

Title 292 WAC

COMMISSION ON JUDICIAL CONDUCT

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Chapter 292-08 WAC

AGENCY ORGANIZATION—CONFIDENTIALITY

WAC

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WAC 292-08-010 Purpose. The purpose of this chapter is to provide rules implementing Article IV, section 31, of the Constitution of the state of Washington and chapter 2.64 RCW for the commission on judicial conduct.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-010, filed 5/1/90, effective 6/1/90.]

WAC 292-08-020 Function. (1) The commission on judicial conduct is constitutionally created to consider complaints that a judge has violated a rule of judicial conduct, or has a disability which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties.

(2) The commission shall adopt, amend, or repeal a rule in accordance with the procedures of RCW 34.05.310 through 34.05.395. In addition, the commission will provide adopted rules to the reporter of decisions for publication in the official codification of Washington Court Rules.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-020, filed 5/1/90, effective 6/1/90.]

WAC 292-08-030 Definitions. In these rules:

(1) "Admonishment," when issued by the commission, means a written disposition of an advisory nature that cautions a judge not to engage in certain proscribed behavior. An admonishment may include a requirement that the judge follow a specified corrective course of action.

(2) "Censure" means a written action of the commission that requires a judge to appear personally before the commission, and that finds that conduct of the judge violates a rule of judicial conduct, detrimentally affects the integrity of the judiciary, undermines public confidence in the administration of justice, and may or may not require a recommendation to the supreme court that the judge be suspended or removed. A censure shall include a requirement that the judge follow a specified corrective course of action.

(3) "Chairperson" includes the acting chairperson.
(4) "Commission" means the commission on judicial conduct.

(5) "Complaint" means a statement or communication alleging facts which may, upon investigation, lead to a finding of judicial misconduct or disability.

(6) "Fact-finder" means the commission, or at the discretion of the commission, a three-member subcommittee consisting of a citizen, a judge, and a lawyer member of the commission, or a master appointed by the commission.

(7) "Hearing" means a meeting for the purpose of taking evidence and conducted by a fact-finder.

(8) "Judge" means a judge or justice and includes justices of the supreme court, judges of the court of appeals, judges of the superior court, judges of any court organized under Titles 3, 35, or 35A RCW, judges pro tempore, court commissioners, and magistrates. The term includes full-time and part-time judges and judges who have been or have not been admitted to the practice of law in Washington.

(9) "Master" means a person appointed by the commission to hear and take evidence with respect to charges against a judge.

(10) "Meeting" means a meeting of the commission for any purpose other than the taking of evidence for fact-finding.

(11) "Member" means a member of the commission and includes alternates acting as members.

(12) "Party" means the judge or the judge's attorney, or the commission or its attorney, as the context suggests.

(13) "Reprimand" means a written action of the commission that requires a judge to appear personally before the commission, and that finds that the conduct of the judge is a minor violation of the code of judicial conduct and does not require censure or a formal recommendation to the supreme court that the judge be suspended or removed. A reprimand shall include a requirement that the judge follow a specified corrective course of action.

(14) "Statement of charges" means the formal charge of judicial misconduct or disability filed by the commission upon the completion of an investigation and initial proceeding and forming the basis for a fact-finding hearing.

(15) "Verified statement" means a sworn statement which includes allegations showing that a judge may have violated a rule of judicial conduct or may be suffering a disability that seriously interferes with the performance of judicial duties and is or is likely to become permanent.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-030, filed 5/1/90, effective 6/1/90.]

WAC 292-08-040 Organization. (1) The commission shall elect from its members a chairperson, a vice-chairperson and secretary, each of whom shall serve a term of two

years or until they cease to be members of the commission, whichever period is shorter. The vice-chairperson shall act as chairperson in the absence of the chairperson. In the absence of both the chairperson and the vice-chairperson, the members present may select a temporary chairperson.

