

Procedural Rules of the Nevada Commission on Judicial Discipline

I. GENERAL PROVISIONS

Rule 1. Scope of Rules. These rules carry out the obligation of the Nevada Commission on Judicial Discipline to adopt rules of procedure for the conduct of its hearings and other procedural rules necessary to carry out its duties as imposed by Section 21(7) of Article 6 of the Constitution of Nevada.

Rule 2. Definitions. In these rules, unless the context requires otherwise:

1. "Alternate" means any judge designated by the Nevada Supreme Court to act in place of a specific judicial member of the Commission.

"Alternate," when referring to a bar member, means any lawyer designated by the Board of Governors of the State Bar of Nevada to act in place of a specific lawyer member of the Commission.

"Alternate," when referring to a lay member, means any lay member designated by the Governor to act in place of a specific lay member of the Commission.

2. "Commission" means the Nevada Commission on Judicial Discipline.

3. "Executive Director" means any person who serves in the administrative capacity as Executive Director of the Commission.

4. "General Counsel" means any person who serves in the capacity of legal advisor to the Commission.

5. "Formal Statement of Charges" means the document filed by the designated Prosecuting Officer.

6. "Judicial Misconduct" means commission of any act which is a ground for discipline set forth in NRS 1.4653.

7. "Member" shall include such Alternates who have been seated in any specific meeting, case, or proceeding.

8. "Prosecuting Officer" means an attorney designated by the commission to file and prosecute a complaint or a formal statement of charges.

9. "Judge" shall have the meaning as set forth in NRS 1.428.

10. "Reasonable Probability" means a finding by the Commission that there is a reasonable probability the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action against the Respondent named in the complaint.

11. "Respondent" means any supreme court justice, appellate court judge, district judge, justice of the peace, or municipal court judge or referee, master, or commissioner who is the subject of any disciplinary or removal proceedings instituted in accordance with these rules.

12. "Service" and "notice" mean service or notice by personal delivery or by registered mail or certified mail, return receipt requested. "Serve" and "notify" have corresponding meanings.

Rule 3. Structure; meetings; formal hearings.

1. A Respondent may not participate as a member of the Commission in any proceeding involving a charge against Respondent.

2. A member of the Commission who cannot serve by reason of disqualification, resignation, inability to attend or any other reason is to be replaced by his or her alternate(s). In the event of such a replacement, an Alternate must act and vote in the place of the absent member. In proceedings against a municipal judge or justice of the peace, within 20 days after service of a Formal Statement of Charges, the Respondent may file a demand with the Commission's clerk, sending a copy to the Chief Justice, requesting that the Nevada Supreme Court substitute as judicial members of the Commission judges serving in courts of limited jurisdiction outside the county in which the Respondent presides.

3. The Commission may be convened by the chairperson or on request of three or more members. Meetings may be held on not less than three days' notice, but this requirement may be waived by consent of all the members.

4. A quorum for the conduct of business other than the hearing and decision of formal disciplinary proceedings is four members. The action of a majority of the members present at any meeting at which a quorum is present is the action of the Commission, except that no Respondent may be censured, temporarily suspended under rule 9, removed or retired from office or punished for contempt, unless five or more members so concur.

5. Commission business requiring approval of the members may be transacted either at an in-person meeting or by telephone, videoconference, electronic mail ("email") or other informal poll of all members appointed, the majority concurring, but if any member objects to such a poll, the matter must be deferred until the next telephonic or in-person meeting.

6. Any member of the Commission or sitting Alternate member may be disqualified upon challenge for cause by the Respondent or by counsel prosecuting a complaint or a Formal Statement of Charges. A challenge must be heard by the Commission, and the Commission may disqualify any commissioner 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 Commission.

7. A challenge for implied bias must be allowed on a showing of any of the grounds relating to jurors which are enumerated in NRS 16.050.

