

Idaho Judicial Council

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Ex-Officio Chairman: Chief Justice Roger S. Burdick ■ **Executive Director:** James D. Carlson

Members:

■ J. Philip Reberger ■ Hon. Ronald J. Wilper ■ Ronald M. Nate, Ph D. ■ Steven A. Tuft
■ Joel P. Hazel ■ Hon. Thomas H. Borresen, *Adjunct Member*

Rules of the Idaho Judicial Council General Rules of Procedure

RULE 1. Oath of Office.

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.

RULE 2. 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 not less than two (2) nor more than four (4) qualified persons for each vacancy in the office of justice of the Supreme Court, Court of Appeals judge, or district judge, one (1) of whom shall be appointed by the Governor;
- (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 3. Honoraria and Expenses.

Each member of the Council, except a judge or justice, shall receive an honorarium of fifty dollars (\$50.00) per day 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 Chairman proper vouchers for payment thereof.

RULE 4. Officers and Their Duties.

The officers of the Council shall be:

Chairman, who shall be the Chief Justice of the Supreme Court of the State of Idaho. (I.C. §1-2101). The Chairman's duties, inter alia, shall be: (1) to act as chairman of all meetings of the Council; (2) to cause studies to be made and reports to be submitted as required by I.C. §1-2102; and (3) 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.

Vice-Chairman, who shall be elected by the Council annually, on a calendar year basis, and who shall act in the place of and perform the duties of the Chairman in the Chairman's absence.

Secretary, who shall be appointed by the Council, annually, on a calendar year basis, and who shall attend all Council meetings and keep minutes thereof, communicate with Council members from time to time as the Chairman may direct, and assist in the formulation of the studies and reports required by I.C. §1-2102.

RULE 5. Meetings.

Meetings of the Council shall be held at the call of the Chairman or at the request of any two (2) members. The Secretary 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. The Secretary or an assistant under the Secretary's direction shall maintain minutes of such meetings, and shall within three (3) working days following each such meeting send to every member of the Council by first class mail 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 mailing, 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 Chairman or an assistant under the Chairman's direction shall cause to be distributed to members of the Supreme Court and shall 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 6. Types and Locations of Meetings.

The notice calling a meeting shall specify whether the meeting is by assembly of Judicial Council members or by telephone 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 telephone 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 telephone conference shall be terminated upon demand by any member for a secret ballot on a matter subject to vote.

RULE 7. Quorum.

The Council shall act by concurrence of four (4) or more members. (I.C. §1-2101)

RULE 8. Voting.

All voting shall be viva-voce, provided that the vote on any particular issue, on request of any member, shall be by roll call or by secret ballot.

RULE 9. Committees.

Committees may be appointed to perform specified duties. The Chairman shall appoint all committees unless otherwise provided in a motion or resolution authorizing a particular committee.

RULE 10. Assistants and Assistance.

The Council may employ such 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; also, inter alia, concerning the improvement of the science of jurisprudence, and of the administration of justice.

RULE 11. Intentionally Left Blank.

RULE 12. 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 Council shall conduct a background check into the qualifications of the applicants, which may include, but not be limited to, 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 applicants.

RULE 13. Attorney Questionnaires.

Following the expiration of the deadline for submission of applications, the Judicial Council shall mail to all attorneys in the applicants' judicial districts if for a district position, and to all attorneys in the state for statewide judicial offices, a questionnaire on the qualifications of the applicants. After the results of the questionnaires are tabulated, the Council may disclose to each applicant, the results of the applicant's score. However, the results of the surveys shall not be disclosed to any other person or entity except the Governor. Any written comments shall be confidential and shall not be disclosed to the applicant or any other person except the Governor.

RULE 14. Interviews.

The Council shall interview the applicants 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 15. 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 16. Judicial Qualifications.

The deemed qualifications of candidates selected by the Council to be considered for appointment to judicial office may be in accordance with the following ratings:

- (a) Exceptionally well qualified,
- (b) Well qualified, and
- (c) Qualified.

RULE 17. Ex Parte Contact with Judicial Council Members.

The members of the Judicial Council should not engage in ex parte communications concerning any applicant for a judicial position. They should encourage all interested attorneys and members of the public to communicate with the Council in writing concerning the applicants on which they have knowledge or information.

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Rules for Removal, Discipline or Retirement of Judges

RULE 21. Definitions.

