court of Nevada -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]**

Dear Chief Justice Parraguirre,

On behalf of District Court Judge Mark Denton (cc'd above), ADKT 0582 Member and Regular Commissioner of the Nevada Judicial Discipline Commission, it is respectfully requested that the attached emails previously sent to all ADKT Members on July 10, 2022, be made part of the official record of these proceedings and, in accordance with Ms. Jamie Gradick's email dated July 14, 2022, be included in the material packet to be considered and discussed at the next ADKT meeting. Please note that the foregoing request does not include the zip file (containing formal charges from 2016 forward) attached to the first email (Email 1 of 2) sent out on July 10<sup>th</sup>. However, it is respectfully requested that the attachments to the second email (Email 2 of 2) on July 10<sup>th</sup> be made part of the record and included in the material packet for the next meeting (i.e., Answering Brief, Prehearing Order and Order Denying Motion to Transfer).

Thank you,

Paul

**Paul C. Deyhle**  
General Counsel and Executive Director  
Nevada Commission on Judicial Discipline  
Executive Director  
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**From:** [Paul Deyhle](#)  
**To:** [tammy.riggs@washocourts.us](mailto:tammy.riggs@washocourts.us)  
**Cc:** [Parraguirre, Justice Ron](#); [Hardesty, Justice James](#); [david.hardy@washocourts.us](mailto:david.hardy@washocourts.us); [dentonm@clarkcountycourts.us](mailto:dentonm@clarkcountycourts.us); [tstockard@churhillcourts.org](mailto:tstockard@churhillcourts.org); [RichardGlasson@gmail.com](mailto:RichardGlasson@gmail.com); [elana.graham@clarkcountynv.gov](mailto:elana.graham@clarkcountynv.gov); [drakulich@reno.gov](mailto:drakulich@reno.gov); [ritchiea@clarkcountycourts.us](mailto:ritchiea@clarkcountycourts.us); [khiggins@washocounty.us](mailto:khiggins@washocounty.us); [batemans@clarkcountynv.gov](mailto:batemans@clarkcountynv.gov); [sam.bateman@clarkcountynv.gov](mailto:sam.bateman@clarkcountynv.gov); [ann.zimmerman@clarkcountynv.gov](mailto:ann.zimmerman@clarkcountynv.gov); [bmbrown@lasvegasnevada.gov](mailto:bmbrown@lasvegasnevada.gov); [lvn@lbeqslaw.com](mailto:lvn@lbeqslaw.com); [DKennedy@BaileyKennedy.com](mailto:DKennedy@BaileyKennedy.com)  
**Subject:** ADKT 0582 Commission - Reply to Judge Tammy Riggs' Request for Information dated June 30, 2022 (Email 1 of 2)  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[NCJD Requested Information.zip](#)  
**Importance:** High

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Dear Judge Riggs,

As requested by your Judicial Assistant Caity Skill (see email below dated June 30, 2022), attached are copies of the public Formal Statement of Charges for each of the judges subject to the public judicial discipline process from 2016 forward. Please note that in some cases a Formal Statement of Charges was not filed due to the NV Commission on Judicial Discipline ("NV Commission") and the judge agreeing to a Consent Order (stipulation) of discipline in lieu of formal charges. See Commission Procedural Rule 29 (Consent Orders). Also attached as requested are the appointment and reappointment dates for each of the Regular Commission Members and all Alternate Commission Members (judges, attorneys and lay members). The Commission does not have a written policy or procedure for reappointing members to the Commission since the Commission does not appoint or reappoint its members. The appointing authorities that appoint and reappoint members to the Commission are the Nevada Supreme Court (judicial members), the State Bar of Nevada Board of Governors (attorney members) and the Governor (lay members). When the term of service of a Commissioner (Regular or Alternate) is set to expire, Commission staff contacts the respective appointing authority to notify them of such expiration and to request appointment/reappointment.

Although this email is responding directly to you, I have also decided to copy all of the ADKT 0582 Commissioners not only for transparency purposes given that this is a public proceeding, but also to hopefully facilitate further discussion and understanding of the issues and proposals being discussed. \*\*\* In a separate email to follow, additional information will be provided which will address some of the other topics discussed at the ADKT 0582 Commission ("ADKT Commission") meeting held on June 20, 2022.

To further assist the ADKT Commission's consideration of the issues and proposals being discussed, please provide responses to the following questions below:

1. Please indicate which, if any, of the public cases from 2016 forward were decided unfairly or wrongly by the Commission and why. Please be specific.
2. Please indicate how these cases, if any, would have been decided differently if other commissioners had been involved given the specific facts and law of each respective case. Please be specific.
3. Please indicate whether any of the proposals seeking to impose and/or change the



Commission's (i) composition (from a one-tier structure to a bifurcated structure), (ii) term limits and (iii) Procedural Rules require Constitutional Amendment. If you believe that the proposals do not require Constitutional Amendment, then please provide specific legal authority that supports the proposals being enacted or promulgated without Constitutional Amendment given the following:

- Nevada Constitution, art. 6, sec. 21(2) (Composition); sec. 21(4) (Terms); and sec. 21(7) (Procedural Rules). Please note that the limited responsibilities conferred to the Legislature as delineated in sec. 21(5) do not involve the composition of the Commission, term limits, or changes to the Commission's Procedural Rules;
- The Nevada Supreme Court's decision in *Mosely v. Nevada Commission on Judicial Discipline*, 117 Nev. 371, 377-381, 22 P.3d 655, 659-661 (2001) (wherein the Court determined that "the Nevada State Constitution contemplates a judicial discipline commission with combined functions" and concluded that the holding in the United States Supreme Court case of *Withrow v. Larkin*, 421 U.S. 35, 52-58 (1975), was indistinguishable and dispositive of the issue of combining investigative and prosecutorial functions);
- Nevada Supreme Court ADKT No. 346 (February 21, 2003) (Nevada Supreme Court's Order repealing the Nevada Supreme Court's procedural rules governing the Commission following the people's approval and ratification of an amendment to the Nevada Constitution during the 1998 general election that removed the Nevada Supreme Court's authority to promulgate rules governing proceedings before the Commission and empowered the Commission to adopt procedural rules to govern its proceedings). Please note that in March 2003 (a few weeks after the issuance of the foregoing Order, the Commission adopted the same procedural rules which previously governed the Commission for decades;
- Article 6 Commission's conclusions on bifurcating the Commission. Please note that the Article 6 Commission, which was formed by the Nevada Supreme Court in 2006 and comprised experts throughout Nevada and the United States, including Supreme Court justices, judges, lawyers and members of the public, examined for over two years the entire structure and disciplinary process of the Commission, including the Commission's statutes and procedural rules. The Article 6 Commission authored the Article 6 Report which included a bill draft request ("BDR") to the Legislative Counsel Bureau. This BDR later became AB496 in the 2009 Legislative Session. In its Article 6 Report, the Article 6 Commission concluded as follows:

"Bifurcation of the Nevada Judicial Discipline Commission is not possible without constitutional amendment. The Commission has only seven members – two judges, two lawyers, and three public members. It is impossible to divide that membership in two and maintain a ratio of 1.5 public members to every judge and lawyer member. Having panels with different ratios decide whether to file a (*sic*) formal charges or whether formal charges have been proven would violate the Constitution.

Using alternate members to create a second tier or panel would not solve the problem. The Constitution does not provide for alternative members. Appointing members to sit occasionally on cases when a regular member is disqualified or otherwise unable to sit (which is the current practice) is inherent in the constitutional power of appointment, [citing *Moseley* opinion] but turning them into regular members taking part in every investigation or adjudication to avoid having to amend the Constitution cannot be justified. (It would also mean there would be no alternate members available to serve in place of disqualified regular members, complicating the Judicial Discipline Commission's task of finding a quorum.)" See Article 6 Report, Section D (Bifurcation), p.21; and

- The United States Supreme Court's decision in *American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532, 538-39, 90 S.Ct. 1288, 25 L.ED.2d 547 (1970) (internal citations omitted), which held that:

"The Commission is entitled to a measure of discretion in administering its own procedural rules in such a manner as it deems necessary .... [T]here is no reason to exempt this case from the general principle that [i]t is always within the discretion of a court or an administrative agency to relax or modify its procedural rules adopted for the orderly transaction of business before it when in a given case the ends of justice require it. The action of either in such a case is not reviewable except upon a showing of substantial prejudice to the complaining party." See also, *Matter of Buckson*, 610 A.2d 203, 218 (Del.Jud. 1992), where the Delaware Supreme Court, in conducting a judicial discipline review, relied on the U.S. Supreme Court's decision in *American Farm Lines*.