8. No later than 20 days prior to the commencement of a hearing upon a Formal Statement of Charges, counsel appointed to present evidence in support thereof or counsel for the Respondent may exercise a single peremptory challenge to any of the Commission members. The peremptory challenge must be filed in writing with the clerk of the Commission. A formal hearing may proceed before a quorum of 5 members of the Commission.

9. No member may vote by substitution or proxy.

II. PRIVILEGED COMMUNICATIONS

Rule 4. Privileged Communications. The following are privileged communications and shall not be divulged to any person or court.

1. All communications between the Commission and its staff.
2. All deliberations of the Commission, including all meeting minutes of the Commission.
3. All communications either oral or written between General counsel and/or Executive Director and members of the Commission.
4. All communications between General Counsel or Executive Director and Commission staff, prosecuting officers, or Commission investigators.

Rule 5. Violations of the Nevada Code of Judicial Conduct. Members of the Commission who are judges are subject to disciplinary proceedings before the Commission for violations of the Nevada Code of Judicial Conduct, and are also subject to removal as members of the Commission upon order of the Nevada Supreme Court.

Rule 6. Formal Charges. Upon the filing of the Formal Statement of Charges, said Statement and other documents later formally filed with the Commission shall be made accessible to the public, and hearings shall be open. The Commission's deliberative sessions and meeting minutes must remain private and shall not be disclosed. The filing of the Formal Statement of Charges does not justify the Commission, its counsel or staff in making public any correspondence, notes, work papers, interview reports, or other evidentiary matter, except at the formal hearing or with explicit consent of the Respondent.

Rule 7. Public Statements by Commission. In any case in which the subject matter becomes public, through independent sources, or upon a finding of reasonable probability and filing of a Formal Statement of Charges, the Commission may issue statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the Respondent to a fair hearing without prejudgment, and to state that the Respondent denies the allegations. At all times, however, the Commission, its counsel and staff shall refrain from any public or private discussion about the merits of any pending or impending matter, or discussion which might otherwise prejudice a Respondent's reputation or rights to due process.

III. JURISDICTION AND GROUNDS FOR DISCIPLINE

Rule 8. Grounds for Discipline. The jurisdiction of the Commission extends to all justices and judges, including senior or part-time judges, and anyone whether or not a lawyer who is an officer of a judicial system and who performs or formerly performed judicial functions, including an officer such as a magistrate, court commissioner, special master or referee. In the absence of fraud or bad faith occurring in the commission of an act constituting a ground for discipline set forth in NRS 1.4653, the Commission shall take no action against a Judge for making findings of fact, reaching a legal conclusion, expressing views of law or policy in a judicial opinion, or otherwise declaring or applying the law in the course of official duties. The Commission shall not review or base charges upon differences of opinion between Judges as to matters of law, or as to other issues

committed to judicial or administrative discretion. Claims of error shall be left to the appellate process.

Rule 9. Suspension.

1. The Commission may suspend a Judge from the exercise of the office in accordance with NRS 1.4675 and NRS 1.4677(1).

2. The Commission shall give the Respondent seven (7) days' notice of its intention to suspend. The Judge may submit documents in opposition to suspension which shall be considered by the Commission. The Commission shall hold a public hearing before ordering such a suspension unless the Judge waives the right to the hearing.

3. A Respondent suspended under these rules may appeal to the Nevada Supreme Court.

4. The Commission shall promptly file a certified copy of the notice of suspension with the clerk of the Nevada Supreme Court.

IV. PROCEDURE IN CASES OF JUDICIAL MISCONDUCT PRIOR TO FINDING OF REASONABLE PROBABILITY

Rule 10. Initiation of Procedure.

1. Except as provided in subsections 2 and 3, initial complaints of Judicial Misconduct must be made in writing upon oath or declaration under penalty of perjury and may be made by the person complaining. Such a complaint must contain facts which, if true, would establish grounds for discipline as set forth in NRS 1.4653.

2. A complaint may be initiated by information in any form from any source received by the Commission that alleges or from which a reasonable inference can be

drawn that a Judge committed misconduct or is incapacitated. If there is no written complaint from another person, the Executive Director of the Commission may file a complaint.