In these rules, unless the context or subject matter otherwise requires:

- (a) "Council" means the Judicial Council of Idaho.
- (b) "Judge" means a Justice of the Supreme Court, a Court of Appeals judge, a judge of a district court, a magistrate judge, or a member of the Industrial Commission.
- (c) "Accused judge" or "defendant" means the judge against whom formal proceedings have been instituted pursuant to Rule 29.
- (d) "Chairman" means the chairman of the Council or the acting chairman.
- (e) "Masters" means special masters appointed by the Supreme Court upon request of the Council.
- (f) "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 masters.

(g) "Examiner" means counsel designated by the Council to make a preliminary investigation, to gather evidence, and to present evidence before the Council or the masters, with respect to the charges against a judge.

(h) "Shall" is mandatory and "may" is permissive.

(l) The masculine gender includes the feminine gender.

RULE 22. Process - Witnesses - Hearings.

(a) In the exercise of its powers and duties as provided by I.C. Title 1, Chapter 21, the Council or any member or master shall have the power to summon and examine witnesses under oath and to compel their attendance and the production of books, papers, documents and other writings necessary or material to the inquiry. Such summons or subpoena shall be issued under the hand of the Secretary of the Council or any member thereof, 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. Any witness or other person who shall refuse or neglect to appear in obedience thereto or who shall refuse to be sworn or testify or produce books, papers, documents or other writing demanded, or to comply with any lawful order of the Council or any member or master in the premises, shall be liable to attachment upon application to the Supreme Court, or to any court or a judge thereof, as in cases of contempt.

(b) The Council or masters 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, 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 of discipline: Rules 6(a)(e), 15(b)(c)(d), 16, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 43(b)(c)(d), 44(a)(b)(c), 45(d)(1), 45(d)(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, or any member of the Council, or master, may administer oaths to witnesses.

(c) Witnesses subpoenaed by the Council or any member thereof or by a master shall be allowed such fees and traveling expenses as are allowed in civil actions, to be paid by the party in whose interest such witnesses are subpoenaed.

RULE 23. 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) A district judge serving on the Judicial Council may not participate in deliberations of the Judicial Council pertaining to a complaint filed against a district judge residing in the same judicial district as the district judge member of the Council, and that district judge member of the Council shall be disqualified from all proceedings involving that particular complaint.

(c) 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-Chairman of the Council shall preside over any such deliberations and shall preside over any procedures involved in the investigation or processing of that complaint.

RULE 24. Confidentiality of Proceedings.

All papers filed with and proceedings before the Council, or before the masters appointed by the Supreme Court pursuant to Rule 31, shall be confidential until a record is filed by the Council in the Supreme Court, provided, however, that if allegations against a judge are made public by the complainant, judge or third persons, the Judicial Council, and/or the 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 25. Confidential and Privileged Defamatory Material.

(a) Papers filed with the Council, and testimony given before the Council, or before the masters appointed by the Supreme Court pursuant to Rule 31, shall be privileged;

(b) The record filed by the Council in the Supreme Court continues privileged but on such filing loses its confidential character; and

(c) A writing which was privileged prior to its filing with the Council or the masters does not lose such privilege by such filing.

RULE 26. Appointment of Examiner.

The Council may appoint one or more examiners to assist the Council (a) in making preliminary investigation of the charges against a judge; (b) to gather evidence and to present evidence before the Council or the masters with respect to the charges against an accused judge.

RULE 27. Service of Documents Upon Accused Judge.

In proceedings for the discipline, removal or retirement of a 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 judge, or by mailing a copy of such document by prepaid registered or certified mail addressed to the judge at the judge's chambers or last known residence address, and by mailing a copy thereof to the judge's counsel of record if such there be unless the judge shall otherwise direct in writing filed with the Council.

RULE 28. Grounds for Discipline, Removal or Retirement - Initial Inquiry - Preliminary Investigation.

(a) The Council, upon receiving a verified statement, not obviously unfounded or frivolous, alleging facts indicating that a judge is guilty of willful misconduct in office, willful and persistent failure to perform the duties of a judge, habitual intemperance, or of conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the Code of Judicial Conduct, or that the judge has a

disability that seriously interferes with the performance of the judge's duties which is or is likely to become of a permanent character, shall make an initial inquiry or investigation to determine whether formal proceedings should be instituted and a hearing held. 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.

