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The below versions of 3.0 and 3.5 include revisions proposed for the Supreme Court's approval, which is pending

**COLORADO RULES OF CIVIL PROCEDURE
CHAPTER 24**

COLORADO RULES OF JUDICIAL DISCIPLINE

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PART A. GENERAL PROVISIONS

Rule 1. Scope, Objectives and Title

(a) **Scope.** The Colorado Rules of Judicial Discipline (the “Rules”) apply to all of the responsibilities and proceedings of the Colorado Commission on Judicial Discipline (the “Commission”), pursuant to Article VI, Section 23(3) of the Colorado Constitution (the “Constitution”), involving the removal, retirement, suspension, censure, reprimand, or other discipline of judges, and disabilities affecting the performance of their judicial duties.

(b) **Constitutional Mandate.** The Constitutional mandate of the Commission is to protect the public from improper conduct of judges; preserve the integrity of the judicial process; maintain public confidence in the judiciary; create a greater awareness of proper judicial behavior on the part of the judiciary and the public; and provide for the fair and expeditious disposition of complaints of judicial misconduct or judicial disabilities.

(c) **Title.** These Rules shall be known and cited as the Colorado Rules of Judicial Discipline or Colo. RJD.

Rule 2. Definitions

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

(a) The term “**Judge**” means any justice or judge of any court of record of this state serving on a full time, part-time, senior, or retired basis against whom a complaint has been filed or initiated or who has been convicted of a felony or an offense involving moral turpitude. This definition does not include judges of the county court of the City and County of Denver, whose conduct is monitored and disciplined by the Denver County Court Judicial Discipline Commission; municipal judges; magistrates; or administrative law judges. The conduct of an attorney serving

as a municipal judge, magistrate, or administrative law judge is subject to the disciplinary and disability jurisdiction of Attorney Regulation under Colo. RPC 251.1(b).

(b) “**Attorney Regulation**” means the Office of Attorney Regulation Counsel.

(c) “**Chair**” means a member elected by the Commission to administer the business of the Commission and preside at all meetings of the Commission, any member appointed to preside at a hearing, or any person designated as “acting chair.”

(d) “**Code,**” “**Canons,**” or “**Canon Rules**” mean the provisions of the Colorado Code of Judicial Conduct as amended.

(e) “**Colo. RPC**” means the Colorado Rules of Professional Conduct.

(f) “**Complaint**” means allegations that provide grounds for the Commission to conduct disability or disciplinary proceedings.

(g) “**Complainant**” means a person who initiates a complaint by requesting an evaluation of judicial conduct.

(h) “**C.R.C.P.**” means the Colorado Rules of Civil Procedure.

(i) “**Disability**” means a Judge’s physical or mental condition that adversely affects the Judge’s ability to serve as a judicial officer or to assist with his or her defense in disciplinary proceedings.

(j) “**Executive director**” means the person appointed by the Commission whose duties and responsibilities are described in Rule 3(d).

(k) “**Formal proceedings**” means disciplinary proceedings that could result in a recommendation for a public sanction.

(l) “**Grounds**” means the basis for disciplinary proceedings in Rule 5 or for disability proceedings in Rule 33.5.

(m) “**Hearing**” means a meeting of the Commission or special masters convened for the purpose of taking evidence or considering legal arguments.

(n) “**Informal proceedings**” means proceedings that could result in informal remedial action or the appointment of special counsel to advise the Commission regarding other options, including advice on whether there is probable cause to commence formal proceedings.

(o) “**Mail**” or “**mailed**” means first-class mail, personal delivery, or delivery by commercial mail service.

(p) **“Meeting”** means an assembly of the Commission or special masters in person or by conference call or any combination thereof.

(q) **“Member”** means a member or special member of the Commission.

(r) **“Misconduct”** means conduct by a Judge that does not comply with the Code or Colo. RJD.

(s) **“Notice”** means a letter or other writing sent by mail, unless otherwise specified in the Rules, to a Judge at the Judge’s chambers or last known residence, to an address designated by the Judge, or to the Judge’s counsel of record.

(t) **“Participant”** means a member, special member, the executive director, Commission staff, complainant, Judge, the Judge’s counsel, special counsel, special master, witness, investigator, or any other person who obtains knowledge of a proceeding in the course of an investigation or prosecution by the Commission.

(u) **“Party”** means the Commission, special counsel, the Judge, or the Judge’s counsel.

(v) **“Presenter”** means one or more members who are designated by the Commission or by the executive director to evaluate and report on a complaint to the Commission.

(w) **“Proceedings”** means informal or formal proceedings, including, but not limited to, consideration of a request for evaluation of judicial conduct; the investigation of a complaint; a meeting or hearing of or with the Commission, its staff, special counsel, or special masters; a disciplinary disposition; a disciplinary sanction; a disability disposition; or a communication with respect thereto.

(x) **“SCAO”** means the Office of the State Court Administrator.

(y) **“Request for evaluation of judicial conduct”** or **“request”** means a request by a complainant for the Commission to consider whether there is a reasonable basis for the commencement of disciplinary or disability proceedings.

(z) **“Rules”** as cited herein means Colo. RJD.

(aa) **“Special counsel”** means an attorney or attorneys appointed by the Commission to serve as counsel to the Commission on such matters as the Commission may request including, but not limited to, the investigation or disposition of a complaint, a motion for temporary suspension of a Judge under Rule 34, and the prosecution of a complaint in formal proceedings.

(bb) **“Special master”** means a person appointed by the Supreme Court to preside over hearings.

(cc) “**Special members**” are persons appointed by the Commission to serve as alternates to members.

(dd) “**Supreme Court**” or “**Court**” means the Colorado Supreme Court.

Rule 3. Organization and Administration

(a) **Composition.** The Commission shall be made up of ten members as provided in the Constitution.

(b) **Officers.** The Commission shall elect from its membership a chair, a vice-chair, and a secretary, each of whom shall serve renewable one-year terms from January 1 to December 31 each year. The vice-chair shall act as chair in the absence of the chair, and in the absence of both, the members present may select an acting chair. An officer’s position and authority shall continue beyond his or her term of office until a successor is duly elected.

(c) **Special Members.** The Commission may appoint a special member to serve in the place of a member who recuses or is disqualified with respect to a complaint, or who may be temporarily unable to perform his or her duties as a member.

(d) **Executive director.** The Commission shall appoint an executive director whose duties and responsibilities, subject to general oversight by the Commission, shall be to:

- (1) Establish and maintain a permanent office;
- (2) Respond to inquiries about the Commission or the Canons;
- (3) Process requests for evaluation of judicial conduct;
- (4) Conduct investigations;
- (5) Recommend dispositions;
- (6) Maintain Commission records;
- (7) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;
- (8) Prepare the Commission's budget and administer its funds;
- (9) Employ the Commission's staff;
- (10) Prepare an annual report of the Commission's activities for presentation to the Commission, to the Supreme Court, and to the public;
- (11) Employ special counsel, investigators, or other experts as necessary to investigate and process matters before the Commission and before the Supreme Court; and
- (12) Perform such other duties as these Rules, the Commission, or the Supreme Court may require.

(e) **Evaluation of the Executive Director.** The members should evaluate the performance of the Executive Director periodically, but no less frequently than annually.

(f) **Meetings.** Meetings shall be held at the call of the chair, the vice-chair, or the executive director, or at the request of three members of the Commission. The Commission may conduct meetings in person or by conference call.

(g) **Quorum.** Six members must be present in person or by conference call for the transaction of business by the Commission.

3.5. Code of Conduct for Members

(a) **General.** The Commission is responsible for maintaining the integrity and independence of the judiciary. The conduct of each member, the Executive Director, and staff of the Commission in the performance of their duties shall be in accordance with this Rule 3.5.

(b) Consent and Enforcement.

(1) **Acknowledgement and Consent.** By accepting appointment to the Commission and participating in its meetings and other activities, each member acknowledges and agrees to abide by the provisions of this Rule 3.5. The Chair should remind the members of their obligations under this Rule and their duty to disqualify themselves when necessary.

