

IDAHO JUDICIAL COUNCIL



*REPORT TO THE LEGISLATURE,
GOVERNOR, AND SUPREME COURT*

(YEAR 2013)

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I.

OVERVIEW OF SIGNIFICANT EVENTS OF 2013

A. **Council Budget.** The Judicial Council accomplished all of its statutory duties without salaried employees, and with a budget of \$139,400.00 . (See page 3)

B. **Judicial Vacancies.** There were 5 judicial vacancies in the 2013 calendar year. (See page 7)

C. **Discipline.** In calendar year 2013, there were 81 complaints against Idaho judges. (See page 11)

D. **Judicial Performance Evaluation.** The Judicial council has continued the voluntary Judicial Performance Evaluation Program. (See page 16)

E. **Ethics Opinions.** The Judicial Council provided 35 ethics opinions to judges. (See page 17)

COUNCIL ACTIVITIES FOR 2013

Total Number of Meetings	8
Number of Telephone Conference Call Meetings	2
Number of Applicant Interviews	5
Number of Formal Adversarial Hearings	0
Number of Complaints	81

II.

INTRODUCTION TO THE IDAHO JUDICIAL COUNCIL

The concept of a Judicial Council, consisting of a small reform committee, was introduced at Massachusetts in 1919. The Massachusetts Judicature Commission was directed by the state legislature "to investigate the judicature of the commonwealth with a view to ascertaining whether any and what changes...would insure a more prompt, economical and just dispatch of judicial business." In 1929, a similar council was created, and was shortly thereafter allowed to lapse, in Idaho.

Idaho rejoined the reform movement and created the present Judicial Council, by enactment of Title I, Chapter 21, of the Idaho Code, in 1967. Drawing from the experiences of other states, the legislature provided in Idaho Code Section 1-2102 a broad range of functions.

Today the Judicial Council is charged to:

- (1) Conduct studies for the improvement of the administration of justice.
- (2) Make reports to the Supreme Court and Legislature at intervals of not more than two years.
- (3) Submit to the Governor the names of not less than two nor more than four qualified persons for each vacancy in the office of Justice of the Supreme Court, Judge of the Court of Appeals, or District Judge, one of whom shall be appointed by the Governor.
- (4) Recommend the removal, discipline and retirement of judicial officers (including members of the Industrial Commission).
- (5) Perform such other duties as might be assigned by law.

To better enable the Judicial Council to perform its functions effectively, and to enhance public confidence in the Council, the legislature created a geographically and politically balanced structure. Idaho Code Section 1-2101 provides as follows:

1-2101. Judicial council - Creation - Membership - Appointments - Vacancies. - (1) There is hereby created a judicial council which shall consist of seven (7) permanent members, and one (1) adjunct member. Three (3) permanent attorney members, one (1) of whom shall be a district judge, shall be appointed by the board of commissioners of the Idaho state bar with the consent of the senate. Three (3) permanent non-attorney members shall be appointed by the governor with the consent of the senate. If any of the above appointments be made during a recess of the senate, they shall be subject to consent of the senate at its next session. The term of office for a permanent appointed member of the judicial

council shall be six (6) years. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration for area representation and not more than three of the permanent appointed members shall be from one (1) political party. The chief justice of the Supreme Court shall be the seventh member and chairman of the judicial council. No permanent member of the judicial council, except a judge or justice, may hold any other office or position of profit under the United States or the state. The judicial council shall act by concurrence of four (4) or more members and according to rules which it adopts.

(2) In addition to the permanent members of the judicial council, whenever there is an issue before the council which involves the removal, discipline or recommendation for retirement of a district court magistrate, the chief justice shall appoint an adjunct member of the judicial council, who shall be a district court magistrate. For all purposes for which the adjunct appointment is made, the adjunct member shall be a full voting member of the judicial council.

Today, the Judicial Council consists of the Chief Justice (non-partisan), a district judge (non-partisan), two lawyers (one Republican and one Independent), a businessman (Republican), a businesswoman (Republican), a retired educator (Democrat), and the adjunct member is a magistrate judge (non-partisan).

Members of the Judicial Council serve without salaried compensation for their services. Members, other than judges, receive only a daily honorarium for each day the Council meets and reimbursement for their actual expenses, pursuant to Idaho Code Section 1-2104. The Judicial Council utilizes the services of a part-time Executive Director and a legal assistant.

Ordinarily, the Council meets approximately five or six times per year or, as needs arise. In an effort to operate within the Council's budgetary allowance, many matters are disposed of by telephone conference call or by mail and meetings scheduled in conjunction with interviews for judicial vacancies.

**BIOGRAPHIES OF COUNCIL MEMBERS
AND EXECUTIVE DIRECTOR**

JUDICIAL MEMBERS:

CHIEF JUSTICE ROGER S. BURDICK, is the Ex-Officio Chairman of the Idaho Judicial Council. Justice Burdick received his Bachelor's of Science degree in Finance from the University of Colorado in 1970 and graduated from the University of Idaho School of Law with a Juris Doctorate in 1974. From 1970 to 1971, he worked as a bank examiner with the Idaho Department of Finance. From 1974 to 1980, he worked with the law firm of Webb, Pike, Burton & Carlson in Twin Falls, Idaho, then as Deputy Prosecuting Attorney in Ada County, and finally as a partner with the law firm of Hart and Burdick, in Jerome, Idaho.

While with Hart and Burdick from 1976 to 1980, he served as a Public Defender in Camas, Lincoln, Jerome and Gooding Counties, as well as a general practice. In November 1980, he was elected as Prosecuting Attorney for Jerome County. From September 1981 to September 1993, he served as Magistrate Judge in Jerome County. During that time, he was appointed the first Magistrate member of the Idaho Judicial Council, President of Idaho Magistrate Association and Chairman of Juvenile Rules Committee, as well as numerous other committees.

In September 1993, he was appointed District Judge in Twin Falls County and has served on various Idaho Supreme Court advisory committees, including Chairman of I.A.R. 32 Rules Committee. He again served on the Idaho Judicial Council from 1995 to 2001 as the District Court member. He served as President of the District Judges Association from 2001 to 2003. In 2001, he was assigned to preside over the Snake River Basin Adjudication. In January 2001, he was appointed the Administrative Judge for the Fifth Judicial District.

In August, 2003 he was appointed to be the fifty-third Justice of the Idaho Supreme Court by Governor Dirk Kempthorne. He was retained by popular election in 2004 and won a state-wide contested election in 2010. He now serves as chair of the Idaho Appellate Rules Committee. He serves as Co-Chair of the Appellate Time Standards Committee of the Conference of Chief Justices. He was appointed Vice Chief Justice of the Idaho Supreme Court in 2007 and in August 2011 he was elected to be the Chief Justice by his peers.

HONORABLE THOMAS J. RYAN was born in Caldwell and graduated from Nampa High School. His father was in the seed business and his mother was in education. In 1975, Judge Ryan graduated from the University of Notre Dame with a degree in Accounting. Between 1975 and 1980 he worked as a Certified Public Accountant with the international accounting firm of Touche Ross & Co. (now Deloitte LLP).

In 1983, he graduated from the University of Idaho, College of Law. In 1985 and 1986, he worked as a trial attorney in the Ada County Public Defender's Office. From 1986 through 1994 he worked as a trial attorney.

In 1995, Judge Ryan was appointed as the Magistrate Judge in Owyhee County. In 2007, he was appointed as a District Judge with chambers in Caldwell.

Judge Ryan has been appointed to the Juvenile Justice Commission since 1998 by Governors Kempthorne, Risch and Otter. In 2004 he was given the John Schuler Award for Outstanding Contribution to Juvenile Corrections by the Idaho Juvenile Justice Association. He previously served on the Statewide Drug Court and Mental Health Court Committee of the Idaho Supreme Court and presided over the Canyon County Drug Court for a five year period. He also served on the Lawyers' Assistance Program committee of the Idaho State Bar. In 2004 he received Idaho State Bar's Outstanding Service Award. Judge Ryan joined the Idaho Judicial Council as a member in July 2013.

HONORABLE THOMAS BORRESEN earned his Bachelor of Science in Accounting from the University of Idaho in 1972 and graduated from the University of Idaho Law School in 1977. He was a member of the Idaho Law Review. He served as law clerk for the Honorable J. Blaine Anderson in both the U.S. District Court and the Ninth Circuit Court of Appeals. He engaged in the private practice of law from 1978 to 1993 when he was appointed to the Jerome County Magistrate Court. Judge Borresen has served as an adjunct member of the Idaho Judicial Council since July 2000.

PUBLIC MEMBERS:

J. PHILIP REBERGER, is a resident of Boise, Idaho. He graduated from Caldwell High School and the University of Idaho where he earned a Bachelors of Science in Business and received the President's Top Senior Award. He is currently a partner in one of Idaho's leading governmental affairs firms, Sullivan & Reberger. As a U.S. Navy Viet Nam veteran, he served on active duty as Staff Pilot to Admiral John McCain, Commander in Chief, Pacific. In 2002, he retired as a Captain, last serving as Chief of Staff to the Commander, Navy Reserve Security Group. Early in his career, he served on the executive staff of the Republican National Committee under the leadership of Former President George H. W. Bush and U.S. Senator Bob Dole. He served for twelve years as Chief of Staff to Idaho's U.S. Senator Steve Symms. He retired in 2003 as Idaho Governor Dirk Kempthorne's Chief of Staff, a position he held since 1992 when he joined Kempthorne to manage his successful campaign for election to the United States Senate. He is a former Presidential appointee to the USO World Board of Governors. He is currently Chairman of Boise's Capital City Development Corporation and has served on various state and local government boards and commissions. Mr. Reberger has been a member of the Idaho Judicial Council since September 2003.

ELIZABETH CHAVEZ, has been a resident of Nez Perce County for fifty years and a graduate of Lewis Clark State College. She is married to Jerry Chavez and taught middle school in the Clarkston School District from 1970-2000. She is involved in her church and also several public service organizations including the Lewis Clark State College Foundation and Women's Basketball Scholarship Club, as well as a member of the Family Promise Board.

