

Supreme Court of Nevada

ADMINISTRATIVE OFFICE OF THE COURTS

KATHERINE STOCKS
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.

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- 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.