(2) **Enforcement.** If a member fails to comply with this Rule, or fails to regularly attend Commission meetings, the Chair or the Executive Director may refer the matter to the Commission as a whole for appropriate corrective action. The Commission may, by the majority vote of a quorum of its members at a meeting, during a conference call, or by email, reprimand the member or temporarily suspend the member from the Commission. In addition, a member who fails to attend three consecutive meetings shall be deemed to have resigned, as provided in Colo. Const. Article VI, Section 23(3)(b).

(3) **Removal.** If the situation involves a violation of this Rule which, in the Commission's view cannot be adequately addressed internally, the Commission may recommend to the Governor's office that the appointment of an attorney member or non-attorney member should be rescinded and the member removed from the Commission; or recommend to the Supreme Court that the appointment of a judge member should be rescinded and the judge removed from the Commission.

(c) Confidentiality.

(1) **General Application.** All disciplinary proceedings of the Commission are confidential in accordance with Article VI, Section 23(3) of the Colorado Constitution and Colo. RJD 6.5.

(2) **Communications.** Neither the Executive Director, Commission staff, nor any member should communicate on behalf of the Commission with the public or news media regarding Commission business, except as provided in this Rule. Members, the Executive Director, and staff may provide general information to educate judges, the public, and the news media about the Commission's Rules and proceedings, but without reference to allegations of misconduct that are pending or that may become pending before the Commission. The Executive Director and staff may describe the allegations and explain the Commission's Rules and procedures to a judge

who is the subject of disciplinary proceedings. Inquiries about actions or positions of the Commission shall be referred to the Executive Director, the Chair, or a Commission member designated by the Chair to speak on behalf of the Commission.

(3) **File Destruction.** Members shall ensure that all confidential documents in their possession are secured; that hard copies of documents received at meetings are destroyed; and that materials sent or received by secure email are protected from disclosure.

(4) **Family, Friends, and Associates.** Members and staff shall take appropriate measures to protect the confidentiality of the Commission's proceedings from disclosure to their family, friends, and business and professional associates.

(5) **Former Members and Staff.** These confidentiality rules will continue to apply to former Commission members and staff with respect to information to which they had access while serving the Commission.

(d) Appearance of Impropriety.

(1) **Private Conduct.** Each member should respect and comply with federal and state laws and conduct the member's personal and professional business at all times in a manner that promotes public confidence in the integrity and impartiality of the Commission.

(2) **Representation before Commission.** No member may represent a judge concerning disciplinary proceedings that are pending or known to be contemplated against the judge.

(3) **Independent Judgment.** In discharging his or her responsibilities, a member should not allow the member's business, professional, family, social, or other relationships to influence the member's conduct or judgment.

(4) **Prestige of the Office.** A member should not lend the prestige of the member's office to advance the private interests of the member; nor should a member convey to another person that such person's relationship with the member could influence the decisions of the Commission.

(5) **Business Dealings.** Each member should refrain from professional, financial, and business dealings that may adversely reflect, directly or indirectly, on the member's impartiality, interfere with the proper performance of Commission duties, or exploit his or her position as a member.

(6) **Staff Obligations.** The provisions of this Rule 3.5(d) also shall apply to the conduct of the Executive Director and staff.

(e) Political Activity.

(1) **Judicial Campaigns.** No member, staff, or the Executive Director shall participate in or contribute to a campaign for or against the retention of a judge for another term in office.

(2) **Non-Judicial Campaigns.** No member, staff, or the Executive Director shall take any action in non-judicial campaigns that would be construed as the Commission's viewpoint for or against a candidate or a public referendum.

(f) Use of State Resources.

(1) **Judicial Branch Policies.** Members and Commission staff who utilize information technology, electronic communications, computers, or other resources provided by the state shall comply with the judicial branch policies applicable to the use thereof by judicial branch employees.

(2) **Staff Services.** Members shall not use Commission staff for their own personal, financial, business, or professional matters.

(g) **Disqualification.**

(1) **Conditions for Disqualification.** A member shall be disqualified, on the member's own motion or by a majority vote of the other members, from the Commission's consideration of allegations of judicial misconduct or judicial disability if the member's ability to participate fairly and impartially could reasonably be questioned, including, for example and without limitation, where the member:

(A) is the judge whose conduct is the subject of a Request for Evaluation of Judicial Conduct, an investigation, a complaint, or other disciplinary or disability proceedings;

(B) was involved in events relating to the allegations;

(C) has personal knowledge of evidence that is relevant to the allegations;

(D) is or expects to be a material witness regarding the subject judge's conduct;

(E) is a close personal friend of the subject judge; or

(F) has a personal bias for or against the subject judge or the person who has alleged judicial misconduct.

(2) **Disclosure.** Each member should disclose to the Commission any present or past family, personal, social, professional, financial, or business relationship with the subject judge or a lawyer who is representing the subject judge; and either recuse from participation in the proceedings or defer to the remainder of the Commission members to determine whether the member should be disqualified from the proceedings in order to avoid the appearance of impropriety.

(3) **Appearance before the Subject Judge.** A lawyer member may disqualify himself or herself from the Commission's consideration of the conduct of a subject judge before whom the lawyer or the lawyer's firm has one or more pending cases. A lawyer member with concerns about a subject judge's ability to remain impartial in presiding over a pending case in which the lawyer member or the lawyer member's firm is counsel, a case in which the lawyer member or the lawyer member's firm is counsel that occurs subsequent to a disciplinary proceeding against the subject judge, or about a judge to whom the subject judge's case was reassigned may disclose the circumstances involving the Commission's proceedings in a motion for disqualification under C.R.C.P. 97 or Crim.P. 21(b).

(4) **Written Materials and Decisions.** A disqualified member shall not respond to or comment on written materials provided by the Commission to its members that are relevant to the allegations regarding the conduct of the subject judge, nor shall such member critique the decision of the remaining members regarding the judge's conduct.

(5) **Previous Complaints.** A member is not disqualified by having considered a previous complaint or a related complaint against the subject judge.

(6) **Excused from Meeting.** A disqualified member shall be excused from the meeting room before the Commission begins its consideration of the allegations and shall return to the meeting after the remaining members have reached a decision. A member judge, however, need not leave during the staff's summary of routine dismissals of Requests for Evaluation that include allegations against the member judge but do not provide a reasonable basis for disciplinary proceedings.

(7) **Special Members.** In accordance with Article VI, Section 23(3)(b) of the Colorado Constitution, the Commission may appoint a special member to sit on the Commission solely for the purpose of deciding the matter in which a member is disqualified.

(h) Complaints regarding the Executive Director and Staff.

(1) **Complaints regarding the Executive Director.** If a member receives a complaint about the conduct of the Executive Director, the member shall refer the complaint to the Chair or Vice-Chair, who shall appoint a subcommittee of the members to conduct an investigation and report their findings to the other members and the Executive Director.

(2) **Complaints regarding Staff.** If a member receives a complaint about the conduct of a staff member, other than the Executive Director, the member shall refer the complaint either to the Executive Director, the Chair, or the Vice-Chair.

Rule 4. Jurisdiction and Powers

(a) Jurisdiction.

(1) **Filing Date.** The Commission has jurisdiction over a Judge regarding allegations of misconduct or a disability and the application of dispositions and sanctions thereto, based on events that occurred while the Judge was an active or senior judge, if a request for evaluation of judicial conduct is received by the Commission (or a complaint is commenced on the Commission's motion) (A) during the Judge's term of office or within one year following the end of the judge's term of office or the effective date of the Judge's retirement or resignation, with respect to alleged misconduct or disability occurring during the Judge's term of office; or (B) during the Judge's service in the senior judge program or within one year following the end of the Judge's service in the senior judge program, with respect to alleged misconduct or disability occurring during the Judge's service in the senior judge program.

(2) **Continuing Jurisdiction.** The jurisdiction of the Commission to fulfill its Constitutional mandate under of Rule 1(b) regarding a pending disciplinary or disability proceeding shall not terminate upon the expiration of the Judge's term of office, the Judge's retirement or resignation, or the appointment or reappointment of the Judge to the senior judge program. Such jurisdiction shall continue until a disposition or sanction is determined.