Mrs. Chavez served as a member of the Idaho Legislature/House of Representatives from 2006-2010. Mrs. Chavez served on the Agricultural Affairs Committee, the Education Committee, and the Natural Resources Committee. Other committee work while in the Legislature included serving on the Middle School Task Force, the Teacher Evaluation Task Force, the Soil Conservation Interim Committee, and as a member of the House and Senate Sportsman's Caucus, and Idaho Preferred Advisory Board. Mrs. Chavez was also the recipient

of the 2010 Patricia Kempthorne Award for work in substance abuse awareness.

Mrs. Chavez is an avid supporter of full funded accessible education at all levels, helping families and communities deal with mental illness in the same way we deal with physical illness, she supports groups and organizations which enable those with special needs, those living in poverty and older citizens to live independently or with assistance. Mrs. Chavez joined the Idaho Judicial Council as a member in October, 2012.

KATHY SIMPSON is a resident of Idaho Falls, Idaho. She grew up in Blackfoot, Idaho where her parents had a small family farm in Groveland. Following graduation from Blackfoot High School, she attended and received a Bachelor of Science degree from the College of Family, Consumer and Human Development at Utah State University in 1972.

Mrs. Simpson has pursued a career in business that includes 13 years in the financial services industry where she held such positions as commercial loan officer, operations manager, regional branch manager and marketing director. In 2012 she retired from the Idaho National Laboratory after 20 years where she managed various functions including electronic publications, the communications and public affairs division and management communications. She also served as the interior design lead for the office of campus development.

Mrs. Simpson has been active in community service over the years serving on the boards of the Blackfoot Chamber of Commerce and United Way. She has also supported fund raising for the Idaho Meth Project. Mrs. Simpson joined the Idaho Judicial Council as a member in July 2013.

ATTORNEY MEMBERS:

STEVEN A TUFT, is a resident of Burley, Idaho. He received a Bachelor of Arts from Brigham Young University in German Literature and his Juris Doctorate from the University of Utah Law School. He is involved in his church and several community activities including the Boy Scouts of America, serving first as a board member for 20 years and then as president of the Snake River Council. Mr. Tuft also sits on the board of three charitable foundations. His law practice focuses on real estate, commercial transactions and estate planning. He represents the Fifth Judicial District CASA program in child protection cases in Cassia and Minidoka Counties. For over 30 years, he has served as a part-time city attorney for Heyburn. He is a founding member of the Idaho Municipal Attorneys Association. In 2006 he received both the Idaho State Bar's Service Award and the Professionalism Award. Mr. Tuft joined the Idaho Judicial Council as a member in July 2009.

JOEL P. HAZEL, is a lawyer in private practice in Coeur d'Alene, Idaho. He is a shareholder of the firm Witherspoon Kelley. He received his Bachelor of Arts degree from Gonzaga University and his Juris Doctor degree from the University of Idaho College of Law in 1994. Mr. Hazel was a deputy prosecuting attorney in Kootenai County from 1994 to 1999 when he joined his current firm. Mr. Hazel's current practice focuses on civil litigation. Before serving on the Idaho Judicial Council, Mr. Hazel served on the Idaho State Bar's Character and Fitness Committee and Professional Conduct Board. Mr. Hazel received the Idaho State Bar Service Award in 2010. Mr. Hazel has been active in Kootenai County's Specialty Courts and

served as a Pro Temp Judge for Kootenai County's DUI court for ten years. Mr. Hazel joined the Idaho Judicial Council in September of 2011.

EXECUTIVE DIRECTOR:

JAMES D. CARLSON, is an Idaho native and resides in Boise, Idaho. He is a University of Idaho graduate; receiving his Bachelor of Science degree in Business in 1978 and his Juris Doctorate in 1982. Mr. Carlson began his legal career as a trial attorney in 1982 with the Ada County Prosecutors Office in both the Civil and Criminal Divisions. In 1989 he entered private practice and concentrated upon constitutional rights/litigation. In 1998, he was appointed a Deputy Attorney General in the Civil Litigation Division of the Idaho Attorney General's Office and was most recently Of Counsel with the law firm of Naylor & Hales, P.C. He has tried more than 160 jury trials in Idaho and federal courts and has handled over 20 cases on appeal before the Idaho Supreme Court, the Ninth Circuit Court of Appeals and the U.S. Supreme court. Mr. Carlson served on behalf of the Idaho State Bar in handling fee arbitration and professional discipline matters. His law related activities include POST academy instruction and instruction at the college level as an adjunct professor.

III.

SELECTION OF JUDGES

Justice is administered by people, not by systems. The quality of justice turns, in full measure, upon the competence, fairness, and diligence of the human beings selected as judges. Because the judicial system depends heavily on a quality judiciary, we need the best available method for judicial selection. While there is no perfect method, a broad national consensus suggests that the best judges are identified through a merit selection process. Merit selection envisions a commission, composed of judges, lawyers, and laymen, submitting nominations to the Governor for appointment. Idaho law provides such a process. Idaho Code Section 1-2102 provides that the Judicial Council shall:

Submit to the Governor the names of not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the Supreme Court or district judge, one (1) of whom shall be appointed by the Governor...

This process is followed whenever new positions are created or vacancies occur prior to the expiration of a term. However, once selected, all Idaho judges are subject to a non-partisan competitive election or retention process.

THE SELECTION PROCESS IN DETAIL

The Idaho Judicial Council has a detailed and careful selection procedure. The Council uses a comprehensive application form to elicit detailed information concerning each applicant's professional background and achievements. During personal interviews, which are open to the public, partisan political questions are strictly avoided. Applicants are asked for their thoughtful comments on issues of substantive law and problems of judicial administration. A

standard questionnaire is distributed throughout the judicial district or the state, depending on whether the vacancy is on the district bench, the Court of Appeals, or the Supreme Court, asking those members of the practicing bar and of the general public who know the applicant to evaluate the judicial candidate upon the standards recommended by the American Judicature Society. These standards include the following:

1. Integrity and moral courage.
2. Legal ability and experience.
3. Intelligence and wisdom.
4. Capacity to be fair-minded and deliberate.
5. Industriousness and promptness in performing duties.
6. Compatibility of personal habits and outside activities with judicial office.
7. Capacity to be courteous and considerate on the bench.

When all of this information has been received and digested, the Judicial Council analyzes each applicant's mental and physical fitness to perform the duties of judicial office, superior self-discipline, moral courage, sound judgment, ability to weigh impartially the views of others, ability to be decisive when required, capacity for logical reasoning, adequacy of educational background, and excellence of professional achievement. For trial court positions, the Judicial Council also considers knowledge of procedure and evidence and experience as an advocate. For appellate positions, the Council looks for clarity of written and spoken expression. The Council also obtains information from the State Tax Commission, the Idaho State Bar, a credit bureau, the Idaho Supreme Court and the Idaho Department of Law Enforcement in order to verify the integrity and background of each applicant.

The Judicial Council's process of judicial selection is now being emulated by several district magistrates commissions, the federal bench, and, has been the subject of inquiries from other states.

NOMINATIONS BY THE JUDICIAL COUNCIL FOR 2013

Judicial vacancies usually fill a large part of the Council's activities. There were five (5) vacancies in the 2013 calendar year.

NOMINATIONS BY THE JUDICIAL COUNCIL FOR THE PAST FIVE YEARS

The following table summarizes the screening process for judicial vacancies for the last five years (2013-2009).

Vacancy	No. of Applicants	No. of Nominees	Individual Appointed
	<u>2013</u>		
District Judge First District John P. Luster	7	3	Richard S. Christensen

Vacancy	No. of Applicants	No. of Nominees	Individual Appointed
District Judge Seventh District New Position	4	3	Alan C. Stephens
District Judge Third District New Position	8	3	Christopher S. Nye
District Judge Fourth District New Position	14	4	Steven J. Hippler
District Judge Fourth District Ronald J. Wilper	11	4	Jason D. Scott
	<u>2012</u>		
District Judge Fourth District Michael McLaughlin	10	4	Melissa N. Moody
District Judge First District Steve Verby	9	4	Barbara A. Buchanan
District Judge Third District Rena Hoff	7	2	George A. Southworth
	<u>2011</u>		
District Judge Fourth District Darla Williamson	9	4	Lynn G. Norton
District Judge Third District Gregory W. Culet	10	4	Molly J. Huskey

Vacancy	No. of Applicants	No. of Nominees	Individual Appointed
	<u>2010</u>		
No Vacancies			
	<u>2009</u>		
District Judge Third District Stephen W. Drescher	4	3	Susan E. Wiebe
District Judge Sixth District Peter D. McDermott	8	4	Robert C. Naftz
Court of Appeals Darrel R. Perry	12	4	John M. Melanson
District Judge First District Charles W. Hosack	7	3	Benjamin R. Simpson
District Judge Fifth District R. Barry Wood	7	2	Eric J. Wildman
District Judge Fifth District John M. Melanson	6	2	Jonathan P. Brody
District Judge Seventh District Brent J. Moss	5	2	Gregory W. Moeller
District Judge Third District Gordon W. Petrie	8	3	Bradly S. Ford

IV.

DISCIPLINARY ACTIVITIES OF THE JUDICIAL COUNCIL

Judges can and should meet rigorous standards of personal and professional conduct. The role of judicial conduct agencies throughout the country is to help enforce the standards of judicial conduct. These agencies, established by the fifty states and the District of

Columbia, play a vital role in maintaining public confidence in the judiciary and preserving the integrity of the judicial process. As a forum for citizens with complaints against judges, the Idaho Judicial Council helps maintain the balance between judicial independence and public accountability. It also serves to improve and strengthen the judiciary by creating a greater awareness of proper judicial conduct on the part of judges themselves, both on and off the bench.

The Idaho Judicial Council generally acts only on verified complaints involving judicial misconduct and disability. Accordingly, it does not address complaints involving a judge's legal decisions or rulings unless there is an accompanying allegation of fraud, corrupt motive, or other misconduct.

