

COMMISSION ON PRACTICE OPERATING RULES

Pursuant to Rule 2G(1) of the Montana Rules for Lawyer Disciplinary Enforcement, the Commission on Practice of the Montana Supreme Court adopts the following rules and policies:

Rule 1. Filings.

(a) Time of filing. All filings, whether by mail, in person, by facsimile or electronically, must be received by the Commission on Practice not later than 5:00 p.m. on a business day or will be deemed to have been filed the next business day.

(b) Docket record and agendas. The Commission staff shall maintain a docket record that is the official record of the filings in each matter that is the subject of a formal Complaint. The docket record should include chronological sequential document numbers for each separate filing, the date of the filing, the title of the document, whether denominated “Confidential” or filed under seal and any other pertinent information. Agendas represent the schedule of matters to be addressed at a Commission meeting. An agenda for each meeting of the Commission shall be prepared by the Office Administrator with the approval of the Chair. Final Agendas and docket sheets are public documents but are subject to requirements for confidentiality and protection of privileged matters.

(c) Confidential matters. In accordance with the MRLDE, certain filings with the Commission are not public documents and are not subject to disclosure except as provided by the MRLDE. One example of a confidential filing is a MRLDE Rule 26 Conditional Admission and Affidavit of Consent. Such document(s) will be designated as “Confidential” and will remain in that status until altered pursuant to the terms of the MRLDE. A document designated “Confidential” will not be described in the docket sheet, an agenda, or in the Commission’s minutes or records in a manner that will compromise its confidentiality. No document can be filed under seal absent an Order of the Commission or the Montana Supreme Court. All questions regarding whether a document should be designated “Confidential” or filed under seal should be directed to the Chair of the applicable Panel.

(d) Incomplete or noncompliant filings. In any proceeding when the Office Administrator is of the opinion that a submittal or pleading tendered for filing does not comply with the MRLDE, the Commission's operating rules, or an order issued in the matter, the Office Administrator should consult with the Chair of the Commission regarding the proposed filing. The Office Administrator may alternatively decline to accept an incomplete or noncompliant document for filing and return it unfiled, or may accept it for filing, advise the person tendering it of the deficiency, and require that the deficiency be corrected within five (5) business days.

Rule 2. Communications with the Commission.

(a) Attorneys, self-represented litigants, or others who need to communicate with the Commission shall do so only through the Commission Administrator at his or her address or e-mail address. Excepting only communications with the Chair, communications with Commissioners that relate to Commission business shall not be made through personal or professional addresses, telephone numbers, texts or e-mail addresses.

(b) All communications with the Commission should be in conformity with applicable rules regarding *ex parte* communications, including Rule 15, MRLDE. If an attorney or self-represented litigant is communicating substantive information to Commission staff, the correspondence or e-mail must contemporaneously be sent to opposing counsel and so indicate in the correspondence or e-mail. Commission staff will not engage in any communication if this requirement is not met.

(c) Requests for Advice. Commission staff are not authorized to provide legal advice or advisory opinions regarding procedures, or to engage in *ex parte* communications on substantive information or issues. Commission staff will not discuss substantive information with any party unless all counsel of record are included in the discussion. Substantive information includes, but is not limited to, information regarding the likelihood of settlement, the timing of hearings or witness attendance, anticipated problems with scheduling, the hearing, or other case-specific issues. Questions regarding procedural issues should be resolved by reference to the MRLDE, stipulation or appropriate motion to the Commission.

(d) Retention of e-mail. Commission members may, but are not obligated, to retain electronic communications except authorized filings. Such

communications are privileged and the rule allowing retention is not intended to render such communications discoverable.

Rule 3. Public admonitions. Public admonitions, whether delivered orally or in writing, are not to be transcribed or a record of the substance of the admonition maintained in the Commission's or any Commissioner's files. The fact that a public admonition was delivered is itself public, but the substance of the admonition is not. Public admonitions are intended to be instructional as well as disciplinary, and no retention of a verbatim record of the same is maintained.

