

RULE CHANGE 2012(07)

**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 other offense involving moral turpitude. This definition does not include judges of the county court of the City and County of Denver, municipal judges, or magistrates. The conduct of municipal judges and magistrates 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 selected by the Commission to administer the business of the Commission and preside at all meetings of the Commission, any member selected to preside at a hearing, or any person designated as “acting chair.”

(d) “**Code**” means the Colorado Code of Judicial Conduct, as amended.

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

(f) “**Complaint**” means information in any form from any source received by the Commission that alleges, or from which a reasonable inference can be drawn, that a Judge may have committed misconduct or may have a disability that is adversely affecting the Judge’s performance.

(g) “**Complainant**” means a person who files a complaint.

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

(i) “**Executive director**” means the person appointed by the Commission to serve as its executive director.

- (j) **“Hearing”** means a meeting of the Commission or special masters convened for the purpose of taking evidence or considering legal arguments.
- (k) **“Mail”** or **“mailed”** means first-class mail, personal delivery, or delivery by commercial mail service.
- (l) **“Meeting”** means an assembly of the Commission or special masters in person or by conference call or any combination thereof.
- (m) **“Member”** means a member or special member of the Commission.
- (n) **“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.
- (o) **“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.
- (p) **“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.
- (q) **“Proceedings”** include a complaint, a response to a complaint, an investigation of a complaint, a meeting, a hearing, a disciplinary disposition, a disciplinary sanction, a disability disposition, or a communication with respect thereto.
- (r) **“Special counsel”** means an attorney or attorneys appointed by the Commission with respect to the investigation or disposition of a complaint or the prosecution of a complaint in formal proceedings.
- (s) **“Special master”** means a person appointed by the Supreme Court to preside over hearings.
- (t) **“Special members”** are persons appointed by the Commission to serve as alternates to members.

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. 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.
- (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:

- (1) To establish and maintain a permanent office;
 - (2) To receive information, allegations, and complaints;
 - (3) 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 maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;
 - (8) To prepare the Commission's budget and administer its funds;
 - (9) To employ the Commission's staff;
 - (10) To prepare an annual report of the Commission's activities for presentation to the Commission, to the Supreme Court, and to the public;
 - (11) To 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 perform such other duties as the Commission or the Supreme Court may require.
- (e) **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.
- (f) **Quorum.** Six members must be present in person or by conference call for the transaction of business by the Commission.

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, or within one year following (A) the end of the Judge's term of office, (B) the effective date of the Judge's retirement or resignation, or (C) the end of the Judge's participation 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 preliminary, 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 action.

(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 Colo. RJD 4(e).

(e) **Misconduct Distinguished from Disputed Rulings.** Complaints that dispute a Judge's pre-trial orders, evidentiary or procedural rulings, findings of fact, conclusions of law, sentencing, or other matters that are under the jurisdiction of the trial court or which are subject to appellate review shall not constitute grounds for judicial discipline, unless the Judge's conduct includes one or more of the grounds provided in section 5(a) of this Rule.

Rule 6. Confidentiality and Privilege [DELETED]

[Note: Rule 6 became 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 for one or more sanctions of a Judge's conduct under Rule 36, at which time the recommendation together with the supporting record of the proceedings shall no longer be confidential.

(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 its 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 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 investigate 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 complaints 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 executive director of 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) If a Judge has been convicted of a crime or public discipline has been imposed on a Judge by Attorney Regulation or by a foreign jurisdiction and the Commission determines that public disclosure is appropriate;

(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 the Office of the State Court Administrator;

(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 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, by motion filed with the Supreme Court, assert that the allegations of a complaint have become generally known to the public and that, in the interests of justice, the nature of the disciplinary proceedings should be disclosed. The Judge shall have fourteen days after the filing of such motion within which to object to such disclosure or to propose conditions or limitations on such disclosure. The Supreme Court, in its discretion, may deny such motion or order disclosure of the nature of the allegations, the Judge's response, and, when determined, the disposition of the complaint, subject to such terms as it deems appropriate.

(g) **Available Records.** 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 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) **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 nature of any discipline previously imposed on the Judge by the Commission or the Supreme Court.

(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 canons and rules 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) **Duty of Officials and Employees.** All officials and employees within the Commission, 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 delivering or mailing 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, 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. PRELIMINARY PROCEEDINGS

Rule 12. Filing a Complaint

Any organization or person may file a complaint with the Commission alleging judicial misconduct or disability on the part of a Judge. The Commission on its own motion may initiate a complaint against a Judge. A complaint need not be in any specific form; however, the Commission shall prepare and distribute printed forms for the convenience of complainants. Complaints must include allegations of facts which, if true, would constitute one or more grounds for discipline of a Judge.

Rule 13. Screening of Complaints

The Commission, or, at its discretion, the executive director, shall determine whether a complaint provides sufficient cause to warrant further investigation and evaluation. The Commission or the executive director shall dismiss complaints that (a) do not include allegations of facts which, if true, would constitute grounds for disciplinary action; (b) are based on disputed rulings under the jurisdiction of the trial or appellate courts; (c) are frivolous; or (d) are otherwise beyond the jurisdiction of the Commission. If a complaint survives screening, the executive director or one or more presenters shall provide an evaluation of the complaint to the

Commission. A Judge need not be notified of the action taken by the Commission at this stage of the proceedings.