4. Notwithstanding the foregoing, please provide the prospective benefits, if any, of the proposals seeking to impose and/or change the Commission's structure, term limits and Procedural Rules. For example, will the proposed changes decrease the timeliness of Commission proceedings, improve the effectiveness of the Commission in addressing judicial misconduct in Nevada, increase the transparency of the Commission, or decrease the operating funds necessary to enable the Commission to sufficiently carry out its constitutional and statutory mandates?
5. To the extent known or available, please provide evidence, if any, that supports or corroborates the allegation that the Commission made a decision (presumably in advance of or during the 2020 election cycle) that it would not investigate any instances of misconduct by judicial candidates during the 2020 election cycle (as set forth in the Agenda and discussed during the ADKT Commission meeting (via Zoom) on June 20, 2022).

Please note that the Commission is unaware of any decision made by the Commission in advance of or during the 2020 election cycle that it would not investigate any instances of election misconduct occurring during the 2020 election cycle. Please note that if the Commission receives a complaint alleging judicial misconduct in the course of an election, that complaint must follow the very same due process steps delineated by law as any other complaint (i.e., complaint review by staff and Commission, independent investigation, investigation review by staff and Commission, confidential response by judge, response

review by staff and Commission, multiple Commission meetings to review and act on the foregoing, appointment of an independently licensed attorney to act as prosecuting officer, prosecuting officer review of case, filing of formal charges, public answer by judge, setting public trial, pre-trial motion practice and holding a trial). However, a stipulation of discipline may be entered into between the judge and the Commission after the Commission appoints a prosecuting officer, which would obviate the need for a trial. Nevertheless, it is only after a trial or a stipulation of discipline is entered that the Commission can take any action or impose discipline or conditions on a judicial officer. As you can appreciate, the foregoing due process steps are very time-consuming. This does not even include time delays for extension of time requests, the filing of Writ Petitions and related motions for stay with the Nevada Supreme Court, as well as state and federal lawsuits filed against the Commission (and related motions for stay), all of which are afforded by law. By the time the foregoing process is complete, the election has long since concluded.

There is no authority under the law that permits the Commission to expedite election complaints or circumvent/bypass the due process steps previously discussed. Moreover, with respect to non-judicial officers, the Commission has no jurisdiction at all, whether over election misconduct or otherwise. As such, the only way the Commission can discipline a judicial candidate for election misconduct is if the judicial candidate wins the election. Otherwise, the Commission has no authority over lay persons or attorneys running for office who engage in election misconduct. Please note that members of the Nevada judiciary inquired several years ago regarding the Commission's practice in this regard and the very same explanation was given. Perhaps this explanation was misunderstood and the allegation set forth in Section VI.F. of the Agenda emanated from that discussion.

Please note that from 2014 to 2020, there was a total of 29 complaints filed concerning allegations of election misconduct. Eight (8) of those complaints were dismissed without investigation because the complaints either (i) alleged misconduct against non-judicial officers, or (ii) were filed outside the statute of limitations period. Under both circumstances, the Commission does not have jurisdiction to proceed by law. Among the remaining twenty-one (21) complaints filed over which the Commission had jurisdiction, the Commission authorized eight (8) investigations, imposed two (2) public reprimands (Almase and Smith) and issued four (4) letters of caution. Specifically, during the 2020 election cycle, the Commission received ten (10) complaints alleging election misconduct. Four (4) of those complaints were dismissed for alleging misconduct against non-judicial officers, and one (1) was dismissed for being filed outside the statute of limitations period. As mentioned above, the Commission has no jurisdiction to proceed with these complaints by law. See NRS 1.428 (defining "Judge") and NRS 1.4655(2) (statute of limitations). Of the remaining five (5) complaints filed over which the Commission had jurisdiction during the 2020 election cycle, they were dismissed by the Commission without investigation for various reasons, including lack of evidence rising to the requisite "objectively verifiable evidence" standard set forth in NRS 1.4657(1) or because the Nevada Revised Code of Judicial Conduct (including the Comments) did not expressly prohibit or address the conduct alleged.

Although the Commission did not authorize any investigations during the 2020 election

cycle, it was not because the Commission made a decision prior to or during the 2020 election cycle that it would not investigate any election complaints (as alleged in the Agenda discussed at the ADKT Commission meeting on June 20, 2022), but rather was based on the facts and law in each of those respective cases. It is also important to note that Rule 11 (Investigation) of the Commission's Procedural Rules, permit Commission staff to "perform minimal investigation as may be necessary to aid the Commission in properly reviewing a complaint." See Commission Procedure Rule 11(1). This may involve obtaining additional information and documents from complainants as necessary and warranted, as well as requesting court records, transcripts and JAVS recordings from courts throughout Nevada. Accordingly, every case received by the Commission undergoes a preliminary investigation; however, "[a] full investigation may not commence without Commission authorization." See Commission Procedural Rule 11(2).

6. Please identify what role, if any, the Nevada Secretary of State's Office ("SOS") has in policing and disciplining for election misconduct (which it is tasked to do under the law), particularly given that the SOS governs the enforcement of NRS Chapter 294A (Nevada's Campaign Practices Act) and has a much larger budget and many more resources than the Commission.

As one of the smallest agencies in the State of Nevada, and as noted by Justice Hardesty during the June 20<sup>th</sup> ADKT Commission meeting, budgetary funding and resources have always been and will continue to be a challenge for the Commission even under present circumstances, but even more so if significant changes are made to the Commission's duties and responsibilities going forward.

**If possible, please provide responses to the foregoing questions by Friday, July 22, 2022, so they can be considered and further discussed at the next meeting of the ADKT Commission scheduled for July 28, 2022.** Your assistant, Ms. Skill, previously indicated that you need the attached information set forth in this email for your planned presentation at the next ADKT Commission meeting on the 28<sup>th</sup>. To further facilitate discussion and understanding of the issues among the ADKT Commissioners, it would also be helpful if you further addressed the requested responses to the questions above in your planned presentation.

**\*\*\*\*\*** In a separate email to follow, additional information will be provided which will address some of the other topics discussed at the ADKT Commission meeting held on June 20, 2022. It is hopeful that this additional information will further assist the ADKT Commission in its consideration of the current proposals.

Thank you,

Paul

**Paul C. Deyhle**  
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**From:** Skill, Caity <[Caity.Skill@washoecourts.us](mailto:Caity.Skill@washoecourts.us)>  
**Sent:** Thursday, June 30, 2022 10:38 AM  
**To:** Kadie Seghieri <[kseghieri@judicial.nv.gov](mailto:kseghieri@judicial.nv.gov)>  
**Subject:** Request for Information

**WARNING** - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hi Katie,

Thank you for returning my call. Please allow this correspondence to memorialize our conversation.

Judge Riggs is requesting a copy of the public, formal complaint for each of the judges subject to the public judicial discipline process from 2016 forward. As well as the appointment and reappointment dates for each of the Regular Commission Members and all Alternate Members (judge, attorney, and lay members) and the written policy or procedure for reappointment of members of the commission, or if there is nothing in writing, a description of that procedure.

If possible, we are asking for all requested items by July 15, 2022. Please do not hesitate to contact me with any questions or concerns.