Judicial misconduct, or the inability of a judge to perform judicial functions, represents a greater threat to the public interest than do personnel problems among public officers in general. Most elected officers are subject to the constitutional remedy of recall, but Article 6, Section 6, of the Idaho Constitution specifically exempts judicial officers. Experience in other states has shown that the alternative remedy of impeachment is ineffective except in cases of gross scandal. In any event, as noted by the American Bar Association, the impeachment method can be activated only by preliminary proceedings that approach prejudging the case, and involve methods of determination that are easily politicized.

The problem is underscored by the special role that courts play in our system of government. The courts, in the last analysis, are the protectors of the individual rights which give our society its distinct character. Because the public quite understandably views justice as being no better than the person who dispenses it, the judge who misbehaves or who is unable to perform adequately brings discredit to the entire system. The fact that relatively few judges manifest such problems is small consolation to the public or to the other judges whose images are indirectly tarnished by the acts of a few.

Conversely, the clear need for effective judicial discipline must not obscure the equally important public interest in an independent judiciary. The judge who is different is not for that reason alone, unfit. Nor is a judge incompetent, merely because of the issuance of controversial decisions. The need for balance between judicial accountability and judicial independence puts a premium upon the fairness of disciplinary procedures.

THE JUDICIAL DISCIPLINARY PROCESS IN IDAHO

Idaho Code Section 1-1202 authorizes the Judicial Council to recommend the removal, discipline, and retirement of judicial officers. Section 1-2103, which prescribes the procedures by which this power shall be exercised, refers only to the removal, discipline, or retirement of district judges, court of appeals judges or justices of the Supreme Court. However, Idaho Code Section 1-2103A was added by the 1990 legislature and requires the Judicial Council to investigate and make recommendations to the Supreme Court on the discipline, removal, or retirement of magistrates. The statutory change was effective on July 1, 1990. It did not affect the magistrate selection process or the right of the district magistrate commission to remove a magistrate in the first eighteen (18) months after appointment. All judges are subject to the Idaho Code of Judicial Conduct promulgated by the Supreme Court.

Section 1-2103 provides that the Judicial Council may investigate a complaint against a judge or justice and may order a formal hearing before it, after such investigation has been conducted. A copy of the complaint form may be found in the Appendix. Following this hearing, the Council may recommend to the Supreme Court the removal, discipline, or retirement of the accused judge or justice. Final disciplinary authority rests with the Supreme Court. Section 1-2103 further provides that all papers filed with, and proceedings conducted before, the Judicial Council are confidential. These papers and proceedings do not lose their confidential nature unless or until the matter is forwarded to the Supreme Court upon recommendation of the Council. At that point, the proceedings become public.

The rules adopted by the Judicial Council pursuant to this statutory authority provide that when a complaint is received, the Council initially determines whether or not the complaint (a) states facts which constitute possible grounds for removal, discipline or retirement, and (b) is not obviously unfounded or frivolous. This is accomplished through an initial inquiry wherein the Executive Director informally obtains sufficient additional information to allow the Council to determine whether to proceed to a preliminary investigation. The judge is usually notified of the complaint at this stage of the proceedings. If the complaint passes these tests, then a preliminary investigation will be conducted, and the judge or justice involved must be formally notified. Ordinarily, this investigation is conducted by the Council's Executive Director. The judge or justice is invited to make such statements or submit such materials as may be helpful to the investigation.

When the preliminary investigation has been completed, the Judicial Council determines whether or not the investigation has disclosed sufficient cause to warrant further proceedings. If not, or if the investigation itself has resolved the alleged problem, then the complaint is dismissed with notice to the complainant and the judge or justice. However, if further proceedings are warranted, the judge or justice is then served notice of formal proceedings and given an opportunity to answer.

The hearing may be conducted by the Judicial Council itself, or it may request that the Supreme Court appoint a panel of three special masters to hear and take evidence in such a proceeding and report their findings to the Judicial Council. During the hearing, and at all other stages of the proceeding, the judge or justice is entitled to be represented by counsel. The rules governing evidence and the requirements of due process are observed during the hearing in the same manner as in a civil court case.

Following the hearing, or upon receiving the report of findings by the special masters, the Judicial Council determines whether good cause exists to recommend to the Supreme Court that the judge or justice be removed, disciplined or retired. If the decision is in the affirmative, the record of proceedings is transmitted to the Supreme Court together with the Judicial Council's recommendation. The Court may order the judge or justice removed from office, involuntarily retired from office, or disciplined. Pursuant to Section 1-2103 and the Judicial Council's rules, no judge or justice who is a member of the Council or Supreme Court may participate in any proceedings involving himself or herself, or any district judge in his or her own judicial district.

Two especially significant features of the foregoing process are the

confidentiality of proceedings before the Judicial Council and the undertaking of a preliminary investigation prior to any formal hearing. The confidentiality provisions serves two purposes: (1) the complainant is not deterred by fear of public embarrassment from bringing a personal grievance to the attention of the Judicial Council; and (2) the reputation of the judge or justice is protected during the period of time when the truth of the complaint is undetermined. Furthermore, confidentiality allows a judge or justice to recognize a mistake, if one has been committed, and rectify it to the satisfaction of the complainant before publicity "freezes" the case into an adversary mold. Similarly, the preliminary investigation provides a framework in which issues can be defined, and in many cases resolved, before formal proceedings are commenced.

In many cases, the Judicial Council finds that the judge or justice has not engaged in misconduct or failed to perform judicial duties. Even in such cases, the disciplinary process accomplishes a constructive purpose. As noted by the Texas Judicial Qualifications Commission, in its 1974 report:

"Many complainants do not understand law, how the courts operate, the jurisdiction of the judge, their right of appeal, and other aspects of the judicial system. They know only that they are unhappy with the system and want someone to hear their complaint. . . . The tremendous caseload of the court and the demand upon the time of a judge...[do] not permit him to give these people the time they feel they deserve. To the individual, his case is the only one; to the judge it is one among hundreds of similar nature. By serving as an intermediary, taking remedial action when necessary, the Commission feels that it negates much of the animosity toward the judicial system, and provides the lay person a better understanding of the judiciary."

DISCIPLINARY ACTIVITIES BY THE JUDICIAL COUNCIL IN 2013

In calendar year 2013, there were eighty-one (81) complaints or inquiries concerning Idaho judges. Those complaints were made against judges as follows:

TYPE OF JUDGE	NO. OF COMPLAINTS **
Idaho District Judges	26
Idaho Magistrate Judges	33
Idaho Appellate Judges	0
Idaho Supreme Court Justices	0

Retired/Senior Judges	9
Judicial Candidates	0
Judges Not Identified or Other Entities Not Under Judicial Council Jurisdiction	13

** Some complaints have more than one judge named.

Of the 81 complaints received in 2013, thirty-two (32) were not verified (not a sworn statement) as required by Idaho law. When a complaint is not verified, the Judicial Council contacts the complainant to explain the need for a sworn statement and offers to assist them in locating a notary public. Of the forty-nine (49) verified complaints, thirty (30) complaints were dismissed after having been reviewed and discussed by the Judicial Council and a determination made that there was no factual basis for the complaint or the facts did not constitute a violation of the Code of Judicial Conduct. There were seventeen (17) initial inquiries conducted and two (2) preliminary investigations. An initial inquiry consists of obtaining more facts on the complaint and receiving a response from the judge and a review of court records/transcripts. A preliminary investigation is a full investigation, which includes at a minimum, interviewing of witnesses.

In the seventeen (17) cases in which there were initial inquiries, the Judicial Council took remedial action in two (2) cases pursuant to Judicial Council Rule 28(c), which permits the Judicial Council to remedy issues with a judge without filing formal charges. In one case, the judge was admonished for acting as a hearing officer in a contested case, without being assigned to do so by the Idaho Supreme Court or any judicial officer, and in contravention of the Idaho Code of Judicial Conduct. In the second case, the judge was admonished for rude, nonprofessional comments made in open court.

In the two (2) cases in which there were preliminary investigations, one judge

self-reported his off-the-bench conduct that was alleged to have brought the judicial office into disrepute. This matter was ultimately dismissed by the Judicial Council. In the other case, the judge was investigated for (1) acting inappropriately, in violation of Canon 2, (2) failing to handle cases in a timely fashion in violation of Canon 3B(8), and (3) engaging in extra-judicial activities to such an extent and at such times as to interfere with the proper performance of judicial duties in violation of Canon 4A(2). This matter is currently being investigated.

There are seven (7) matters that are pending as of the date of this report.

The primary allegations contained in the complaints against judges were as follows:

**NATURE OF COMPLAINT	OCCURRENCES
Abuse of Power	0
Appearance of impropriety	9
Bias/prejudice/discrimination	13
Conduct prejudicial to administration of justice/Failure to perform duties	6
Conflict of interest	3
Conspiracy	2
Erroneous decision/error of law	28
Ex parte communication	2
Excessive or improper use of alcohol/drugs	0
Failure to disqualify	1
Improper/Unreasonable delay	4

**NATURE OF COMPLAINT	OCCURRENCES
Improper Conduct	2
Improper sentence	0
Improper campaign/Political activity	0
Lack of impartiality	0
Rude and discourteous treatment/lack of judicial temperament	14
Unknown or general dissatisfaction	23

** Many complaints have more than one allegation made against the judge or judges.

In all cases, the judges against whom complaints had been filed were cooperative with the Judicial Council in performing its statutory duties.

V.

JUDICIAL PERFORMANCE EVALUATIONS

The Judicial Council has found that when individuals are appointed to the bench, they become isolated and do not receive feedback on their performance as a judge.

Judicial Performance Evaluations provide the opportunity to receive feedback on the way judges perform their judicial duties. That information is provided to the judges in order to assist them in improving their judicial skills and abilities.

The Judicial Council began a Volunteer Pilot Judicial Performance Evaluation Project in June 2000. The questionnaires are distributed to attorneys and court clerks once a year.

For 2013, all judges in the state of Idaho were encouraged to participate in the

evaluation program and the number of judges participating increased to 93 out of 143 total judges in Idaho.

