Idaho Judicial Council

General Rules of Procedure

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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 nine (9) 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) **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 three (3) to four (4) qualified persons for each vacancy in the office of justice of the Supreme Court, Court of Appeals judge, or district judge;

(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/Treasurer, 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 Chairs 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 telephonic or video 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 telephonic or video 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 telephonic video 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 five (5) 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), 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 five (5) 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 Surveys

Following the expiration of the deadline for submission of applications, the Council shall mail or e-mail to all attorneys and judges in the survey on the qualifications of the candidates. After the results are tabulated, the Council may disclose to each candidate, the candidate's score and general rank in the applicant field. The other survey results, including comments, may only be disclosed pursuant to the provisions of Idaho Code 1-2102.

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. Limitation of Actions

Every complaint against a judge permitted under these rules shall be considered provided a complaint is initiated within three (3) years after the date the conduct leading to the complaint arose or reasonably should have been discovered, whichever is later. This rule of limitation shall not apply to judicial misconduct which would constitute a crime under Idaho Law.

The time limit set forth in this rule shall not preclude the Council's consideration of previous allegations of misconduct or patterns of alleged misconduct under Rule 36 in weighing an appropriate remedy.

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) 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. §1-2103, 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. A public reprimand is issued 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. _____
	)	
_____	)	NOTICE
(Name of Accused Judge)		

(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 nine (9) 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 nine (9) 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 nine (9) 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 five (5) 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.** When a determination has been made that removal or retirement is required, all further proceedings will be in accordance with Rule 72 of the Idaho Court Administrative Rules.

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 further proceedings in the Supreme Court shall be conducted pursuant to the rules of that Court.

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