(2) The commission may hire attorneys or others by personal service contract to conduct initial proceedings regarding a complaint against a judge. The commission shall employ one or more investigative officers with appropriate professional training and experience. The investigative officers of the commission shall report directly to the commission. The commission shall employ an executive director and such administrative or other staff as are necessary to manage the affairs of the commission.

(3) Meetings of the commission shall be held at the call of the chairperson or the written request of five members of the commission.

The commission may conduct executive meetings by telephone conference call.

(4) Six members must be present for the transaction of business by the commission. However, the adoption of or amendment to the rules of the commission, the determination of probable cause, or lack thereof, the imposition of, or stipulation to, an admonishment, reprimand or censure, with or without a recommendation of suspension or removal of the judge, or the recommendation of retirement of a judge shall require the affirmative vote of six members of the commission.

(5) The chairperson will call upon an alternate member selected by the appropriate appointing authority to serve in the place of a member whenever a member is disabled, disqualified, or unable to serve. The alternate member so called upon shall have all the authority of a member of the commission. The chairperson shall identify when an alternate member is serving in the place of a commission member.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-040, filed 5/1/90, effective 6/1/90.]

WAC 292-08-050 Confidentiality provisions. (1)

Except as provided in this rule and WAC 292-12-030 and 292-12-040, the fact that a complaint has been made, or a statement has been given to the commission and all papers and matters submitted to the commission together with the investigation and initial proceedings conducted pursuant to these rules, shall be confidential. However, the person filing a complaint or giving a statement to the commission is not prohibited by these rules from informing any third party, or the public generally, of the factual basis upon which a complaint is based, or a statement is given.

(2) The statement of charges alleging judicial misconduct or disability shall be available for public inspection as provided in WAC 292-12-030(1). The fact-finding hearing before the commission, a subcommittee of the commission, or a master shall be open to the public; however, deliberation of the fact-finder in reaching a decision on the statement of charges shall be conducted in executive session.

(3) In the following circumstances, the commission may, with the permission of the judge, make a public statement

regarding complaints concerning the judge which would otherwise be confidential:

(a) If public statements that charges are pending before the commission are substantially unfair to a judge; or

(b) If a judge is publicly associated with violating a rule of judicial conduct or with having a disability, and the commission, after a preliminary investigation has determined there is no basis for further proceedings or for a recommendation of discipline or retirement.

(4) After final commission action on a complaint, the commission shall disclose to the person making a complaint that after an investigation of the charges:

(a) The commission has found no basis for action by the commission against the judge; or

(b) The commission has admonished, reprimanded, or censured the judge, or censured the judge and recommended to the supreme court the suspension or removal of the judge or has recommended to the supreme court the retirement of the judge. The name of the judge, in the discretion of the commission, shall not be used in written communication to the complainant.

(5) Informal action taken by the commission prior to May 5, 1989, when amended rules were adopted eliminating private informal dispositions, may, in the commission's discretion, be disclosed to the Washington State Bar Association, American Bar Association, a judicial authority, any judicial appointive, selection or confirmation authority, or to law enforcement agencies, when required in the interests of justice, or to maintain confidence in the selection of judges or administration of the judiciary. The person to whom the information relates shall be informed of any information released.

(6) Unless otherwise permitted by these rules, no person shall disclose information obtained by that person during commission proceedings or from papers filed with the commission. Any person violating confidentiality rules may be subject to contempt proceedings.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-08-050, filed 5/1/90, effective 6/1/90.]

Chapter 292-10 WAC PUBLIC RECORDS

WAC

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WAC 292-10-010 Purpose. The purpose of this chapter is to implement those provisions of RCW 42.17.250 through 42.17.340 relating to access to public records.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-010, filed 2/5/91, effective 3/8/91.]

WAC 292-10-020 Public records available. All commission public records are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 2.64.111 and 42.17.310. In accordance with chapter 256, Laws of 1990, work and home addresses of any person requesting in writing that their addresses be kept private because disclosure would endanger life, safety or property, shall be omitted from all documents in public files.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-020, filed 2/5/91, effective 3/8/91.]