VI.

ETHICS OPINIONS

The Judicial Council encourages judges to solicit advice on ethics issues that arise. In 2013, the Judicial Council provided thirty-five (35) informal ethics opinions to judges.

APPENDIX A

STATE OF IDAHO
IDAHO JUDICIAL COUNCIL

P.O. Box 1397
Boise, Idaho 83701
(208) 334-5213
Website: www.judicialcouncil.idaho.gov

COMPLAINT FORM

No. _____

This form is designed to provide the Judicial Council with information required to make an initial evaluation of your complaint, and to begin an investigation of the allegations you make. Please read the accompanying materials on the Judicial Council's function and procedures before you complete this form.

PLEASE TYPE OR LEGIBLY PRINT ALL INFORMATION

Name: _____
(Please type or print)

Address: _____

Telephone: _____ Day () _____ Evening () _____

I have information of possible misconduct or disability on the part of

_____, of the _____ Court in
(name of Judge or Industrial Commissioner)

_____, Idaho.
(City) (County)

STATEMENT OF FACTS

1. When and where did this happen?
Date(s): _____ Time: _____ Location: _____

2. If your information arises out of a court case, please answer these questions:

a) What is the name and number of the case?

Case Name: _____ Case No: _____

b) What kind of case is it?

criminal domestic relations small claims probate

civil juvenile other (specify) _____

c) What is your relationship to the case?

plaintiff/petitioner defendant/respondent

attorney for _____

witness for _____

other (specify): _____

d) If you were represented by an attorney in this matter at the time of the conduct of the judge or industrial commissioner, please identify the attorney:

Name: _____

Address: _____

Phone: () _____

e) Identify any other attorney(s) who represented you or any person involved in the case:

Name of attorney: _____

Address: _____

Phone: () _____

Represented: _____

f) If this complaint relates to a trial or other court proceeding, has it been or will it be appealed?

Signed: _____

Date: _____

VERIFICATION

STATE OF _____)
) ss.
County of _____)

_____, being first duly sworn upon oath, deposes and says:

That he/she is the Complainant in the above matter, that he/she has read the foregoing Complaint, knows the contents thereof, and verily believes the facts therein stated to be true.

(Signature)

SUBSCRIBED AND SWORN TO Before me this ____ day of _____, 2013.

Notary Public for _____
Residing at _____
Commission Expires: _____

Please return this completed form to:

James D. Carlson
Executive Director
Idaho Judicial Council
P.O. Box 1397
Boise, Idaho 83701

APPENDIX B

(Add new RULES as pdf)

APPENDIX B

Idaho Judicial Council Rules of Procedure

Chief Justice Roger S. Burdick
Ex-Officio Chair

James D. Carlson
Executive Director

Members:

J. Philip Reberger • Steven A. Tufft • Joel P. Hazel • Elizabeth Chavez
Hon. Thomas J. Ryan • Kathy Simpson • Hon. Thomas H. Borresen, *Adjunct Member*

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PART A. GENERAL PROVISIONS

Rule 1. Scope, Objective and Title

- (a) **Scope.** The Idaho Judicial Council Rules of Procedure (the “Rules”) apply to all of the responsibilities and proceedings of the Idaho Judicial Council (the “Council”), as authorized by Idaho Code §1-2101, §1-2102, and §1-2103 pursuant to Article V, Section 28 of the Constitution of the State of Idaho. Final disposition of matters before the Idaho Judicial Council is subject to the original supervisory control of members of the judicial system by the Supreme Court pursuant to Article V, Section 2 of the Constitution of the State of Idaho.
- (b) **Objective.** The Idaho Judicial Council shall administer the judicial vacancy, judicial discipline, and judicial incapacity system pursuant to the Idaho Judicial Council Rules of Procedure or other applicable rules.
- (c) **Title.** These Rules shall be known and cited as the Idaho Judicial Council Rules of Procedure (I.J.C.R.P.).

Rule 2. Definitions

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

- (a) **“Accused Judge”** means any judicial candidate as defined in the Idaho Code of Judicial Conduct, or any judge against whom formal proceedings have been instituted pursuant to Rule 37.
- (b) **“Applicant”** means any person who submits an application to fill a judicial vacancy for consideration by the Council, whether statutorily qualified or not.
- (c) **“Candidate”** means any person who submits an application to fill a judicial vacancy for consideration by the Council and who meets all Idaho statutory qualifications for judicial candidacy. Alternatively, any person who seeks election as a judge or justice.
- (d) **“Chair”** means the chair of the Council or the acting chair of the Council.
- (e) **“Clear and convincing evidence”** means evidence indicating that the allegation or thing to be proved is highly probable or reasonably certain.
- (f) **“Complaint”** means information in any form from any source received by the Council that alleges, or from which a reasonable inference can be drawn, that a judge may have committed misconduct or may have a disability that is adversely affecting the judge’s performance.
- (g) **“Complainant”** means a person who files a complaint.
- (h) **“Conduct prejudicial to the administration of justice that brings the judicial office into disrepute”** includes, without limitation, “a violation of the Idaho Code of Judicial Conduct.”
- (i) **“Council”** means the Idaho Judicial Council.

- (j) **“Custodian”** means the Executive Director of the Judicial Council.
- (k) **“Custodian Judge”** for the purposes of ICAR 32 means the Chief Justice, provided that the duties prescribed to the Custodian Judge in ICAR 32 shall be performed in accordance with Rule 32 herein.
- (l) **“Disability”** means a mental or physical condition, or mental and physical condition combined, that seriously interferes with a judge’s performance of duties.
- (m) **“Executive Director”** means the person appointed by the Council to serve as its executive director.
- (n) **“Hearing”** means a meeting of the Council or master convened for the purpose of taking evidence or considering legal arguments.
- (o) **“ICAR”** means Idaho Court Administrative Rules.
- (p) **“Judge”** means a Justice of the Supreme Court, a Court of Appeals judge, a judge of a district court, a magistrate judge, a *pro tempore* trial judge, a senior judge, a Plan B judge, or a member of the Industrial Commission.
- (q) **“Mail”** means first-class mail, personal delivery, or delivery by commercial mail service.
- (r) **“Master”** means special master appointed by the Supreme Court upon request of the Council.
- (s) **“Member”** means a member or special member of the Council.
- (t) **“Proceedings”** include a complaint, a response to a complaint, an investigation of a complaint, a meeting, a hearing, evidence in any form, any disciplinary disposition, or communication with respect thereto.
- (u) **“Presiding Master”** means the master so designated by the Supreme Court or, in the absence of such designation, the judge first named in the order appointing master.
- (v) **“Record”** specific to Rule 32 herein shall mean Court Record, Physical Record, or Electronic Record, as defined by ICAR 32.
- (w) **“Shall”** is mandatory and **“May”** is permissive.
- (x) **“Special Examiner”** means counsel designated by the Council to make a preliminary investigation, to gather evidence, and to present evidence before the Council, the master, or the Supreme Court with respect to charges against an accused judge.
- (y) **“Verified Petition for Review”** means a written declaration signed by the judge and verifying that the accused judge has personal knowledge of the facts stated to be true.
- (z) The masculine gender includes the feminine gender.

Rule 3. Organization and Administration

(a) **Composition.** The Council shall consist of seven (7) permanent members as provided in Idaho Code §1-2101.

(b) **Officers.** The officers of the Council shall be:

(1) **Chair.** The Chair shall be the Chief Justice of the Supreme Court of the State of Idaho. (I.C. §1-2101). The Chair's duties, *inter alia*, shall be:

(i) to act as chair of all meetings of the Council;

(ii) to cause studies to be made and reports to be submitted as required by I.C. §1-2102; and

(iii) approve all honoraria and expenses of travel necessarily incurred by members of the Council in attending Council meetings and in the performance of official duties.

(2) **Vice-Chair.** The Vice-Chair shall be elected by the Council annually, on a calendar year basis, and shall act in the place of and perform the duties of the Chair in the Chair's absence.

(3) **Secretary/Treasurer.** The Secretary/Treasurer shall be elected by the Council, annually, on a calendar year basis, and shall attend all Council meetings and keep minutes thereof, communicate with Council members from time to time in accordance with these Rules and as the Chair may direct, assist in the formulation of the studies and reports required by I.C. §1-2102, and prepare such financial reports as directed by the Council.

(c) **Executive Director.** The Council shall appoint an executive director whose duties and responsibilities, subject to general oversight by the Council, shall be:

(1) To coordinate with candidates for judicial vacancy under the direction of the Council;

(2) To receive information, allegations, and complaints;

(3) To conduct an initial inquiry of complaints under Rule 36 and refer complaints to the Council for consideration;

(4) To conduct investigations;

(5) To recommend dispositions to the Council;

(6) To maintain Council records;

(7) To maintain statistics concerning the operation of the Council and make them available to the Council and to the Supreme Court;

(8) To prepare the Council's budget and administer its funds with oversight from the Secretary/Treasurer and the Chair;

(9) To prepare annual or bi-annual reports of the Council's activities for presentation to the Council, to the Supreme Court and the state legislature pursuant to I.C. §1-2102, and to the public at the discretion of the Council; and

(10) To perform such other duties as these Rules and the Council may require.

(d) **Adjunct Member.** At the request of the Executive Director, the Magistrate Association shall recommend two to three (2–3) magistrate judge candidates to serve as an adjunct member of the judicial council in addition to the permanent members of the judicial council. The Chief Justice shall appoint the adjunct member, who shall be a magistrate judge pursuant to I.C. §1-2101(2). For all purposes for which the adjunct appointment is made, the adjunct member shall be a full voting member of the judicial council consistent with I.C. § 1-2201(2) and shall serve for a term of six (6) years subject to reappointment by the Chief Justice.

(e) **Oath of Office.** Upon appointment by the Governor, or Idaho State Bar, and before entering upon the duties of the Judicial Council each member shall take and subscribe to an oath or affirmation to support the Constitution of the United States and the Constitution and laws of the State of Idaho, and to faithfully discharge all the duties of such office. Such oath shall be administered pursuant to I.C. §59-401 and §9-1401.

