

RULE CHANGE 2014(16)

CHAPTER 24
COLORADO RULES OF JUDICIAL DISCIPLINE

PART A. GENERAL PROVISIONS

Rule 1. Scope, Objectives, and Title

(a) – (c) [NO CHANGE]

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 another 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; or magistrates; or administrative law judges. The conduct of an attorney serving as a municipal judge, s and magistrate, s or administrative law judge is subject to the disciplinary and disability jurisdiction of Attorney Regulation under Colo. RPC 251.1(b).

(b) [NO CHANGE]

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

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

(e) - (m) [NO CHANGE]

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

~~(on)~~ “**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.

~~(po)~~ “**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.

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

(rp) **“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.

(sq) **“Proceedings”** include a complaint; a response to a complaint; ~~an~~ the review, evaluation, and investigation of a complaint; a meeting; or a 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.

(tr) **“Special counsel”** means an attorney or attorneys appointed by the Commission ~~with respect 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, or a motion for temporary suspension of a Judge under Rule 34, and the prosecution of a complaint in formal proceedings.

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

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

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

Rule 3. Organization and Administration

(a) [NO CHANGE]

(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) [NO CHANGE]

(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) ~~To~~ Establish and maintain a permanent office;
- (2) ~~To~~ Recieve information, allegations, and complaints;
- (3) Review and evaluate ~~To screen~~ complaints under Rule 13 and refer screened complaints to the Commission for consideration;
- (4) ~~To~~ Conduct investigations;
- (5) ~~To~~ Recommend dispositions;
- (6) ~~To~~ Maintain Commission records;

- (7) ~~To M~~ maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;
 - (8) ~~To P~~ prepare the Commission's budget and administer its funds;
 - (9) ~~To E~~ employ the Commission's staff;
 - (10) ~~To P~~ prepare an annual report of the Commission's activities for presentation to the Commission, to the Supreme Court, and to the public;
 - (11) ~~To E~~ employ special counsel, investigators, or other experts as necessary to investigate and process matters before the Commission and before the Supreme Court; and
 - (12) ~~To P~~ perform such other duties as these Rules, the Commission, or the Supreme Court may require.
- (e) - (f) [NO CHANGE]

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 complaint is filed by a complainant (or commenced on the Commission's motion) ~~while the Judge is an active or senior judge,~~ (A) during the Judge's term of office or within one year following ~~(A) the end of the Judge's term of office, or (B) the effective date of the Judge's retirement or resignation, or (C) 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~~ participation 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) – (g) [NO CHANGE]

Rule 5. [NO CHANGE]

Rule 6. ~~Confidentiality and Privilege~~ [Reserved]

[Confidentiality and Privilege revised and restated in 2012 as Rule 6.5.] ~~Rule deleted and replaced by 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 for the issuance of one or more of the sanctions of a Judge's conduct under provided in Rule 36, at which time the recommendation together with the supporting record of the proceedings shall no longer be confidential.

(b) – (d) [NO CHANGE]

(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) **Public Knowledge.** The Commission ~~may or the Judge~~, by motion filed with the Supreme Court, ~~may~~ assert that ~~the allegations of a complaint misconduct, pending informal or formal disciplinary proceedings, and/or the disposition of such proceedings have become generally known to the public and that, in the interests of justice, the nature of the disciplinary proceedings should be publicly disclosed, including the nature and status of such proceedings and, if concluded, the result of such proceedings.~~ The Judge ~~or the Commission~~ shall have ~~fourteen~~ 14 days ~~after the filing of such motion within which to object to such disclosure or request modifications to propose conditions or limitations on such~~ 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 of the allegations, the Judge's response, and, when determined, the disposition of, status, and result of the complaint, subject proceedings,~~ the Commission's records, including but not limited to ~~such terms as it deems appropriate~~ 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).