(b) **Attorney Regulation.** Conduct by a Judge or former Judge that involves grounds for disciplinary action under Rule 5 and/or may involve grounds for a violation of Colo. RPC may be referred by the Commission to Attorney Regulation. Such referral shall not preclude the Commission from proceedings concerning conduct under its jurisdiction coincident with Attorney Regulation's jurisdiction over violations of Colo. RPC. Nothing in these Rules shall be construed to limit the jurisdiction of Attorney Regulation over an attorney with respect to conduct subject to Colo. RPC, which occurred before, during, or after the attorney's service as a judge.

(c) **General Powers.** The Commission shall have the authority and duty to investigate and resolve complaints in accordance with the Constitution and these Rules.

(d) **Evidentiary Powers.** Any member or special master may administer oaths and affirmations, compel by subpoena the attendance and testimony of witnesses, including the Judge as a witness, and provide for the inspection of documents, books, accounts, and other records.

(e) **Contempt Powers.** A Judge's refusal to comply with a disposition ordered under Colo. RJD 35 or the willful misconduct of a Judge or any other person during any stage of the Commission's investigation or consideration of a complaint in informal, formal, or disability proceedings, including, but not limited to, misrepresentation of a material fact, resistance to or obstruction of any lawful process, disruptive behavior, breach of confidentiality, or failure to comply with any of these Rules, may be grounds for direct or indirect contempt, as provided in C.R.C.P. 107. In formal proceedings or disability proceedings, direct contempt may be addressed summarily by the special masters. To address allegations of indirect contempt, the Commission shall request the Supreme Court to appoint a special master. The Commission shall be represented in contempt proceedings by special counsel who shall file a motion with the special master, verified by the executive director or a member of the Commission, alleging the grounds for contempt. The special master may ex parte order a citation to issue to the person charged to appear and show cause at a designated date, time, and place why the person should not be held in contempt. The motion and citation shall be served on the person charged at least seven days before the time required for the person to appear before the special master. The special master shall conduct a hearing and file recommended findings of fact and conclusions of law regarding the alleged contempt with the Supreme Court. The Supreme Court shall consider the special master's recommendations and dismiss the citation or order remedial or punitive sanctions as it deems appropriate under C.R.C.P. 107.

(f) **Administrative Powers.** The Commission may adopt administrative policies, procedural rules, or forms for its internal operation or proceedings that do not conflict with the provisions of these Rules.

(g) **Communications.** The Commission may distribute information to the judiciary and the public concerning its authority and procedures.

Rule 5. Grounds for Discipline

(a) **In General.** Grounds for judicial discipline shall include:

(1) Willful misconduct in office, including misconduct which, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice;

(2) Willful or persistent failure to perform judicial duties, including incompetent performance of judicial duties;

(3) Intemperance, including extreme or immoderate personal conduct; recurring loss of temper or control; abuse of alcohol, prescription drugs, or other legal substances; or the use of illegal or non-prescribed narcotic or mind-altering drugs; or

(4) Any conduct that constitutes a violation of the Code.

(b) **Failure to Cooperate During Proceedings.** A Judge's failure to cooperate with the Commission during the investigation or consideration of a complaint may be grounds for discipline.

(c) **Failure to Comply with a Commission Order.** A Judge's failure or refusal to comply with an order issued under these Rules during disciplinary proceedings or with a disciplinary order resulting from such proceedings may be (i) grounds for initial or supplemental disciplinary measures or (ii) probable cause to proceed with formal proceedings.

(d) **Contempt Proceedings not Precluded.** Determinations by the Commission under sections (b) and (c) of this Rule are in addition to and do not preclude contempt proceedings under Rule 4(e).

(e) **Misconduct Distinguished from Disputed Rulings.** A dispute regarding a Judge's rulings on motions, evidence, procedure, or sentencing; a Judge's findings of fact and conclusions of law; or other matters that are within the jurisdiction of the trial or appellate courts to resolve shall not provide a basis for disciplinary proceedings, unless the Judge's conduct in presiding over the case involves one or more of the grounds provided in this Rule.

Rule 6. [Reserved]

[Revised and restated in 2012 as Rule 6.5]

Rule 6.5. Confidentiality and Privilege

(a) **Confidentiality.** The proceedings of the Commission and special masters, including all papers, investigative notes and reports, pleadings, and other written or electronic records, shall be confidential unless and until the Commission files a recommendation with the Supreme Court under Rule 37. The recommendation and the record of proceedings shall thereupon become

public, subject to the limitations provided in Rule 37. The Supreme Court may enter a protective order requiring that certain portions of the record remain confidential upon a showing of good cause by the Commission, special counsel, special masters, or the Judge.

(b) **Privilege.** Papers or pleadings filed with the Commission, the work product of investigations, testimony given in proceedings, minutes and decisions of the Commission, records of special counsel, hearings conducted by the special masters, and the report of the special masters are privileged and, therefore, cannot be the subject of any legal action against a participant, including a claim for defamation.

(c) **Disability Proceedings.** In disability proceedings, all orders transferring a Judge to or from disability inactive status shall be matters of public record; otherwise, disability proceedings shall remain confidential and shall not be made public, except by order of the Supreme Court.

(d) **Disclosures.** Subject to certification, when required by subsection (e)(2) of this Rule, confidentiality does not apply to (i) the disclosure of the records and proceedings reasonably necessary for the Commission or the executive director to fulfill the Commission's Constitutional mandate under Rule 1(b) or (ii) disclosures in the interest of justice or public safety, including the following:

(1) Disclosure of the allegations in a complaint and related materials reasonably necessary to conduct the investigation of the complaint;

(2) When the Commission has determined that there is a demonstrated need to notify another person in order to protect that person; or to notify an appropriate government agency, including law enforcement or Attorney Regulation, in order to protect the public or the judiciary or to further the administration of justice;

(3) In response to an inquiry by the Supreme Court or SCAO concerning the qualifications of a Judge for appointment or reappointment to other judicial responsibilities (including the senior judge program), by an agency or official authorized to evaluate the qualifications of a Judge who has applied for or has been nominated for another judicial position, or by the Governor with respect to the qualifications of a Judge recommended by a nominating commission for appointment to another judicial position, the Commission shall disclose disciplinary dispositions under Rule 35 (other than requests resulting in dismissals) and sanctions under Rule 36, together with the status of any pending complaints directed at the Judge which the Commission, as of the date of such request, is investigating under Rule 14;

(4) In response to an inquiry by the Office of Judicial Performance Evaluation ("Judicial Performance") if the Commission determines, in its discretion, that disclosure to Judicial Performance is consistent with its Constitutional mandate under Rule 1(b) and on the condition that Judicial Performance will not publicly disclose such information or its source without independent verification by Judicial Performance;

- (5) When a Judge has been convicted of a crime or has become subject to disciplinary measures taken by Attorney Regulation or a similar agency in another jurisdiction;
- (6) Upon request of an agency authorized to investigate the qualifications of persons for admission to practice law;
- (7) Upon request of any attorney discipline enforcement agency;
- (8) Upon request of any law enforcement agency;
- (9) Upon a Judge's written waiver of confidentiality and consent to disclosure; or
- (10) When the Commission or the executive director has knowledge of potential grounds for misconduct under state or federal law, a chief justice directive, or other rule applicable to the conduct of an employee of the state judicial branch (other than a judge) and provides such information to SCAO.

(e) When Certification Required.

- (1) The Commission is permitted to disclose nonpublic information pursuant to subsections (d)(1) through (d)(5) of this Rule without prior notice to, or waiver and consent by, the Judge.
- (2) The Commission is permitted to provide nonpublic information requested pursuant to subsections (d)(6) through (d)(8) of this Rule without prior notice to, or waiver and consent by, the Judge, only if a senior official of the requesting agency provides a verified certificate to the Commission on the agency's letterhead in support of its request, which addresses:
 - (i) Whether there is an ongoing investigation of (A) alleged misconduct by the Judge, (B) an alleged violation of federal or state law, or (C) the Judge's qualifications to practice law;
 - (ii) The reasons the information is essential to that investigation;
 - (iii) Whether the agency has attempted to obtain the Judge's waiver of confidentiality and consent to disclosure or why a request for waiver and consent would be inappropriate or impractical;
 - (iv) Why disclosure of the existence of the investigation to the Judge would significantly prejudice the investigation; and
 - (v) Other factors relevant to the request.
- (3) If an agency authorized to request disclosure by subsections (d)(6) through (d)(8) of this Rule has not obtained a waiver and consent from the Judge or provided the certification required in subsection (e)(2), then the Commission may decline the request or may notify the Judge in

writing of the request which identifies the requesting agency and describes the information proposed to be released. The notice shall advise the Judge that the Commission will release the information, unless the Judge objects to the disclosure within fourteen days after mailing of the notice. If the Judge objects to the disclosure, then the information shall remain confidential unless, upon motion by the requesting agency or the Commission with notice to the Judge, the Supreme Court enters an order requiring release.