(1) **Initial Inquiry.** After notifying the judge informally, the Council, or its representative, shall make an initial inquiry to determine whether or not the complaint contained in the verified statement is obviously unfounded or frivolous. In making that initial inquiry, the Council or its representative may obtain and consider any information it deems pertinent.

(2) **Preliminary Investigation.** If the Council concludes that the complaint set out in the verified statement is not obviously unfounded or frivolous, the Council shall conduct a preliminary investigation, after first notifying the judge in writing of the investigation and the nature of the charge, and shall afford reasonable opportunity in the course of such preliminary investigation for the judge or the judge's counsel to present evidence on behalf of the judge. In conducting the investigation, the Council may consider any information obtained during the course of the initial inquiry. If the Council determines that the physical or mental health of the judge is in issue, it may order physical and/or mental examinations of the judge by independent examiners. Service of such written notice shall be in accordance with Rule 27.

(b) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the judge, complainant and other parties in the discretion of the Council shall be so notified.

(c) If the preliminary investigation does disclose sufficient cause to warrant further proceedings, the Council may:

- (1) continue the case for further action, investigation or review;
- (2) require a personal appearance of the judge before the Council;
- (3) recommend a remedial course of conduct to the judge and require the judge's written acquiescence thereto;
- (4) issue a public reprimand with the judge's consent;
- (5) institute formal proceedings; or
- (6) take or direct such other action as the Council may determine will reasonably curtail or eliminate the conduct of the judge which involves any matter within the jurisdiction of the Council.

RULE 29. 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 judge. Such proceedings shall be entitled:

BEFORE THE JUDICIAL COUNCIL STATE OF IDAHO

Inquiry Concerning) No. _____
)
 _____)
 (Name of Judge)) NOTICE

(b) The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of the right to file a written answer to the charges within fifteen (15) days after service of the notice upon them.

(c) The notice shall be served in accordance with Rule 27.

RULE 30. Answer.

Within fifteen (15) days after service of the notice of formal proceedings, the accused judge may file with the Council an original and seven (7) legible copies of a verified answer.

RULE 31. Setting for Hearing Before Council or Masters.

(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 three (3) special masters 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 masters and shall give written notice of such hearing in accordance with Rule 27.

(b) In the event the 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 judge of the judge's right to a hearing; and
- (4) Whether a mitigation/aggravation hearing is requested.

RULE 32. Hearing.

(a) At the time and place set for hearing, the Council or the masters when the hearing is before masters, shall proceed with the hearing whether or not the accused judge has filed an answer or appears at the hearing. The examiner shall present the case in support of the charges set forth in the notice of formal proceedings.

(b) The failure of the 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 judge to testify in the judge's own behalf or to submit to a medical examination requested by the Council or by the masters may be considered unless it appears that such failure was due to circumstances beyond the judge's control.

(c) The proceedings at the hearing shall be reported by such method as the Council may prescribe.

(d) The Council shall appoint either the Chief Justice, the District Judge member, or a retired or senior judge as the presiding judge for the hearing.

RULE 33. Evidence.

At a hearing before the Council or masters only evidence as is admissible in civil cases shall be received; provided, however, that the Council may review and consider previous proceedings against the accused judge.

RULE 34. Procedural Rights of 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 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.

(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 judge and the judge's counsel in connection with the proceedings. The 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 judge.

(c) If the judge is adjudged insane or incompetent, or if it appears to the Council at any time during the proceedings that the judge is not competent to act, the Council shall appoint a guardian ad litem unless the judge has a guardian who will represent the judge. In the appointment of a guardian ad litem preference shall be given, whenever possible, to members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right or privilege and make any defense for the judge with the same force and effect as if claimed, exercised or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any document to the judge such notice or document shall be served, given or sent to the guardian or guardian ad litem.

RULE 35. Amendments to Notice or Answer.

The masters 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 reasonable time to answer the amendment and to prepare and present a defense against the matters charged thereby.

RULE 36. Report of Masters.

(a) After the conclusion of the hearing before masters, they shall promptly prepare and transmit to the Council a report which shall contain a brief statement of the proceedings had and their findings of fact and conclusions of law with respect to the issues presented by the pleadings. When the findings and conclusions supported removal, discipline, or retirement, the

report shall be accompanied by an original and four (4) copies of a transcript of the proceedings.