3. In exceptional circumstances, in which the Commission has substantial reason to believe that a complainant may in likelihood suffer untoward risk of embarrassment, harassment, or other detrimental consequences, the Commission may on request, authorize its Executive Director to sign and swear to a complaint on information and belief, in the complainant's stead.

4. A complaint will be reviewed by Commission staff to ensure that it meets the minimum requirements as required by statute. Except for complaints filed by the Executive Director, all complaints shall be sworn or declared under penalty of perjury. Complaints that do not meet the statutory requirements may be dismissed administratively by Commission staff with the Commission subsequently ratifying such administrative dismissals, if appropriate, at its next scheduled Commission meeting.

5. All complaints shall be reviewed by the Commission to determine whether they state facts, which if true, establish grounds for discipline as set forth in the Nevada Revised Statutes.

6. The Commission may either dismiss the complaint or authorize an investigation.

7. A complainant may file a request for reconsideration of a dismissed complaint. Unless additional facts are alleged which in the opinion of the General Counsel require reconsideration of the dismissed complaint by the Commission, the matter may be dismissed administratively by Commission staff with the Commission

subsequently ratifying such dismissals, if appropriate, at its next scheduled meeting.

Rule 11. Investigation.

1. The Commission staff may perform minimal investigation as may be necessary to aid the Commission in properly reviewing a complaint.

2. A full investigation may not commence without Commission authorization.

3. After an investigation is authorized by the Commission, the Executive Director shall hire an investigator or investigators as necessary to properly carry out the duties of the Commission. Once an investigation is authorized, it shall be directed by the Executive Director.

4. Investigations are not limited to the matters raised in the complaint. Investigations may encompass any matters either raised in the complaint or disclosed during the investigative process. When matters that are totally unrelated to the issues raised in the complaint are uncovered, they shall not be investigated without first receiving Commission approval.

Rule 12. Determination to Require an Answer.

1. The Commission shall review all reports of the investigation to determine whether there is sufficient reason to require the Respondent to answer. If there is insufficient reason to proceed, the Commission may dismiss a complaint with or without a letter of caution. A letter of caution is not to be considered an event of discipline.

The Commission may take into consideration a dismissal with a letter of caution in subsequent complaints against a Respondent when considering the appropriate discipline to be imposed.

2. If the Commission determines it could in all likelihood make a determination that there is a Reasonable Probability the evidence available for introduction at a formal hearing could clearly and convincingly establish grounds for disciplinary action, it shall require the Respondent named in the complaint to respond.

3. The Commission shall serve the complaint upon the Respondent who shall have 30 days in which to respond to the complaint. Failure of the Respondent to answer the complaint shall be deemed an admission that the facts alleged in the complaint are true and establish grounds for discipline.

4. In preparing to respond to a determination of Reasonable Probability, the Respondent has the right to inspect all records of the Commission relating to the disciplinary action against the Respondent and to be fully advised as to the contents of such records. Privileged communications and work product of the Commission's counsel are not subject to inspection. To the extent practicable, the Respondent shall be supplied with all records of the Commission subject to inspection along with service of the complaint.

5. Amendment of allegations in the complaint, prior to a finding of Reasonable Probability, may be permitted by the Commission. The Respondent shall be given notice of any amendments, and additional time as may be necessary to respond to the complaint.

6. The commission investigator may compel by subpoena the attendance of witnesses and the production of pertinent books, papers and documents for purposes of investigation. Subpoenas must be issued by the executive director of the commission in the same manner as subpoenas are issued by clerks in the district courts of this state.

Rule 13. Finding of Reasonable Probability.

1. Based upon the complaint and all relevant evidence presented in the reports of any investigation conducted by the Commission or referred to in documents and memoranda in the Respondent's response and supporting documents, the Commission shall make a finding of whether there is Reasonable Probability for disciplinary action against the Judge named in the complaint.