Sincerely,  
Caity

Caity Skill  
Judicial Assistant to Hon. Tammy M. Riggs  
Second Judicial District Court  
Department 3  
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Phone: (775) 328-3189



**From:** [Paul Deyhle](#)  
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**Cc:** [Parraguirre, Justice Ron](#); [Hardesty, Justice James](#); [david.hardy@washocourts.us](mailto:david.hardy@washocourts.us); [dentonm@clarkcountycourts.us](mailto:dentonm@clarkcountycourts.us); [tstockard@churchillcourts.org](mailto:tstockard@churchillcourts.org); [RichardGlasson@gmail.com](mailto:RichardGlasson@gmail.com); [elana.graham@clarkcountynv.gov](mailto:elana.graham@clarkcountynv.gov); [drakulichq@reno.gov](mailto:drakulichq@reno.gov); [ritchiea@clarkcountycourts.us](mailto:ritchiea@clarkcountycourts.us); [kbiggins@washocounty.us](mailto:kbiggins@washocounty.us); [batemans@clarkcountynv.gov](mailto:batemans@clarkcountynv.gov); [sam.bateman@clarkcountynv.gov](mailto:sam.bateman@clarkcountynv.gov); [ann.zimmerman@clarkcountynv.gov](mailto:ann.zimmerman@clarkcountynv.gov); [bmbrown@lasvegasnevada.gov](mailto:bmbrown@lasvegasnevada.gov); [lyn@lbeqslaw.com](mailto:lyn@lbeqslaw.com); [DKennedy@BaileyKennedy.com](mailto:DKennedy@BaileyKennedy.com)  
**Subject:** ADKT 0582 Commission - Reply to Judge Tammy Riggs" Request for Information dated June 30, 2022 (Email 2 of 2)  
**Attachments:** [image001.png](#)  
[2018.11.11 Prehearing Order 2017-119-P.pdf](#)  
[2020.06.03 Respondent's Answering Brief.pdf](#)  
[2018.04.04 Order Denying Motion to Transfer Hearing to Las Vegas, Nevada or, in the Alternative, to.pdf](#)  
**Importance:** High

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Dear Judge Riggs,

As noted in my previous email to you (sent a few minutes ago), below and attached are additional information and documents which will hopefully assist the ADKT Commissioners in their consideration and understanding of the proposals and issues being discussed during these ADKT Commission proceedings. This information will also address, in part, the supplemental materials (entitled "Possible Changes To: Procedural Rules of the Nevada Commission on Judicial Discipline") submitted by Judge Zimmerman and posted to the Supreme Court's website (referred to herein as the "Supplemental Materials"):

#### **Commission's Website:**

The Commission staff does not administer the Commission's website. The Commission's website is administered by the Web Enterprise Group, a subdivision of Enterprise IT Services (EITS), which is a division of the Department of Administration, an executive branch agency of the State of Nevada. The Commission only has limited usage and storage rights. The functionality, posting capabilities and storage capacity of the Commission's website are extremely limited and any changes to the existing functionality are dependent on the priorities of the Web Enterprise Group and the directives of the Governor.

In short, the Commission's website simply does not have the functionality or capacity to post every document filed in every case that resulted in public charges dating back decades. Even the Nevada Supreme Court's website does not post every document. In fact, the Supreme Court's website (under "Find-A-Case") includes a disclaimer that reads as follows: "Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing. For official records, please contact the Clerk of the Supreme Court of Nevada at (775) 684-1600."

In Judge Zimmerman's Supplemental Materials (page 1 under "Rule 6" and page 3, under "Rule 14"), she states that "the Commission only posts what they want to post despite the fact that their website states in all capital letters "ALL DOCUMENTS ARE POSTED ON THE COMMISSION WEBSITE." This is incorrect. In the "Introduction" section of the Commission's website, it states

“ALL **AFOREMENTIONED** DOCUMENTS ARE POSTED ON THE COMMISSION WEBSITE.” The word “AFOREMENTIONED” was left out of the above quote. The “AFOREMENTIONED DOCUMENTS” are referring to the relevant sections of the Nevada Constitution, Nevada Revised Statutes, the Code of Judicial Conduct and the Procedural Rules of the Commission, as stated in the “Introduction” section. See <https://judicial.nv.gov/Discipline/Introduction/>

Please note that Commission Procedural Rule 14 and NRS 1.4687 state that upon the filing of a formal statement of charges with the Commission, other documents later formally filed with the Commission are public documents and must be accessible to the public. These documents are accessible to the public upon request as are the documents not reviewable on the Supreme Court website. The Commission is not sidestepping any rules or hiding any matters from the public. The Commission’s statutes and rules do not mandate the Commission to post to its website all filed pleadings and orders. As explained above, the Commission’s website does not have the functionality or storage capacity to post all filed pleadings and orders. During the pendency of a public trial, and to the extent it is able, the Commission posts all filed pleadings and orders under its “Pending Public Formal Statements of Charges and Answers” tab on its website. However, there are times when the Commission cannot even post all filed documents in a single case simply due to the sheer volume of documents filed.

**Proposal to Provide Copy of Complaint to Judge Prior to a Response or Interview** [See Judge Zimmerman’s Supplemental Materials, pages 2-3, under “Rule 12”]

Under current law and practice, the Commission provides judges with a copy of the complaint and all investigation documents, including the investigation report, interview summaries, interview transcripts, interview audio recordings, as well as any other information considered by the Commission in determining that a judge is required to respond to a complaint, except attorney-client recommendations provided to the Commission by Commission counsel which are confidential by law. The complaint and all above-mentioned documents and recordings are provided to judges prior to a judge having to confidentially respond to a Commission complaint.

However, Judge Zimmerman is proposing in her Supplemental Materials that the Commission provide a copy of the complaint prior to a Commission authorized interview. The Commission is not required by law to provide a judge with a copy of the complaint prior to an investigative interview. There are many important reasons why Nevada and many other judicial discipline commission jurisdictions throughout the United States do not mandate that a judge be provided with a copy of the complaint prior to an interview. In fact, some states prohibit a judge from ever seeing the confidential complaint, even after formal charges are filed and a trial is conducted. This very issue was briefed before the Nevada Supreme Court in *Tobiasson v. Nevada Commission on Judicial Discipline* (Sup. Ct. Case No. 80904). Please note that the Nevada Supreme Court dismissed the forgoing Writ Petition not on the merits, but on grounds of mootness. See Order Dismissing Petition filed on October 8, 2020. Nevertheless, attached is a copy of the Commission’s Answering Brief filed with the Supreme Court on June 3, 2020, which discusses many of the issues involved.

**Proposal to Require the Commission to Set a Hearing that is Mutually Agreed Upon by the Parties and the Commission** [See Judge Zimmerman’s Supplemental Materials, page 3, under “Rule 16.”]

**Formal Hearing” and pages 4-5, under “Rule 26”]**

Judge Zimmerman states in her Supplemental Materials that “[h]istorically, there has been no input allowed on the part of Respondent and his/her counsel as to scheduling.” This is incorrect. One of the first steps taken by the Commission following the filing of public charges is to determine how many days and hours are needed by the parties to present their respective evidence during the hearing. Without this information, the Commission can neither identify nor request and reserve an available venue for trial. Moreover, there are seven (7) Commissioners located throughout Nevada, along with Commission staff, the judge and defense counsel, the Commission’s Prosecuting Officer, witnesses and a court reporter, whose availability must all be determined months in advance. If one person or venue is unavailable on a proposed date(s), then this undertaking must start again from scratch. This process is nothing short of herding cats.

Consequently, the Commission does not set the hearing dates until the Commission’s Prosecuting Officer and judge’s counsel agree on the number of days for the hearing and the hours allotted to each side to present evidence. This is agreed to by all parties in advance. See, for example, Prehearing Order (attached), p.3, ln. 21 – p.4, ln. 7. Please note that most judges adhere to their prior agreements with respect to the number of days and hours to be allotted for their hearings. However, there are some who claim several weeks or months after the issuance of a Prehearing Order that more time is needed for their defense. Knowing the difficulty of extending hearing dates or identifying new ones at such a late date, in the experience of the Commission, these requests are often made in hopes of improperly delaying hearings. When such requests are denied based on clearly defined rules of evidence and procedure (during pre-trial motion practice), some judges and their counsel argue that the Commission has violated their due process rights, when no such violation has occurred.