(b) Upon receiving the report of the masters, the Council shall promptly deliver or mail a copy thereof to the examiner and shall promptly serve a copy thereof upon the accused judge in accordance with Rule 27.

RULE 37. Objections to Report of Masters.

Within thirty (30) days after service of the copy of the masters' reports upon the accused judge in accordance with Rule 27, the examiner or the judge may file with the Council an original and seven (7) legible copies of a statement of objections to the report of the masters, setting forth all objections and when filed by the examiner a copy thereof shall be served upon the judge in accordance with Rule 27.

RULE 38. Appearance Before Council.

If no statement of objections to the report of the masters is filed within the time provided, the Council may adopt the findings and conclusions of the masters 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 masters, the Council shall give the accused judge and the 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 judge at least ten (10) days prior thereto in accordance with Rule 27.

RULE 39. Extension of Time.

The Chairman 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 masters and the presiding master may similarly extend the time for the commencement of a hearing before masters.

RULE 40. Hearing Additional Evidence.

(a) The Council may order a hearing in conformance with the provisions of Rule 31 through 40, 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 27.

(b) In any case in which masters have been appointed the hearing of additional evidence shall be before such masters and the proceedings therein shall be in conformance with the provisions of Rules 31 through 40, inclusive.

RULE 41. 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 four (4) members of the Council shall be required for a recommendation of removal, discipline, or retirement of the judge or for dismissal of the proceedings.

RULE 42. 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 the record and notice thereof shall be served upon the judge in accordance with Rule 27. In all proceedings resulting in a recommendation to the Supreme Court for removal, discipline, or retirement 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 masters, with respect to the issues of fact and law in the proceedings.

RULE 43. Certification of Council's Recommendation to Supreme Court.

Upon making a determination recommending the removal, discipline, or retirement of an accused judge, the Council shall promptly file a copy of the determination certified by the Chairman or Secretary of the Council together with the transcript and the findings and conclusions with the Clerk of the Supreme Court and shall immediately serve notice of such filing together with a copy of such determination, findings and conclusions upon the judge in accordance with Rule 27. The Council's determination shall be subject to review by the Supreme Court as provided by Rule 44.

RULE 44. Review of Determination.

(a) The accused judge may request review by the Supreme Court of the Council's determination by the filing with the Clerk of the Supreme Court of a verified petition for review together with six (6) copies thereof within thirty (30) days after filing of the determination with such clerk; within five (5) days thereafter the judge shall file with the clerk a certificate showing service of the petition upon the Chairman or the Secretary of the Council.

(b) The petition for review shall specify in detail the grounds upon which the judge relies.

(c) Any answer, response or countershowning by the Council shall be signed and verified by the Secretary or other member of the Council or by the examiner, and shall be filed and served upon the judge within fifteen (15) days of the filing of the petition, such service to be in accordance with Rule 27.

(d) Any factual issue presented by the petition, answer, response or countershowning shall be resolved in such manner as may be prescribed by the court.

(e) Upon review, the court will determine the issues presented by the petition, answer, response, or countershowning and will notify the petitioner and the Council's secretary thereof.

(f) Failure to file a petition within the time provided shall be deemed a consent to the determination on the merits based upon the record filed by the Council.

(g) Appellate procedure relating to civil actions, as far as applicable, shall apply to proceedings for such review, except that no filing fees shall be exacted.

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RULE 49. Intentionally Left Blank.

RULE 50. 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 a microfilm or other permanent copy.

(b) **Permissive Destruction of Records.** The following records and documents may be destroyed pursuant to the designated schedule: One year after the vacancy is filled.

1. Public comments on applicants for judicial positions.

2. Attorney questionnaires on applicants for judicial positions.

RULE 51. Intentionally Left Blank.

RULE 52. Confidentiality of Judicial Performance Evaluations.

All judicial Performance Evaluations, records, documents and reports relating to an individual judge shall be considered confidential records of the Idaho Judicial Council pursuant to Idaho Court Administrative Rule 32(d)(22), and shall not be disclosed by the judge or the Judicial Council to any third party. 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 53. Intentionally Left Blank.

RULE 54. Rules of Order.

Roberts' Rule of Order shall govern the procedures of all meetings of the Council and of its committees unless otherwise directed.

Rule 55. Amendments.

These rules may be amended or supplemented at any meeting by affirmative vote of not less than four (4) members of the Council.