Rule 4. Duties of Council

The Judicial Council shall:

(a) Conduct studies for the improvement of the administration of justice;

(b) Make reports to the Supreme Court and Legislature at intervals of not more than two (2) years;

(c) Submit to the Governor the names of not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the Supreme Court, Court of Appeals judge, or district judge, one (1) of whom shall be appointed by the Governor;

(d) Recommend the removal, discipline, and retirement of judicial officers; and

(e) Such other duties as may be assigned by law. (I.C. §1-2102).

Rule 5. Jurisdiction and Powers

(a) **Filing Date.** The Council has jurisdiction over an accused judge regarding allegations of misconduct or a disability and the application of dispositions thereto, based on events that occurred during the duration of the accused judge's judicial capacity.

(b) **Continuing Jurisdiction.** The jurisdiction of the Council regarding a pending proceeding shall not automatically terminate upon the expiration of the accused judge's term of office or the

accused judge's retirement or resignation. Such jurisdiction may continue until a disposition is determined.

(c) **General Powers.** The Council shall have the authority and duty to commence investigations on its own motion on matters concerning alleged disability, judicial misconduct, criminal misconduct, or civil misconduct falling within the jurisdiction of the Council and to investigate and resolve complaints pursuant to §1-2103.

(d) **Evidentiary Powers.** The Chief Justice, Secretary/Treasure, special master, or any member may administer oaths and affirmations pursuant to §9-1401. The Council may compel by summons or subpoena the attendance and testimony of witnesses under oath, including the accused judge as a witness, and compel the production of documents, books, accounts, and other records or writings necessary or material to the inquiry pursuant to I.R.C.P. 4(a)(1) and 45(a)-(b) except that such summons or subpoena shall be issued under the hand of the Executive Director, or any master appointed to conduct a hearing, and shall have the force and effect of a subpoena issued by a court of competent jurisdiction.

(e) **Administrative Powers.** The Council may adopt administrative policies, procedural rules, or forms for its internal operation or proceedings that do not conflict with the provisions of Idaho Statute or these Rules.

(f) **Communications.** The Council may distribute information to the judiciary and the public concerning its authority, procedures, or practices.

Rule 6. Honoraria and Expenses

Each member of the Council, except a judge or justice, shall receive an honorarium in such amount as may be set by Idaho statute for each day spent in actual attendance at meetings of the Council. Members of the Council shall be reimbursed for actual expenses necessarily incurred in attending meetings and in the performance of official duties. (I.C. §1-2104).

The Secretary is authorized to procure necessary supplies, stationery and postage, and copies of papers and documents for the Secretary's use, and use of the members of the Council, and to submit for approval by the Chair proper vouchers for payment thereof.

Rule 7. Meetings

(a) **Meeting Request and Notice.** Meetings of the Council shall be held at the call of the Chair or at the request of any two (2) members. The Secretary/Treasurer shall cause timely notice of a meeting to be given in advance of the time designated for the meeting. The presence of any member at any meeting shall constitute that member's waiver of notice.

(b) **Meeting Minutes.** The Secretary/Treasurer or an assistant under the Secretary/Treasurer's direction shall maintain minutes of such meetings, and shall within ten (10) working days following each such meeting send to every member of the Council the proposed minutes of such meeting. If no written objection to such proposed minutes is received from any member of the Council within one (1) week from the date of such transmission, said proposed minutes shall be

deemed approved. If any written objection is received, review of the proposed minutes shall be included on the agenda of the next duly-called meeting of the Council. Immediately following approval of the minutes of a meeting, the Chair or an assistant under the Chair's direction shall cause to be distributed to members of the Supreme Court and may cause to be made available to the general public said minutes; provided, however, that the copies of said minutes so distributed or made available shall reflect deletions of any material subject to a confidentiality requirement prescribed by law or by rules of the Council.

Rule 8. Types and Locations of Meetings

The notice calling a meeting shall specify whether the meeting is by assembly of Judicial Council members or by telephone conference. All meetings by assembly of members shall be held at the conference room adjoining the chambers of the Chief Justice of the Supreme Court, unless another meeting location is designated in the notice. If the notice specifies a meeting by telephone conference, such meeting will be conducted by long distance conference call; provided, that no telephone conference shall be held if any member expresses a written or oral objection, and provided further that any telephone conference shall be terminated upon demand by any member for a secret ballot on a matter subject to vote.

Rule 9. Quorum

The Council shall act by concurrence of four (4) or more members. (I.C. §1-2101)

Rule 10. Voting

All voting shall be voice vote, provided that the vote on any particular issue, on request of any member, shall be by roll call or by secret ballot. The Chief Justice only votes to break a tie.

Rule 11. Committees

Committees may be appointed to perform specified duties. The Chair shall appoint all committees unless otherwise provided in a motion or resolution authorizing a particular committee.

Rule 12. Assistants and Assistance

The Council may employ such professionals, assistants, and clerical assistance as may be deemed necessary to perform the duties and responsibilities imposed by Idaho Code, Title 1, Chapter 21.

The Council may solicit the view and assistance of professionals and other groups and of the general public concerning qualifications of candidates to fill Supreme Court, Court of Appeals, or district court vacancies; and concerning the improvement of the science of jurisprudence, and of the administration of justice.

Rule 13. Conflicts

(a) Members of the Council must police themselves against actual and potential conflicts of interest in the discharge of their prescribed duties. In circumstances involving an actual conflict of

interest, the member must immediately discontinue any involvement in the matter including discussions of it with other members or staff. Further, a Council member shall not participate in any matter if a judge similarly situated would be required to disqualify himself or herself under the Idaho Code of Judicial Conduct.

(b) A Council member who has recused or disqualified himself or herself shall not have access to the investigative file, shall not receive any of the staff reports and must leave the meeting room while the Council discusses the matter in which that member has recused himself and may not participate in its consideration.

(c) Recusal requires that a Council member shall not

(1) Participate in deliberations

(2) Make recommendations

(3) Give advice

(4) Participate in any manner

(5) Or in any way assume responsibility for any aspect of the investigation or deliberative process.

Rule 14. Immunity

When acting within the course and scope of their duties and without malice or criminal intent and without reckless, willful and wanton conduct as defined in I.C. §6-904(C), Council members, the Executive Director, master, special investigators, and staff members shall be immune from liability for any claim that arises out of the performance of those duties.

Rule 15. Standard of Proof

The standard of proof in all proceedings shall be clear and convincing evidence except as to reasonable cause to proceed with investigation pursuant to Rule 36, which shall be at discretion of the Council.

Rule 16. Rules of Order

All meetings of the Council and of its committees shall be conducted pursuant to these Rules and by procedure promulgated by the Chair and approved by the Council members pursuant to Rule 9.

Rule 17. Rules of Procedure and Evidence

(a) The Council or master shall conduct the hearing of such matter as shall best arrive at the truth and any member or master may interrogate witnesses. The following enumerated rules of the Idaho Rules of Civil Procedure (IRCP), as adopted by the Supreme Court, effective November 1, 1958, or as the same have been, or may hereafter be amended, shall govern and may be used in all proceedings and hearings conducted under these Rules. Rules: 6(a), 6(e)(1), 15(b), 15(c), 15(d),

(a) The Council or master shall conduct the hearing of such matter as shall best arrive at the truth and any member or master may interrogate witnesses. The following enumerated rules of the Idaho Rules of Civil Procedure (IRCP), as adopted by the Supreme Court, effective November 1, 1958, or as the same have been, or may hereafter be amended, shall govern and may be used in all proceedings and hearings conducted under these Rules. Rules: 6(a), 6(e)(1), 15(b), 15(c), 15(d), 16(a), 16(b), 16(c), 16(d), 16(e), 16(f), 16(g), 16(h), 16(i), 16(k), 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 43(a), 43(b)(1), 43(b)(2), 43(b)(5), 43(d), 43(e), 43(f), 45(d), 45(e)(1), 45(e)(2), 61 and 80; provided, that if the accused judge shall be in default for failure to answer, depositions and discovery procedures may be taken and used without notice to the accused, or affidavits of witnesses may be introduced and used in evidence. The Secretary/Treasurer, the Chief Justice, or master, may administer oaths to witnesses.

(b) The Idaho Rules of Evidence (IRE), as adopted by the Supreme Court, effective July 1, 1985, or as the same have been, or may hereafter be amended, shall govern and may be used in all proceedings and hearings conducted under these rules.

(c) Notwithstanding the above, procedure may vary by stipulation of the parties and agreement of the Council or master where certain provisions would be impractical or unnecessary, or where alternate procedure may be more suitable to a particular proceeding. Procedural provisions not affecting the substantial rights of an accused judge shall not be grounds for invalidation of the proceedings.

(d) Witnesses subpoenaed by the Council or any member thereof or by a master shall be allowed such fees and traveling expenses as are allowed under I.R.C.P. 54(d)(1)(C)(3, 4, and 8), to be paid by the party in whose interest such witnesses are subpoenaed.

Rule 18. Amendments

These rules may be amended or supplemented at any meeting by affirmative vote of not less than four (4) members of the Council.

Rule 19. Preservation, Destruction, or Disposition of Judicial Council Records

(a) **General Standards.** Except as provided in (b) below, all records and documents of the Idaho Judicial Council shall be preserved by the Executive Director or Secretary of the Council indefinitely, either in the form of the original document or permanent copy.

(b) **Permissive Destruction of Judicial Vacancy Records.** The following records and documents may be destroyed one year after a vacancy is filled.

- (1) Public comments on applicants for judicial positions.
- (2) Attorney questionnaires on applicants for judicial positions.

Rule 20. Intentionally Left Blank

Rule 21. Intentionally Left Blank

PART B. JUDICIAL VACANCY

Rule 22. Confidentiality and Disclosure in Relation to Candidates for Judicial Vacancies

The deliberations of the Council relating to candidates, their names and their deemed qualifications shall be considered confidential and shall not be disclosed to anyone except the Governor. The names of the candidates may be disclosed when the deadline for submitting applications for the judicial vacancy in question has expired; the names of such candidates may be used in any questionnaire or investigation of their qualifications for judicial office; and the names of the candidates submitted to the Governor may be further released for publication by the Council in its discretion.