(g) **Available Records.** ~~Upon~~After the filing of a recommendation with the Supreme Court pursuant to section (a) of this Rule, the record of proceedings shall be available to the public, ~~except as provided in Rule 37 or unless the Supreme Court enters a protective order concerning specifically identified information, but only upon a showing of good cause for such protective order by the Commission, special counsel, special masters, or the Judge.~~

(h) [NO CHANGE]

(i) **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 Ceanons or Canon and Rrules in the Code, 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.

(j) [NO CHANGE]

Editor's note: This rule was previously numbered as Rule 6.

Rule 7. – Rule 8. [NO CHANGE]

Rule 8.5. Procedural Rights of Judge

(a) – (b) [NO CHANGE]

Editor's note: This rule was previously numbered as Rule 28(a) and 28(e).

Rule 9. – Rule 11. [NO CHANGE]

PART B. PRELIMINARY PROCEEDINGS

Rule 12. [NO CHANGE]

Rule 13. Review Screening of Complaints and Preliminary Evaluation

(a) Review. The Commission, or, ~~at its discretion,~~ the executive director, upon receipt and without undue delay, shall review each complaint to determine whether thea complaint allegesprovides sufficient cause to warrant further evaluation and investigation and evaluation.

(b) Dismissal. The Commission or the executive director shall dismiss complaints that: ~~(a)~~

(1) Do not include allegations of allege facts which, if true, would provideconstitute grounds for disciplinary action; (b) are based on disputed proceedings;

(2) Dispute a Judge's findings of fact; conclusions of law; or rulings on evidence, procedure, or other matters within under the jurisdiction of the trial or appellate courts; (c) are, unless the Judge's conduct in considering and issuing such a decision provides grounds for disciplinary proceedings;

(3) Are frivolous; or (d) are

(4) Are otherwise beyond the jurisdiction of the Commission.

(c) Preliminary Evaluation. If the review does not result in dismissal of thea complaintsurvives screening, the executive director, or one or more presenters a member of the Commission, the Commission staff, or an investigator shall conduct a preliminary provide an evaluation of the complaint to allegations for consideration by the Commission. A Judge need not be notified of the action taken by the Commission at this stage of the proceedings a preliminary evaluation.

(d) Reports from Other Offices. In its review, preliminary evaluation, and subsequent proceedings, the Commission may consider relevant information contained in (1) a report of an investigation by the Office of the State Court Administrator regarding the conduct of a Judge and/or other employees of the judicial branch or (2) a report by Attorney Regulation regarding the misconduct of an attorney who has been appointed as a Judge or attorney misconduct that involves a Judge.

Rule 14. Preliminary Investigation and Notice to Judge

(a) Investigation and Notice. The Commission shall consider the preliminary evaluation provided by the executive director or presenter(s), and if it finds that there are sufficient grounds to initiate for disciplinary proceedings, it shall commence an preliminary investigation which may be conducted by one or more presenters, the executive director, a member of the Commission, the Commission staff, and/or one or more an investigators.

(b) Notice to Judge. As soon as practicable after finding sufficient grounds for disciplinary proceedings, the Commission shall notify tThe Judge shall be given notice of the complaint, its preliminary evaluation, and the investigation. The notice shall include the nature of the charge, allegations and the name of the complainant (or a statement that describe the preliminary reasons for an investigation that was commenced on the Commission's own motion). The Judge shall be afforded a reasonable opportunity during the course of the investigation to respond to or appear before the Commission. A copy of the Rules shall be included with the notice or incorporated by reference into the notice. The Commission or the executive director, in their discretion, may determine when the complainant should be notified of the preliminary investigation.

(cb) Expedited Investigations by State Court Administrator. The results of executive director may commence an investigation by and provide the Office of the State Court Administrator regarding the conduct of a Judge and/or other employees of the judicial branch may be considered notice required by section (b) of this Rule, without advance approval by the Commission, if the alleged misconduct includes a lack of diligence to judicial duties or other circumstances which, in its the executive director's reasonable discretion, warrant attention before the next meeting of the Commission.