2. If the Commission makes a finding that such a Reasonable Probability does not exist, the Commission shall dismiss the complaint. The Commission may issue a letter of caution accompanying its dismissal.

3. A finding of Reasonable Probability authorizes the Executive Director to designate a Prosecuting Officer who must sign under oath a Formal Statement of Charges against the Judge.

V. PROCEDURE AFTER FINDING OF REASONABLE PROBABILITY

Rule 14. Filing of formal Statement of Charges. If Reasonable Probability is found, a Formal Statement of Charges shall be filed. The Formal Statement of Charges is a public document, as are other pleadings, motions, challenges, and supporting affidavits subsequently filed. The Formal Statement of Charges shall be filed with the clerk of the Commission.

Rule 15. Content of Formal Statement of Charges. The Formal Statement of Charges must contain a clear reference to the specific provisions of statutes, the Nevada Code of Judicial Conduct and the Nevada Constitution which are deemed to justify procedures before the Commission, together with a clear statement of all acts and omissions which are alleged to warrant action by the Commission under those

provisions, identifying the dates, times and places to the extent possible that the acts or omissions are alleged to have occurred.

Rule 16. Service of Formal Statement of Charges. The Respondent shall be served within ten days of filing a copy of the Formal Statement of Charges.

Rule 17. Respondent's Answer. Within 20 days after service of the Formal Statement of Charges, the Respondent shall file with the Commission an original and one copy of an answer. The answer must set forth in ordinary and concise language all denials, affirmative defenses and mitigating factors upon which the Respondent intends to rely at the hearing. The Executive Director may, for good cause, extend the time for Respondent's answer for a period not to exceed 30 additional days.

Failure to answer the Formal Statement of Charges shall constitute an admission that the facts alleged in the formal complaint are true and establish grounds for discipline pursuant to NRS1.4653.

Rule 18. Formal Hearing.

1. When the answer has been filed, a formal hearing shall be scheduled within 60 days unless waived by both the Commission and the Respondent. The Respondent and all counsel must be notified of the time and place of the hearing and must first be consulted concerning the scheduling thereof to accommodate, where possible, the schedules of the Respondent and counsel and those of their witnesses.

2. If the Respondent or counsel should fail to appear at the hearing, the respondent shall be deemed to have admitted the factual allegations contained in the formal complaint and shall be deemed to have conceded the merits of the complaint.

Absent good cause, the Commission shall not continue or delay proceedings because of the respondent's or counsel's failure to appear.

3. All documents required or permitted to be filed with the Commission in formal, public cases must strictly comply with the Commission's Public Case Filing Procedures attached hereto as **Exhibit "A"** and incorporated herein by reference.

Rule 19. Discovery.

1. A. Within 10 days after service of the notice of formal hearing, the Commission and the Respondent shall exchange the following material and information within their possession or control to the extent not previously provided:

(a) The names and addresses of persons who have knowledge of facts relating to the complaint against the Respondent;

(b) Any written or recorded statements made by these persons and the substance of any oral statements claimed to have been made by the Respondent;

(c) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations; and

(d) Any books, papers, documents, photographs or tangible objects pertaining to the case.

B. Additional discovery requests shall only be permitted with leave of the Commission.

2. The Commission's and Respondent's obligations under this rule extends to material and information in the possession or control of any persons who, on behalf of the Commission or the Respondent, have participated in any investigation of the charges.

3. If, subsequent to complying with these discovery provisions, the Commission or Respondent discovers additional material or information which is subject to disclosure, the additional material or information must be promptly disclosed.

4. True work product of counsel is not subject to discovery.

Rule 20. Subpoena and Inspection. The Respondent and Prosecuting Officer are entitled to compel attendance at the formal hearing of witnesses, including the Respondent, by subpoena, and to provide for the production of documents, books, accounts and other records. Subpoenas must be issued by the Executive Director of the Commission in the same manner as subpoenas are issued by clerks in the district courts of this state.