Rule 23. Notice of Vacancy

Upon receiving notice of a judicial vacancy, notice of the vacancy shall be sent to members of the Idaho State Bar and disseminated to the public. After the deadline for submission of applications has expired, the Executive Director shall review applicants for Idaho statutory compliance to determine which applicants shall be candidates. The Council shall conduct a background check into the qualifications of the candidates, which may include, but not be limited to its own records, criminal records check, bar disciplinary activities check, Magistrate Commission disciplinary activities check, State Tax Commission check, and credit bureau check. The Council may also solicit input from members of the public concerning each of the candidates.

Rule 24. Attorney Questionnaires

Following the expiration of the deadline for submission of applications, the Council shall mail or e-mail to all attorneys in the candidates' judicial districts if for a district position, and to all attorneys in the state for statewide judicial offices, a questionnaire on the qualifications of the candidates. After the results of the questionnaires are tabulated, the Council may disclose to each candidate, the results of the candidate's score. However, the results of the surveys shall not be disclosed to any other person or entity except the Governor. Any written comments shall be confidential and shall not be disclosed to the candidate or any other person except the Governor.

Rule 25. Interviews

The Council shall interview candidates for the judicial position, which interviews shall be open to the public. Interviews will ordinarily be held in the judicial district for vacancies within that district, and in Boise, Idaho, for statewide judicial positions.

Rule 26. Judicial Qualifications and Rating of Judicial Candidates

The qualifications of candidates selected by the Council to be considered for appointment to judicial office may be rated by the Council as follows:

- (a) Exceptionally well qualified,
- (b) Well qualified, and
- (c) Qualified.

Such ratings are confidential and may only be disclosed to the Governor.

Rule 27. Ex Parte Contact with Judicial Council Members

The members of the Judicial Council should not engage in *ex parte* communications concerning any candidate for a judicial position. They should encourage all interested attorneys and members of the public to communicate with the Council in writing concerning the candidates about whom they have knowledge or information.

Rule 28. Intentionally Left Blank

Rule 29. Intentionally Left Blank

PART C. REMOVAL, DISCIPLINE OR RETIREMENT OF JUDGES

Rule 30. Confidentiality of Proceedings

All papers filed with and proceedings before the Council, or before the master appointed by the Supreme Court pursuant to Rule 31, shall be confidential unless and until a record is filed by the Council in the Supreme Court per ICAR 32(g)(26) and Rule 32 herein. However, if allegations against a judge are made public by the complainant, accused judge or third persons, the Judicial Council, and/or the accused judge may comment on the existence, nature, and status of any investigation and may correct any false or misleading information including false or misleading information on the actions taken by the Judicial Council.

Rule 31. Confidentiality of Judicial Performance Evaluations

All records, documents and reports relating to judicial Performance Evaluations of an individual judge shall be considered confidential records of the Idaho Judicial Council pursuant to ICAR 32(g)(28), and shall not be disclosed by the judge or the Judicial Council to any third party nor shall such records be subject to any discovery methods. All judicial Performance Evaluations, records, documents and reports relating to an individual judge shall not be disclosed to the members of the Judicial Council by the Executive Director.

Rule 32. Privileged and Confidential Material and Public Disclosure

(a) **Privilege.**

- (1) Pursuant to I.C. §1-2013, papers filed with the Council or the master, and testimony given before the Council or before the master, shall be privileged in any action, including any action for defamation; but
- (2) No other publication of such papers or proceedings shall be privileged in any action for defamation except that:
 - (i) Any Council record filed by the Council in the Supreme Court continues to be privileged but upon such filing loses its confidential character; and
 - (ii) A writing which was privileged prior to its filing with the Council or the master does not lose such privilege by such filing.

(b) **Confidentiality.** Unless otherwise permitted by these rules, or unless revealed in public documents or a public hearing, all proceedings before the Council and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the Council in the course of its work, shall be confidential. No member of the Council or agent of the Council, Executive Director and staff, no attorney, and no testifying witness shall disclose such proceeding, information, communications, materials, papers, files, or transcripts, except in the course of official duty or as otherwise authorized by these rules. Any violation of the provision for confidentiality shall constitute an act of contempt and be punishable as such. Any violation by any person of the requirements of confidentiality shall be dealt with in accordance with these rules, and the Council may refer any violation to the appropriate tribunals, authorities, agencies, commissions, or bodies.

(c) **Oath of Witnesses.** Every witness in every proceeding under these rules shall be sworn to tell the truth and to not disclose the existence of the proceedings or the identity of the accused judge until and/or unless the proceeding is no longer confidential under these rules. The oath shall be in substantially this form:

“Do you solemnly swear or affirm that you will testify to such matters and things inquired upon before the Judicial Council and that you will keep secret your testimony, the existence of these proceedings, and the accused judge’s identity and that you will testify to the truth, the whole truth, and nothing but the truth.”

(d) **Exceptions to Confidentiality.**

- (1) Violations of Law. The Council may refer potential violations of law by an accused judge or by any other individual or entity, or evidence thereof, to the appropriate authorities.
- (2) Other Disclosure. The Council may disclose information to any committee, commission, agency, or body within or outside the State of Idaho empowered to investigate, regulate, or adjudicate matters incident to the legal profession.

(3) Public Request for Records.

(i) Upon public request for any record in the Judicial Council, the custodian shall notify the Secretary/Treasurer that a request for records has been made and the Secretary/Treasurer shall either issue timely notice of a meeting pursuant to Rule 7, or shall add the request for records to the agenda for the next scheduled meeting. Such determination shall be at the discretion of the custodian, provided that such meeting shall be held within a reasonable time.

(ii) The custodian shall respond within three (3) working days pursuant to ICAR 32(j), if a longer period of time is needed.

(iii) Determination as to the nature of disclosure, whether complete, redacted, or denied, shall be decided by the Council pursuant to Rule 9 and Rule 10, acting as custodian judge for the purposes of ICAR 32.

(iv) The custodian shall respond to the request for records in accordance with the determination of the Council.

(4) Summaries. In an annual report, the Council may publish summaries of proceedings which have resulted in disciplinary dispositions or sanctions.

(i) Detailed Summary. A detailed summary may include a brief statement of facts, references to the applicable canons and rules in the Idaho Code of Judicial Conduct and a description of the disciplinary measure.

(ii) Statistical Summary. A statistical summary may include a description of the number of complaints received or initiated, the disposition of complaints received or initiated, the source of the complaints received (e.g. "litigant," "prisoner," "employee," etc), the nature of the allegations, the nature of the litigation (e.g. "criminal," "small claims," etc.), and such other non-identifying statistical information as the Council may elect.

Rule 33. Interested Party and Disqualification

(a) A judge who is a member of the Council or of the Supreme Court shall not participate as such in any proceedings involving the judge's own removal, discipline or retirement.

(b) If a complaint is filed against a Supreme Court Justice, the Chief Justice shall not participate in deliberations of the Judicial Council pertaining to the complaint filed against the Justice of the Supreme Court, and the Chief Justice shall be disqualified from participating in deliberations of the Council pertaining to that complaint. The Vice-Chair of the Council shall preside over any such deliberations and shall preside over any procedures involved in the investigation or processing of that complaint.

(c) Any member of the Council may be disqualified upon challenge for cause by the accused judge. A challenge must be heard by the Council, and the Council may disqualify any member 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 Council.

(d) No later than twenty-one (21) days prior to the commencement of a formal proceeding, the accused judge may exercise a single peremptory challenge to any Council member. The peremptory challenge must be filed in writing with the Chair of the Council. A formal hearing may proceed so long as at least four (4) members of the Council are present.

Rule 34. Appointment of Special Examiner

The Council may appoint one or more special examiners to assist the Council (a) conducting a preliminary investigation of the complaint against an accused judge; (b) to gather evidence and to present evidence before the Council or the master with respect to the complaint against an accused judge.

Rule 35. Service of Documents Upon Accused Judge

In proceedings for the discipline, removal, or retirement of an accused judge, including preliminary investigations therefor, service of any document required to be served upon an accused judge shall be made by personal service upon the accused judge, or by mailing a copy of such document to the judge at the judge's chambers or last known residence address, and by mailing a copy thereof to the accused judge's counsel of record, if such there be, unless the accused judge shall otherwise direct in writing filed with the Council.

Rule 36. Grounds for Discipline, Removal or Retirement; Initial Inquiry; Preliminary Investigation

(a) **Initial Inquiry.** Upon receiving a verified complaint, or a complaint as defined in these Rules, alleging facts indicating that an accused judge is accused of a violation of the Idaho Code of Judicial Conduct, the Council, or its representative shall make an initial inquiry to determine whether the complaint is obviously unfounded, frivolous, or pertains to subject matter over which the Council has no jurisdiction. In making the initial inquiry, the Council or its representative may obtain and consider any information it deems pertinent.

(b) **Preliminary Investigation.**

(1) If the Council concludes that the verified complaint, or a complaint as defined in these Rules, is not obviously unfounded or frivolous, and pertains to subject matter over which the Council has jurisdiction, the Council shall conduct a preliminary investigation, after first notifying the accused judge in writing as set forth below. In conducting the investigation, the Council may consider any information obtained during the course of the initial inquiry. The Council without receiving a verified statement may make such a preliminary investigation on its own motion and may, in such cases, conduct a preliminary investigation without an initial inquiry. If the Council determines that the physical or mental health of the accused judge is at issue, it may order physical and/or mental examinations of the accused judge by independent

examiners. Service of such written notice shall be in accordance with Rule 35 and, shall include the following:

- (i) a specific statement of allegations being investigated or a copy of the verified complaint;
- (ii) the accused judge's opportunity to respond and/or retain counsel, including any deadlines for doing so;
- (iii) the accused judge's opportunity to meet with the Council;
- (iv) the complainant's name, unless the Council has good cause to withhold that information.

