

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**

June 20, 2022

2:00 PM

Summary prepared by: Jamie Gradick

Members Present

Chief Justice Ron Parraguirre, Chair
Justice James Hardesty, Vice-chair
Ms. Lyn Beggs
Judge Bert Brown
Judge Mark Denton
Judge Richard Glasson
Judge David Hardy
Mr. Dennis Kennedy
Judge Tammy Riggs
Judge T. Arthur Ritchie
Judge Tom Stockard
Judge Ann Zimmerman

AOC Staff Present

Jamie Gradick
John McCormick

Guests Present

K. Armstrong
D. Batten
D. Christensen
P. Deyhle
J. Sanford
N. Schreihans
G. Vause
T. Wilson

I. Call to Order

- Chief Justice Parraguirre called the meeting to order at 2:02 p.m.
- Ms. Gradick called roll; a quorum was present.
- Opening Comments
 - Chief Justice Parraguirre welcomed attendees.
 - Justice Hardesty provided a contextual overview of the Commission's creation per AB43.
 - At the Legislature's request, this commission was created to review the statutes and rules governing the Nevada Commission on Judicial Discipline. This Commission was tasked with making recommendations to the Legislature,

consistent with best practices, regarding potential improvements to the function and operation of the Nevada Commission on Judicial Discipline.

- There is an ongoing debate regarding the scope of the rules in the Constitution for procedural aspects of the Commission's function and whether these should be evaluated, as well.
- Concern has also been expressed regarding inadequate funding for the Nevada Commission on Judicial Discipline; the Commission is "underfunded" to meet the demands placed upon it. Justice Hardesty commented that the lack of appropriate funding is something that should be made a "priority" with the Legislature.

II. Public Comment

- No public comment was offered.

III. Discussion of Commission Scope and Mission

- Authority of the NJDC to Adopt Rules
 - Attendees discussed the Nevada Commission on Judicial Discipline's authority to make its own rules.
 - Discussion was held regarding degrees of rule-making authority held by the Nevada Commission on Judicial Discipline, by the Legislature, and by the Supreme Court.
 - Justice Hardesty suggested the group start by reviewing the constitutional provision creating the Commission; Art 6 tasks the Supreme Court with adopting a Code of Judicial Conduct and tasks the Commission with adopting "rules of procedure" necessary to carry out its duties. The Legislature has the a broader authority to create/change applicable statutes, as necessary.
 - Judge Hardy asked for clarification regarding "bifurcation" and where the authority to investigate versus the authority to prosecute should lie. Discussion was held regarding this group's ability to make a recommendation on this issue based upon best practices, how these issues are handled in other states, public perception, etc.
 - Attendees discussed the possibility of inviting subject matter experts to a future meeting to present on best practices and to offer insight.
 - Chief Justice Parraguire commented that he has been in contact with Mr. Keith Fisher at the National Judicial College; Mr. Fisher is willing to act a resource for this group. He will reach out to Mr. Fisher or Ms. Grey, with the NCSC, regarding a presentation for this group.
 - Justice Hardesty encouraged attendees to communciate resource needs and interests; this is an opportunity to "take a fresh look" at these issues.
- Attendees discussed whether this Commission should also review the Judicial Code of Conduct itself or if that would exceed the the scope of Commission's work.
 - Justice Hardesty commented that the Judicial Code of Conduct should be reviewed but is only implicated in this Commission's work to the extent that the Commission is of the view "that enforceability of the Code is problematic by the Discipline Commission because of confusion that exists, either within the Code itself, or with commentary within the Code."
 - Ideally, this is a topic that could be addressed by a new, separate Nevada Supreme Court commission.

IV. Review of Procedural Rules of the Nevada Commission on Judicial Discipline

- Rule 6
 - Judge Zimmerman commented that there is a lack of transparency on the part of the Nevada Commission on Judicial Discipline and the 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.
- Rule 12
 - Judge Zimmerman suggested this rule be amended to require the Nevada Commission on Judicial Discipline to provide copy of complaint and all corresponding documents to Respondent prior to scheduling an interview or providing any answer.
- Rule 16
 - Judge Zimmerman suggested that the rule be amended to require the Nevada Commission on Judicial Discipline to set the hearing at a time that is mutually agreed upon by the parties and the commission and to require that proper venue shall be the jurisdiction where the alleged misconduct occurred.
- Rule 26
 - Judge Zimmerman commented that 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 Nevada Commission on Judicial Discipline can hold them to it.
- Rule 24
 - Attendees discussed remedies if/when procedural rules of the Nevada Commission on Judicial Discipline conflict with the Nevada Rules of Criminal Procedure.
 - Judge Zimmerman commented that, currently, the Commission promulgates Interrogatories and compels an Answer prior to the filing of Formal Statement of Charges. This is contrary to NRCPC 26(a) that provides that Interrogatories are due once discovery is opened upon the filing of a complaint.
 - Judge Zimmerman commented that, currently, there is 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 27
 - Judge Zimmerman suggested this rule be changed to require an Order of Dismissal be filed with the Clerk of the Nevada Supreme Court and posted on the Nevada Commission on Judicial Discipline's website.
- Proposed New Rules
 - Judge Zimmerman suggested the addition of a rule to permit electronic testimony at the discretion of the parties.
 - Judge Zimmerman suggested the addition of a 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 Nevada Commission on Judicial Discipline and parties can appear remotely.