WAC 292-10-030 Records index. The indexes developed by or for the agency shall be available to all persons under the same rules and under the same conditions as are applied to public records available for inspection and shall be available at the offices of the agency.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-030, filed 2/5/91, effective 3/8/91.]

WAC 292-10-040 Requests for public records. (1) All requests for inspection or copying made in person at the agency shall be made on a form substantially as follows:

REQUEST FOR PUBLIC RECORDS

Date Time
Name
Address
Representing
Description of Records:
.....
.....
.....

I certify that lists of names obtained through this request for public records will not be used for commercial purposes.

.....
Signature

Number of copies
Number of pages
Per page charge \$
Total charge \$

(2) All requests made in person may be made to the agency at 908 E. 5th, Olympia, Washington, between the hours of 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays.

(3) A request for inspection or copying of public records may be made by mail in a letter containing the following information:

- (a) The name and address of the person making the request;
(b) The organization or group that the person represents;
(c) The time of day and the calendar date on which the person wishes to inspect the public records;
(d) A description of the public records requested;
(e) A statement whether access to copying equipment is desired;

(f) A phone number where the person can be reached in case the public records officer or designee needs to contact the person for further description of the material or any other reason;

(g) A statement that the record will not be used for commercial purposes.

(4) All requests by mail should be received at the agency at least three business days before the requested date of inspection to allow the public records officer or designee to make certain the requested records are available and not exempt and, if necessary, to contact the person requesting inspection.

(5) The agency may in its discretion fill requests made by telephone.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-040, filed 2/5/91, effective 3/8/91.]

WAC 292-10-050 Fees. No fee shall be charged for inspection of public records. The agency may charge a reasonable fee, determined from time to time by the director, for providing copies. The fee shall be the amount necessary to reimburse the agency for its actual costs incident to such copying.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-050, filed 2/5/91, effective 3/8/91.]

WAC 292-10-060 Statement of reasons for denial of public records request. When the agency refuses, in whole or in part, a written request for inspection of any public record, it shall include a statement of the specific exemption authorizing the refusal and a brief explanation of how the exemption applies to the record withheld.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-060, filed 2/5/91, effective 3/8/91.]

WAC 292-10-070 Protection of public records. In order to protect the public records of the agency, the following guidelines shall be adhered to by any person inspecting such public records:

- (1) No public records shall be removed from the agency's premises.
(2) Inspection of any public record shall be conducted in the presence of a designated agency employee.
(3) No public records may be marked or defaced in any manner during inspection.
(4) Public records which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by commission director or designee.
(5) Access to file cabinets, shelves, and other storage areas with public records is restricted to office personnel, unless other arrangements are made with the commission director or designee.

[Statutory Authority: RCW 42.17.250, [42.17.]260 and Washington State Constitution, Article IV, section 31. 91-04-060 (Order 3), § 292-10-070, filed 2/5/91, effective 3/8/91.]

Chapter 292-12 WAC
PROCEDURAL RULES

WAC

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WAC 292-12-010 Preliminary investigation. (1)

Any organization, association, or person, including a member of the commission, may make a complaint of judicial misconduct or disability to the commission. A complaint may be made orally or in writing.

(2) Upon receipt of a complaint not obviously unfounded or frivolous, the investigative officer shall make a prompt, discreet, preliminary investigation and evaluation. Failure of a person making the complaint to supply requested additional information may result in dismissal of that complaint. On every complaint received, the investigative officer shall make a recommendation to the commission as to whether to commence initial proceedings.

(3) If the complaint alleges that a judge is suffering a possible physical and/or mental disability which may seriously impair the performance of judicial duties, the commission may order a judge to submit to physical and/or mental examinations at commission expense. The failure or refusal of a judge to submit to physical and/or mental examination ordered by the commission may, in the discretion of the commission, preclude the judge from presenting the results of other physical and/or mental examinations on his or her own behalf.