**Proposal to Require Proper Venue to be the Jurisdiction where the Alleged Misconduct Occurred.**  
**[See Judge Zimmerman’s Supplemental Materials, pages 3-4, under “Rule 16 (cont.)”]**

Under current law, the proper venue for judicial hearings and proceedings shall be determined by the Commission. On only two (2) occasions in recent history has the Commission ever required venue for a trial to be in Reno when the judges were located in Las Vegas. Those cases were *In the Matter of the Honorable Rena G. Hughes*, Commission Case No. 2016-113-P (2016) and *In the Matter of the Honorable Melanie Andress-Tobiasson*, Commission Case No. 2014-094-P (2014). Both cases were one (1) day trials with only one or two witnesses testifying, one of them being the judge. In both cases, the judges’ motions to change venue were procedurally deficient as they lacked any affidavits to support the change in venue, the Reno location facilitated setting the hearing date in a more timely fashion, no exceptional circumstances were pleaded (as required by law) that would merit a change in venue, only minimal (same-day) travel was required, and the judges failed to disclose the substance of the testimony of their potential witnesses or explain the relevance of their expected testimonies. It was also unclear if some of the potential witnesses would even be allowed to testify based upon relevance and duplicity grounds pursuant to NRS 48.025 and NRS 48.035. For example, attached is a copy of the Commission’s Order Denying Motion To Transfer Hearing To Las Vegas, Nevada Or, In The Alternative, To Do Said Hearing By Video, issued by District Court Judge Jerome Polaha (as Presiding Judge) on April 4, 2018.



In all other cases before the Commission, the venue was determined to be where the judge was located and venue was never challenged. The foregoing cases were the only exceptions, not the rule governing decades of Commission practice. The Commission exercised its discretion in administering its own procedural rules in such a manner as it deemed necessary under the circumstances and, thus, required that the one-day trials be held in Reno instead of Las Vegas. Judge Zimmerman's statement in the Supplemental Materials that "[h]istorically, Motions for Change of Venue are routinely denied" is incorrect. No motions for change of venue were filed in any other case, except for the cases in *Hughes* and *Tobiasson* (as discussed above).

**Proposal to Require Commission to Rule on Pre-Hearing Motions.** [See Judge Zimmerman's Supplemental Materials, page 4, under "Rule 24" and "Example 3 – Pre-Hearing Motions?"]

Judge Zimmerman states that "[t]here is currently no time limit for the Commission to rule on pre-hearing motions thereby depriving the Respondent the opportunity to appropriately prepare for the hearing. The current practice is to rule on pre-hearing motions immediately prior to the start of the hearing." This is incorrect. In practice, the Commission issues a Prehearing Order (attached) shortly after the filing of public charges, which provides adequate time for both parties to file prehearing motions prior to trial. In fact, several months elapse from the filing of public charges to the commencement of a trial on the merits. A judge can file a prehearing motion immediately after the filing of public charges if desired. The only situation where pre-hearing motions are not ruled upon by the Commission prior to trial is when the judge waits until the last second and chooses to file such motions late. The opposing party (the Commission's Prosecuting Officer) needs adequate time to oppose and/or reply to such motions, and the Commissioners need time to confer and rule on the same.

Please note that the Commission is comprised of seven (7) volunteer citizens (judges, lawyers and laypersons) located throughout Nevada. These Commissioners should be entitled to a certain measure of discretion in administering the Commission's own procedural rules for the orderly transaction of proceedings before it when in a given case the ends of justice require it. In sum, a judge has several months to file prehearing motions prior to trial. See Commission's Prehearing Order (attached), page 2, lines 3-5.

Judge Zimmerman also states on page 4 of the Supplemental Materials, under "Rule 24" and "Example 2 – Interrogatories?" that "[t]he Commission promulgates Interrogatories and compels an Answer PRIOR to the filing of Formal Statement of Charges." Under current Nevada law, which is also consistent with the laws of every judicial discipline commission in the United States, a judge is required to confidentially answer a complaint prior to the filing of public charges. See NRS 1.4667(3) and Commission Procedural Rule 12. However, with respect to "promulgating Interrogatories", the Commission has ceased that long-standing practice upon the issuance of the Nevada Supreme Court's Order Granting In Part and Denying In Part Petition for Writ of Mandamus or Prohibition in *Tobiasson v. Nevada Commission on Judicial Discipline* (Supreme Court Case No. 77551), filed on May 10, 2019. However, in that Order, even the Nevada Supreme Court acknowledged that "[a] judge must also 'respond to [a] complaint in accordance with procedural rules adopted by the Commission. NRS 1.4667(3).'"

Moreover, on page 4 of the Supplemental Materials, under “Rule 24”, Judge Zimmerman asks “[w]hat remedy if the procedural rules of the Commission conflict with the Nevada Rules of Civil Procedure? Under NRS 1.462(2), “[e]xcept as otherwise provided in NRS 1.425 to 1.4695, inclusive, or in the procedural rules adopted by the Commission, after a formal statement of charges has been filed, the Nevada Rules of Civil Procedure apply.” Accordingly, the Nevada Rules of Civil Procedure apply unless the Commission’s statutes and procedural rules provide otherwise.

**Proposal to Require Commission Meeting Minutes to be Made Public and Posted on the Commission’s Website.** [See Judge Zimmerman’s Supplemental Materials, page 2, under “Rule 6”]

Judge Zimmerman states that “[t]his portion of the rule should be amended to require that meeting minutes should be made public and posted on their website. This is a publicly funded body and should not be permitted to operate in total secrecy.” This portion of Rule 6 also mirrors NRS 1.4687(3), which states “[t]he Commission’s deliberative sessions must remain private and any minutes of such sessions must remain confidential.” See also NRS 1.4683, which states “[e]xcept as otherwise provided in this section and NRS 1.4675 and 239.0115, the existence of a proceeding of the Commission must remain confidential until the Commission makes a determination pursuant to NRS 1.467 and the special counsel files a formal statement of charges.”

Although the press and the public would most certainly celebrate such a change to the Commission’s statutes and procedural rules, I am doubtful that the overwhelming majority of judges at any level of the Nevada judiciary would be comfortable with the public disclosure of confidential meeting minutes concerning confidential complaints filed against them.

Furthermore, on page 2 of the Supplemental Materials, under “Rule 10”, Judge Zimmerman asks “[w]ho is the Commission staff that reviews the complaints? What are the objective criteria or checklist for said review? Commission staff consists of administrative staff/paralegals and attorneys. Commission staff reviews complaints, enters all information in the Commission’s case management system, conducts preliminary investigations as warranted and prepares confidential recommendations for review by the Commission at its quarterly meetings. Commission staff ensures from the outset that the Commission has jurisdiction to review and take action on the complaints (includes, among other things, making certain the complaint is against a “judge” within the meaning of NRS 1.428, and that the statute of limitations has not passed pursuant to NRS 1.4655(2). Commission attorneys prepare confidential recommendations to the Commission which incorporate factual and legal analyses based on the complaint filed, relevant provisions of the Nevada Revised Code of Judicial Conduct, Nevada Revised Statutes, Commission Procedural Rules, and applicable case law, as well as a recommended course of action.

**Proposal to Narrowly Tailor Rule 4 Concerning Privileged Communications.** [See Judge Zimmerman’s Supplemental Materials, page 1, under “Rule 4”]

The Nevada Constitution, art. 6, sec 21(5) mandates that “[t]he Legislature shall establish: (d) the confidentiality or nonconfidentiality, as appropriate, of proceedings before the Commission, ....” Likewise, NRS 1.4695 provides that “[t]he Commission shall adopt rules to establish the status of

particular communications related to a disciplinary proceeding as privileged or nonprivileged.” Commission Procedural Rule 4 is consistent with the Nevada Constitution, NRS 1.4695 as well as NRS 1.4683(4), which further provides that “[t]he confidentiality required pursuant to subsection 1 also applies to all information and materials, written or oral, received or developed by the Commission, its staff or any independent contractors retained by the Commission [to include investigators and prosecuting officers] in the course of its work and relating to the alleged misconduct or incapacity of a judge.”

Judge Zimmerman states that “the investigator, prosecutor, and judge/jury can have unlimited communication and it will be considered privileged?” The Commission’s independent investigators and prosecuting officers have no contact or communications with any of the Commissioners [judge/jury] during the course of their Commission case engagements. The Commissioners (i) review the investigation reports and related materials (at its quarterly meetings) submitted by the independent investigators; (ii) review the prehearing motions submitted by both prosecuting officers and defense counsel prior to trial and issue related orders; and (iii) observe the independent prosecuting officers appearing before them during a trial on the merits, all in accordance with current law.