(f) **Prior Discipline.** In investigating a complaint, determining a disposition under Rule 35, or in recommending a sanction under Rule 36, the Commission and special masters may consider the record of any discipline previously imposed on the Judge by the Commission or the Supreme Court.

(g) **Public Knowledge.** The Commission or the Judge, by motion filed with the Supreme Court, may assert that allegations of misconduct, the commencement of informal or formal proceedings, and/or the disposition of such proceedings have become generally known to the public and, in the interest of justice, should be publicly disclosed. The Judge or the Commission shall have 14 days to object to or request modifications to the proposed disclosure. The Supreme Court, in its discretion, may deny such motion or order the disclosure as proposed or with such modifications as it deems necessary. Notwithstanding the disclosure of the nature, status, and result of the proceedings, the Commission's records, including but not limited to investigative reports, correspondence, and pleadings, shall remain confidential unless and until the Commission files a recommendation for sanctions in formal proceedings to the Supreme Court under Rule 37(c) or the Commission and the Judge stipulate to the resolution of formal proceedings under Rule 37(e).

(h) **Summaries.** In the annual report required by Rule 3(d)(10), the Commission may publish summaries of proceedings which have resulted in disciplinary dispositions or sanctions. A summary may include a brief statement of facts, references to the applicable Canons or Canon Rules, and a description of the disciplinary action taken, but shall not disclose the date or location of the factual basis for the disciplinary measures or the identity of the Judge, the complainant, witnesses, or other parties to the proceedings.

(i) **Duty of Officials and Employees.** All officials and employees within the Commission, the executive director's office, special counsel's office, special masters' offices, and the Supreme Court shall conduct themselves in a manner that maintains the confidentiality mandated by these Rules.

Rule 7. Notice of Action

Upon termination of any proceedings hereunder, the Judge, the Judge's counsel, special counsel, and the complainant shall be notified of the action taken by the Commission or the Supreme Court and all participants shall be advised of the confidentiality of Commission proceedings.

Rule 8. Service

(a) **Service on Judge.** All papers and pleadings in proceedings may be served on a Judge in person or by mail, except that a notice of formal charges served by mail must be served by certified mail. Mail shall be sent to the chambers or last known residence of a Judge, or to an address designated by the Judge. If counsel has been designated for a Judge, all notices, papers, and pleadings may be served on the Judge's counsel in lieu of service upon the Judge.

(b) **Service on Commission.** Service of papers and pleadings on the Commission or any member shall be by delivering or mailing the papers to the Commission's office.

(c) **Service on Special Counsel.** Service of papers and pleadings on special counsel shall be by delivery or mail to special counsel's office.

(d) **When Service Accomplished.** When service is by mail, a pleading or other document is timely served if mailed within the time permitted for service.

Rule 8.5. Procedural Rights of Judge

(a) **Counsel.** A Judge may confer with and be represented by counsel at any stage of disciplinary or disability proceedings. If counsel has entered an appearance, all communications and pleadings from the Commission, the executive director, and special counsel shall be directed to the Judge's counsel. In formal proceedings and disability proceedings, a Judge may testify, introduce evidence, and examine and cross-examine witnesses, and the Judge's counsel may introduce evidence and examine and cross-examine witnesses.

(b) **Guardian ad litem.** If it appears to the Commission at any time that a Judge may not be competent to act, the Commission shall appoint a guardian ad litem for the Judge at the Commission's expense. The guardian ad litem may claim and exercise any right or privilege that could be claimed or exercised by the Judge, including the selection of counsel, a request for an independent medical examination, or the commencement of disability proceedings under Rule 33.5. Any notice to be served on the Judge shall also be served on the guardian ad litem.

Rule 9. Disqualification of an Interested Party

A Judge who is a member shall be disqualified from participation in any proceedings involving the Judge's own discipline or disability. A justice of the Supreme Court shall be disqualified from participating in formal proceedings concerning the justice's own discipline or disability. A member or the executive director may recuse himself or herself in any proceeding involving a Judge who is a close personal acquaintance, their current or recent professional or business associate, or where there are other actual or potential conflicts of interest.

Rule 10. Immunity

Members, the executive director, Commission staff, its investigators, special counsel, and special masters shall be absolutely immune from suit for all conduct in the course of their official duties.

Rule 11. Amendment of Rules

The Commission may petition the Supreme Court to amend or alter these Rules as may be necessary to implement the Commission's Constitutional mandate. Any person may request the adoption, amendment, or repeal of a Rule by filing a petition with the Commission describing the proposed change.

PART B. INFORMAL PROCEEDINGS

Rule 12. Request for Evaluation of Judicial Conduct

To initiate a complaint, any person or organization may request that the Commission examine a Judge's conduct. The request should identify the Judge, the person or organization making the request, and describe conduct by the Judge that may involve grounds for disciplinary or disability proceedings. A request may be in any format; however, the Commission shall prepare and distribute printed forms to guide a complainant in making a request for evaluation of judicial conduct. Commission staff will make reasonable accommodations for a person with disabilities in preparing and filing a request.

Rule 13. Preliminary Proceedings

(a) **Evaluation of the Request.** The executive director or one or more members of the Commission, upon receipt and without undue delay, shall evaluate each request to determine whether it alleges sufficient grounds for the Commission to consider disciplinary or disability proceedings. The evaluation may include a preliminary review of documentation, including court records.

(b) **Complaint.** If the members of the Commission, based on an evaluation of the request, conclude that there is a reasonable basis for disciplinary or disability proceedings, the Commission shall process the request as a complaint under these Rules.

(c) **Absence of a Reasonable Basis for a Complaint.** The executive director or members of the Commission shall close the matter without further consideration, if:

- (1) The request does not allege sufficient grounds for disciplinary or disability proceedings;
- (2) The request disputes a Judge's rulings on motions, evidence, procedure, or sentencing; a Judge's findings of fact and conclusions of law; or other matters that are within the jurisdiction

of the trial or appellate courts to resolve, without providing grounds for disciplinary or disability proceedings;

(3) The allegations are frivolous; or

(4) The allegations involve subject matter that is not within the jurisdiction of the Commission.

(d) **Reply to the Request.** The executive director or a member of the Commission shall provide a written explanation to the complainant of the results of its evaluation.

(e) **Reports from Other Offices.** In its evaluation and any subsequent proceedings, the Commission may consider relevant information contained in (1) a report of an investigation by SCAO regarding the conduct of a Judge and/or other employees of the judicial branch or (2) a report by Attorney Regulation regarding (i) the misconduct of an attorney who has been appointed as a Judge or (ii) attorney misconduct that involves a Judge.

(f) **Complaints initiated by the Commission.** The Commission on its own motion, based on information it deems reliable, may determine that there is a reasonable basis on which to initiate a complaint. The Commission shall process such a complaint in the same manner as other complaints.

Rule 14. Investigation and Notice to Judge

(a) **Notice to Judge.** As soon as practicable, after the members of the Commission have concluded that the allegations are sufficient to be processed as a complaint, the Commission shall provide written notice to the Judge of the allegations and commence an investigation. A copy of the Rules shall be included with the notice or incorporated by reference into the notice. The Commission is not required to notify a Judge of a request for evaluation that the Commission determined to be insufficient for consideration as a complaint.

(b) **Investigation.** The Commission's investigation may include interviews; an examination of pleadings, orders, transcripts, and other court records; and consideration of other evidence relevant to the allegations. The Commission or the executive director, in its, his, or her discretion, may determine when the complainant should be notified of the investigation.

