

**STATE OF MONTANA  
JUDICIAL STANDARDS COMMISSION**

**Rule 1 – Scope, Purpose and Title**

- (a) Scope. These rules apply to all of the functions, responsibilities, and proceedings of the Judicial Standards Commission involving the removal, retirement, suspension, censure, reprimand, or other discipline of judges pursuant to Section 11, Article VII of the Montana Constitution, and the provisions of Title 3, Chapter 1, Part 11, MCA.
- (b) Purpose. The purpose of the Judicial Standards Commission and these rules is to protect the public from improper conduct or behavior of judges; preserve the integrity of the judicial process; maintain public confidence in the judiciary; create a greater awareness of proper judicial conduct on the part of the judiciary and the public; and provide for the expeditious and fair disposition of allegations of judicial misconduct.
- (c) Title. These rules shall be known as the Procedural Rules of the Judicial Standard Commission and may be abbreviated as “PRJSC”.

**Rule 2 – Definitions**

In these rules, unless context or subject matter otherwise requires:

- (a) “Commission” means the Judicial Standards Commission of the State of Montana.
- (b) “Judge” means the Chief Justice, Supreme Court Justice, District Judge, Water Court Judge, Workers’ Compensation Court Judge, Justice of the Peace, City Judge, Municipal Court Judge, Standing Master, Small Claims Judge, Judge *Pro Tempore*, or Special Master appointed by a District Judge. “Judge” does not include an administrative law judge or hearings officer appointed by the legislature or any department or commission.

- (c) "Chairperson" includes the Acting Chairperson.
- (d) "Complaint" or "Formal Complaint" means a statement of alleged grounds for discipline used to initiate formal proceedings against a Judge as provided in Rule 13.
- (e) "Grievance" means a written statement submitted to the Commission alleging improper conduct by a Judge as provided for in Rule 10.
- (f) "Shall" is mandatory. "May" is permissive.
- (g) "Mail" and "Mailed" include ordinary or postal mail, personal delivery, and email, provided the parties agree to notification by email.
- (h) "Registered mail" means either registered or certified mail deposited with the United States Postal Service with postage prepaid and with a request for a return receipt.
- (i) "Oath" is synonymous with "affirmation" and "swear" is synonymous with "affirm".

### **Rule 3 – Organization of the Commission**

- (a) After the Speaker of the House notifies the Montana Judges Association that a vacancy exists on the Commission as to a position appointed in accordance with § 3-1-1101(1)(a), MCA, the Association shall notify all District Court Judges of the vacancy and shall then compile a list of all judges interested in serving on the Commission. The Executive Secretary shall forward this list to the Speaker of the House.
- (b) The Commission shall select from its members a Chairperson, a Vice Chairperson, and such other officers as the Commission may consider necessary and proper in carrying out its functions and duties, who shall serve at the pleasure of the Commission. A member may be selected for more than one office.

- (c) The Chairperson or designee of the Chairperson shall preside at the meetings of the Commission as well as at formal hearings concerning the conduct or disability of a judge. In the event the Chairperson is absent or is otherwise unable to attend a meeting or to perform the duties of Chairperson, those duties shall be performed by the Vice Chairperson, and in the absence of the Vice Chairperson, by a member of the Commission designated by the members who are present.
- (d) Any member of the Commission is authorized to administer oaths or affirmations to all witnesses appearing before the Commission.
- (e) All records of the Commission shall remain confidential except as hereinafter specified and shall be under the exclusive and continuing control of the Judicial Standards Commission and its staff. In the conduct of the business of the Commission, including the appointment of an investigator or attorney, and to facilitate the coordination of investigations with other agencies, the Commission is authorized to utilize the same personnel that are involved in an agency investigation of the same factual allegations of misconduct or disability that is before the Commission to avoid duplicative expense relative to investigation. The Chief Justice of the Montana Supreme Court and the Court Administrator are allowed access to investigative files. The permission of the Chairperson of the Commission is required prior to the release of records to anyone other than Commission members, the Chief Justice, or the Supreme Court Administrator.
- (f) The records of the Commission shall be maintained in the Court Administrator's office pursuant to these rules.
- (g) Records concerning a grievance against a judge, other than a formal complaint ordered filed by the Commission as hereinafter set forth or records of discipline imposed as

described in these rules, shall be maintained for twelve (12) years after such judge has ceased to act as a judicial officer. At the expiration of twelve (12) years, such records may be destroyed. Records concerning a formal complaint filed against a judge, and records of discipline administered as described in these rules, shall be maintained during the lifetime of the judge named therein.

