



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: March 01, 2023

TIME: 10:34 AM

WSR 23-06-076

Agency: State of Washington Commission on Judicial Conduct

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 22-23-156 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____ ; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Access to Commission Complaint Records and Access to Commission Administrative Records.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
Friday, April 21, 2023	1:30 p.m.	Teleconference via Zoom	The public hearing will be held in conjunction with the Commission's regular business meeting. Internet and phone login instructions will be posted on the Commission's website the morning of the hearing at www.cjc.state.wa.us .

Date of intended adoption: April 21, 2023 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Commission on Judicial Conduct
Address: P.O. Box 1817, Olympia, WA 98507
Email: RulesComments@cj.c.state.wa.us
Fax: (360) 586-2918
Other:
By (date) Wednesday, April 12, 2023

Assistance for persons with disabilities:

Contact Tanya Calahan
Phone: (360) 753-4585
Fax: (360) 586-2918
TTY:
Email: tcalahan@cj.c.state.wa.us
Other:
By (date) Wednesday, April 12, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Implements Rule 12 and 12.1 of the Commission on Judicial Conduct Rules of Procedure (CJCRP) and repeals WAC 292-10 in its entirety. The CJCRP is the constitutionally-required avenue to establish rules regarding access to Commission complaint and administrative records. Case law has established that the Public Records Act, RCW 42.56, does not apply to the judicial branch. WAC regulations implemented under RCW 42.56 therefore do not apply.

Reasons supporting proposal: Case law has established that the Public Records Act, RCW 42.56, does not apply to the judicial branch, so as a constitutionally-created agency of the judicial branch, directed under Const. Art. IV §31 par. 10 to establish rules of procedure governing confidentiality of proceedings, the Commission prepared these rules under the CJCRP governing public access to Commission complaint and administrative records.

Statutory authority for adoption: Washington State Constitution, Article IV, Section 31.

Statute being implemented: n/a

Is rule necessary because of a:

Federal Law? Yes No

Federal Court Decision? Yes No

State Court Decision? Yes No

If yes, CITATION: *Nast v Michels*, 107 Wn.2d 300 (1986); *Cowles Publishing Co. v. Murphy*, 96 Wn.2d 584 (1981); *City of Federal Way v Koenig*, 167 Wn.2d 241 (2009); *Yakima County v. Yakima Herald-Republic*, 170 Wn.2d 775 (2011); and *West v. Washington State Association of District and Municipal Court Judges*, 190 Wn.2d 931 (2015).

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: Implements Rule 12 and 12.1 and repeals WAC 292-10 in its entirety. No fiscal impact.

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Commission on Judicial Conduct

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting: Coordinator	Tanya Calahan, Rules	1110 Capitol Way South, Suite 120, Olympia, WA	(360) 753-4585
Implementation: Request Officer	Tanya Calahan, Records	1110 Capitol Way South, Suite 120, Olympia, WA	(360) 753-4585
Enforcement: Director	J. Reiko Callner, Executive	1110 Capitol Way South, Suite 120, Olympia, WA	(360) 753-4585

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: Does not apply. No fiscal impact.

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- | | |
|--|--|
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |
- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW _____.
- Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: 2/28/23

Name: J. Reiko Callner

Title: Executive Director

Signature:

J. Reiko Callner

**Commission on Judicial
Conduct Rules of Procedure
Rule 12
ACCESS TO COMMISSION
COMPLAINT RECORDS**

(a) Policy and Purpose.

It is the policy of the Commission on Judicial Conduct (Commission) to facilitate access to complaint records as provided by Article IV, Section 31 of the Washington State Constitution. Access to Commission case records is not absolute and shall be consistent with confidentiality requirements as provided by Article IV, Section 31 of the Washington State Constitution, with reasonable expectations of personal privacy as provided by Article I, Section 7 of the Washington State Constitution, and shall not unduly burden the Commission or substantially interfere with agency operations and the administration of justice.

(b) Scope.

This rule applies to all Commission complaint and investigative records, regardless of the physical form of the record, the method of recording the record or the method of storage of the record. Administrative records are not within the scope of this rule.

(c) Definitions.

(1) “Access” means the ability to view or obtain a paper or electronic copy of a Commission record.

(2) “Administrative record” means any record pertaining to day-to-day agency operations or the administration of the Commission, including any committee appointed by the commission.

(3) “Commission” means collectively, the appointed regular and alternate members comprising the Commission on Judicial Conduct and its staff as an organization, including temporary or contract employees.

(4) “Executive Director” means the Commission’s chief executive appointed by Commission members to supervise and administer day-to-day agency operations.