(d) Judge's Response. The Judge shall be afforded a reasonable opportunity to respond in writing to the preliminary evaluation and the investigation and in subsequent or to appear before the Commission.

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

Rule 15. Independent Medical Examination

If the preliminary evaluation or the investigation indicates that a Judge may have a physical or mental disability which seriously impairs the 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 to evaluate the Judge's physical and/or mental condition.

Rule 16. Determination

(a) **Summary Report.** 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, ~~presenter(s) shall report their observations and findings regarding a complaint to the other members.~~

(b) **Decision.** The Commission shall consider the ~~report of the presenter(s) and all other relevant evidence regarding the complaint~~ summary of the investigation and by majority vote:

~~(1) Dismiss 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;~~

~~(12) Apply a private disciplinary disposition under subsections (c) or (d) through (i) of Rule 33.5;~~

~~(23) Initiate disability proceedings under Rule 33.5;~~

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

~~(4) Determine that there is probable cause to proceed with formal action against the Judge, in which case it shall appoint special counsel, who upon to review the summary, conduct such further investigation as may be appropriate, and evaluation of the allegations, may initiate formal 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, as provided in these Rules or recommend a disposition under Rule 35 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 Voting.** The standard of proof for a decision under section (b) of this Rule shall be the preponderance of the evidence. ~~A decision shall require a majority vote of those members present or participating by conference call, provided that no member who served as a presenter on the complaint may vote on a section (b) decision.~~

Rule 17. [NO CHANGE]

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 ~~against~~ the name of the People of the State of Colorado ~~Judge~~ by filing a statement of charges with the Commission and serving a copy of the statement of charges together with a notice of formal charges ~~upon~~ 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 a written answer to the statement of charges, which shall include a response to the statement of charges each allegation together with applicable affirmative defenses or mitigation factors.~~

(2) ~~Pleadings in formal proceedings shall follow the general format for civil pleadings, and the original of all pleadings and a copy of the 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~~ filed a 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, ~~including hearings to receive who shall hear and take evidence and consider legal arguments, concerning the charges and provide a report to the Commission in accordance with the Constitution and these Rules. The appointees~~ special masters may be retired justices or active, senior, or retired judges of courts of record, and, unless 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) [NO CHANGE]

Editor's note: This rule was previously numbered as Rule 24.

Rule 19. Response of Judge

The Judge shall file a response to the statement of charges with the executive director within ~~21~~twenty-one 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, ~~expiration of the presiding time for its filing, the special masters shall order that the formal proceedings are at issue and shall schedule a hearing to be held, without unreasonable delay, before the special masters regarding the matters contained in the statement of charges and the response, if any. The special masters shall serve notice on all parties of set the date and location and date of the hearing, and which shall serve notice thereof on all parties within a reasonable time before begin no later than 91 days after the at issue date, unless extended for good cause by order of the presiding special master.~~ set

Rule 21. Discovery [Reserved]

[Discovery revised and restated in 2012 as Rule 21.5.] ~~Rule deleted and replaced by Rule 21.5.~~

Rule 21.5. Discovery

(a) Purpose and Scope. ~~Except as provided herein, Rule 26 of the Colorado Rules of Civil Procedure shall not apply to proceedings conducted pursuant to these Rules. This 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) – (f) [NO CHANGE]

(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.

Editor's note: This rule was previously numbered as Rule 21.