#### **Rule 4 – Staff of the Commission**

- (a) The Court Administrator shall select an Executive Secretary whose duty it shall be to record minutes of the meetings and hearings which shall be a permanent record of the actions of the Commission. The Executive Secretary shall be responsible for the custody and safekeeping of all the records of the Commission. The Executive Secretary shall promptly furnish to members of the Commission copies of all grievances, complaints, notices, answers and other documents filed in connections with proceedings before the Commission. The Executive Secretary's salary and benefits are established by the Judicial Branch Pay Plan pursuant to § 3-1-130, MCA.
- (b) The Commission may appoint a qualified person to investigate charges against a judicial officer and to report findings to the Commission, and to otherwise assist the Commission in its inquiry into the conduct or disability of a judicial officer.
- (c) The Commission may appoint an attorney licensed to practice law in the State of Montana, or a retired district court judge or retired Supreme Court justice who has not been subject to prior discipline by the Commission, to marshal and present evidence, to file a formal complaint, and to prosecute a formal complaint before the Commission in its inquiry into the conduct or disability of a judicial officer.

- (d) An individual, attorney, retired district court judge, or retired Supreme Court justice appointed by the Commission under (b) or (c) above shall be paid as determined from time to time by the Commission from funds provided for the operation of the Commission.
- (e) The Commission may employ a qualified law clerk to assist with drafting orders and opinions as deemed necessary by the Chair of the Commission.

**Rule 5 – Meetings**

- (a) The Commission shall meet four (4) times a year or more often as the business of the Commission shall require.
- (b) The Chairperson may, and upon the request of three members shall, call a meeting of the Commission. The Chairperson shall give reasonable notice to each member of the time and place of the meeting.
- (c) A quorum for the transaction of business of the Commission shall be three members and no action of the Commission shall be valid unless agreed to by no less than three members thereof.
- (d) Decisions by the Commission to commence an investigation of a judge, order a judge to submit to a physical examination, proceed against a person for contempt for failing to respond to a subpoena of the Commission, issue a public opinion or statement, hold or dispense with a formal hearing, hear additional evidence, make a report to the Supreme Court recommending removal, retirement, or other discipline of a judge, or determine after a formal hearing not to make such a report, shall be made at a meeting of the Commission. Other matters before the Commission may be determined by communication among the

members of the Commission, but a report of such action shall be made by the Chairperson at the next meeting of the Commission and entered in the minutes of that meeting.

#### **Rule 6 – Nonparticipation of Members of Commission**

- (a) In the event a judicial officer who is a member of the Commission is disqualified by the terms of § 3-1-1108, MCA, or recuses himself or herself from acting in a particular proceeding, the Chairperson may appoint another District Court Judge to act as a member of the Commission to sit and act in the place of the disqualified or recused judge.
- (b) In the event a lay member of the Commission recuses himself or herself for a particular proceeding, the Chairman of the Commission, or in the Chairman's absence, the Vice-chair, may appoint a qualified adult citizen of the state of Montana to act as a member of the Commission for the recused lay member. The Commission may proceed in the absence of not more than two members.