(c) **Expedited Notice and Investigation.** If the request alleges an unreasonable delay in performing judicial duties or other circumstances which, in the good faith judgment of the executive director, require immediate commencement of disciplinary or disability proceedings, the executive director may process the request as a complaint, notify the judge, and begin the investigation without the prior approval of the members of the Commission.

(d) **Judge's Response.** The Judge shall be afforded a reasonable opportunity to provide a written response to the allegations or to appear before the Commission.

(e) **Temporary Suspension.** The Commission may request the temporary suspension of a Judge under Rule 34 during an investigation.

Rule 15. Independent Medical Examination

If the preliminary evaluation or the investigation indicates that a Judge may have a physical or mental condition which significantly impairs his or her performance of judicial duties, the Commission may order the Judge to submit to one or more independent examinations by physicians or other persons with appropriate professional qualifications, who shall report their findings and recommendations to the Commission.

Rule 16. Determination

(a) **Summary.** The executive director or the Commission shall appoint a member to serve as the presenter who shall provide a summary of an investigation, including the allegations, the Judge's response, and other relevant evidence, to the other members.

(b) **Decision.** The Commission shall consider the summary of the investigation and by majority vote of the members participating in person and by conference call, exclusive of the presenter, dismiss the complaint under Rule 35(a) or take one of, or a combination of any of, the following measures:

(1) Apply a private disciplinary disposition under subsections (c) through (i) of Rule 35;

(2) Initiate disability proceedings under Rule 33.5;

(3) Request a temporary suspension of the Judge under Rule 34; or

(4) Appoint special counsel to review the summary, conduct such further investigation as may be appropriate, and advise the Commission regarding its options to address the allegations; and, upon consideration of special counsel's advice, dismiss the complaint, adopt a private disciplinary disposition, initiate disability proceedings, request a temporary suspension of the Judge pending further proceedings, determine that probable cause exists for the commencement of formal proceedings, or continue the investigation.

(c) **Standard of Proof.** The standard of proof for a decision under section (b) of this Rule shall be the preponderance of the evidence.

Rule 17. Disqualification of a Judge

When a complaint is filed against a Judge, the Commission may order the Judge disqualified, on request of the complainant or on the Commission's own motion, in any litigation in which the

complainant is involved. Disqualification will be ordered only when the circumstances warrant such relief. After completion of the disqualifying litigation, the order for disqualification shall terminate unless extended by the Commission.

PART C. FORMAL PROCEEDINGS

Rule 18. Statement of Charges, Notice, and Pleadings in Formal Proceedings

(a) **Commencement of Formal Proceedings, Statement of Charges, and Notice.** Special counsel shall commence formal proceedings in the name of the People of the State of Colorado by serving a statement of charges together with a notice of formal charges on the Judge. The case shall be captioned “In re the Matter of the People of the State of Colorado, Complainant, and Judge [name], Respondent.”

(1) The statement of charges shall state in ordinary and concise language the grounds for the charges with specific reference to the alleged misconduct and applicable Canons, Canon Rules, or Colo. RJD. The notice shall advise the Judge of his or her right to file an answer to the statement of charges, which shall include a response to each allegation together with applicable affirmative defenses or mitigation factors.

(2) Pleadings in formal proceedings shall follow the general format for civil pleadings. The statement of charges, notice of formal charges, the originals of all pleadings, and the orders of the special masters shall be filed in the office of the executive director, who shall maintain the record of proceedings.

(b) **Role of Special Counsel in Formal Proceedings.** At all times during formal proceedings, special counsel shall represent the People and shall inform the Commission periodically concerning the status of the proceedings.

Rule 18.5. Special Masters

(a) **Appointment.** After special counsel has served the statement of charges and notice of formal charges on the Judge and filed copies thereof with the executive director, the Commission shall request the Supreme Court to appoint three special masters to preside over formal proceedings who shall hear and take evidence concerning the charges and provide a report to the Commission in accordance with the Constitution and these Rules. The appointees may be retired justices or active or retired judges of courts of record, who have no conflicts of interest and who are able to serve diligently and impartially as special masters. Unless otherwise designated, the judge or justice first named in the Supreme Court's order shall be the presiding special master. The presiding special master is authorized to act on behalf of the special masters in resolving pre-hearing issues, including but not limited to discovery disputes; conducting pre-hearing conferences; and ruling on evidentiary, procedural, and legal issues that arise during hearings.

(b) **One Special Master.** The Commission may request the Supreme Court to appoint one special master for designated purposes in any proceeding.

Rule 19. Response of Judge

The Judge shall file a response to the statement of charges with the executive director within 21 days after service of the statement of charges and notice of formal charges. The special masters may consider the failure or refusal to respond as an admission of the charges.

Rule 20. Setting for Hearing

After the filing of the Judge's response under Rule 19, or if the Judge does not file a response under Rule 19, the presiding special master shall order that the formal proceedings are at issue and shall schedule a hearing regarding the matters contained in the statement of charges and the response, if any. The special masters shall serve notice on all parties of the location and date of the hearing, which shall begin no later than 91 days after the at issue date, unless extended for good cause by order of the presiding special master.

Rule 21. [Reserved]

[Revised and restated in 2012 as Rule 21.5]

Rule 21.5 Discovery

(a) **Purpose and Scope.** Rule 21.5 shall govern discovery in judicial discipline and disability proceedings. C.R.C.P. 26 shall not apply to such proceedings, except as provided in this Rule or as ordered by the presiding special master.

(b) **Meeting.** A meeting of the parties shall be held no later than 14 days after the case is at issue to confer with each other about the nature and basis of the claims and defenses and discuss the matters to be disclosed.

(c) **Disclosures.** No later than 21 days after the case is at issue, the parties shall disclose:

(1) The name and, if known, the address, and telephone number of each person likely to have discoverable information relevant to disputed facts alleged in the pleadings, and the nature of the information;

(2) A listing, together with a copy or description of all documents, written or electronic records, and tangible things in the possession, custody, or control of the Commission or the Judge that are relevant to the disputed facts in the proceedings; and

(3) A statement of whether the parties anticipate the use of expert witnesses, identifying the subject areas of the proposed experts.

(d) **Limitations.** Except upon order by the presiding special master for good cause shown, discovery shall be limited as follows:

(1) Special counsel may take one deposition of the Judge and two other persons in addition to the depositions of experts. The Judge or the Judge's counsel may take one deposition of the complaining witness and two other persons in addition to the depositions of experts. The scope and manner of proceeding by way of deposition and the use thereof shall otherwise be governed by C.R.C.P. 26, 28, 29, 30, 31, 32, and 45.

(2) A party may serve on the adverse party 30 written interrogatories, each of which shall consist of a single question. The scope and manner of proceeding by means of written interrogatories and the use thereof shall otherwise be governed by C.R.C.P. Rules 26 and 33.

(3) When the mental or physical condition of the Judge has become an issue in the proceeding, the presiding special master, on motion of any party or any of the special masters, may order the Judge to submit to a physical or mental examination by a suitable licensed or certified examiner. The order may be made only upon a determination that reasonable cause exists and after notice to the Judge. The Judge will be provided the opportunity to respond to the motion; and the Judge may request a hearing before the special masters. The hearing shall be held within 14 days of the date of the Judge's request, and shall be limited to the issue of whether reasonable cause exists for such an order.

(4) A party may serve the adverse party requests for production of documents pursuant to C.R.C.P. 34, except such requests for production shall be limited to 20 in number, each of which shall consist of a single request.

(5) A party may serve on the adverse party 20 requests for admission, each of which shall consist of a single request. The scope and manner of proceeding by means of requests for admission and the use thereof shall otherwise be governed by C.R.C.P. 36.

(e) **Good Cause.** In determining good cause pursuant to section (d) of this Rule, the presiding special master shall consider the following:

(1) Whether the scope of the proposed discovery is reasonable and likely to produce evidence that is material to the issues in the proceedings;

(2) Whether the discovery sought is unreasonably cumulative, unreasonably duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(3) Whether the burden or expense of the proposed discovery outweighs its likely benefit; and

(4) Whether the party seeking discovery has had ample opportunity by disclosure or discovery in the proceedings to obtain the information sought.