Please note that the Commission will take under consideration any recommendations made by the ADKT Commission related to proposed changes to the Commission’s Procedural Rules pursuant to its constitutional authority.

**Gender Statistics** [in reference to Agenda item C discussed at the ADKT Commission meeting held on June 20, 2022]

From 1992 to 2021, 30% of the discipline imposed by the Commission were against female judges, while 70% were against male judges. Among the female judges disciplined, 60% of the complaints were filed by females. Among the 30% of complaints filed against female judges, 25% were initiated or filed by female judges (i.e., a female judicial colleague of the disciplined female judge) or female court staff. Among the 25% of the complaints initiated or filed against female judges by female judges or female court staff, 10% of the filed complaints were by female judges.

**Other Statistics**

Historically, a significantly higher number of complaints filed with the Commission are against district court judges, not limited jurisdiction judges. See, for example, the FY 2020 – FY 2021 Biennial Report located on the Commission’s website under the “Annual and Biennial Reports” tab. In FY 2020, 66% of the complaints filed with the Commission were against district court judges, compared to 23% for limited jurisdiction judges (refer to Exhibits to Biennial Report). Likewise, in FY 2021, 58% of the complaints filed were against district court judges, compared to 35% for limited jurisdiction judges (refer to Exhibits to Biennial Report). Moreover from 2013 to 2021, the Commission imposed discipline against 17 district court judges, compared to 20 limited jurisdiction judges.

Other statistics and reporting information gathered by the Commission are set forth in the body of and exhibits to its Annual and Biennial Reports located on the Commission’s website under the

"Annual and Biennial Reports" tab.

Thank you,

Paul

**Paul C. Deyhle**  
General Counsel and Executive Director  
Nevada Commission on Judicial Discipline  
Executive Director  
Nevada Standing Committee on Judicial Ethics  
P.O. Box 18123  
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# TAB 3



## SECOND JUDICIAL DISTRICT COURT

TAMMY M. RIGGS  
DISTRICT JUDGE  
DEPARTMENT THREE

STATE OF NEVADA  
WASHOE COUNTY

75 COURT STREET  
RENO, NEVADA 89501  
775.328.3189

September 8, 2022

Chief Justice Parraguirre  
Nevada Supreme Court  
201 South Carson Street, Suite 201  
Carson City, NV 89701

Associate Chief Justice Hardesty  
Nevada Supreme Court  
201 South Carson Street, Suite 201  
Carson City, NV 89701

Jamie Gradick, Rural Courts Coordinator  
Nevada Supreme Court  
Administrative Office of the Courts  
201 South Carson Street, Suite 250  
Carson City, NV 89701

Re: **Recommendations to ADKT 0582 Commission Regarding Diversity, Equity and Inclusion**

Dear Chief Justice Parraguirre and Associate Chief Justice Hardesty:

Following are the recommendations summarized in the conclusion of my presentation to the ADKT 0582 Commission on August 12, 2022, "*Gender Equity, Terms of Office, and Process for Appointment of Commissioners for the Nevada Commission on Judicial Discipline.*" Per your request, they have been prepared in proposal form in anticipation of being voted upon (aye or nay) by the ADKT 0582 Commission at a future meeting.

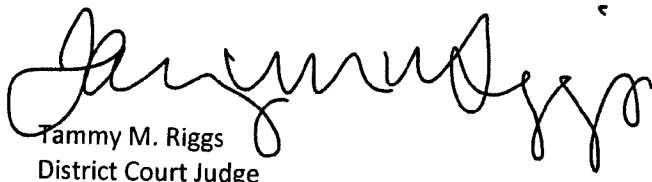
- 1) The ADKT 0582 Commission makes a finding that it is in the interest of fairness to the public and to judges who are subject to the processes of the Nevada Commission on Judicial Discipline that the Commission's members represent the diversity of the citizens of the State of Nevada and the judges who appear before it.
- 2) The ADKT 0582 Commission recommends that NRS 1 be amended to require that the authorities who appoint members to the Nevada Commission on Judicial Discipline (the Nevada Governor,

the Board of Governors of the State Bar of Nevada, and the Nevada Supreme Court) may not appoint any person to the Commission to serve more than two consecutive full terms.

- 3) 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."
- 4) The ADKT 0582 Commission recommends that the Nevada Commission on Judicial Discipline adopt a policy that, at the time a term expiration/vacancy on the Commission is announced to the appointing authority, the Executive Director inform the appointing authority that the Commission seeks members who reflect the diversity of the people of the State of Nevada, the State Bar of Nevada, and the Nevada Judiciary.
- 5) The ADKT 0582 Commissions 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, to advertise the vacancy through established modes of communicating with members of the public, State Bar of Nevada, and members of the Nevada Judiciary prior to making the appointment.

I am available to answer any questions that you may have about these proposals at [judge.riggs@washocourts.us](mailto:judge.riggs@washocourts.us), or (775) 328-3189. Thank you and the ADKT 0582 Commission for your consideration.

Sincerely,



Tammy M. Riggs  
District Court Judge

# TAB 4



Procedural Rules of the Nevada Commission on Judicial Discipline

I. GENERAL PROVISIONS

Rule 1. Scope of Rules.

These rules carry out the obligation of the Nevada Commission on Judicial Discipline to adopt rules of procedure for the conduct of its hearings and other procedural rules necessary to carry out its duties as imposed by Section 21(7) of Article 6 of the Constitution of Nevada.

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. ~~"Prosecuting Officer"~~Prosecutor 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.

### Rule 3. Structure; Meetings; Formal Hearings.

1. A Respondent may not participate as a member of the Commission in any proceeding involving a charge against Respondent.

2. A member of the Commission who cannot serve by reason of disqualification, resignation, inability to attend or any other reason is to be replaced by his or her alternate(s).

3 In the event of such a replacement, an Alternate must act and vote in the place of the absent member. In proceedings against a municipal judge or justice of the peace, ~~within 20 days after service of a Formal Statement of Charges, the Respondent may file a demand with the Commission's clerk, sending a copy to the Chief Justice, requesting that~~ the Nevada Supreme Court shall substitute as judicial members of the Commission judges serving in courts of limited jurisdiction outside the county in which the Respondent presides. ~~3.~~The Commission may be convened by the chairperson or on request of three or more members. Meetings may be held on not less than three (3) days' notice, but this requirement may be waived by consent of all the members.

4. A quorum for the conduct of business other than the hearing and decision of formal disciplinary proceedings is four members. The action of a majority of the members present at any meeting at which a quorum is present is the action of the Commission, except that no Respondent may be censured, temporarily suspended under rule 9, removed or retired from office or punished for contempt, unless five (5) or more members so concur.

5. Commission business requiring approval of the members may be transacted either at an in-person meeting or by telephone, videoconference, electronic mail ("email") or other informal poll of all members appointed, the majority concurring, but if any member objects to such a poll, the matter must be deferred until the next telephonic or in-person meeting.

6. Any member of the Commission or sitting Alternate member may be disqualified upon challenge for cause by the Respondent or by counsel prosecuting a complaint or a Formal Statement of Charges. A challenge must be heard by the Commission, and the Commission may disqualify any commissioner who by reason of ~~4~~ actual or implied bias would, in the opinion of a majority of the members present, either be prevented from adjudicating the matter in a fair and impartial manner or, by reason of facts creating an appearance of impropriety, be prevented from adjudicating the matter in a manner consistent with maintenance of public confidence in the Commission.

7. A challenge for implied bias must be allowed on a showing of any of the grounds relating to jurors which are enumerated in NRS 16.050.

8. No later than 20 days prior to the commencement of a hearing upon a Formal Statement of Charges, counsel appointed to present evidence in support thereof or counsel for the Respondent may exercise a single peremptory challenge to any of the Commission members. The peremptory challenge must be filed in writing with the clerk of the Commission. A formal hearing may proceed before a quorum of five (5) members of the Commission.

9. No member may vote by substitution or proxy.

## II. PRIVILEGED COMMUNICATIONS

Rule 4. Privileged Communications. The following are privileged communications and shall not be divulged to any person or court.

1. All communications between the Commission and its staff.

2. All deliberations of the Commission, including all meeting minutes of the Commission.

3. All communications either oral or written between ~~General counsel and/or~~ Executive Director and members of the Commission.