Rule 14. Preliminary Investigation

(a) **Investigation and Notice.** The Commission shall consider the evaluation provided by the executive director or presenter(s) and if it finds that there are sufficient grounds to initiate disciplinary proceedings, it shall commence a preliminary investigation which may be conducted by one or more presenters, the executive director, the Commission staff, and/or one or more investigators. The Judge shall be given notice of the preliminary investigation, the nature of the charge, and the name of the complainant or a statement that the preliminary investigation 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.

(b) **Investigations by State Court Administrator.** The results 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 may be considered by the Commission in its preliminary investigation and in subsequent proceedings.

Rule 15. Independent Medical Examination

If the preliminary 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) **Report.** The 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 and by majority vote:

- (1) Dismiss the complaint under Rule 35(a);
- (2) Apply a disciplinary disposition under subsections (b) or (d) through (h) of Rule 35;
- (3) Initiate disability proceedings under Rule 33.5; 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 further investigation and evaluation of the allegations, may initiate formal proceedings as provided in these Rules or recommend a disposition under Rule 35.

(c) **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. 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 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

Special counsel shall commence formal proceedings against the 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 statement of charges shall state in ordinary and concise language the grounds for the charges. The notice shall advise the Judge of his or her right to file a written response to the statement of charges. Pleadings in formal proceedings shall follow the general format for civil pleadings, and the original of all pleadings and a copy of the notice of formal charges shall be filed in the office of the executive director.

Rule 18.5. Special Masters [formerly Rule 24]

(a) **Appointment.** After special counsel has filed a statement of charges, the Commission shall request the Supreme Court to appoint three special masters to preside over formal proceedings, including hearings to receive evidence and consider legal arguments, in accordance with these Rules. The special masters may be active, senior, or retired judges of courts of record, and, unless otherwise designated, the judge 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 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 or the expiration of the time for its filing, the special masters shall order 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 set the date and location of the hearing and shall serve notice thereof on all parties within a reasonable time before the date set.

Rule 21 Discovery [DELETED]

[Note: Rule 21 became 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 shall govern discovery in judicial discipline and disability proceedings.

(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 of 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

The Judge and the Commission shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the Judge as witness, and to provide for the inspection of documents, books, accounts, and other records. Subpoenas may be issued by the chair, the executive director, or a special master and shall be served in the manner provided by law for the service of subpoenas in a civil action.

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 disability. 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. Special Masters

[Revised and moved to Rule 18.5]

Rule 25. Prehearing Procedures

The Commission or special masters may direct the parties to appear 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 disclosed by notice, the special masters shall proceed with the hearing, whether or not the Judge has filed a response or appears at the hearing. 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.

(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

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 substantial rights of a Judge shall not be grounds for invalidation of the proceedings.

Rule 28. Procedural Rights of Judge [Deleted]

[Note: Rules 28(a) and 28(c) became Rules 8.5(a) and (b). Rule 28(b) regarding the record is now in the text of Rule 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 fourteen 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 conclusions of law; and shall

propose a dismissal of the charges 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 pleadings, 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) **Initiation of a Disability Proceeding.** A disability proceeding can be initiated by a complaint, 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 (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) 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.

(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, the chair, or the executive director (if so authorized by 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 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. 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 Commission shall hold a hearing on the order to show cause within twenty-one days of its issuance or such later time as mutually agreed by the Commission and the Judge, and then advise the Supreme Court of its findings and conclusions with respect to 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.

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) **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;

- (c) **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);
- (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) **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

The Commission, including any member who was a presenter with respect to the complaint, 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:

- (a) **Removal.** Remove the Judge from office;
- (b) **Suspension.** Suspend the Judge without pay for a specified period;
- (c) **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);
- (d) **Public Reprimand or Censure.** Reprimand or censure the Judge publicly, either in person or by written order;
- (e) **Diversion or Deferred Discipline.** Require compliance with a diversion plan or deferred discipline plan;
- (f) **Costs and Fees.** Assess costs and expenses against the Judge; or
- (g) **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 convicted in any court of Colorado, any other state, or the United States of a felony or other offense involving moral turpitude, the Supreme Court on its own motion or upon petition filed by any person and a finding that such a conviction was had, shall enter an order suspending the Judge from office until such time as the judgment of conviction becomes final, and the payment of the Judge's salary shall also be suspended from the date of such order.

(b) **Final Conviction.** If the judgment of conviction becomes final, the Supreme Court shall enter an order removing the Judge from office and declaring the Judge's office vacant. The Judge's salary from the date of suspension to the date of removal from office shall be forfeited.

(c) **Reversal or Acquittal.** If the judgment of conviction is reversed with directions to enter a judgment of acquittal or a judgment of dismissal, or acquittal is entered following remand for a new trial, the Judge shall be entitled to receive the salary that was forfeited pursuant to Rule 36.5(b). 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, 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 for the purpose of this Rule.

PART E. SUPREME COURT ACTION

Rule 37. Recommendation and Notice

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, 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) **Recommendation for Sanctions.** The Commission shall file a recommendation for sanctions under Rule 36 with the Supreme Court. 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 Rule 38. The executive director shall file proof of service of the recommendation and the notice with the clerk.

(c) **Private Disposition.** The Commission may recommend a private disposition under Rule 35, which may include dismissal. It shall notify the Judge (or the Judge's counsel) and the Supreme Court of its recommendation. The record of proceedings shall be sealed 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 the case number and caption. 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.

(d) **Stipulated Resolution.** The Commission and the Judge may stipulate to a resolution of formal proceedings, subject to approval by the Supreme Court.

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 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' 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. 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.

Repealed and Reenacted by the Court, En Banc, March 22, 2012, effective immediately.

By the Court:

**Michael L. Bender
Chief Justice, Colorado Supreme Court**