(f) **Supplementation of Disclosures and Discovery Responses.** A party is under a duty to supplement its disclosures under section (c) of this Rule when the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process. A party is under a duty to amend a prior response to an interrogatory, request for production, or request for admission when the party learns that the prior response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process. With respect to experts, the duty to supplement or correct extends to information contained in the expert's report or summary disclosed in pre-hearing proceedings and to information provided through any deposition of or interrogatory responses by the expert. Supplementation shall be provided in a timely manner.

(g) **Protective Orders.** Upon motion by a party or by the person from whom disclosure is due or discovery is sought, accompanied by a certificate that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute, and for good cause shown, the special masters may take any action which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including the issuance of one or more of the following orders:

(1) That the disclosure or discovery not be had;

(2) That the disclosure or discovery may be had only on specified terms and conditions, including designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the special masters; and

(6) That a deposition, if sealed, be opened only by order of the special masters.

If the motion for a protective order is denied in whole or in part, the special masters, on such terms and conditions as are just, may order that any party or other person provide or permit discovery. The provisions of C.R.C.P. 37(a)(4) apply to an award of expenses incurred with regard to the motion.

Rule 22. Subpoena and Inspection

Special counsel and the Judge shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the Judge as witness, and to provide for the production and inspection of documents, books, accounts, and other records. Subpoenas may be issued by the chair, the executive director, special counsel, the Judge's counsel, or a special master and shall be served in the manner provided by law for the service of subpoenas in a civil action. A party requesting or issuing a subpoena shall file a copy of each subpoena with the special masters; shall notify all parties of the issuance and service of each subpoena; and shall not cancel any subpoena without the approval of the presiding special master or the agreement of the parties.

Rule 23. Witness Fees and Expenses

All witnesses in formal proceedings shall receive fees and expenses in the amount allowed by law for civil litigation in the district courts, except as provided in this Rule. Fees and expenses of witnesses shall be borne by the party calling them. The Commission may, upon a showing of good cause, reimburse a Judge for reasonable expenses incurred for consultations with or testimony by a physician or mental health professional with respect to whether the Judge's conduct is adversely affected by a physical or mental condition. If the Judge is exonerated of allegations of misconduct in a matter that does not involve disability issues and the Commission determines that the Judge's payment of witness fees and expenses would work a financial hardship or injustice upon the Judge, then it may pay or reimburse such fees and expenses.

Rule 24. [Reserved]

[Revised and restated in 2012 as Rule 18.5]

Rule 25. Prehearing Procedures

The special masters may direct the parties to appear in person or by telephone for prehearing procedures which shall generally follow C.R.C.P. 16, but in a manner suitable for formal proceedings.

Rule 26. Hearing

(a) **In General.** At the time and place designated by notice, the special masters shall hear and take evidence, as required by Article VI, Section 23(3)(e) of the Constitution. Special counsel shall present the case in support of the formal charges. The presiding special master shall rule on all motions and objections made during the hearing, subject to the right of the Judge, the Judge's counsel, or special counsel to appeal a ruling to all of the special masters. The special masters shall provide a report to the Commission, as required by Article VI, Section 23(3)(e) of the Constitution and Rule 32, which shall be approved by majority vote of the special masters. In the

event that a majority of the special masters cannot agree on the content of the report, each special master shall issue a report.

(b) **Failure to Appear.** The special masters may determine, in their discretion, whether the failure of the Judge to appear at the hearing may be considered an admission of the allegations in the statement of charges, unless such failure was due to circumstances beyond the Judge's control.

Rule 27. Procedures and Rules

The hearing in formal proceedings shall be conducted in accordance with C.R.C.P., except where the special masters determine that certain provisions of C.R.C.P. would be impractical or unnecessary. The order of presentation in a hearing shall be the same as in civil cases. All witnesses shall give testimony under oath, and rules of evidence applicable in civil proceedings shall apply. Procedural errors or defects not affecting the substantive rights of a Judge shall not be grounds for invalidation of the proceedings.

Rule 28. [Reserved]

[Revised and restated in 2012 in Rules 8.5 and 33]

Rule 29. Amendment to Pleadings

The special masters may in the interest of justice allow or require amendments to pleadings at any time in accordance with C.R.C.P.

Rule 30. Additional Evidence

The special masters may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of the hearing and shall indicate matters on which the evidence is to be taken. A copy of such order shall be served on the Judge and special counsel at least 14 days prior to the date of hearing.

Rule 31. Standard of Proof

The standard of proof in all formal proceedings and disability proceedings shall be clear and convincing evidence.

Rule 32. Report of the Special Masters

At the conclusion of the hearing in formal proceedings, the special masters shall issue and file with the executive director a report which shall include written findings of fact regarding the evidence in support of and in defense to the allegations in the complaint, a report of any prior disciplinary action by the Commission against the Judge, and its recommendations to the

Commission for dismissal of the charges, a private disposition, or one or more sanctions. The executive director shall certify the special masters' report as part of the record of proceedings to be filed with the Supreme Court, in accordance with Rule 37.

Rule 33. Record of Proceedings

The record of proceedings shall consist of the report of the special masters together with pleadings, motions, verbatim electronic or written transcripts of proceedings, affidavits, exhibits, findings of fact and conclusions of law, legal briefs, and any other documentation designated by the Commission for the Supreme Court's consideration. The special masters shall determine whether the verbatim record will be made by court reporter or electronic recording. The Judge shall be provided, on request and without cost, copies of electronic recordings that are made of any portion of the proceedings. The Judge may, in addition, have all or any portion of the testimony in the proceedings transcribed at the Judge's own expense. Special counsel's work product, the investigation file, discovery, and deliberations of the Commission or the special masters shall not be included in the record of proceedings unless so ordered by the Court.

Rule 33.5. Disability Proceedings

(a) **Initiation of a Disability Proceeding.** A disability proceeding can be initiated by a request for evaluation of judicial conduct, by the Commission, by a Judge or the Judge's counsel, by a claim of inability to defend in a disciplinary proceeding, by an order of involuntary commitment or adjudication of incompetency, or as a result of information discovered during the course of disciplinary proceedings.

(b) **Proceedings to Determine Disability Generally.** The Commission shall conduct all disability proceedings in accordance with the procedures for disciplinary proceedings, except:

(1) The purpose of the disability proceedings shall be to determine whether the Judge suffers from a physical or mental condition that adversely affects the Judge's ability to perform judicial functions or to assist with his or her defense in disciplinary proceedings;

(2) All of the proceedings shall be confidential;

(3) The Commission may appoint a lawyer to represent the Judge if the Judge is without representation;

(4) In lieu of a Rule 18.5 appointment of three special masters, the Supreme Court may, in its discretion, appoint one special master, who is qualified to oversee disability proceedings (and who need not be a judge of a court of record), to conduct a hearing to take and consider evidence, promptly transmit a report concerning the alleged disability to the Supreme Court, and otherwise act as provided in this Rule for action by three special masters; and

(5) If the Supreme Court concludes that the Judge is incapacitated to hold judicial office, it may enter orders appropriate to the nature and probable length of the period of disability, including:

(i) Retirement of the Judge for a disability interfering with the performance of his or her duties which is, or is likely to become, of a permanent character;

(ii) Transfer of the Judge to temporary judicial disability inactive status. Such transfer shall be for a period of 182 days (the “temporary transfer period”). The special master(s) shall take appropriate measures to review the Judge’s disability status during the temporary transfer period, and issue a report to the Supreme Court on the degree of the Judge’s disability no later than 70 days after the beginning of the temporary transfer period. If the special master(s) find that the Judge remains disabled, the special master(s) shall again review the Judge’s condition within the 35 days preceding the end of the temporary transfer period and report to the Supreme Court on or before expiration of the 182 days. The Court may order more frequent reports during the temporary transfer period, in its discretion. For good cause, the Court may extend the temporary transfer period, but not to exceed an additional 182 days, and require periodic reports from the special master(s) during and at the end of the extension. In each report, the special master(s) shall determine whether the Judge is no longer disabled or that the disability is continuing, and shall recommend whether the Judge should be returned to active status or, retired due to a disability under subsection (b)(5)(i) of this Rule. The Court shall consider the recommendations and enter any order appropriate under the circumstances;

(iii) Transfer of the Judge to lawyer disability inactive status, if the Supreme Court concludes that the Judge is unable to practice law; or

(iv) Suspension of the disciplinary proceeding, pursuant to subsection (c)(2) of this Rule.