Rule 21. Witnesses. Witnesses are entitled to appear with counsel, who may represent and advise them on matters affecting their rights.

Rule 22. Public Hearing. The formal hearing shall be held in public before the Commission. All testimony must be under oath. All hearings shall be reported verbatim.

Rule 23. Presiding Officer. At the commencement of the hearing, the chairperson shall designate a member of the Commission who is either a Judge or a lawyer to preside at the hearing.

Rule 24. Rules of Evidence and Due Process. The rules of evidence applicable to civil proceedings apply at the hearing, and the Respondent shall be accorded due process of law.

Rule 25. Burden of proof. Counsel appointed by the Commission to present the evidence against the Respondent have the burden of proving, by clear and convincing

legal evidence, the facts justifying discipline in conformity with the averments of the Formal Statement of Charges.

Rule 26. Cross-Examination and Evidence. The Commission and the Respondent are each entitled to present evidence and produce and cross-examine witnesses, subject to the rules of evidence applicable to civil proceedings.

Rule 27. Order of Dismissal. If the Commission determines either that the charges against the Respondent have not been proven by clear and convincing evidence, or that discipline is not warranted in light of facts made to appear in mitigation or avoidance, it shall forthwith prepare and file its order publicly dismissing the charges against the Respondent. Any sitting member of the Commission who does not agree with the order, which has been approved by other Commission members, must be allowed 10 days in which to prepare and sign a concurring or dissenting opinion. All orders and opinions shall be concurrently filed.

Rule 28. Decision to Discipline.

1. Within 20 days after reaching a decision that discipline should be imposed, the Commission shall prepare and adopt a written statement of the nature of the proceeding, findings of fact, and conclusions of law on the issues presented by the Formal Statement of Charges and the answer thereto, if any. The Commission may include in its decision a summary of evidence admitted. When the foregoing have been formulated, any sitting Commission member who wishes to dissent or protest shall be allowed 10 days for that purpose. Upon filing, the Commission must promptly serve a copy of the foregoing on the Respondent.

2. Upon adoption and filing of a decision which orders the censure, removal, retirement or other discipline of a Respondent, the Commission must file a certified copy of the decision with the clerk of the Nevada Supreme Court.

Rule 29. Consent Orders. Upon written consent of the Respondent, the Commission may order the Respondent's censure, removal, retirement, or other discipline at any stage of the proceedings following a determination of Reasonable Probability and the filing of a Formal Statement of Charges and this order takes effect immediately. A certified copy of the order must be filed with the clerk of the Nevada Supreme Court and a copy of the order must be served on the Respondent.

VI. MENTAL OR PHYSICAL DISABILITY

Rule 30. Disability. Complaints of mental or physical disability must be made in writing and may be made by any person. Such a complaint must contain facts, which, if true, would justify retirement of a respondent who is disabled in the manner defined in the Nevada Revised Statutes.

Rule 31. Procedure for Carrying Out Responsibilities Regarding Physical or Mental Disability.

1. The same procedures as are employed with respect to discipline for Judicial Misconduct shall be followed by the Commission in regard to physical or mental disability. A Formal Statement of Charges filed after a determination of Reasonable Probability must be under oath. All conduct or omissions relied upon must be alleged with particularity, and must show a substantial disability which is likely to be permanent.

2. If a complaint received by the Commission alleges that a Judge is incapacitated, and the Commission determines after conducting an investigation that

there is Reasonable Probability to file a formal complaint, the Commission shall attempt to resolve the matter informally.

3. The Commission may request the Respondent to submit to medical, psychiatric, or psychological testing by a physician selected by the Commission who is licensed to practice medicine in the State of Nevada.

4. If the Commission is unable to resolve the matter informally, and the Judge has not retained counsel at his or her own expense, the Commission shall appoint an attorney to represent the Judge at public expense.

5. Should a Respondent deny all or part of the charges contained in the complaint alleging incapacity, it shall be deemed to be consent on the part of the Respondent to submit to medical, psychiatric or psychological testing by a physician selected by the Commission who is licensed to practice medicine in the State of Nevada.