Rule 22. Subpoena and Inspection

~~The Judge~~ Special counsel and the ~~Judge~~ Commission 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. [NO CHANGE]

Rule 24. Special Masters [Reserved]

[Special Masters revised and restated in 2012 as Rule 18.5.]~~Rule deleted and replaced by Rule 18.5.~~

Rule 25. Prehearing Procedures

The ~~Commission or~~ 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~~disclosed by notice, the special masters shall ~~proceed with~~ hear and take evidence, as required by Article VI, Section 23(3)(e) of the hearing, whether or not the Judge has filed a response or appears at the hearing 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 vote of the majority of special masters shall prevail on all findings of fact and conclusions of law. The special masters shall provide a report to the Commission, as required by Article VI, Section 23(3)(e) of the Constitution, 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) [NO CHANGE]

Rule 27. Procedures and Rules

The hearing in fFormal 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 ~~substantial~~substantive rights of a Judge shall not be grounds for invalidation of the proceedings.

Rule 28. Procedural Rights of Judge [Reserved]

[Procedural Rights of Judge revised and restated in 2012 in Rules 8.5 and 33.]~~Rule deleted. Rule 28(a) and (28)(c) were replaced by Rule 8.5. Rule 28(b) regarding the record was relocated to Rule 33.~~

Rule 29. [NO CHANGE]

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 ~~fourteen~~ 14 days prior to the date of hearing.

Rule 31. [NO CHANGE]

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 ~~conclusions of law; and shall propose a~~ its recommendations to the Commission for dismissal of the charges, a private disposition, or one or more dispositions or sanctions. ~~The Commission shall consider the special masters' report, in accordance with Rule 36.~~ 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 ~~Supreme~~ Court.

Rule 33.5. Disability Proceedings

(a) [NO CHANGE]

(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 (~~26 weeks~~) (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 (~~10 weeks~~) 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 (~~5 weeks~~) 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) [NO CHANGE]

(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) – (i) [NO CHANGE]

PART D. DISPOSITIONS AND SANCTIONS

Rule 34. Temporary Suspension

(a) Request to Supreme Court. The Commission, through its chair, or the executive director, (if so authorized by or through special counsel to the Commission), 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 Supreme 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 Supreme Court (1) shall issue an order for temporary suspension; ~~and~~ (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 Supreme 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/Commission shall conduct hold a hearing on the order to show cause within 28twenty one days of its issuance the Judge's response to such order or such later time as mutually agreed date ordered by the Commission and special master, at which the executive director, special counsel, the Judge, Judge's counsel, and witnesses may appear and

then advise the Supreme Court participate. Within seven days following the conclusion of the hearing, the special master shall file its findings and conclusions with respect to 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) - (e) [NO CHANGE]

(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;

(be) 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);

(cb) 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 misconduct that does not meet the minimum standards of judicial conduct;

(f) Private Censure. Censure the Judge privately for misconduct 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(f).

(jh) 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, tThe Commission, by majority vote of the members meeting in person or by conference call, including the vote of any member who served as was a presenter with respect to the complaint in prior proceedings, shall consider the report issued by the special masters under Rule 32 and 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;

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

(de) 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);

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

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

(gf) Costs and Fees. Assess costs and ~~expenses against the Judge~~ 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

(hg) Other Discipline. Impose any other sanction or combination of sanctions, including dispositions under Rule 35, that the Supreme Court determines will curtail or eliminate the Judge's misconduct.
(h) Voting. ~~The Commission's recommendation of one or more sanctions shall require a majority vote of the members participating in person or by conference call, except that a recommendation for removal shall require a majority vote of all members of the Commission.~~

Rule 36.5. Conviction of a Crime

(a) Suspension. Whenever a Judge has been found guilty, by a verdict or a plea of guilty convicted in any state or federal court of Colorado, any other state, or the United States, of a felony or another 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 conviction was had, shall enter an order suspending the Judge from office until such time as the judgment of conviction becomes final, and suspending the payment of the Judge's salary shall also be suspended from the date of such order until such time as the Judge is sentenced.