#### **Rule 7 – Proceedings Confidential**

- (a) All papers filed herewith and all proceedings before the Commission shall be confidential while pending before the Commission, as provided by Section 11, Article VII of the Montana Constitution, and the provisions of Title 3, Chapter 1, Part 11, MCA, except as follows:
  - (1) where the Commission, after an investigation and on a finding of good cause, advises the judicial officer and the Supreme Court, in writing, that the grievance will be dismissed if the judicial officer files with the Commission a letter stating that the officer will take corrective action satisfactory to the

Commission, as provided in § 3-1-1106(2)(b), MCA;

(2) where, after appropriate proceedings, it finds the charges true and recommends to the Supreme Court the censure, suspension, removal, or retirement of the judicial officer, as provided in § 3-1-1106(3), MCA, including filing of a formal complaint pursuant to Rule 13(b);

(3) under circumstances that the Commission considers appropriate as provided in §§ 3-1-1105(2) and -1123, MCA;

(4) if sought by any federal or state agency in connection with the selection or appointment of a judge, as provided in § 3-1-1124, MCA, and in accordance with these Rules; and

(5) as part of the Commission's report to the legislature, as provided in § 3-1-1126, MCA. This report shall include summary rejections or dismissals as provided in Rule 10(c).

(b) A grievance dismissed by the Commission under Rule 12 is no longer confidential, and a claimant may disclose the grievance and the Commission's response. If an investigation results in formal proceedings, then the record filed by the Commission with the Supreme Court loses its confidential character upon its filing. Further, a proceeding loses its confidentiality if § 3-1-1121 and/or §§ 3-1-1123 through 1126, MCA, are invoked in accordance with the terms thereof.

(c) All notices, pleadings and papers mailed to a judge and to other persons pursuant to these Rules shall be marked "personal and confidential."

(d) Every witness in every proceeding under these Rules shall be sworn to tell the truth and not to disclose the existence of the proceeding or the identity of the judge until the proceedings

are no longer confidential under these rules. Violation of the confidentiality proceedings may result in summary dismissal of the grievance.

- (e) If a judge voluntarily retires or resigns prior to the institution of formal proceedings, and agrees not to act as a judge at any time in the future, all proceedings against such judge shall terminate and the files of the Commission concerning said judge shall remain confidential.
- (f) A judge shall, upon request, be given all information concerning grievances that have been filed against the judge, unless the Commission finds good cause to protect the confidentiality of any information acquired or submitted.

#### **Rule 8 – Immunity**

Members of the Commission, investigators, special or appointed counsel, and staff members shall be immune from suit for any conduct in the course of their official duties. All persons referenced above are deemed officers and/or agents of the Commission for all purposes mentioned in these rules.

#### **Rule 9 – Jurisdiction and Grounds for Discipline**

- (a) The Commission shall have jurisdiction over the conduct of all judges and standing masters as defined herein, including part-time judges, and those retired district judges that may be called to hear cases as provided by § 19-5-103, MCA. Jurisdiction of the Commission also extends to conduct that occurred while a judge is in office, or acting as a retired judge, and may include conduct that is not in connection with judicial duties.



(b) Grounds for discipline or removal include, but are not limited to:

- (1) Any disability that seriously interferes with the performance of the officer's duty and is or may become permanent.
- (2) Willful and persistent failure to perform judicial duties, including consistent failure to make decisions in a timely manner.
- (3) Willful misconduct in office.
- (4) Impropriety or other conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or impropriety.
- (5) Habitual intemperance.
- (6) *Ex parte* communications except as allowed by statute or rule.
- (7) Violation of the provisions of the Code of Judicial Conduct adopted by the Montana Supreme Court.

(c) The Commission may impose, or recommend to the Supreme Court, the following, by written order, with copies provided to the interested parties, and with any portion under seal if the Commission determines such is necessary to protect the privacy of matters related to the health or family members of the judicial officer:

- (1) *Admonition*: A private communication from the Commission to a judge reminding the judge of ethical responsibilities and giving a warning to avoid future misconduct or inappropriate practices. An admonition may be used to give authoritative advice and encouragement, to suggest or require other informal corrective actions or education, or to express disapproval of behavior that suggests the appearance of impropriety even though it meets minimum standards of judicial conduct.