(c) Inability to Properly Defend in a Disciplinary Proceeding.

(1) If, in the course of a disciplinary proceeding, a Judge, the Judge’s counsel or personal representative, or special counsel, if appointed, alleges that the Judge is unable to assist in his or her defense due to mental or physical disability, the Commission shall promptly notify the Supreme Court and suspend the disciplinary proceeding. The Supreme Court shall immediately transfer the Judge to lawyer and judicial disability inactive status and appoint a special master, or special masters, under subsection (b)(4) of this Rule, who shall consider all relevant factors and/or stipulations of the parties, conduct a hearing if necessary, and report to the Supreme Court concerning the Judge’s alleged disability. The 182 day temporary transfer period, provided in subsection (b)(5)(ii) of this Rule, shall not commence until and unless the special master(s) determine that the Judge cannot assist with his or her defense under subsection (c)(2) of this Rule.

(2) The Supreme Court shall consider the report of the special master(s) to determine whether the Judge can assist in such defense. If it finds that the Judge can assist, the disciplinary proceeding

shall be resumed but the Judge shall remain on lawyer and judicial inactive status, pending the results of the disciplinary proceeding. If it finds that the Judge cannot assist, the disciplinary proceeding shall remain in suspension and the Judge shall be placed on (i) temporary judicial disability inactive status, subject to the provisions of subsection (b)(5)(ii) of this Rule, and (ii) on lawyer disability inactive status. If the Supreme Court, under subsection (b)(5)(ii), subsequently determines that the Judge is no longer disabled, the Judge shall be restored to lawyer and judicial active status and the Commission may resume the disciplinary proceeding.

(d) Involuntary Commitment or Adjudication of Incompetency. If a Judge has been declared incompetent by judicial order or has been involuntarily committed to an institution by judicial order on the grounds of incompetency or disability, the Supreme Court shall, after considering all relevant factors, enter an order appropriate in the circumstances, including but not limited to: (i) retiring the Judge under subsection (b)(5)(i) of this Rule; (ii) transferring the Judge to temporary judicial disability inactive status and evaluating the Judge's disability under provisions of subsection (b)(5)(ii); and/or (iii) transferring the Judge to lawyer disability inactive status under subsection (b)(5)(iii). A copy of the order shall be served on the Judge, his or her guardian, and the director of such institution. All such orders shall be public, in accordance with section (i) of this Rule.

(e) Stipulated Disposition for Disability.

(1) The special masters may designate one or more experts whom the special masters deem, in their discretion, to be appropriately qualified in medicine, psychiatry, or psychology, and who shall examine the Judge prior to considering evidence of the alleged disability.

(2) After receipt of the examination report, the Commission or special counsel and the Judge may agree upon a stipulated disposition which includes proposed findings of fact, conclusions of law, and an order. The stipulated disposition shall be submitted to the special master(s) who shall forward it to the Supreme Court for approval or rejection.

(3) If the Supreme Court approves the stipulated disposition, it shall enter an order in accordance with its terms. If the stipulated disposition is rejected by the Supreme Court, the disability proceedings shall resume, but any statements by or on behalf of the Judge in the proposed disposition shall not be used as an admission of any material fact.

(f) Interim Appointment. The Supreme Court may designate another judge to assume the Judge's duties during the Judge's disability inactive status.

(g) Reinstatement from Judicial Disability Inactive Status.

(1) A Judge may petition the Court at any time, on good cause, for reinstatement to active judicial and lawyer status.

(2) Upon the filing of a petition for transfer to active judicial status, the Supreme Court may take or direct whatever action it deems necessary or proper to determine whether the disability has been removed, including but not limited to an examination of the Judge by a physician or mental health practitioner designated by the Supreme Court or consideration of the findings of the special master(s) under subsection (b)(5)(ii) of this Rule.

(3) With the filing of a petition for reinstatement to active judicial status, the Judge shall be required to disclose the name of each physician or mental health practitioner and hospital or other institution by whom or in which the Judge has been examined or treated since the transfer to judicial disability inactive status. The Judge shall furnish to the Supreme Court written consent to the release of information and records relating to the disability, if requested by the Supreme Court or by court-appointed experts. The Judge shall bear the burden of proof to establish grounds for reinstatement.

(4) A Judge who is returned to active judicial status will be eligible to apply for another judicial position or for the senior judge program.

(5) Reinstatement to active lawyer status shall be under the jurisdiction of Attorney Regulation, pursuant to C.R.C.P. 251.30.

(h) **Waiver of Medical Privilege.** Asserting a mental or physical condition as a defense to or in mitigation of judicial misconduct constitutes a waiver of medical privilege in any disciplinary proceeding.

(i) **Public Orders.** All recommendations of the special master(s) and orders of the Supreme Court under this Rule shall be public. However, the pleadings, briefs, and evidence considered by the special master(s), including but not limited to testimony, medical reports, and other documentation, shall remain confidential.

PART D. DISPOSITIONS AND SANCTIONS

Rule 34. Temporary Suspension

(a) **Request to Supreme Court.** The Commission, by its chair, the executive director, or special counsel, may request the Supreme Court to order temporary suspension of a Judge, with pay, pending the resolution of preliminary or formal proceedings. The request shall include a statement of the reasons in support of the suspension, which may include the Judge's failure to cooperate with the Commission. Upon receipt of such a request, the Court may require additional information from the Commission.

(b) **Order to Show Cause.** Upon a finding that the Supreme Court has been fully advised and that a temporary suspension is appropriate, the Court (1) shall issue an order for temporary suspension; (2) direct the Commission to issue an order to the Judge to show cause to the

Commission in writing, within 21 days, why the Judge should not continue to be temporarily suspended from any or all judicial duties pending the outcome of preliminary or formal proceedings before the Commission; and (3) appoint an active, retired, or senior judge or a retired justice as special master to preside over a show cause hearing. The Court may issue an order for temporary suspension and an order to show cause to the Commission on its own motion.

(c) **Hearing.** The special master shall conduct a hearing on the order to show cause within 28 days of the Judge's response to such order or such later date ordered by the special master, at which the executive director, special counsel, the Judge, Judge's counsel, and witnesses may appear and participate. Within seven days following the conclusion of the hearing, the special master shall file its findings and conclusions with the Supreme Court. Within the seven days thereafter, special counsel and the Judge or the Judge's counsel may file exceptions with the Court regarding the findings and conclusions. Upon its consideration of the findings, conclusions, and exceptions, the Court may affirm, modify, or terminate the temporary suspension.

(d) **Further Order.** The Supreme Court may issue further orders concerning the suspension, as it may deem appropriate.

(e) **Voluntary Suspension.** The Commission may inquire whether a Judge will voluntarily submit to temporary suspension, and a written consent, if obtained, shall be filed with the Supreme Court.

(f) **Public Notice.** An order by the Supreme Court for temporary suspension shall become public upon its issuance. However, the Commission's investigation, pleadings, and other records with respect to the temporary suspension and its record of proceedings in preliminary or formal proceedings shall remain confidential unless and until a recommendation for sanctions or a recommendation for approval of a stipulated resolution is filed with the Court under Rule 37.

Rule 35. Dispositions

Upon consideration of all the evidence and the report of the presenter(s), the Commission may order any of the following dispositions:

(a) **Dismissal.** Dismiss an unjustified or unfounded complaint, which may include an appropriate expression of concern by the Commission regarding the circumstances;

(b) **Disability Proceedings.** Initiate disability proceedings under Rule 33.5 or stipulate to voluntary retirement by the Judge for a disability under Rule 33.5(e);

(c) **Diversion Plan.** Direct the Judge to follow a diversion plan, including but not limited to education, counseling, drug and alcohol testing, medical treatment, medical monitoring, or

docket management, which may be accompanied by the deferral of final disciplinary proceedings;

(d) **Private Admonishment.** Admonish the Judge privately for an appearance of impropriety, even though the Judge's behavior otherwise meets the minimum standards of judicial conduct;

(e) **Private Reprimand.** Reprimand the Judge privately for conduct that does not meet the minimum standards of judicial conduct;

(f) **Private Censure.** Censure the Judge privately for conduct which involves a substantial breach of the standards of judicial conduct;

(g) **Costs and Fees.** Assess costs or fees of an investigation, examination or proceeding; or

(h) **Stipulated Disposition.** Agree with the Judge to a stipulated private disposition which may include the Judge's resignation, retirement, or agreement not to stand for retention; disciplinary measures under sections (c) through (g) of this Rule; and/or dismissal of the complaint with or without such disciplinary measures. A stipulated private disposition shall remain confidential, subject to Rule 6.5(g).