(4) If the commission determines to commence initial proceedings, the person making the complaint may be requested to file a verified statement with the commission. If a verified statement is not filed by the person making the complaint, the investigative officer who conducted the preliminary investigation and evaluation shall prepare and file a verified statement. Initial proceedings only will begin upon filing of a verified statement.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-010, filed 5/1/90, effective 6/1/90.]

WAC 292-12-020 Initial proceedings. (1) An investigative officer will supervise the investigation.

(2) The judge who is the subject of initial proceedings will be notified by the commission within seven days after the filing of a verified statement. The judge shall also be advised of the nature of the complaint with sufficient specificity to permit an adequate response. In its discretion,

the commission may disclose to the judge the name of the individual making the complaint and may provide a copy of the verified statement to the judge.

(3) The judge shall be afforded a reasonable opportunity in the course of the initial proceedings to present such matters as he or she may choose.

(4) If the commission determines that there are insufficient grounds for further commission proceedings, the judge and the person making the complaint will be so notified.

(5) If the commission determines that probable cause exists that the judge has violated a rule of judicial conduct or may be suffering from a disability that seriously interferes with the performance of judicial duties and is permanent or is likely to become permanent, the commission shall order the filing of a statement of charges pursuant to WAC 292-12-030.

(6) Any matter before the commission, after a determination of probable cause has been made, may be disposed of by a stipulation entered into in a public proceeding. The stipulation shall be signed by the judge and the commission and may impose any terms and conditions deemed appropriate by the commission. A stipulation shall set forth all material facts relating to the proceeding and the conduct of the judge. When a stipulation which disposes of a violation of a rule of judicial conduct has been signed by the necessary parties, the person making the complaint shall be notified of the action taken by the commission and shall be provided with a copy of the stipulation.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-020, filed 5/1/90, effective 6/1/90.]

WAC 292-12-030 Statement of charges. (1) The commission shall file a statement of charges in the commission's office alleging the violation of a rule of judicial conduct or the disability of a judge that is or is likely to become permanent and which seriously impairs the performance of judicial duties. The statement of charges and any material or information within the commission's knowledge which tends to negate the statement of charges will be served on the judge within seven days after filing of the statement of charges. After service, the statement of charges shall be available to the public except as otherwise provided by protective order.

(2) A statement of charges under WAC 292-12-030 shall be served on a judge in person, unless the judge cannot be found within the state. If the judge cannot be found within the state and the judge's whereabouts out-of-state can reasonably be discovered, the statement of charges may be served by certified mail addressed to the judge's last known business and residence addresses and also the out-of-state address. All other papers in commission proceedings may be served on a judge in person or by mail. If counsel has appeared for a judge, papers, other than a statement of charges, may be served on counsel in lieu of service upon the judge.

(3) When a statement of charges is filed, no further factual information shall be considered by the members of the commission prior to a fact-finding hearing unless notice is given to both parties.

(4) The statement of charges will state in ordinary and concise language the basis for commission action and the facts supporting the statement of charges. The statement of charges shall also inform the judge that he or she may file a written answer to the charges as provided in subsection (5) of this section.

(5) The judge may file with the commission an answer to the statement of charges. The answer must be filed within twenty-one days after service of the statement of charges on the judge. If the judge does not file a written answer, a general denial will be entered on behalf of the judge. The statement of charges and the answer shall be the only pleadings required. Once filed, the answer shall be available to the public.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-030, filed 5/1/90, effective 6/1/90.]

WAC 292-12-040 Fact-finding hearing. (1) Upon filing of a statement of charges, a public fact-finding hearing will be scheduled at a location selected by the commission. The records of the initial proceeding that were the basis of a finding of probable cause shall become public as of the date of the fact-finding hearing.

(2) The executive director will set a time and place for the public fact-finding hearing to be held no later than forty-two days after the time for answer has expired or after the answer is filed, whichever is earlier. The judge will be given at least fourteen days' notice of the hearing which will include the name or names of the fact-finder and the presiding officer, if any.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-040, filed 5/1/90, effective 6/1/90.]