4. All communications between ~~General Counsel or~~ Executive Director and Commission staff, ~~prosecuting officers~~the prosecutor, or Commission investigators.

Rule 5. Violations of the Nevada Code of Judicial Conduct.

Members of the Commission who are judges are subject to disciplinary proceedings before the Commission for violations of the Nevada Code of Judicial Conduct, and are also subject to removal as members of the Commission upon order of the Nevada Supreme Court.

Rule 6. Formal Charges.

Upon the filing of the ~~Formal Statement of Charges~~Complaint, said ~~Statement~~Complaint and other documents later formally filed with the Commission shall be made accessible to the public, and hearings shall be open. The Commission's deliberative sessions and meeting minutes must remain private and shall not be disclosed. The filing of the ~~Formal Statement of Charges~~Compliant 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.

Rule 7. Public Statements by Commission.

In any case in which the subject matter becomes public, through independent sources, or upon a finding of reasonable probability and filing of a ~~Formal Statement of Charges~~Complaint, the Commission may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the Respondent to a fair hearing without prejudice, and to state that the Respondent denies the allegations. At all times, however, the Commission, its counsel and staff shall refrain from any public or private discussion about the merits of any pending or impending matter, or discussion which might otherwise prejudice a Respondent's reputation or rights to due process.

## II. JURISDICTION AND GROUNDS FOR DISCIPLINE

Rule 8. Grounds for Discipline.

The jurisdiction of the Commission extends to all justices and judges, including senior or part-time judges, and anyone whether

or not a lawyer who is an officer of a judicial system and who performs or formerly performed judicial functions, including an officer such as a magistrate, court commissioner, special master or referee. In the absence of fraud or bad faith occurring in the commission of an act constituting a ground for discipline set forth in NRS 1.4653, the Commission shall take no action against a Judge for making findings of fact, reaching a legal conclusion, expressing views of law or policy in a judicial opinion, or otherwise declaring or applying the law in the course of official duties. The Commission shall not review or base charges upon differences of opinion between Judges as to matters of law, or as to other issues committed to judicial or administrative discretion. Claims of error shall be left to the appellate process, unless supported by evidence of abuse of authority, a disregard for fundamental rights, an intentional disregard of the law, a pattern of legal error, or an action taken for a purpose other than the faithful discharge of judicial duty.

Rule 9. Suspension.

1. The Commission may suspend a Judge from the exercise of the office in accordance with NRS 1.4675 and NRS 1.4677(1).
2. The Commission shall give the Respondent seven (7) days' notice of its intention to suspend. The Judge may submit documents in opposition to suspension which shall be considered by the Commission. The Commission shall hold a public hearing before ordering such a suspension unless the Judge waives the right to the hearing.
3. A Respondent suspended under these rules may appeal to the Nevada Supreme Court.
4. The Commission shall promptly file a certified copy of the notice of suspension with the clerk of the Nevada Supreme Court.

Rule 10. Initiation of Procedure.

1. Except as provided in subsections 2 and 3, initial ~~complaints~~ accusations of Judicial Misconduct must be made in writing upon oath or declaration under penalty of perjury and may be made by the ~~person complaining~~ accuser. Such ~~a complaint~~ an accusation must contain facts which, if true, would establish grounds for discipline as set forth in NRS 1.4653.

2. ~~A complaint~~An accusation may be initiated by information in any form from any source received by the Commission that alleges or from which a reasonable inference can be drawn that a Judge committed misconduct or is incapacitated. If there is no written ~~complaint-accusation~~ from another person, the Executive Director of the Commission may file a complaint.

3. In exceptional circumstances, in which the Commission has substantial reason to believe that ~~a complainant~~an accuser may in likelihood suffer untoward risk of embarrassment, harassment, or other detrimental consequences, the Commission may on request, authorize its Executive Director to sign and swear to ~~a complaint-an accusation~~on information and belief, in the ~~complainant's-accuser's~~ stead.

4. ~~A complaint~~An accusation will be reviewed by Commission staff to ensure that it meets the minimum requirements as required by statute. Except for ~~complaints-accusations~~ filed by the Executive Director, all ~~complaints-accusations~~ shall be sworn or declared under penalty of perjury. ~~Accusations~~Complaints that do not meet the statutory requirements may be dismissed administratively by Commission staff with the Commission subsequently ratifying such administrative dismissals, if appropriate, at its next scheduled Commission meeting.

5. All ~~accusations~~complaints shall be reviewed by the Commission to determine whether they state facts, which if true, establish grounds for discipline as set forth in the Nevada Revised Statutes.

6. The Commission may either dismiss the ~~accusation~~complaint or authorize an investigation.

7. A ~~accuser~~complainant may file a request for reconsideration of a dismissed ~~accusation~~complaint. Unless additional facts are alleged which in the opinion of the General Counsel require reconsideration of the dismissed ~~accusation~~complaint by the Commission, the matter may be dismissed administratively by Commission staff with the Commission ratifying such dismissals, if appropriate, at its next scheduled meeting.

#### Rule 11. Investigation.

1. The Commission staff may perform minimal investigation as may be necessary to aid the Commission in properly reviewing an accusation~~complaint~~.

2. A full investigation may not commence without Commission authorization.

3. After an investigation is authorized by the Commission, the Executive Director shall hire an investigator or investigators as necessary to properly carry out the duties of the Commission. Once an investigation is authorized, it shall be directed by the Executive Director.

4. Investigations are not limited to the matters raised in the accusation~~complaint~~. Investigations may encompass any matters either raised in the accusation~~complaint~~ or disclosed during the investigative process. When matters that are totally unrelated to the issues raised in the accusation~~complaint~~ are uncovered, they shall not be investigated without first receiving Commission approval.

#### 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 an accusation ~~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 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 accusation~~complaint~~ to respond.

3. The Commission shall serve the accusation~~complaint~~ upon the Respondent who shall have 30 days in which to respond to the accusation~~complaint~~. Failure of the Respondent to answer the accusation~~complaint~~ shall be deemed an admission that the facts alleged in the accusation~~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 accusationcomplaint.

5. Amendment of allegations in the accusationcomplaint, 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 accusationcomplaint.

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.

#### Rule 13. Finding of Reasonable Probability.

1. Based upon the accusationcomplaint and all relevant evidence presented in the reports of any investigation conducted by the Commission or referred to in documents and memoranda in the Respondent's response and supporting documents, the Commission shall make a finding of whether there is Reasonable Probability for disciplinary action against the Judge named in the accusationcomplaint.

2. If the Commission makes a finding that such a Reasonable Probability does not exist, the Commission shall dismiss the accusationcomplaint. The Commission may issue a letter of caution accompanying its dismissal.

3. A finding of Reasonable Probability authorizes the Executive Director to designate a Prosecuting Officer who must sign under oath a Formal Statement of ChargesComplaint against the Judge.

#### V. PROCEDURE AFTER FINDING OF REASONABLE PROBABILITY

Rule 14. Filing of a Complaintformal Statement of Charges.

If Reasonable Probability is found, a Complaint Formal Statement of Charges shall be filed. The Formal Statement of Charges is a public document, as are other pleadings, motions, challenges, and supporting affidavits subsequently filed. The Complaint Formal Statement of Charges shall be filed with the clerk of the Commission.



Rule 15. Content of ~~Complaint~~Formal Statement of Charges. The ~~Complaint~~ Formal Statement of Charges must contain a clear reference to the specific provisions of statutes, the Nevada Code of Judicial Conduct and the Nevada Constitution which are deemed to justify procedures before the Commission, together with a clear statement of all acts and omissions which are alleged to warrant action by the Commission under those provisions, identifying the dates, times and places to the extent possible that the acts or omissions are alleged to have occurred.

Rule 16. Service of ~~the Complaint~~Formal Statement of Charges. The Respondent shall be served within ten (10) days of filing a copy of the ~~Formal Statement of Charges~~Complaint.

Rule 17. Respondent's Answer. Within 20 days after service of the ~~Formal Statement of Charges~~Complaint, the Respondent shall file with the Commission an original and one copy of an answer. The answer must set forth in ordinary and concise language all denials, affirmative defenses and mitigating factors upon which the Respondent intends to rely at the hearing. The Executive Director may, for good cause, extend the time for Respondent's answer for a period not to exceed 30 additional days. Failure to answer the ~~Complaint~~Formal Statement of Charges shall constitute an admission that the facts alleged in the formal complaint are true and establish grounds for discipline pursuant to NRS1.4653.  
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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. 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.