(i) **Other Action.** Take or direct such other action, including any combination of dispositions that the Commission believes will reasonably improve the conduct of the Judge. A Judge who disagrees with a disposition under this Rule has the right to request that the complaint be resolved through formal proceedings.

Rule 36. Sanctions

After considering the record of proceedings and the report of the special masters, in accordance with Article VI, Section 23(3)(e) of the Constitution, the Commission, by majority vote of the members meeting in person or by conference call, including the vote of any member who served as a presenter in prior proceedings, shall recommend that the Supreme Court dismiss the charges or order one or more of the following sanctions, except that a recommendation for removal shall require a majority vote of all members of the Commission:

(a) **Removal.** Remove the Judge from office;

(b) **Retirement.** Order the retirement of the Judge.

(c) **Suspension.** Suspend the Judge without pay for a specified period;

(d) **Disability Proceedings.** Remand the matter to the Commission for disability proceedings or stipulate to voluntary retirement by the Judge for a disability under Rule 33.5(e);

(e) **Public Reprimand or Censure.** Reprimand or censure the Judge publicly, either in person or by written order;

(f) **Diversion or Deferred Discipline.** Require compliance with a diversion plan or deferred discipline plan;

(g) **Costs and Fees.** Assess the costs and fees incurred by the Commission, which may include a recommendation for reimbursement of its reasonable attorney fees, provided the recommendation includes grounds for such reimbursement that the Court determines to be appropriate and equitable in the circumstances; or

(h) **Other Discipline.** Impose any other sanction or combination of sanctions, including dispositions under Rule 35, that the Court determines will curtail or eliminate the Judge's misconduct.

Rule 36.5 Conviction of a Crime

(a) **Suspension.** Whenever a Judge has been found guilty, by a verdict or a plea of guilty in any state or federal court of the United States, of a felony or an offense involving moral turpitude, the Supreme Court on its own motion or upon petition filed by any person and a finding that such a finding of guilty was had, shall enter an order suspending the Judge from office and suspending the payment of the Judge's salary until such time as the Judge is sentenced.

(b) **Removal.** Upon the sentencing of the Judge, the Supreme Court shall enter an order removing the Judge from office and declaring the Judge's office vacant; and also forfeiting the Judge's salary, retroactive to the date of the finding of guilty.

(c) **Reversal or Acquittal.** If the judgment of guilty is reversed and a judgment of acquittal or a dismissal is then entered, the Judge shall recover the salary that had been forfeited pursuant to section (b) of this Rule together with the salary that would have accrued through the date of acquittal or dismissal. While reversal of a conviction does not entitle the Judge to resume his or her previous judicial office or to be paid a salary beyond the date of acquittal or the date of dismissal, the Judge will be eligible for consideration by a judicial nominating commission for open positions and will be eligible to apply for the senior judge program.

(d) **Effect of Pleas.** A plea of guilty or *nolo contendere* shall be equivalent to a finding of guilty for the purpose of this Rule.

PART E. SUPREME COURT ACTION

Rule 37. Recommendations

(a) **Filing the Record of Proceedings and Recommendation.** Upon the Commission's consideration of the report of the special masters, the executive director shall file, with the clerk of the Supreme Court, the record of the proceedings and the Commission's recommendation to the Court for dismissal, sanctions, a private disposition, or a stipulated resolution.

(b) **Dismissal.** If the Commission recommends dismissal, the dismissal and the record of proceedings shall remain confidential, unless the Supreme Court orders public disclosure under Rule 6.5(g).

(c) **Sanctions.** The Commission may recommend one or more of the sanctions provided in Rule 36. The Commission's recommendation for sanctions and the record of proceedings shall become public upon filing the recommendation with the Supreme Court, and the clerk shall docket the recommendation for the Court's expedited consideration. The executive director shall promptly serve a copy of the recommendation and notice of the date of its filing on the Judge (or the Judge's counsel) and on special counsel. The executive director shall file proof of service of the recommendation and the notice with the clerk. Exceptions to the recommendation may be filed under Rule 38.

(d) **Private Disposition.** As an alternative to sanctions, the Commission may recommend a private disposition under Rule 35. The executive director shall notify the Judge (or the Judge's counsel), special counsel, and the Supreme Court of the Commission's recommendation. Exceptions to the recommendation may be filed under Rule 38. The recommendation, exceptions, and any disposition resulting therefrom shall remain confidential subject to the provisions of Rule 6.5(g). If the Court does not approve the disposition, the case shall be remanded to the Commission and the record shall remain sealed pending the Commission's further action.

(e) **Stipulated Resolution of Formal Proceedings.** Special counsel and the Judge may propose that the Commission adopt a stipulated resolution of formal proceedings, which shall include summaries of the principal allegations, the Judge's response, and material facts that are agreed or remain disputed; relevant Canons, Canon Rules, or provisions of Colo. RJD; recommendations for dismissal or sanctions; and an acknowledgement that the stipulated resolution and the record of proceedings will become public. If the Commission finds that the terms of the stipulated resolution comply with these requirements, it shall file the stipulated resolution with the Supreme Court as its recommendation under this Rule. The recommendation, the stipulated resolution, the record of proceedings, and any sanctions proposed in the stipulated resolution shall become public upon the Commission's filing of the recommendation with the Court. However, if it provides for dismissal, the stipulated resolution and the record of proceedings shall be confidential pending the Court's consideration, and if approved by the Court, the stipulated resolution and the record of proceedings shall remain confidential, subject to the provisions of Rule 6.5(g).

Rule 38. Exceptions

Exceptions to a recommendation under Rule 37(c) or 37(d) may be filed by the Judge, the Judge's counsel, or special counsel with the clerk of the Supreme Court and served on each other party to the proceedings within 21 days after service of the notice required by Rule 37(c) or 37(d). Exceptions shall be supported by an opening brief based on the record of the proceedings. A party opposing the exceptions shall have 14 days after the filing of the opening brief within which to file an answer brief, a copy of which shall be served on all parties. A party shall have 7 days after the filing of the answer brief within which to file a reply brief, a copy of which shall be served on all parties. If no exceptions are filed, the matter will stand submitted upon the Commission's recommendation and the record. In other respects, the filing and consideration of exceptions to the special masters' recommendation shall be governed by the Colorado Appellate Rules, unless the Court determines that the application of a particular rule would be impracticable, inappropriate, or inconsistent in disciplinary proceedings.

Rule 39. Additional Findings

If the Supreme Court desires an expansion of the record or additional findings as to certain issues or the entire matter, it may remand the proceedings to the Commission with appropriate directions and continue the proceedings pending receipt of the additional information. The Commission shall refer the remand to the special masters for additional findings and forward the additional findings to the Court. The Court may order oral argument, in its discretion.

Rule 40. Decision

The Supreme Court shall consider the evidence and the law, including the record of the proceedings and additions thereto; the special masters' report; the Commission's recommendation; and any exceptions filed under Rule 38. The Court shall issue a decision, in which it may dismiss the complaint; adopt or reject the recommendation of the Commission; adopt the recommendation of the Commission with modifications; or remand the proceedings to the Commission for further action. Provided, however, that if the Commission has recommended a stipulated resolution, the Court shall order it to become effective and issue any sanction provided in the stipulated resolution, unless the Court determines that its terms do not comply with Rule 37(e) or are not supported by the record of proceedings. The decision of the Court, including such sanctions as may be ordered, shall be final. Unless confidentiality is required under Rule 37, the decision shall be published.