WAC 292-12-050 Disqualification of fact-finder. (1) A member of the commission or a master must disqualify himself or herself in any proceedings involving his or her own conduct or alleged disability. A member of the commission or a master must disqualify himself or herself if he or she cannot impartially consider the statement of charges against a judge.

(2) A judge may file an affidavit challenging for cause any member or a master who the judge believes will not impartially consider the statement of charges. The affidavit must be filed within seven days after notice of the fact-finding hearing. The commission will decide any challenge for cause if the member or master does not disqualify himself or herself.

(3) A judge may file a peremptory challenge against one member of the commission. The challenge must be filed within seven days after notice of a fact-finding hearing. If the judge has unsuccessfully challenged a member for cause, any peremptory challenge against that member must be filed within three days after service of notice of the determination of the challenge for cause.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-050, filed 5/1/90, effective 6/1/90.]

WAC 292-12-060 Procedural rights of judge. (1) The judge has a right to notice of the complaints concerning the judge which have been found by the commission to warrant initial proceedings. The judge shall have the right and reasonable opportunity at a fact-finding hearing to defend against the allegations in the statement of charges by the introduction of evidence. The judge has the privilege against self-incrimination. The judge may be represented by counsel and may examine and cross-examine witnesses. The judge has the right to testify or not to testify on his or her own behalf. The judge has the right to issuance of subpoenas for the attendance of witnesses to testify or produce evidentiary matters. The judge has the right to a prompt resolution of the allegations in the statement of charges.

(2) A judge's compliance with an opinion by the ethics advisory committee shall be considered by the commission as evidence of good faith.

(3) The judge will be provided, without cost, a copy of any report of proceedings prepared by the commission. The judge may, in addition, have all or any portion of the testimony in the proceedings transcribed at his or her own expense.

(4) All witnesses shall receive fees and expenses in the amount allowed by law for witnesses in the superior court. Expenses of witnesses shall be borne by the party calling them, provided that if the commission determines that the imposition of costs and expert witness fees would work a financial hardship or injustice upon the judge, it may order that all or part of such costs and fees be reimbursed.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-060, filed 5/1/90, effective 6/1/90.]

WAC 292-12-070 Guardian ad litem. If it appears to the commission at any time during the proceedings that the judge is not competent to act, or if it has been previously judicially determined that the judge is not competent to act, the commission will appoint a guardian ad litem for the judge unless the judge already has a guardian who will represent the judge's interests. In the appointment of a guardian ad litem, consideration may be given to the wishes of the members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge which the judge could have claimed, exercised, or made if competent. Any notice to be served on the judge will also be served on the guardian or guardian ad litem.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-070, filed 5/1/90, effective 6/1/90.]

WAC 292-12-080 Discovery procedure before fact-finding. (1) Upon written demand, the opposing party will disclose within seven days thereof, with a continuing obligation thereafter, the following:

(a) Names and addresses of all witnesses whose testimony that party expects to offer at the hearing;

(b) A brief summary of the expected testimony of each witness;

(c) Copies of signed or recorded statements of anticipated witnesses; and

(d) Copies of documents which may be offered. Witnesses or documents not disclosed may be excluded.

(2) The taking of depositions, the requesting of admissions and all other procedures authorized by Rules 26 through 37 of the Superior Court Civil Rules are available upon stipulation of the parties or upon prior permission of the master or presiding officer. A request for discovery shall be granted, unless the master or presiding officer determines that the request is frivolous, will create an undue burden on the party, or will result in undue delay.

(3) The commission's counsel shall disclose to the judge any material or information within his or her knowledge which tends to negate the complaints against the judge or mitigate the degree of discipline which may be imposed.