- Judge Riggs commented that she is interested in a “top-to-bottom” review of the way the Nevada Commission on Judicial Discipline handles cases.
 - Terminology should be modified. For example, the use of “prosecution” should be eliminated as these matters are not criminal in nature.
 - Term limits should be addressed as well; Nevada is a 6-year state but, it seems, many commissioners have been on the Nevada Commission on Judicial Discipline for a longer period.
 - Judge Hardy commented that the Nevada Constitution provides that terms are to be limited to 4 years.
 - Gender-equity on panel membership is also a concern.

V. Review of NRS Chapter 1

- This item was not discussed during the meeting.

VI. Additional Suggested Items for Commission Review

- Chief Justice Parraguirre asked Commission members to provide additional topics for review, along with any supporting documentation, to Ms. Gradick prior to the next meeting.
 - 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 commission could include in its report to the Legislature.
 - Chief Justice Parraguirre asked those members of the Nevada Commission on Judicial Discipline, who are sitting on this Commission, to follow up with Mr. Deyhle and report back at the next meeting regarding the budgetary constraints/concerns and how these issues impact the Nevada Commission on Judicial Discipline’s ability to operate.
 - Justice Hardesty would like to further review enforcement of the Judicial Code of Conduct provisions regarding candidates running for office. What is the Commission’s official position?
 - Judge Riggs commented that she would like to know on what authority the Nevada Commission on Judicial Discipline’s decision to not investigate alleged instances of misconduct by judicial candidates during the 2020 election cycle, was based. Additionally, Judge Riggs would like to know the volume of complaints received and, to what extent, the Commission’s decision was based on resource and volume concerns.
 - Judge Hardy would like to know why the Standing Committee on Election Practices was dissolved and whether it would be appropriate to incorporate it, to some extent, back into the rules.
 - There was discussion regarding resource and budget concerns in addition to the Committee finding itself being sued for its determinations.
 - Ms. Gradick will review the ADKT record regarding the Committee.
 - Ms. Beggs suggested the group specifically address the bifurcation of proceedings of the investigation and the formal hearing.

- Judge Glasson suggested the Commission address language; “Formal Complaint” would be more consistent and appropriate than “Formal Statement of Charges” and should follow an “Accusation.”
- Justice Hardesty asked whether those members of the Nevada Commission on Judicial Discipline, who are sitting on this Commission, have identified any statutory language concerns that should be examined.
 - Mr. Denton suggested the name of the Commission on Judicial Discipline be changed to “Commission on Judicial Conduct”. A comment was made that this would require a Constitutional change.
 - Justice Hardesty asked whether the Nevada Commission on Judicial Discipline publishes statistics on its website or provides statistics/data to the Legislature in any form? If so, do those statistics include data on how many complaints are filed, investigated, and dismissed and what types of matters are usually at issue? The group should discuss what statistics are kept and what, if any, additional data should be tracked.
 - Mr. Denton commented that Mr. Paul Deyhle would be in a better position to provide that information.
 - Chief Justice Parraguirre asked Mr. Denton to follow up with Mr. Deyhle on these questions and report back at the next meeting.
 - Judge Stockard commented that the Nevada Commission on Judicial Discipline posts reports on its website. Ms. Gradick will locate a Powerpoint presentation on this that was presented at the recent Nevada Judicial Leadership Summit.

VII. Other Items/Discussion

- In preparation for the next meeting, Chief Justice Parraguirre requested that Judge Glasson, Judge Riggs, and Judge Zimmerman be prepared to provide a presentation on the specifics of those items suggested for Commission review during this meeting.

VIII. Next Meeting Date

- Chief Justice Parraguirre commented that he would like to hold the next meeting in a month.
 - Ms. Gradick will distribute an availability survey the Commission membership.

IX. Public Comment

- No public comment was offered.

X. Adjournment

- The meeting was adjourned at 3:25 pm.