- (2) *Private Reprimand*: A private communication from the Commission to a judge that declares the judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to merit a public sanction.
- (3) *Public Reprimand*: A public reprimand administered by the Supreme Court, upon report and recommendation of the Commission, which declares a judge's conduct unacceptable under one of the grounds for judicial discipline but not so serious as to warrant a censure.
- (4) *Censure*: A public declaration by the Supreme Court that a judge is guilty of misconduct that does not require suspension or removal from office. Censure may be ordered in conjunction with other sanctions.
- (5) *Suspension*: A decision by the Supreme Court to suspend a judge from office temporarily, with or without pay, for serious misconduct that merits more than censure but less than removal. This sanction is flexible, and there are no restrictions on the length of a suspension.
- (6) *Removal*: A decision by the Supreme Court to remove a judge from office for serious misconduct.
- (7) *Permanent Removal*: A decision by the Supreme Court to remove a judge permanently from office for serious misconduct and declares that such person may never again hold a judicial office in the State of Montana.
- (8) *Retirement*: A decision by the Supreme Court to retire a judge for a disability that seriously interferes with the performance of judicial duties that is or is likely to become permanent.

## **Rule 10 – Grievances – Receipt and Review**

- (a) Written grievances to the Commission shall be submitted substantially as provided on the attached “Form A”. Grievances shall be lodged with the Executive Secretary of the Commission.
- (b) A written grievance shall not be a prerequisite to initiation of disciplinary proceedings that the Commission, in its discretion, deems appropriate. Upon receiving a grievance or otherwise receiving information alleging judicial misconduct or that the commission should take some action, the Commission shall review the grievance or information received and determine whether the allegations concerning the conduct or condition of the judge may, if proven, provide grounds for discipline or removal.
- (c) The Commission may summarily reject and dismiss a grievance if, in the judgment of the Commission, the grievance fails to state adequate grounds or provide good cause for disciplinary proceedings. A grievance that is based solely on rulings in a case which can be addressed in an appeal or on sentence review shall not constitute adequate grounds for disciplinary proceedings and shall be summarily rejected and dismissed by the Commission.

## **Rule 11 – Grievances – Investigations**

- (a) If the Commission determines that a grievance sets forth allegations that may provide grounds for discipline or removal, it shall initiate an investigation for the purpose of determining whether good cause exists to institute formal proceedings. In determining whether good cause exists to institute formal proceedings, the Commission may hold a meeting with or without provision of notice or other information to the judge.

- (b) Upon initiating an investigation, the Commission shall send the judge a copy of the grievance, or a synopsis of matters to be investigated. The judge shall thereafter have reasonable opportunity to provide a statement to the Commission as the judge considers appropriate. The judge may make the statement personally or through counsel, verbally or in writing, and the statement may or may not be given under oath. In exercising this right to respond, the judge shall not have the right to call witnesses nor to confront nor cross-examine the person making the grievance or any person interviewed by the Commission or its duly authorized representative. The Commission may, in its discretion, require that the judge provide a response. After notification from the Commission, if the judge does not respond within a reasonable time or within the time fixed by the Commission, the right to make a responsive statement shall be deemed waived.
- (c) In conducting an investigation, the Commission shall have the authority to issue subpoenas for witnesses to appear before the Commission or its representative for the purpose of making a sworn statement and may also issue subpoenas for the production of books, papers and other evidence that may be pertinent to the Commission's inquiry.
- (d) Whenever the Commission concludes that facts developed upon initial investigation fail to show good cause for the initiation of formal disciplinary proceedings, the Commission shall dismiss the grievance, terminate the inquiry, and so advise the grievant and the judge. At the same time, the grievant shall be informed of the confidentiality provisions of Rule 7.

#### **Rule 12 – Grievances – Negotiated Disposition**

- (a) After receipt of a grievance or of information indicating that a judge may have engaged in judicial misconduct, or that a judge may be disabled, the Commission, before voting to

initiate formal proceedings, may delegate to one or more of its members or to the Commission's attorney or investigator, the authority and responsibility to personally and confidentially confer with the judge subject to the inquiry, and to make informal recommendations to the judge or to the judge's attorney concerning the subject matter of the inquiry and a satisfactory disposition thereof. If the judge agrees to the Commission's suggested disposition, the Commission may dispose of the matter on the basis of the agreement reached. Except as provided in Rule 7(e) or sealed under Rule 9(c), the Commission shall file a report of such disposition in the office of the Clerk of the Supreme Court and the disposition shall become a matter of public record.