(2) Insufficient Probable Cause. If the preliminary investigation does not disclose probable cause to warrant further proceedings, the accused judge, complainant and other parties in the discretion of the Council shall be so notified.

(3) Sufficient Probable Cause. If the preliminary investigation does disclose probable cause to warrant further proceedings, the Council may, by affirmative vote of four (4) members:

- (i) Continue the case for further action, investigation, or review;
- (ii) Require a personal appearance of the accused judge before the Council for discussion and possible resolution;
- (iii) Institute a remedial measure and solicit the accused judge's acquiescence thereto pursuant to Paragraph (d) of this rule;
- (iv) Institute formal proceedings; or
- (v) Take or direct such other action as the Council may determine will reasonably curtail or eliminate the conduct of the accused judge and uphold the dignity of the judiciary or protect the interests of the Idaho citizens which involves any matter within the jurisdiction of the Council.

(c) **Disciplinary Factors**. In evaluating the nature and extent of alleged judicial misconduct, the Council may consider one or more of the following non-exclusive factors:

(1) Nature of the Misconduct.

- (i) Whether the misconduct occurred in the accused judge's official capacity or private life;
- (ii) Whether the misconduct occurred in the courtroom or in the accused judge's administrative role;

- (iii) Whether the accused judge exploited judicial position to satisfy personal desires and/or interests;
- (iv) Whether the misconduct constituted a crime, particularly one of a type over which the accused judge's court has jurisdiction;
- (v) Whether the misconduct involved dishonest acts or moral turpitude;
- (vi) Whether the accused judge acted in bad faith, good faith, or negligently;
- (vii) Whether the accused judge's act was spontaneous, premeditated, or deliberate;
- (viii) Whether the accused judge was motivated by compassion for others or for personal profit, vindictiveness, ill-will, or other dishonest or selfish motives;
- (ix) Whether the conduct involved the appearance of impropriety or an actual impropriety;
- (x) Whether the misconduct affected or appeared to affect the administration of justice;
- (xi) Whether the misconduct undermined the ability of the justice system to discover the truth or to reach the most just result, or merely delayed the result;
- (xii) Whether the accused judge's conduct was contrary to a public policy to which the state has made a commitment;
- (xiii) Whether the misconduct involved the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion; or
- (xiv) Whether the misconduct evidenced lack of independence or impartiality.

(2) Extent of the Misconduct.

- (i) Whether the misconduct was an isolated instance or part of a pattern or course of conduct;
- (ii) The actual harm or potential for harm to the court system, to litigants, and to the public's perception of the judicial system;
- (iii) The number of victims;
- (iv) The vulnerability of the victims; or
- (v) Whether there was indirect economic detriment to the public.

(3) Culpability.

- (i) Whether the accused judge was suffering from personal or emotional problems;
- (ii) Whether the accused judge was suffering from physical or mental disability;
- (iii) Whether the accused judge was impaired by alcoholism or drug abuse;
- (iv) Whether the accused judge's problems were due to stress;
- (v) Whether there was judicial precedent that the accused judge's conduct was unethical;
- (vi) Whether the accused judge asked for and complied with a judicial ethics advisory opinion; or
- (vii) Whether the accused judge ignored others' efforts to persuade the accused judge to change his or her behavior.

(4) Conduct in Response to the Commission's Inquiry.

- (i) Whether the accused judge acknowledged the misconduct, took responsibility, or showed remorse;
- (ii) Whether the accused judge made an effort to change his or her conduct;
- (iii) Whether the accused judge attempted to blame his or her conduct on others;
- (iv) Whether the accused judge failed to respond to the Council's inquiry;
- (v) Whether the accused judge advanced an unlikely defense;
- (vi) Whether the accused judge attempted to interfere with witnesses;
- (vii) Whether the accused judge was candid or less than forthcoming with Council's Counsel or Council's Investigator;
- (viii) Whether the accused judge presented false evidence or gave false testimony to Council's Counsel;
- (ix) Whether the accused judge gave evasive testimony; or
- (x) Whether the accused judge showed a contemptuous attitude toward Council proceedings.

(5) Record.

- (i) The length of time the accused judge has served;

- (ii) Whether the accused judge was experienced or should have been familiar with the high standards of judicial behavior;
- (iii) Whether the accused judge had previous acts of misconduct;
- (iv) The remoteness in time of any previous Council's action;
- (v) The similarity between any previous conduct and the current conduct; or
- (vi) Whether the accused judge complied with prior Council recommendations.

(6) Reputation.

- (i) Positive contributions made by the accused judge to the court and community;
- (ii) The accused judge's commitment to fairness and innovative procedural reform; or
- (iii) The accused judge's ability to fairly, effectively, and efficiently run a court with a heavy caseload.

(7) Any other factor the Council may find determinative.

(d) **Remedial Measures Available to the Council.**

(1) Consideration of Settlement. An accused judge may present a settlement proposal to the Council, which may accept it, reject it, or propose an alternative. An accused judge who proposes or agrees to a settlement proposal waives any complaint that consideration of settlement compromises the Council or any of its members in any proceedings. Upon completion of the terms of any settlement, the case will be closed. Consideration of or discussions regarding settlement are subject to Idaho Rules of Evidence 408 and 507.

(2) Issuance of Education Order. Upon issuance of an education order, such order will be served upon the accused judge in accordance with Rule 35 and the accused judge will have seven (7) days from the date of service within which to reject the Council's education order in favor of formal proceedings. If the accused judge does not reject the education order within seven (7) days, the case will remain open until the Council receives written notice from the accused judge of compliance with the education order. If the Council does not receive written notice of the accused judge's compliance with the education order within the timeframe set forth in the Order, the Council will initiate formal proceedings against the accused judge.

(i) When an accused judge shows lack of knowledge in a particular area of the law, or lacks the ability to maintain proper judicial temperament, or for any other reason determined by the Council, the Council may order additional education or training.

(3) Issuance of Private Admonition. Upon issuance of a private admonition, such admonition will be served upon the accused judge in accordance with Rule 35 and the case closed.

(i) A private admonition is typically used for minor infractions committed by less experienced judges where the Council has determined that the public can be adequately protected without public disclosure of the misconduct. This sanction may be combined with any other remedy

(4) Issuance of Private Warning. Upon issuance of a private warning, such warning will be served upon the accused judge in accordance with Rule 35 and the case closed.

(i) A private warning is more serious than an admonition and is typically used for less serious infractions, especially when the accused judge has enough experience to have known the conduct is prohibited, and where the Council has determined that the public can be adequately protected without public disclosure of the misconduct. This sanction may be combined with any other remedy.

(5) Issuance of Private Reprimand. Upon issuance of a private reprimand, such reprimand will be served upon the accused judge in accordance with Rule 35 and the accused judge will have seven (7) days from the date of service within which to reject the Council's private reprimand in favor of formal proceedings. If the accused judge does not reject the private reprimand within seven (7) days, the private reprimand will be forwarded to the Supreme Court for permanent inclusion in the accused judge's employment file and the case closed.

(i) A private reprimand is more serious than a warning, and is typically used for infractions where the Council has determined that the public can be adequately protected without public disclosure of the misconduct, but a strong message needs to be sent to the accused judge that the conduct is prohibited.

(6) Issue a public reprimand with the accused judge's consent. Such public reprimand may or may not include an education order and shall be in accordance with Rule 49(b)(1)-(4) herein;

(7) Maintenance of Records. Notwithstanding other provisions under these Rules, all records of investigations or other formal or informal actions of the Council with respect to an accused judge shall be kept permanently in the accused judge's Council file.

(e) **Temporary Suspension.**

(1) Incident to a preliminary investigation or a formal proceeding conducted pursuant to these rules, the Council may, upon its determination that the continued service of the accused judge is causing immediate and substantial public harm or harm to himself or others, and an erosion of public confidence to the orderly administration of justice, and the accused judge's conduct appears to be violative of the Idaho Code of Judicial Conduct or the Constitution of Idaho, petition the Supreme Court for temporary paid suspension of the accused judge. Such petition shall be presented to the Supreme Court upon a majority vote of the members of the Council, and shall include one of the following:

(i) A certified copy of a judgment finding the accused judge guilty of a felony or other serious crime;

(ii) An Affidavit authorized by the Council and signed by the Secretary or other authorized member that the accused judge has been convicted of or has pled guilty or no contest to a felony, or serious crime which shows conduct prejudicial to the administration of justice or brings judicial office into disrepute;

(iii) A court order or judgment declaring the accused judge to be incompetent or incapacitated; or

(iv) An Affidavit authorized by the Council and signed by the Secretary or other authorized member that immediate suspension of the accused judge is necessary pending disposition of:

1) An investigation by the Council for an alleged violation of the Idaho Code of Judicial Conduct, Rules of Professional Conduct, or a violation of a court rule, statute or other law;

2) A criminal complaint, information, or indictment that has been filed against the accused judge; or

3) A determination of the present competency or capacity of the accused judge.

(2) A judge suspended under the provisions of this rule may only be reinstated by the Supreme Court, in its discretion, after receipt of an Affidavit of the Council demonstrating that:

(i) If the suspension was for conviction of a crime, the underlying conviction has been reversed or dismissed and no further criminal or Council proceedings are pending against the accused judge;

(ii) If the suspension was imposed because of incompetency or incapacity, that such incapacity or incompetency no longer exists; and

(iii) That reinstatement of the accused judge will not result in a substantial loss of public confidence in the judiciary.

(3) Reinstatement after a temporary suspension pursuant to Paragraph (e) of this rule shall not terminate any Council proceedings pending against the accused judge.

(4) Upon notification to the Supreme Court by the Council that information regarding possible substance abuse warrants further review or investigation, an incumbent judge under investigation shall be placed on paid administrative leave pending completion of the investigation for a period not to exceed ninety (90) work days, unless otherwise ordered by the Supreme Court.

