

**RULE CHANGE 2023(02)**

**COLORADO RULES OF JUDICIAL DISCIPLINE**

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### **Part F. Special Tribunal**

#### **Rule 41. Proceedings Involving a Current or Former Justice of the Colorado Supreme Court**

- (a) In any proceeding in which any of the circumstances described in part (b) of this rule are present, the entire Supreme Court shall recuse itself, and a special tribunal composed of seven Colorado Court of Appeals judges shall replace the Supreme Court for the limited purpose of exercising any authority conferred by law to the Supreme Court as to the proceeding giving rise to recusal. The State Court Administrator, or the Administrator's designee, shall randomly select members of the tribunal from among all active, non-senior-status Court of Appeals judges who are not the subject of a current disciplinary investigation or proceeding pending before the Commission; have not received a disciplinary sanction from the Commission or Supreme Court; and are not otherwise required by law, court rule, or judicial canon to recuse themselves from the tribunal. The random selection of tribunal members is a purely administrative function.
- (b) The special tribunal shall replace the Supreme Court in the following circumstances:
- (1) When the proceeding involves a complaint against a current or former Supreme Court justice;
  - (2) When a current or former Supreme Court justice is a complainant or material witness in the proceeding;
  - (3) When a staff member to a current Supreme Court justice is a complainant or material witness in the proceeding;
  - (4) When a family member of a current Supreme Court justice is a complainant or material witness in the proceeding;
  - (5) When any other circumstances exist due to which more than two Supreme Court justices have recused themselves from the proceeding.

#### **COMMENT**

Article VI, section 23(3)(h) of the Colorado Constitution provides that a justice or judge who is a member of the Commission or Supreme Court shall not participate in any proceedings involving the member's own removal or retirement. This, however, is not the exclusive basis on which judges and justices must recuse themselves, as the Colorado Code of Judicial Conduct provides more expansive guidelines for when a justice or judge should do so. See Colo. Code. Jud. Cond. 2.11. This rule is intended to accommodate such other circumstances.

Randomly substituting in judges from the Court of Appeals as contemplated by this rule is not an expansion of the Court of Appeals' jurisdiction. Any judicial officers randomly selected will not be acting in their capacities as Court of Appeals judges; rather, they will be temporarily stepping into the shoes of the Supreme Court justices. Cf. Colo. Const. art. VI, § 5(3); §§ 13-4-101, -104.5, C.R.S. (2022).

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**Amended and Adopted by the Court, En Banc, January 19, 2023, effective immediately.  
Justice Márquez recused from any participation in this rulemaking proceeding.**

**By the Court:**

**Brian D. Boatright  
Chief Justice, Colorado Supreme Court**