- (b) The Commission may at any time entertain and act upon a proposal from a judge for disposition of any matter pending before the Commission concerning such judge. If the proposal is made after the filing of a formal complaint, and is acceptable to the Commission, a report thereof shall be filed in the office of the Clerk of the Supreme Court, and the report shall be a matter of public record.

### **Rule 13 – Formal Complaint**

- (a) If, after an initial investigation, a majority of the Commission find good cause to conduct formal proceedings concerning a grievance or other facts brought to the attention of the Commission, the Commission shall appoint an attorney, retired district court judge, or retired Supreme Court justice, as provided in Rule 4(c), to serve as prosecutor, file a formal complaint against the judicial officer in the office of the Clerk of the Supreme Court, and conduct a hearing or otherwise prosecute the formal complaint before the Commission.

- (b) Upon the filing of a formal complaint, the grievance and all proceedings subsequent to its filing are not considered confidential and shall become a matter of public record.

**Rule 14 – Procedure on Formal Complaint**

- (a) The formal complaint shall be styled substantially as provided on the attached “Form B” and shall state the name(s) of the complainant(s), the nature of the alleged grounds for discipline, the time of actions giving rise to alleged wrongdoing and a brief summary of the facts upon which allegations of misconduct are based.
- (b) A notice of the filing of the formal complaint together with a copy of said complaint shall be served on the judge. The notice shall advise the judge of the name, address and telephone number of the prosecutor appointed by the Commission and of the right to file a written response with the Clerk of the Supreme Court within fifteen (15) days after the complaint has been served upon the judge.
- (c) Service of the notice and copy of the formal complaint shall be made on the judge by personal service as provided in Rule 4(D)(2), (3), M.R.Civ.P. Service of the notice and copy of the complaint may be acknowledged by the judge or the judge’s attorney. Service and filing of orders, pleadings, and other papers shall be made as provided in Rule 5, M.R.Civ.P.
- (d) The Judge may file a written response to the allegations of the formal complaint, within fifteen (15) days after service. Thereafter, the Commission may set a hearing on the complaint. The hearing shall be set no sooner than thirty (30) days after the time for filing a response has expired or after a response is filed. The hearing shall be set as promptly as possible considering the particular circumstances of the matter.

- (e) The Chairperson shall appoint a member of the Commission, who may be the Chairperson, to hear and determine preliminary matters prior to hearing, set dates, make necessary rulings, make discovery orders, order subpoenas issued, and make such orders as are necessary to assure the hearing is conducted promptly and that both the complainant and the responding judge have opportunity to fully and fairly prepare for the hearing. The orders of the member selected shall have the same force as an order of the Commission unless quashed by a majority of the members thereof.
- (f) The responding judge shall, upon request, be provided access to the information upon which the formal complaint is based, including the grievance, statements of the complainant, witnesses, and other physical and documentary evidence. The responding judge shall, upon request, be provided with the names and last known address of witnesses that shall be called to testify at the hearing together with copies of all evidence the prosecutor intends to introduce at the hearing. The judge shall, upon request, provide the prosecutor with the names and addresses of the witnesses the judge intends to call to testify at the hearing, together with copies of all documentary evidence intended to be introduced by the judge at the hearing. Except as specifically stated in these rules, discovery procedures contained in the Montana Rules of Civil Procedure and Montana Code of Criminal Procedure do not apply to proceedings before the Commission. Depositions may be taken only upon order of the Commission upon application showing the necessity therefore. Other discovery procedures such as interrogatories, requests for admissions, or requests for production may be undertaken only upon order of the Commission after application and a showing of the necessity therefor.

- (g) Upon written request, the Commission may direct the Clerk of the Supreme Court to issue subpoenas that may be served as provided in Rule 45, M.R.Civ.P., except the clerk shall not be required to issue any subpoena except upon direct order of the Commission. Payment of witness fees and mileage shall be as provided for witnesses in a district court proceeding.