(4) The judge or counsel for either party may make prehearing motions to the designated presiding officer, who may make rulings or defer rulings to the commission. Motions shall be in writing and shall be filed and served on the opposing party. The responding party shall be allowed five days from service to respond, unless the time is shortened by the presiding officer for good cause. Motions will be promptly decided by written order filed in the commission office. Motions will be decided on the written materials submitted unless the presiding officer requests argument, which may be heard by conference telephone call.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-080, filed 5/1/90, effective 6/1/90.]

WAC 292-12-090 Amendments to statement of charges or answer. The fact-finder, at any time prior to the conclusion of the hearing, or the commission, at any time prior to its decision, may allow or require amendments to the statement of charges or the answer. The statement of charges may be amended to conform to the proof or set forth additional facts, whether occurring before or after the commencement of the hearing. Except for amendments to conform to the proof by evidence admitted without objection at a fact-finding hearing, if an amendment substantially affects the nature of the charges, the judge will be given reasonable time to answer the amendment and prepare and present a defense against the new matter raised.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-090, filed 5/1/90, effective 6/1/90.]

WAC 292-12-110 Procedure at fact-finding hearing.

(1) The order of presentation shall be in the same manner as in civil cases in superior court.

(2) The case for the commission shall be presented by counsel retained by the commission.

(3) The rules of evidence (ER) shall govern the fact-finding hearing.

(4) Any finding that the judge has violated a rule of judicial conduct or that the judge has a disability which is permanent or is likely to become permanent and which seriously interferes with the performance of judicial duties must be supported by clear, cogent, and convincing evidence.

(5) Unless the fact-finding hearing is before a master, the chairperson may appoint a member to be presiding officer or to rule on motions and objections made during the

hearing. If the hearing is before the commission, a member may appeal a ruling to the commission members present. A majority vote will determine the motion.

(6) The failure of a judge to answer or to appear at the hearing or to submit to a mental or physical examination required by the commission will not prevent the commission from proceeding.

(7) Unless the judge and the commission stipulate to a different record, a verbatim record will be made and kept of the fact-finding hearing. The commission shall determine whether the verbatim record will be by court reporter or electronic recording device.

(8) Canon 3(A)(7), from the Code of Judicial Conduct, shall be followed for media participation in public hearings.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-110, filed 5/1/90, effective 6/1/90.]

WAC 292-12-120 Report of fact-finder. (1) The fact-finder, when other than the entire commission, shall prepare a report containing a brief statement of the procedure followed and the proposed findings of fact, conclusions of law, and a recommendation with respect to the issues presented at the fact-finding hearing. The report and verbatim record shall be filed in the commission office within thirty-five days after the hearing. The report and record shall be served on the parties within fourteen days thereafter. The original fact-finder may request the prevailing party to prepare the findings of fact and conclusions of law.

(2) A party may file with the commission a statement of objections to the report of the fact-finder. The statement shall set forth all objections to the report and state reasons therefor. The objections must be filed with the commission and served on the opposing party within fourteen days after service of the report on the party.

(3) If no statement of objections to the report of the fact-finder is filed within the time provided in subsection (2) of this section, the report may be adopted without argument.

(4) If a statement of objections is timely filed, the commission may schedule oral argument, or consider the matter on the record along with briefs of the parties. The parties shall be given at least fourteen days' written notice of the time and place for argument.

(5) If the commission proposes to modify or reject the original fact-finder's report, the commission shall schedule a time for oral argument on the record along with briefs of the parties. The parties shall be given at least fourteen days' written notice of the time and place for argument.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-120, filed 5/1/90, effective 6/1/90.]