(f) **Interim Relief.**

(1) The Council may, upon its determination that the continued service of an accused judge is causing immediate and substantial public harm and an erosion of public confidence to the orderly administration of justice, and the accused judge's conduct appears to be violative of the Idaho Code of Judicial Conduct or the Constitution of Idaho, petition the Supreme Court for interim relief, including but not limited to reassignment of the accused judge. Such petition shall be presented to the Supreme Court upon a majority vote of the members of the Council and shall include an Affidavit of the Council that immediate interim relief is necessary pending disposition of:

(i) an investigation by the Council for an alleged violation of the Idaho Code of Judicial Conduct, Rules of Professional Conduct, or a violation of a court rule, statute or other law; or

(ii) a determination of the present competency or capacity of the accused judge.

(2) Interim relief granted against an accused judge under the provisions of Paragraph (f) of this rule may only be vacated by the Supreme Court, in its discretion, after receipt of an Affidavit of the Council demonstrating that:

(i) if interim relief was imposed pursuant to Subparagraph (f)(1)(i) of this rule, that vacating such interim relief previously ordered against the accused judge will not result in a substantial loss of public confidence in the judiciary; or

(ii) if interim relief was imposed pursuant to Subparagraph (f)(1)(ii) of this rule, that the incompetency or incapacity no longer exists.

(3) Vacating an interim relief order pursuant to Paragraph (f) of this rule shall not terminate any Council proceedings pending against the accused judge.

Rule 37. Notice of Formal Proceedings

(a) After the preliminary investigation has been completed, if the Council concludes that formal proceedings should be instituted, the Council shall without delay issue a written notice to the accused judge advising of the institution of formal proceedings to inquire into the charges against the accused judge. Such proceedings shall be entitled:

BEFORE THE JUDICIAL COUNCIL STATE OF IDAHO

Inquiry Concerning)
)
_____) No. _____
(Name of Accused Judge) NOTICE

(b) The notice shall specify the charges against the accused judge and the alleged facts upon which such charges are based, and shall advise the accused judge of the right to file a written answer to the charges within fourteen (14) days after service of the notice upon them.

(c) The notice shall be served in accordance with Rule 35.

Rule 38. Answer

Within fourteen (14) days after service of the notice of formal proceedings, the accused judge may file with the Council an original and seven (7) legible copies of a verified answer.

Rule 39. Setting for Hearing Before Council or Master

(a) Upon the filing of an answer or upon expiration of the time for its filing, the Council shall order a hearing to be held before it concerning the removal, discipline, or retirement of the accused judge, or the Council may request the Supreme Court to appoint a master to hear and take evidence in such proceeding and to report thereon to the Council. The Council shall set a time and place for hearing before itself or before the master and shall give written notice of such hearing in accordance with Rule 35.

(b) In the event the accused judge and the special examiner agree to a stipulated set of facts, such stipulated facts may be presented to the Council in a written stipulation. The stipulation shall include:

- (1) A statement of the agreed facts, (which statement does not limit the Supreme Court);
- (2) A statement that the Council may rely upon the agreed facts without the necessity of further proof;
- (3) A waiver by the accused judge of the accused judge's right to a hearing; and
- (4) Whether a disposition hearing is requested, which hearing shall examine any mitigating or aggravating circumstances.

Rule 40. Hearing

(a) At the time and place set for the hearing, the Council or the master, when the hearing is before a master, shall proceed with the hearing whether or not the accused judge has filed an answer or appears at the hearing. The special examiner shall present the case in support of the charges set forth in the notice of formal proceedings.

(b) The failure of the accused judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for removal, discipline or retirement. The failure of the accused judge to testify in the accused judge's own behalf or to submit to a medical examination requested by the Council or by the master may be considered unless it appears that such failure was due to circumstances beyond the accused judge's control.

(c) The proceedings at the hearing shall be reported by such method as the Council may prescribe.

(d) If the hearing is before the Council, the Council shall appoint the Chief Justice, the District Judge member, or a retired or senior judge as the presiding judge for the hearing.

Rule 41. Evidence

At a hearing before the Council or master, the Idaho Rules of Evidence shall apply; provided, however, that the Council may review and consider previous proceedings against the accused judge.

Rule 42. Procedural Rights of Accused Judge

(a) An accused judge shall have the right and reasonable opportunity to defend against the charges, to be represented by counsel and to examine and cross-examine witnesses. The accused judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or to produce books, papers or other evidentiary matter not privileged or confidential.

(b) When a transcript of the testimony has been prepared at the Council's expense, a copy thereof shall be available upon request for use by the accused judge and the accused judge's counsel in connection with the proceedings. The accused judge shall have the right to have a transcribed copy of all or any portion of the testimony in the proceedings at the expense of the accused judge.

(c) If the accused judge is adjudged insane or incompetent, or if it appears to the Council at any time during the proceedings that the accused judge is not competent to act, the Council shall appoint a guardian ad litem unless the accused judge has a guardian who will represent the accused judge at the accused judge's expense. In the appointment of a guardian ad litem preference shall be given, whenever possible, to members of the accused judge's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the accused judge with the same force and effect as if claimed, exercised or made by the accused judge, if competent, and whenever these rules provide for serving or giving notice or sending any document to the accused judge such notice or document shall be served, given, or sent to the guardian or guardian ad litem.

Rule 43. Amendments to Notice or Answer

The master at any time prior to the filing of their report with the Council or the Council at any time prior to the filing of its determination with the Clerk of the Supreme Court, may allow or require amendments to the answer or other pleadings. The statement or charge may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the accused judge shall be given time in accordance with Rule 38 to answer the amendment and to prepare and present a defense against the matters charged thereby.

Rule 44. Report of Master

- (a) After the conclusion of a hearing before a master, the master shall within 21 days prepare and transmit to the Council a report which shall contain a brief statement of the proceedings and findings of fact and conclusions of law with respect to the issues presented by the pleadings. When the findings and conclusions support removal, discipline, or retirement, the report shall be accompanied by an original and seven (7) copies of a transcript of the proceedings.
- (b) Upon receiving the report of the master, the Council shall promptly mail a copy thereof to the special examiner and shall promptly serve a copy thereof upon the accused judge in accordance with Rule 35.

Rule 45. Objections to Report of Master

Within twenty-eight (28) days after service of the copy of the master's report upon the accused judge in accordance with Rule 35, the special examiner or the accused judge may file with the Council an original and seven (7) legible copies of a statement of objections to the report of the master, setting forth all objections and, when filed by the special examiner, a copy thereof shall be served upon the accused judge in accordance with Rule 35.

Rule 46. Appearance Before Council

If no statement of objections to the report of the master is filed within the time provided, the Council may adopt the findings and conclusions of the master without a hearing. If such statement is filed, or if the Council in the absence of such statement proposes to adopt findings or conclusions inconsistent with, or to reject any of the findings or conclusions of the master, the Council shall give the accused judge and the special examiner an opportunity to be heard orally before the Council, and written notice of the time and place of such hearing shall be served upon the accused judge at least fourteen (14) days prior thereto in accordance with Rule 35.

Rule 47. Extension of Time

The Chair of the Council may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer, for commencement of a hearing before the Council, and for filing a statement of objections to the report of the master, and the presiding master may similarly extend the time for the commencement of a hearing before master.

Rule 48. Hearing Additional Evidence

- (a) The Council may order a hearing in conformance with the provisions of Rule 39 through 48, inclusive, for the taking of additional evidence at any time while the cause is pending before it. The order shall state the time and place of hearing and the issues on which the evidence is to be taken. A copy of such order shall be served upon the accused judge at least ten (10) days prior to the date of hearing in accordance with Rule 35.

(b) In any case when a master has been appointed the hearing of additional evidence shall be before such master and the proceedings therein shall be in conformance with the provisions of Rules 39 through 48, inclusive.

Rule 49. Council Vote and Determination

(a) **Council Vote.** If the Council finds good cause, it shall recommend to the Supreme Court the removal, discipline or retirement of the accused judge. The affirmative vote of four (4) members of the Council shall be required for a recommendation of removal, discipline, or retirement of the accused judge or for dismissal of the proceedings.

(b) **Determination.** Discipline remedies remain at the discretion of the Council subject to Supreme Court review in accordance with Rule 52, but may include:

(1) **Public Reprimand.** More serious than a warning and typically reserved for more egregious violations that warrant letting the public know about the infraction, while placing the accused judge and other judges on notice that the conduct is prohibited.

(2) **Education Order.** When an accused judge shows lack of knowledge in a particular area of the law, or needs help maintaining proper judicial temperament, or for any other reason determined by the Council, the Council may recommend additional education and/or legal training. An education order may be combined with any other remedy.

(3) **Retirement.** If found just and proper and upon the issuance of an Order for Retirement by the Supreme Court pursuant to Rule 52, the accused judge shall thereby be retired with the same rights and privileges as if he or she retired pursuant to other provisions of law.

(4) **Removal.** If found just and proper and upon the issuance of an Order for Removal by the Supreme Court pursuant to Rule 52, the accused judge shall thereby be removed from office, and his/her salary shall cease from the date of such order.

(5) As concerns accused judges serving at the pleasure of the Supreme Court, the Council may make a recommendation as to whether an accused judge should be permitted to continue participation in Supreme Court programs.

(6) Such other action as the Council, subject to review by the Supreme Court, may determine is a reasonable sanction or will reasonably curtail or eliminate the conduct of the accused judge.

Rule 50. Record of Council Proceedings

The Council shall preserve the record of all proceedings concerning an accused judge. The Council's determination shall be entered in its records and notice thereof shall be served upon the accused judge in accordance with Rule 35. In all proceedings resulting in a recommendation to the Supreme Court for removal, public discipline, or retirement to which the accused judge objects the Council shall prepare a transcript of the evidence and of all proceedings therein and

shall make written findings of fact and conclusions of law of the master, with respect to the issues of fact and law in the proceedings.

All procedural and substantive rules for further proceedings in the Supreme Court are found at ICAR _____.

Rule 51. Rules of Order

Robert's Rule of Order shall govern the procedures of all meetings of the Council and of its committees unless otherwise allowed by majority vote of the Council.

Rules 52-54 Intentionally Left Blank