### **Rule 15 – Hearing on Formal Complaint**

- (a) At the time and place set for hearing, the prosecutor shall present the case in support of the charges in the formal complaint.
- (b) A verbatim record shall be made of the hearing by stenographic or other means. The Commission may, in its discretion, order that a transcript of the proceedings be made. When a transcript of the hearing has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for use by the judge and counsel. The judge shall have the right, without any order or approval, to have all or any testimony in the proceedings transcribed at the judge's expense.
- (c) The Chairperson or designee shall preside at the hearing. The hearing shall be conducted according to the Montana Rules of Evidence.
- (d) The responding judge shall appear at the hearing and, may, in the judge's discretion, testify at the hearing.
- (e) The prosecutor shall have the burden of proof and shall open and close the evidence. Any misconduct or incapacity alleged against the responding judge must be proven by clear and convincing evidence as defined by § 27-1-221(6), MCA. The responding judge shall have the right, but is not required, to present evidence in defense of the complaint.



- (f) At the conclusion of the hearing, the Commission may order further written arguments or submissions as it deems appropriate, including proposed findings of fact and conclusions of law. Thereafter, the matter shall be deemed submitted for decision, unless the Commission orders otherwise.
- (g) Deliberations of the Commission shall be confidential. The Commission shall render its decision, and any recommendation(s) to the Supreme Court in writing. The Commission's decision is a public document and shall be filed in the office of the Clerk of the Supreme Court and the charges dismissed or recommendation(s) transmitted to the Court, whichever is necessary.
- (h) Should less than a majority of the Commission vote affirmatively for the censure, suspension, retirement, or removal of a responding judge, the formal complaint shall be dismissed in favor of the judge, who shall be entitled to the costs paid or incurred for subpoenas, witness fees and mileage, and any depositions ordered by the Commission.

**Rule 16 – Interim Disqualification of Judicial Officers**

- (a) Upon or after the filing of a formal complaint, the Commission may, in its discretion and for good cause shown, disqualify the judge from serving as a judicial officer, without loss of salary, pending the Commission's disposition of the formal complaint.
- (b) Upon the Commission's filing with the Supreme Court a recommendation that a judicial officer be removed or retired, the judge shall forthwith be disqualified to serve as a judicial officer, without loss of salary, pending the Supreme Court's review of the record and proceedings, and its order thereon. § 3-1-1109(2), MCA. If a judge is reinstated to office, the terms of the reinstatement shall be as ordered by the Montana Supreme Court.

**Rule 17 – Effective Date and Amendment**

(a) A majority of the Commission shall sign these rules and file them in the office of the Clerk of the Montana Supreme Court. The Commission may amend these rules at its discretion. Following an opportunity for public comment, the Commission shall submit proposed amendments to the Montana Supreme Court. The Supreme Court shall provide an opportunity for public comment and then review the Commission’s proposed amendments and any submitted public comments. The Supreme Court may propose amendments or comment upon the Commission’s proposed amendments. Amendments to these rules become effective once a majority of the Commission signs the amendments and they are filed in the office of the Clerk of the Supreme Court.

(b) Upon the Commission’s adoption of amendments to these rules, all previous rules or amendments of the Judicial Standards Commission inconsistent with the amendments are repealed.

Approval certified this 15<sup>th</sup> day of November, 2024.



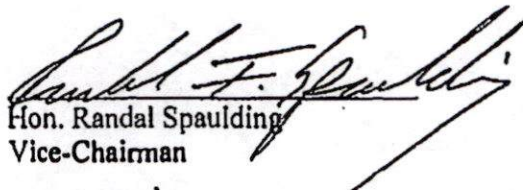
Hon. Michael Menahan  
Chairman



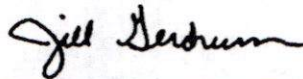
Seth Berglee  
Member



Roger Webb  
Member



Hon. Randal Spaulding  
Vice-Chairman



Jill Gerdrum  
Member