WAC 292-12-130 Commission decision. (1) The commission in open session shall announce and file its decision either to dismiss the case, or to admonish, reprimand or censure the judge, or to censure the judge and recommend to the supreme court the suspension or removal of the judge, or to recommend to the supreme court the retirement of the judge because the judge is suffering from a disability which is permanent or likely to become perma-

ment and which seriously interferes with the performance of judicial duties. The commission may not recommend suspension or removal unless it censures the judge for the violation serving as the basis for the recommendation. If the commission decides to censure or reprimand a judge, the commission shall order the judge to appear personally before the commission. The commission's written decision will include findings of fact, conclusions of law, and any recommendation required to be filed with the supreme court. The commission may adopt the report of the original fact-finder, in whole or in part, by reference. To vote on a matter, a member who did not sit as a fact-finder must consider the verbatim record and any report of a fact-finder. Any commission member may file a dissent.

(2) The commission may consider for probative value any conduct that may have occurred prior to, on, or after December 4, 1980, by a person who was, or is now, a judge when such conduct relates to a complaint filed with the commission against the same judge.

(3) The commission's written decision will be served upon the judge and his or her counsel of record within fourteen days after the decision is filed in the commission's office.

(4) When the hearing is before the commission, a party may file objections to the record or a motion for reconsideration of the commission decision within fourteen days after the decision and record have been served. Objections will be determined by the chairperson or, in his or her discretion, by the commission.

(5) The commission decision is final fourteen days after service unless a motion for reconsideration or objection or an order for the taking of additional evidence pursuant to WAC 292-12-140 is filed. If a motion for reconsideration or objection is denied, the decision is then final. If either the motion for reconsideration or objection is granted, the reconsidered decision is final when filed in the commission's office.

(6) When the decision is final, the commission will notify the person making the complaint of its decision.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-130, filed 5/1/90, effective 6/1/90.]

WAC 292-12-140 Additional evidence. The commission may order a public hearing for the taking of additional evidence at any time before its decision is final. The order will set the time and place of the hearing and will specify the matters on which the additional evidence is to be taken. A copy of the order shall be served upon the judge at least fourteen days prior to the date set for hearing. The hearing will be conducted in the manner provided in WAC 292-12-040 through 292-12-130.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-140, filed 5/1/90, effective 6/1/90.]

WAC 292-12-150 Supreme court procedures. (1) Within fourteen days after the decision is final, a commission decision recommending the suspension, removal, or retirement of a judge will be filed in the supreme court and served on the judge. The notice of the decision served on

the judge shall state the date the decision was filed in the supreme court and shall specify the period during which the judge may challenge the commission recommendation as provided in Discipline Rules for Judges.

(2) If the commission recommendation is that the judge be removed, the judge shall be suspended, with salary, from that judicial position effective upon filing the recommendation with the supreme court; such suspension with pay will remain in effect until a final determination is made by the supreme court.

(3) The chairperson shall certify the record of commission proceedings to the supreme court, having transmitted to the judge those portions of the record required by Discipline Rules for Judges or these rules.

(4) If the supreme court remands a case, the commission will proceed in accordance with the order on remand.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-150, filed 5/1/90, effective 6/1/90.]

WAC 292-12-160 Reinstatement of eligibility. A former judge whose eligibility for judicial office had been removed by the supreme court may file with the commission a petition for reinstatement of eligibility. WAC 292-08-050 and 292-12-040 through 292-12-180 apply to commission review of a petition for reinstatement of eligibility. The commission will recommend to the supreme court in writing that the former judge should or should not be reinstated to eligibility to hold judicial office as provided in Discipline Rules for Judges.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-160, filed 5/1/90, effective 6/1/90.]

WAC 292-12-170 Extension of time. Upon a showing of good cause the chairperson or fact-finder may extend the time within which an act must be done under these rules.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-170, filed 5/1/90, effective 6/1/90.]

WAC 292-12-180 Service. (1) Service of papers on the commission shall be given by delivering or mailing the papers to the commission's office.

(2) If service is by mail, a paper is timely served if mailed within the time permitted for service. If a paper is served by mail, a time period dependent on the service begins to run three days after the paper is mailed.

[Statutory Authority: Chapter 2.64 RCW and Washington Constitution, Article IV, section 31. 90-10-059, § 292-12-180, filed 5/1/90, effective 6/1/90.]