Idaho Court Administrative Rule ICAR 72. Discipline, removal, or involuntary retirement of a justice or judge.

Rule 72. Discipline, removal, or involuntary retirement of a justice or judge.

(a) Service of determination and recommendation. Within seven (7) days of making a written determination that there is good cause for the discipline, removal, or retirement of a judge or justice, the judicial council shall serve a copy thereof upon the judge or justice. The council shall also file a copy thereof with the Supreme Court, which copy shall be certified as true and correct by the chair of the council, its executive director, or its secretary.

(b) Service – when required and how made. Every document filed with the Supreme Court shall be served on the other party.

(1) Service upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the Supreme Court. If the judicial council is not represented by an attorney, service upon it shall be made by serving the council's executive director. Service upon the person to be served shall be made by:

(A) handing it to the person; or

(B) leaving it at the person's office with the person in charge of the office or, if no one is in charge, in a conspicuous place in the office; or

(C) mailing it to the person's last known address, in which event service is complete upon mailing; or

(D) sending it by electronic means if the person consented in writing, in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(E) transmitting the copy by a facsimile machine process although this rule shall not require a facsimile machine to be maintained in the office of the person upon whom service is to be made.

(2) A certificate of service, signed by the attorney or person making service, shall be attached to every document filed with the Supreme Court. The certificate shall state the date and manner of service and the name and address of the person served.

(c) Petition for review of determination or recommendation. If the judge or justice desires to contest the determination or the recommendation, he or she must file a petition for review within fourteen (14) days of the date the determination is filed with the Supreme Court. Within seven (7) days thereafter, the petitioner must also file with the Supreme Court a certificate showing that a copy of the petition has been served upon the judicial council. The failure to file a petition within the time herein specified shall constitute a waiver of any objection to the council's determination and recommendation.

(d) Contents of petition.

(1) The petition shall be entitled, "In the Matter of Judge (judge's name)" or "In the Matter of Justice (justice's name)."

(2) The petition shall state whether the petitioner desires to contest the determination, the recommendation, or both.

(3) The petition shall state in short and plain terms each defense to an alleged violation of the Canons of Judicial Conduct.

(4) The petition shall admit or deny each finding of fact made by the judicial council. Any finding that is not denied shall be deemed admitted.

(5) The petition shall be verified by the petitioner.

(e) Response to petition. If the judicial council desires to file a written response to the petition, it may do so within fourteen (14) days after it is served with the petition. The failure to file a response shall not constitute an admission of the contents of the petition.

(f) Request to present additional evidence. Either party may request permission to present additional evidence to the Supreme Court. Within fourteen (14) days after the petition is filed, or within seven (7) days after the other party is granted permission to submit additional evidence, whichever is later, a party may file with the Supreme Court a request to present additional evidence.

(1) The request to present additional evidence shall include the following:

(A) the name, address, and telephone number of any person whose testimony is to be presented and a summary of the expected testimony;

(B) a copy of any documentary evidence to be presented;

(C) a statement of the reason such additional evidence was not presented to the judicial council during its proceedings.

(2) If the Supreme Court grants the request in whole or in part, the court may require that any additional testimony be presented by affidavit, by deposition, or to a special master appointed by the court who will make recommended findings of fact to the court.

(3) The party permitted to present additional testimony by deposition or to a special master shall file a transcript of such testimony with the Supreme Court. The Supreme Court shall specify the date by which such transcript must be filed, and the failure to file it timely without good cause shall constitute a waiver of the right to present such testimony.

(4) The Idaho Rules of Evidence shall apply to the admissibility of new evidence. All objections to testimony presented by deposition or to a special master shall be made during the examination. Objections to the admissibility of statements in an affidavit or to documents shall be made in writing within fourteen (14) days of the filing of such affidavit or document.

(g) Filing of judicial council records. Within twenty-eight (28) days of receipt of the petition, the judicial council shall file with the clerk of the Supreme Court the following:

(1) a copy of all documents, transcripts, and exhibits presented to the judicial council in connection with the proceedings that are the subject of the petition, and the original of any item that cannot reasonably be photocopied;

(2) a transcript of the proceedings before the judicial council; and

(3) a record of all other dispositions of complaints against the petitioner.

The judicial council shall notify the petitioner of the filing of the judicial council records.

(h) Briefing. Upon the filing of the judicial council records and of any additional evidence permitted by the Supreme Court, the clerk of the Supreme Court shall notify the parties of the briefing schedule.

(1) The petitioner’s opening brief shall be filed within twenty-one (21) days, the answering brief by the judicial council shall be filed within fourteen (14) days of the service of the petitioner’s brief, and the petitioner’s reply brief, if any, shall be filed within seven (7) days of the service of the judicial

council's brief.

(2) A party's brief shall include a table of contents with page references; a table of cases (arranged alphabetically) and other authorities, with references to the page numbers where they are cited; a concise statement of the facts; a list of the issues presented; an argument addressing the contentions of the petitioner with respect to the issues presented on appeal, the reasons therefor, with citations to the authorities, statutes and parts of the transcript and record relied upon; and a conclusion stating the precise relief sought.

(3) No brief exceeding fifty pages, excluding addenda or exhibits, shall be filed without the consent of the Supreme Court.

(4) Each party shall file the original and six (6) copies of all briefs filed with the Supreme Court and shall serve two (2) copies thereof on the opposing party. The original of each brief shall be signed by the person submitting the brief.

(i) Oral argument. There shall be oral argument on the petition at such time and place scheduled by the Supreme Court, unless the parties stipulate to submit the matter upon the briefs and such stipulation is approved by order of the Supreme Court. The petitioner shall be entitled to open and close the argument.

(j) Chief Justice shall be recused. The Chief Justice shall be recused from the proceedings in the Supreme Court.

(k) Decision by Supreme Court. The Supreme Court shall review the record of the proceedings before the judicial council on the law and facts and shall order removal, discipline or retirement, as it finds just and proper, or wholly reject the recommendation.
Adopted on October 11, 2013, Effective November 1, 2013.

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