Rule 19. Discovery.

1. A. Within ten (10) days after service of the notice of the Commission's Prehearing Order, the Commission and the Respondent shall exchange the following material and information within their possession or control to the extent not previously provided:

(a) The names and addresses of persons who have knowledge of facts relating to the complaint against the Respondent; ~~13~~

(b) Any written or recorded statements made by these persons and the substance of any oral statements claimed to have been made by the Respondent; (

c) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations; and (d) Any books, papers, documents, photographs or tangible objects pertaining to the case.

B. Additional discovery requests shall only be permitted with leave of the Commission.

2. The Commission's and Respondent's obligations under this rule extends to material and information in the possession or control of any persons who, on behalf of the Commission or the Respondent, have participated in any investigation of the charges.

3. If, subsequent to complying with these discovery provisions, the Commission or Respondent discovers additional material or information which is subject to disclosure, the additional material or information must be promptly disclosed.

4. True work product of counsel is not subject to discovery.

Rule 20. Subpoena and Inspection.

The Respondent and Prosecuting ~~Officer or~~ are entitled to compel attendance at the formal hearing of witnesses, including the Respondent, by subpoena, and to provide for the production of

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documents, books, accounts and other records. 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.

Rule 21. Witnesses. Witnesses are entitled to appear with counsel, who may represent and advise them on matters affecting their rights.

Rule 22. Public Hearing. The formal hearing shall be held in public before the Commission. All testimony must be under oath. All hearings shall be reported verbatim.

Rule 23. Presiding Officer. At the commencement of the hearing, the chairperson shall designate a member of the Commission who is either a Judge or a lawyer to preside at the hearing.

Rule 24. Rules of Evidence and Due Process. The rules of evidence applicable to civil proceedings apply at the hearing, and the Respondent shall be accorded due process of law.

Rule 25. Burden of Proof. ~~Counsel appointed by the Commission~~ ~~to~~ The Prosecutor shall present the evidence against the Respondent ~~have and has~~ the burden of proving, by clear and convincing legal evidence, the facts justifying discipline in conformity with the averments of the ~~Formal Statement of Charges~~ Complaint.

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 may limit the time each party is allowed to present evidence.

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-Complaint.against the Respondent~~. 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 15 concurrently filed.

Rule 28. Decision to Discipline.

1. Within 20 days after reaching a decision that discipline should be imposed, the Commission shall prepare and adopt a written statement of the nature of the proceeding, findings of fact, and conclusions of law on the issues presented by the ~~Formal Statement of Charges~~Complaint and the answer thereto, if any. The Commission may include in its decision a summary of evidence admitted. When the foregoing have been formulated, any sitting Commission member who wishes to dissent or protest shall be allowed ten (10) days for that purpose. Upon filing, the Commission must promptly serve a copy of the foregoing on the Respondent.

2. Upon adoption and filing of a decision which orders the censure, removal, retirement or other discipline of a Respondent, the Commission must file a certified copy of the decision with the clerk of the Nevada Supreme Court. Rule 29. Consent Orders. Upon written consent of the Respondent, the Commission may order the Respondent's censure, removal, retirement, or other discipline at any stage of the proceedings either prior to or following a determination of Reasonable Probability and the filing of a ~~Formal Statement of Charges~~Complaint, unless waived by Respondent, and such Orders take effect immediately. All such Consent Orders shall contain the allegations and charges that would be set forth in a ~~Formal Statement of Charges~~Complaint had one been filed. A certified copy of the Order must be filed with the Clerk of the Nevada Supreme Court and a copy of the Order must be served on the Respondent and placed on the website of the Commission.

VI. MENTAL OR PHYSICAL DISABILITY

Rule 30. Disability. Complaints of mental or physical disability must be made in writing and may be made by any person. Such a complaint must contain facts, which, if true, would justify retirement of a respondent who is disabled in the manner defined in the Nevada Revised Statutes.

Rule 31. Procedure for Carrying Out Responsibilities Regarding Physical or Mental Disability.

1. The same procedures as are employed with respect to discipline for Judicial Misconduct shall be followed by the Commission in regard to physical or mental disability. A ~~Formal Statement of Charges~~Complaint filed after a determination of

Reasonable Probability must be under oath. All conduct or omissions relied upon must be alleged with particularity, and must show a substantial disability which is likely to be permanent.

2. If ~~a complaint~~ an accusation received by the Commission alleges that a Judge is incapacitated, and the Commission determines after conducting an investigation that there is Reasonable Probability to file a formal complaint, the Commission shall attempt to resolve the matter informally.

3. The Commission may request the Respondent to submit to medical, psychiatric, or psychological testing by a physician selected by the Commission who is licensed to practice medicine in the State of Nevada.

4. If the Commission is unable to resolve the matter informally, and the Judge has not retained counsel at his or her own expense, the Commission shall appoint an attorney to represent the Judge at public expense.

5. Should a Respondent deny all or part of the charges contained in the complaint alleging incapacity, it shall be deemed to be consent on the part of the Respondent to submit to medical, psychiatric or psychological testing by a physician selected by the Commission who is licensed to practice medicine in the State of Nevada.

6. The doctor-patient relationship shall not apply with regard to the findings of the medical practitioner designated by the Commission whose report must be furnished to the Commission and the Respondent. The findings of a physician appointed by the Commission are not privileged communications.

7. Unless the Commission excludes them, after notice and hearing, upon a showing that they have interfered with the orderly conduct of the examination, the Respondent is entitled to have counsel and a medical expert of the Respondent's choice present during all phases of any examination ordered by the Commission.

8. A Respondent who retires during the pendency of an involuntary retirement proceedings shall be deemed to have retired voluntarily.

Rule 32. Effect of Denial. When there is a denial of a ~~Formal Statement of Complaint Charges~~ relating to the physical or mental

condition of the Respondent, by such denial the Respondent must be deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the Commission.

#### VII. REFERRAL; APPEAL

Rule 33. Referral. Whenever a Respondent is removed or retired on grounds which reflect unfavorably on the Respondent's fitness to practice law in Nevada, the Commission shall refer relevant information and evidentiary matter to the State Bar of Nevada.

Rule 34. Appeal. 1. A Respondent may appeal an order of censure, removal, retirement, or other discipline to the Nevada Supreme Court in accordance with rules adopted by the Nevada Supreme Court in regard thereto.

2. An appeal shall be taken by filing a notice of appeal with the clerk of the Commission within fifteen (15) days after service on the Respondent of the Commission's formal order of censure, removal, retirement, public reprimand or other discipline together with its formal findings of fact and conclusions of law.

3. Respondent may request all or a part of the transcript within ten (10) days after filing of a notice of appeal. The written request shall be filed with the clerk of the Commission who shall order the transcript prepared.

4. The cost of the transcript shall be assessed to the Respondent when a final decision in discipline proceedings is adverse.

#### VIII. ADMINISTRATIVE PROVISIONS

Rule 35. Expenses, Costs and Fees.

1. Witnesses may be entitled to fees and mileage allowances in accordance with the Nevada Rules of Civil Procedure.

(a) In the event that Respondent is disciplined by the Commission, the Commission may recover from Respondent any incurred fees and mileage allowances of, and costs of services upon, witnesses ordered by the Respondent.

(b) No Judge or attorney employed by the State of Nevada or its subdivisions may be allowed any fees for attending as a witness.

Rule 36. Amendments and Supplemental Rules.

1. The Commission may amend and supplement these rules as it deems necessary.

2. The Commission may adopt procedures for its internal operations which are 19 consistent with these rules and appropriate to its function.

Rule 37. Computation of Time. Time limitations in these rules shall be computed as in the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure, except that three (3) days shall not be added to the prescribed period for any notice or paper served upon a party by electronic means (email).

**TOP RULE CHANGES**  
**For Procedural Rules of the**  
**Nevada Commission on Judicial Discipline**

**Rule 12** – Amend rule to REQUIRE Commission to provide copy of complaint and all corresponding documents to Respondent prior to scheduling an interview or providing any answer.

