

09/06/2024

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CLERK OF THE SUPREME COURT  
 STATE OF MONTANA  
 Case Number: AF 14-0356

September 6, 2024

Bowen Greenwood  
 ClerkOfSupremeCourt@mt.gov  
 Clerk of the Supreme Court  
 301 S. Park Ave.  
 Helena, MT 59601

Re: In Re The Proposed Revisions to Rules of the Judicial Standards Commission, No. AF 14-0356

Dear Mr. Greenwood,

This letter is sent to provide you with comments and suggestions regarding the proposed revisions to the Rules of the Judicial Standards Commission.

1. Proposed Rule 11 Grievances – Investigations, subsection (a) states, “In determining whether good cause exists to institute formal proceedings, the Commission may hold a meeting with or without provision of notice or other information to the judge.”

The revision allows the committee to hold a meeting to determine whether to institute a formal proceeding without notice to the judge. A judge possesses valuable insight that is directly relevant to the commission’s decision making process concerning that judge. Information from the judge could avoid the necessity of a formal proceeding and wasting the commission’s time. The rule should allow the judge to provide input.

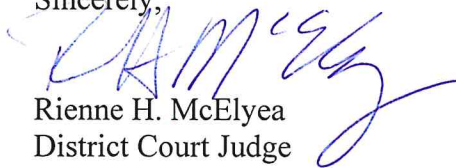
2. Proposed Rule 11 Grievances – Investigations, subsection (b) states, “The judge shall thereafter have reasonable opportunity to provide a statement to the Commission as the judge considers appropriate. . . After notification from the Commission, if the judge does not respond within a reasonable time or within the time fixed by the Commission, the right to make a responsive statement shall be deemed waived.”

The proposed Rules do not define what response time is allotted with the language “a reasonable opportunity to provide a statement.” A defined deadline would give all parties notice of what the commission deems “reasonable.” A judge should have an expectation of the time table involved. When the response time is not defined, the process is subject to abuse and subjective decision making. Further, waiving a judge’s response is a draconian measure. Judges are busy. There could be extenuating circumstances for which the judge is unable to timely respond.

3. Proposed Rule 16 Interim Disqualification of Judicial Officers subsection (a) states, "Upon or after the filing of a formal complaint, the Commission may, in its discretion and for good cause shown, disqualify the judge from serving as a judicial officer, without loss of salary, pending the Commission's disposition of the formal complaint."

Read in conjunction with proposed Rule 11 and the ability to move forward without input from the judge could result in a due process violation. A judge should be afforded notice and an opportunity to be heard before a judge is disqualified.

Sincerely,



Rienne H. McElyea  
District Court Judge