6. The doctor-patient relationship shall not apply with regard to the findings of the medical practitioner designated by the Commission whose report must be furnished to the Commission and the Respondent. The findings of a physician appointed by the Commission are not privileged communications.

7. Unless the Commission excludes them, after notice and hearing, upon a showing that they have interfered with the orderly conduct of the examination, the Respondent is entitled to have counsel and a medical expert of the Respondent's choice present during all phases of any examination ordered by the Commission.

8. A Respondent who retires during the pendency of an involuntary retirement proceedings shall be deemed to have retired voluntarily.

Rule 32. Effect of Denial. When there is a denial of a Formal Statement of Charges relating to the physical or mental condition of the Respondent, by such denial the Respondent must be deemed to have consented to a physical or mental examination by a qualified medical practitioner designated by the Commission.

VII. REFERRAL; APPEAL

Rule 33. Referral. Whenever a Respondent is removed or retired on grounds which reflect unfavorably on the Respondent's fitness to practice law in Nevada, the Commission shall refer relevant information and evidentiary matter to the State Bar of Nevada.

Rule 34. Appeal.

1. A Respondent may appeal an order of censure, removal, retirement, or other discipline to the Nevada Supreme Court in accordance with rules adopted by the Nevada Supreme Court in regard thereto.

2. An appeal shall be taken by filing a notice appeal with the clerk of the Commission within 15 days after service on the Respondent of the Commission's formal order of censure, removal, retirement or other discipline together with its formal findings of fact and conclusions of law.

3. Respondent may request all or a part of the transcript within 10 days after filing of a notice of appeal. The written request shall be filed with the clerk of the Commission who shall order the transcript prepared.

4. The cost of the transcript shall be assessed to the Respondent when a final decision in discipline proceedings is adverse.

VIII. ADMINISTRATIVE PROVISIONS

Rule 35. Expenses, Costs and Fees.

1. Witnesses may be entitled to fees and mileage allowances in accordance with the Nevada Rules of Civil Procedure.

(a) In the event that Respondent is disciplined by the Commission, the Commission may recover from Respondent any incurred fees and mileage allowances of, and costs of services upon, witnesses ordered by the Respondent.

(b) No Judge or attorney employed by the State of Nevada or its subdivisions may be allowed any fees for attending as a witness.

Rule 36. Amendments and Supplemental Rules.

1. The Commission may amend and supplement these rules as it deems necessary.

2. The Commission may adopt procedures for its internal operations which are consistent with these rules and appropriate to its function.

Rule 37. Computation of Time. Time limitations in these rules shall be computed as in the Nevada Rules of Civil Procedure and the Nevada Rules of Appellate Procedure.

EXHIBIT “A”

**NEVADA COMMISSION ON JUDICIAL
DISCIPLINE**

PUBLIC CASE FILING PROCEDURES

PROCEDURE 1. FILING AND SERVICE.

1. **Filing.** The documents required or permitted to be filed with the Nevada Commission on Judicial Discipline (“Commission”) shall be filed with its clerk as provided below.

A. Filing in general. Filing may be accomplished by mail addressed to the Nevada Commission on Judicial Discipline at P.O. Box 48, Carson City, Nevada 89702. Filing shall not be timely unless the documents are received by the Commission within the time fixed for filing.

B. Number of copies required. When filing documents with the Commission, it is necessary that one (1) original and one (1) photocopy be filed. One file-stamped photocopy will be returned to the filing party.

C. Service of all papers required. Copies of all documents filed by any party at or before the time for filing, shall be served by a party or person acting for that party on all other parties to the proceedings. Service on a party represented by counsel shall be made on counsel. The complainant is not a party to any proceeding.

D. Proof of service. Documents presented for filing shall contain an acknowledgment of service by the persons served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the documents filed.