**Rule 16** – Amend rule to REQUIRE Commission to set the hearing at a time that is **mutually agreed upon by the parties and the Commission.**

**Rule 16 (cont.)** – Amend rule to state that **proper venue shall be the jurisdiction where the alleged misconduct occurred.**

**New Rule** – To permit electronic testimony at the discretion of the parties.

**New Rule** - To establish a time limit for the Commission to rule on pre-hearing motions, at least 14 days prior to the date of hearing. Pre-hearing motions should be afforded oral argument in public unless the parties stipulate otherwise. The rule should also provide that the Commission and parties can appear remotely.

**Rule 26** – This rule should be amended to require the Commission to consult with both parties as to how much time each party will require to present their case. Each party should be allowed the amount of time requested to present their case and the Commission can hold them to it.

**Rule 4** – This rule should be more narrowly tailored, especially with respect to subsection 4. Essentially the investigator, prosecutor, and judge/jury can have unlimited communication outside the presence of Respondent and Respondent’s counsel and it will all be considered “privileged”???



**Rule 6** – There is a lack of transparency on the part of the Commission. This rule should be amended to **require** the Commission **to post on their website** the Formal Statement of Charges and any other documents subsequently filed, as well as any decisions issued by the Supreme Court. The current rule only states that documents “shall be made accessible to the public”. Their website actually states in capital letters that “ALL DOCUMENTS ARE POSTED ON THE COMMISSION WEBSITE”. However, this is completely false.

**Rule 27** – This rule should be amended to require the Commission to post an Order of Dismissal **on the Commission’s website** in addition to filing it with the Clerk of the Nevada Supreme Court.

**Rule 3.6** – Disqualification of a Commission member or alternate. The Commission currently rules on a motion to disqualify pursuant to a challenge for cause. This motion should be heard by a disinterested third party.

Possible Changes To:  
**Procedural Rules of the  
Nevada Commission on Judicial Discipline**

Rule 4. Privileged Communications.

Rule 4 makes essentially everything possible a “privileged” communication and therefore not to be divulged to any person or court.

NRS 1.4695 provides that “The Commission shall adopt rules to establish the status of a particular communication related to a disciplinary proceeding as privileged or nonprivileged.”

This rule should be more narrowly tailored, especially with respect to subsection 4 of Rule 4. “All communications between General Counsel or Executive Director and Commission staff, prosecuting officers, or Commission investigators.”

Essentially, the investigator, prosecutor, and judge/jury can have unlimited communication and it will all be considered privileged??

Rule 6. Formal Charges.

“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....”

This rule should be amended to require the Commission **to post on their website** the FSOC and any other documents filed subsequently, either with the Commission or with any court. The Commission currently sidesteps this rule by taking the position that anyone can “contact” the Commission and request documents that have been filed and that is how they are made accessible to the public. But the public generally doesn’t know that documents exist aside from the documents that the Commission chooses to post on their website. The mission of the Commission is to protect the public, yet they routinely hide matters from the public that do not reflect the Commission in a favorable light, i.e., a dismissal of a FSOC, an adverse ruling by the Supreme Court, pre-hearing motions, etc. Additionally, the Commission removes documents from their website at their own

discretion. Once documents are posted on the website, they should not be permitted to be removed.

Rule 6 (Continued).

“The Commission’s deliberative sessions and meeting minutes must remain private and shall not be disclosed”

This portion of the rule should be amended to require that **meeting minutes** should be made public and posted on their website. This is a publicly funded body and should not be permitted to operate in total secrecy.

Rule 10. Initiation of Procedure.

4. “A complaint will be reviewed by Commission staff to ensure that it meets the minimum requirements as required by statute.”

Who is the Commission staff that reviews the complaints? What are the objective criteria or checklist for said review?

5. “All complaints shall be reviewed by the Commission to determine whether they state facts, which if true, establish grounds for discipline as set forth in the Nevada Revised Statutes.”

Are these the complaints that have passed the review for minimum requirements?

Rule 12. Determination to Require an Answer.

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...To the extent practicable, the Respondent shall be supplied with all records of the Commission subject to inspection along with service of the complaint.”

This rule should be amended to **require** the Commission to **provide a copy of the complaint and all corresponding documents** to the respondent **prior to any**

**response or interview.** The Commission frequently refuses to produce a copy of a complaint prior to an interview of a respondent.

Rule 14. Filing of Formal Statement of Charges.

“...The Formal Statement of Charges is a public document, as are other pleadings, motions, challenges, and supporting affidavits subsequently filed...”

This rule should be amended to **require** the Commission to **post on their website all of the documents listed above.** Currently, the Commission only posts what they want to post despite the fact that their website states in all capital letters **“ALL DOCUMENTS ARE POSTED ON THE COMMISSION WEBSITE”.**

Rule 16. Formal Hearing.

“...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.”

This rule should be amended to require the Commission to set the hearing at a **time that is mutually agreed upon by the parties and the Commission.**

Historically, there has been no input allowed on the part of Respondent and his/her counsel as to scheduling.

Rule 16 (cont.)

“...The proper venue for judicial hearings and proceedings shall be determined by the Commission at its sole discretion.’

This rule should be amended to state that the **proper venue shall be the jurisdiction where the alleged misconduct occurred.**

NRS 1.462 provides that the Nevada Rules of Civil Procedure apply after a Formal Statement of Charges has been filed.

NRS 13.020 is instructive as to venue. Judicial officers should be treated the same as “public officers”. NRS 13.020 provides in pertinent part as follows: “Actions for the following causes must be tried in the county where the cause, or some part

thereof, arose..., 3. Against a public officer, or person especially appointed to execute the duties of a public officer, for an act done by him or her in virtue of the office, or against a person who, by his or her command, or in his or her aid, does anything touching the duties of the officer.”

Historically, Motions For Change of Venue are routinely denied.

Nor has Electronic Testimony been permitted. The rules should be amended to permit electronic testimony at the discretion of either party.

Rule 24. Rules of Evidence and Due Process.

What is the remedy if the procedural rules of the Commission conflict with the Nevada Rules of Civil Procedure?

Example 1 – Venue? See NRS 13.020.

Example 2 – Interrogatories? See Rules 26 and 33 of the Nevada Rules of Civil Procedure.

The Commission promulgates Interrogatories and compels an Answer **PRIOR** to the filing of Formal Statement of Charges. This is completely contrary to NRCP 26(a) that provides that Interrogatories are due once discovery is opened upon the filing of a complaint. It is also contrary to the holding in Melanie Andress-Tobiasson v. Nevada Commission on Judicial Discipline, No. 77551, wherein the Supreme Court granted a Writ of Prohibition preventing the Nevada Commission on Judicial Discipline from requiring a judge to answer written questions under oath before a formal statement of charges has been filed.

Example 3 – Pre-Hearing Motions? There is currently no time limit for the Commission to rule on pre-hearing motions thereby depriving the Respondent the opportunity to appropriately prepare for hearing.

The current practice is to rule on pre-hearing motions immediately prior to the start of the hearing. The Commission should be required to rule on these Motions at least 14 days prior to the date of the hearing.

Rule 26. Cross-Examination, Evidence, and Time Restrictions. “...The Commission may limit the time each party is allowed to present evidence.”

This rule is applied completely arbitrarily. A Scheduling Order is signed by the Presiding Commissioner that informs the parties of how much time will be allotted to each side to present evidence. There is no input sought from the Respondent as to how much time is needed to present evidence. It is believed that the Prosecuting Officer advises the Commission as to how much time is needed to present evidence. And the Commission automatically provides the same amount of time to the Respondent without consulting the Respondent. A defense frequently requires more time to present.

This rule should be amended to require the Commission to consult with both parties as to how much time each party will require to present their case. Each party should be allowed the amount of time requested to present their case and the Commission can hold them to it.

Rule 27. Order of Dismissal.

An Order of Dismissal should be filed with the Clerk of the Nevada Supreme Court and **posted on the Commission's website.**

# TAB 5

**Section 1.** Chapter 1 of NRS is hereby amended by adding thereto a new section to read as follows:

*An appointing authority may not appoint any person to the Commission on Judicial Discipline to serve more than two consecutive full terms.*