(b) Removal~~Final Conviction.~~ Upon~~If the sentencing judgment of conviction becomes final the~~ Judge, the Supreme Court shall enter an order removing the Judge from office and declaring the Judge's office vacant. ~~The; and also forfeiting the Judge's salary, from the date of suspension retroactive to the date of removal from office shall be forfeited the finding of guilty.~~

(c) Reversal or Acquittal. If the judgment of guilty conviction is reversed with directions to ~~enter and~~ a judgment of acquittal or a judgment of dismissal, ~~or acquittal is then entered following remand for a new trial,~~ the Judge shall be entitled to receive recover the salary that was had been forfeited pursuant to section (b) of this Rule 36.5(b) 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 ~~after removal from office~~ 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* ~~to such a charge, including a plea involving a deferred judgment or deferred sentence,~~ shall be equivalent to a final conviction finding of guilty for the purpose of this Rule.

PART E. SUPREME COURT ACTION

Rule 37. Recommendations and Notice

(a) Filing the Record of Proceedings and Recommendation. Upon consideration of the report of the special masters, the Commission shall file the record of proceedings and recommend sanctions or a private disposition to the Supreme Court.

(a) Filing the Record of Proceedings. ~~The executive director shall file the record of the proceedings, as defined under Rule 33, and the Commission's recommendation to the Supreme Court for dismissal, sanctions, or a stipulated resolution with the clerk of the Supreme Court, and the clerk shall docket the record under the caption "In re [name and title of judge]."~~

(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(f).

(cb) Recommendation for Sanctions. The Commission shall file a may recommend one or more of the sanctions provided in Rule 36. The Commission's recommendation for sanctions under Rule 36 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 Commission's recommendation and the record of proceedings shall become public upon filing with the Court and the clerk shall docket the recommendation for the Supreme Court's expedited consideration. The notice of filing shall specify the period during which a party may file exceptions to the recommendation, as provided in under Rule 38. The executive director shall file proof of service of the recommendation and the notice with the clerk.~~

(de) Private Disposition. As an alternative to sanctions, tThe Commission may recommend a private disposition under Rule 35, which may include dismissal. The executive director # shall notify the Judge (or the Judge's counsel) and the Supreme Court of its the Commission's recommendation. The record of proceedings shall be sealed remain confidential until the Supreme Court determines whether to approve the disposition. If the Supreme Court approves the disposition, the record shall remain sealed and the disposition shall remain confidential, except for subject to the case number and caption provisions of Rule 6.5(f). If the Supreme Court does not approve the disposition, the case shall be remanded to the Commission for recommendation of appropriate sanctions and the record shall remain sealed until such a recommendation is filed 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(f).

Rule 38. Exceptions

Exceptions to the recommendation shall 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. Exceptions shall be supported by an opening brief based on the record of the proceedings. A party opposing the exceptions shall have 21 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 14 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 ~~special masters'~~ 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 ~~Supreme~~ Court determines that the application of a particular rule would be impracticable, inappropriate, or inconsistent in disciplinary proceedings.

Rule 39. Additional Findings

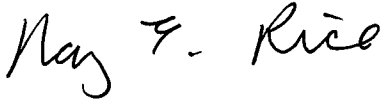
If the Supreme Court desires an expansion of the record or additional findings as to certain issues or the entire matter, it may remand the proceedings to the Commission with appropriate directions and continue the proceedings pending receipt of the additional information. The Commission shall refer the remand to the special masters for additional findings and forward the additional findings to the ~~Supreme~~ Court. The ~~Supreme~~ 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 ~~Supreme~~ Court shall issue a ~~written~~ 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 ~~Supreme~~ Court, including such sanctions as may be ordered, shall be final and shall be published. ~~A stipulated resolution of formal proceedings shall be published and the record of proceedings shall be public, unless the Court finds good cause for the resolution to remain confidential and the record of proceedings to be sealed.~~

Amended and Adopted by the Court, En Banc, December 10, 2014, effective immediately.

By the Court:

A handwritten signature in black ink that reads "Nancy E. Rice". The signature is written in a cursive, flowing style.

Nancy E. Rice
Chief Justice, Colorado Supreme Court