Rule 4. Review Panels. Review Panels review the materials referenced in the MRLDE, including the grievance concerning an attorney communicated to the Office of Disciplinary Counsel or otherwise considered by that office, the attorney's response, and the reply, if any. Review panels do not review or approve any proposed Complaint, nor determine or approve the Montana Rules of Professional Conduct an attorney should be charged with violating. Decisions by a Review Panel to authorize the filing of a Complaint have no preclusive or other effect upon the Adjudicatory Panel that hears the matter. The minutes of a Review Panel's consideration of a matter should reflect only whether the request for a Complaint was granted or denied, the names of the moving and seconding Commissioners, and the numerical vote of the panel on the request. In the event a Review Panel denies a request to file a Complaint, the panel will advise the ODC and the potential respondent attorney of the rationale for its decision.

Review Panels may be conducted via teleconference or remote video means in instances where the expense, safety or file volume make personal appearance by its members impractical, uneconomical or a hardship.

Rule 5. Adjudicatory Panels. One or more members of an Adjudicatory Panel may participate in a hearing by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Panel members should advise the Chair of the panel at least two (2) weeks prior to a hearing of their intended participation by teleconference or videoconference in order that appropriate steps can be taken to ensure the availability of proposed exhibits and other documents to a Commissioner participating in this manner.

Rule 6. Recusal. A member of a Review or Adjudicatory Panel should not participate in a matter or proceeding where there is a substantial showing that the

member cannot participate in a fair and reasonable manner, including but not limited to instances where the member:

- (a) has a fixed bias or prejudice for or against any party or the party's attorney;
- (b) has personal knowledge of disputed evidentiary facts relating to the matter or proceeding;
- (c) served as a lawyer in connection with any events relating to the matter or proceeding;
- (d) was a lawyer in connection with any events relating to the matter or proceeding; or
- (e) has a direct financial interest in any events relating to the matter or proceeding.

Procedure for recusal. Any Commissioner may voluntarily recuse him or herself by communicating with the Chair of the Commission and/or the Chair of that particular matter. A party may also file a motion to recuse a member of the Commission. A motion for recusal must be made in accordance with these rules, but the making of such a motion will not stay the conduct of the proceedings or disqualify the challenged member pending disposition of the motion. The procedures applicable to a motion for recusal are:

- (a) The motion shall be filed and served in accordance with the MRLDE and the M.R.Civ.P.
- (b) The motion must be filed and fully briefed by the parties under the time limits for motions and briefs in the Montana Rules of Civil Procedure and Rule 2, Montana Uniform District Court rules at less than 10 days prior to the scheduled adjudicatory hearing in the matter.
- (c) The motion will be ruled upon by the panel chair. If the panel chair is the challenged member, the chair may rule on the motion or may defer decision to the panel's vice-chair. The burden to establish a basis for recusal is on the party bringing the motion and must be based on objective, admissible evidence.

Rule 7. Continuances. All formal proceedings under these rules shall be conducted as expeditiously as reasonably possible. A continuance will only be granted for good cause. Only the Panel Chair may extend the time for hearing or grant any other extension of time in a proceeding.

Rule 8. Recommendations. In making a recommendation for discipline or imposing discipline, an Adjudicatory Panel should, but is not required to, address the factors set forth in Rule 9B, MRLDE.

Rule 9. Records Retention. Although the role of the Office Administrator of the Commission is to maintain permanent records of all matters processed by the Commission and the disposition thereof in accordance with the law, the Office Administrator is not required to permanently retain all correspondence, emails, memos, draft documents or similar documents but is entitled to exercise independent judgment regarding those documents or records that do not merit retention. In case of doubt, the Office Administrator should consult with the Chair of the Commission.

10. Public Notice of Meetings. The Office Administrator will maintain on the Commission's website, and by such other means as from time to time instructed by the Commission, the agenda for meetings, hearings or other public business of the Commission. Such notices must maintain the confidentiality of certain matters under the MRLDE, such as Conditional Admissions, until such time as the matter becomes public pursuant to the MRLDE. In such instances, the identity of an attorney may be identified as "John Doe I", "Jane Doe I", or similar designation until disclosure is permitted.

Effective Date: These rules and policies are effective on June 5, 2024.