(5) “Investigation records” include but are not limited to: All pleadings, papers, evidence records, and files of the commission, including complaints and the identity of complainants, compiled, or obtained during an investigation or initial proceeding of a complaint alleging judicial misconduct or disability.

(6) “Panel deliberation materials,” regardless of physical format, are those materials used or created by a Commission hearing panel during case deliberations.

(7) “Probable cause records” include only those specific records of the initial proceeding

that were the basis of a finding of probable cause as identified by the Commission members pursuant to CJCRP 17(d)(4)(C).

(8) “Fact-finding records” include probable cause records, statement of charges, and subsequent records filed as part of official fact-finding proceedings and any stipulated agreement, and excluding records sealed by the presiding officer.

(9) “Identifiable public record” means existing public records that do not require substantial alteration or manipulation, as determined by the Commission, to produce.

(d) Access.

(1) The Commission’s records on complaints that are under investigation or are dismissed are investigation records and are permanently exempt from public access and disclosure as required by Article IV, Section 31 of the Washington State Constitution, and established case law. Once a Statement of Charges is served on the respondent judge, documents filed thereafter are presumptively considered public records. Stipulated resolutions must be filed at a public meeting and are thereafter public records. Records requests for public complaint records are deemed satisfied and the Commission is not obligated to respond further if requesters are directed to the Commission's website, www.cjc.state.wa.us, and all the releasable and identifiable case records in the request are available in this location. There is no charge for records available on the Commission’s website. Records requested and provided in an alternative manner, outside the Commission’s website, are subject to the Commission’s published fee schedule.

(2) The public shall have access to probable cause records as of the date of a public hearing except those specifically excluded under Commission rules.

(3) Requests for general information about the Commission do not constitute requests for identifiable public records. The Commission is not obligated to respond to requests that are not for existing and identifiable public records. Merely including the phrase “public records request” or similar language in a request does not in and of itself, constitute a proper request for identifiable public records and does not obligate the Commission to respond to the request as a public records request. The Commission is not obligated to respond more than once to a requester for the same records.

(4) Panel deliberation materials are not public and shall not be provided as public records.

(5) It is the Commission’s policy to respond to requests for public records within five business days of receipt with either (1) the requested records or (2) an explanation why the Commission cannot provide the records. The Commission may seek clarification of requests. If no clarification is received, the Commission is not obligated to respond further, and the request is deemed satisfied. If additional time is required for a response, the Commission will state this to the requester and provide a new estimated timeline for response. The Commission may provide records in batches as they are available to provide the fullest assistance to requesters.

(6)The Commission will provide access to identifiable public records during regular business hours as published on its website after arrangements for viewing the records is made in advance.

(7)A fee may not be charged to view identifiable public records at the Commission's office.

(8)Fees charged for research, scanning, and copying shall be determined by the Executive Director and published on the Commission's website. The Executive Director will evaluate fee schedules from time to time and cause such fees to be updated and published on the Commission's website.

(9) If a fee is assessed, it must be paid in full prior to the Commission fulfilling a partial or complete request. The Commission is not obligated to fulfill a partial request, or complete request if the required fee is not paid. The request is deemed satisfied if no fee is paid and the Commission will close the request without further obligation to respond further.

(e)Method for requesting records.

The public records form provided on the Commission's website should be used for expediency. Alternatively, written requests shall include the following: current date, name, mailing address or email address, and phone number of the requester, preferred delivery method of the records and a description of the identifiable public records requested. Requests are directed to the Commission's Public Records Officer.

(f) Appeals.

Appeals of denials of access to Commission records shall be made within 30 days of the denial, and directed to the Commission's Executive Director. A denial by the Executive Director may be appealed within 30 days to the Executive Committee of the Commission. The decision of the Executive Committee is final. Requests for appeals should be made in the same manner as above.

[Adopted effective _____.]

**Commission on Judicial
Conduct Rules of Procedure
Rule 12.1
ACCESS TO COMMISSION
ADMINISTRATIVE
RECORDS**

(a) Policy and Purpose.

It is the policy of the Commission on Judicial Conduct (Commission) to facilitate access to administrative records as provided by Article IV, Section 31 of the Washington State Constitution. Access to Commission administrative records is not absolute and shall be consistent with confidentiality requirements as provided by Article IV, Section 31 of the Washington State Constitution and shall not unduly burden the Commission or substantially interfere with agency operations and the administration of justice.

(b) Scope.

This rule applies to all Commission administrative records, regardless of the physical form of the record, the method of recording the record or the method of storage of the record. Complaint records are not within the scope of this rule.

(c) Definitions.