E. Original signature and bar number required. All documents submitted to the Commission for filing by a represented party shall include the original signature of at least one (1) attorney of record who is an active member of the State Bar of Nevada, and the address, telephone number, and State Bar of Nevada identification number of the attorney and of any associate attorney appearing for the party filing the paper. All documents submitted to the Commission for filing by unrepresented parties shall include the original signature of the party, and shall state the party's address and telephone number.

F. Caption. The caption of all documents filed with the Commission shall be styled as follows:

Attorney's Name *[Top Left Margin]*
 Attorney's Firm Name
 Bar Number
 Street Address
 City, State, Zip Code
 Telephone Number
[2 line spaces]
 Attorney for *[Respondent or Commission]* *[4 line spaces]*
 BEFORE THE NEVADA COMMISSION ON
 JUDICIAL DISCIPLINE
[2 line spaces]
 STATE OF NEVADA
[2 line spaces]

In the Matter of the)
)
 Honorable *[Respondent Name]*,)
[Judge type, township, city and state],) Case No.
)
 Respondent.)
 _____)

2. Filing By Facsimile Transmission. Documents may be filed with the Commission by means of facsimile transmission as hereinafter provided by this section.

A. Procedure. In all instances, counsel must first notify the Commission of counsel's intention to transmit documents via facsimile. Upon receipt of the transmitted documents, the clerk shall file the transmitted document.

B. Original Service. In all cases where a document has been transmitted via facsimile and filed pursuant to this section, counsel must file the original document with the Commission in the manner provided in Procedure 1 within three judicial days of the date of the facsimile transmission. Copies of all documents filed in accordance with this section shall be served within the time and in the manner provided in Procedure 1(c). The original shall be accompanied by proof of service on all parties as required by Procedure 1(d).

PROCEDURE 2. MOTIONS.

1. Content of Motions; Response; Reply. Unless another form is elsewhere prescribed by the Procedural Rules of the Commission, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of the Procedural Rules of the Commission or these Public Case Filing Procedures governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion within ten (10) days after service of the motion. The Commission may shorten or extend the time for responding to any motion. A reply to the opposition to a motion shall be filed within three (3) days. Upon the expiration of the time period as specified in this procedure or such other time periods as the Commission may order, motions shall be deemed submitted to the

Commission. Decisions on motions shall be made without oral argument unless otherwise ordered by the Commission.

2. Motions that May Cause a Delay in the Hearing. Any motion which by its nature could result in continuing or delaying any scheduled hearing must be filed at least 10 days prior to the date set for the hearing. Opposition to the motion must be filed within 3 days after service of the motion. The motion shall stand submitted upon expiration of the time periods specified herein.

PROCEDURE 3. EXTENSIONS OF TIME.

1. Extensions of time. Extensions of the time limits set forth in these Public Case Filing Procedures or the Procedural Rules of the Commission may be granted by the General Counsel/Executive Director of the Commission for good cause shown.

PROCEDURE 4. CHALLENGES FOR CAUSE.

1. Procedure for Disqualifying a Commissioner. Any party to a Commission proceeding who seeks to disqualify a commissioner for actual or implied bias or prejudice or other cause must file an affidavit specifying the facts upon which the disqualification is sought. The affidavit of a party represented by an attorney must be accompanied by a certificate of the attorney of record that the affidavit is filed in good faith and not interposed for delay. The affidavit must be filed:

- A.** Not less than 30 days before the date set for a hearing of the case; or
- B.** Not less than 10 days before the date set for consideration of any pretrial matter.

When the affidavit is filed at the Commission office, a copy will be forwarded to the commissioner sought to be disqualified.

3. The commissioner against whom an affidavit alleging bias or prejudice or other cause is filed, shall proceed no further with the matter and shall file a written answer with the clerk of the Commission within five (5) days after receipt of the affidavit, admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of their disqualification.

4. The question of the commissioner's disqualification must thereupon be heard and determined by the Commission in accordance with Rule 3 of the Procedural Rules of the Commission.