(1) “Access” means the ability to view or obtain a paper or electronic copy of a Commission record.

(2) “Administrative record” means any record pertaining to day-to-day agency operations or the administration of the Commission, including any committee appointed by the commission.

(3) “Commission” means collectively, the appointed regular and alternate members comprising the Commission on Judicial Conduct and its staff as an organization, including temporary or contract employees.

(4) “Executive Director” means the Commission’s chief executive appointed by Commission members to supervise and administer day-to-day agency operations.

(5) “Preliminary investigation records” include but are not limited to: All pleadings, papers, evidence records, and files of the commission, including complaints and the identity of complainants, compiled, or obtained during an investigation or initial proceeding of a complaint alleging judicial misconduct or disability.

(6) “Probable cause case records” include only those specific records of the initial proceeding that were the basis of a finding of probable cause pursuant to CJCRP 17(d)(4)(C).

(7) “Identifiable public record” means existing records that do not require substantial alteration or manipulation, as determined by the Commission to produce. Requests for

information or answers to questions do not constitute requests for identifiable public records. The Commission is not obligated to respond to requests that are not for existing and identifiable public records. Merely including the phrase “public records request” or similar language in a request does not in and of itself, constitute a proper request for identifiable public records and does not obligate the Commission to respond to the request. The Commission is not obligated to respond more than once to a requester for duplicative requests for the same public records.

(8) “Public” includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency, however constituted, or any other organization or group of persons, however organized.

(d) Access.

(1) **Administrative Records—Access.** Commission administrative records are subject to public disclosure unless access is exempted or prohibited under this rule, other Commission rules, federal statutes, state statutes, court orders, or case law. To the extent that records access would be exempt or prohibited if the Public Records Act applied to the Commission’s administrative records, access is also exempt or prohibited under this rule. In addition, to the extent required to prevent a significant risk to individual privacy or safety interests, the Commission shall redact identifying details in a manner consistent with this rule when it makes available or publishes any public record; however, in each instance, the justification for the redaction shall be provided in writing.

(2) Public records requests for administrative records are deemed satisfied and the Commission is not obligated to respond further if requesters are directed to the Commission's website, www.cjc.state.wa.us, and all the releasable records are available in this location. There is no charge for records available on the Commission’s website. Records requested and provided in an alternative manner, outside the Commission’s website, are subject to the Commission’s published fee schedule.

(3) It is the Commission’s policy to respond to requests for public records within five (5) business days of receipt with either (1) the requested records or (2) an explanation why the Commission cannot provide the records. The Commission may seek clarification of requests. If no clarification is received, the Commission is not obligated to respond further, and the request is deemed satisfied. If additional time is required for a response, the Commission will state this to the requester and provide a new estimated timeline for response. The Commission may provide records in batches as they are available to provide the fullest assistance to requesters.

(4) The Commission will provide access to identifiable public records during regular business hours as published on its website after arrangements for viewing the records is made in advance.

(5) A fee may not be charged to view identifiable public records at the Commission’s office.

(6) Fees charged for research, scanning, and copying shall be determined by the Executive

Director and published on the Commission's website. The Executive Director will evaluate fee schedules from time to time and cause such fees to be updated and published on the Commission's website.

(7) If a fee is assessed, it must be paid in full prior to the Commission fulfilling a partial or complete request. The Commission is not obligated to fulfill a partial request, or complete request if the required fee is not paid. The request is deemed satisfied if no fee is paid and the Commission will close the request without further obligation to respond further.

(8) **RECORDS REQUESTS THAT INVOLVE HARASSMENT, INTIMIDATION, THREATS TO SECURITY, OR CRIMINAL ACTIVITY.** The Commission may deny a records request if it determines that: the request was made to harass or intimidate the Commission or its employees; fulfilling the request would likely threaten the security of the Commission; fulfilling the request would likely threaten the safety or security of Commission members, staff, family members of Commission members or staff, or any other person; or fulfilling the request may assist criminal activity.

(e) Method for requesting records.

The public records form provided on the Commission's website should be used for expediency. Alternatively, written requests shall include the following: current date, name, mailing address or email address, and phone number of the requester, preferred delivery method of the records and a description of the identifiable public records requested. Requests shall be made to the Commission's Public Records Officer.

(f) Appeals.

Appeals of denials of access to Commission records shall be made within 30 days of the denial, and directed to the Commission's Executive Director. The decision of the Executive Director may be appealed within 30 days to the Executive Committee of the Commission. The decision of the Executive Committee is final. Requests for appeals should be made in the same manner as above.

[Adopted effective _____.]

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 292-10 PUBLIC RECORDS.