

## RULE CHANGE 2017(03)

### COLORADO RULES OF JUDICIAL DISCIPLINE

#### PART A. GENERAL PROVISIONS

##### Rule 1. [NO CHANGE]

##### Rule 2. Definitions

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

(a) – (e) [NO CHANGE]

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

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

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

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

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

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

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

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

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

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

(o) **“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.

(p) **“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.

(r) **“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.

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

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

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

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

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

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

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

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

### **Rule 3. Organization and Administration**

(a) – (c) [NO CHANGE]

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

(1) [NO CHANGE]

(2) Respond to inquiries about the Commission or the Canons; ~~Receive information, allegations, and complaints;~~

(3) Process requests for evaluation of judicial conduct; ~~Review and evaluate complaints;~~

(4) – (12) [NO CHANGE]

(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 request for evaluation of judicial conduct is received by the Commission (or a complaint is ~~filed by a complainant (or~~ commenced on the ~~Commission’s~~Commission's motion) (A) during the Judge’s term of office or within one year following the end of the judge’s term of office or ~~the~~ effective date of the Judge’s retirement or resignation, with respect to alleged misconduct or disability occurring during the Judge’s term of office; or (B) during the Judge’s service in the senior judge program or within one year following the end of the Judge’s service in the senior judge program, with respect to alleged misconduct or disability occurring during the Judge’s service in the senior judge program.

(2) [NO CHANGE]

(b) – (d) [NO CHANGE]

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

(f) – (g) [NO CHANGE]

### **Rule 5. Grounds for Discipline**

(a) – (b) [NO CHANGE]

(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 proceedings.

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

(e) **Misconduct Distinguished from Disputed Rulings.** ~~Complaints that~~A dispute regarding a Judge's pre-trial orders, evidentiary or procedural rulings, on motions, evidence, procedure, or sentencing; a Judge's findings of fact, and conclusions of law, sentencing; or other matters that are under within the jurisdiction of the trial court or ~~which are subject to~~ appellate review courts to resolve shall not ~~constitute grounds~~provide a basis for judicial disciplinedisciplinary proceedings, unless the Judge's conduct ~~includes~~in presiding over the case involves one or more of the grounds provided in ~~section 5(a) of~~ this Rule.

**Rule 6. [NO CHANGE]**

## 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 provided in Rule 36, at which time the.~~ The recommendation together with and the supporting record of the proceedings shall no longer be thereupon become public, subject to the limitations provided in Rule 37. The Supreme Court may enter a protective order requiring that certain portions of the record remain confidential upon a showing of good cause by the Commission, special counsel, special masters, or the Judge.

(b) – (c) [NO CHANGE]

(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~~the executive director to fulfill the Commission's Constitutional mandate under Rule 1(b); or (ii) disclosures in the interest of justice or public safety, including the following:

(1) – (2) [NO CHANGE]

(3) In response to an inquiry by the Supreme Court or SCAO concerning the qualifications of a Judge for appointment or reappointment to other judicial responsibilities (including the senior judge program), by an agency or official authorized to ~~investigate~~evaluate the qualifications of a Judge who has applied for or has been nominated for another judicial position, or by the Governor with respect to the qualifications of a Judge recommended by a nominating commission for appointment to another judicial position, the Commission shall disclose disciplinary dispositions under Rule 35 (other than 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~~When a Judge has been convicted of a crime or ~~public discipline~~ has ~~been imposed on a Judge~~become subject to disciplinary measures taken by Attorney Regulation or ~~by a foreign~~similar agency in another jurisdiction ~~and the Commission determines that public disclosure is appropriate;~~

(6) – (9) [NO CHANGE]

(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~~ SCAO.

(e) [NO CHANGE]

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

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

~~(g) **Available Records.** Upon 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) **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.~~

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

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

**Rule 7. [NO CHANGE]**

**Rule 8. Service**

(a) – (b) [NO CHANGE]

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

(d) [NO CHANGE]

**Rule 8.5. Procedural Rights of Judge**

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

(b) [NO CHANGE]

**Rules 9. – 11. [NO CHANGE]**

## PART B. PRELIMINARY INFORMAL PROCEEDINGS

### Rule 12. Request for Evaluation of Judicial Conduct Filing a Complaint

To initiate a complaint, any person or organization ~~or person~~ may file a complaint with request that the Commission ~~alleging judicial misconduct~~ examine a Judge's conduct. The request should identify the Judge, the person or organization making the request, and describe conduct by the Judge that may involve grounds for disciplinary or disability ~~on the part of a Judge. The Commission on its own motion may initiate a complaint against a Judge~~ proceedings. A complaint need not request may be in any specific form ~~format~~; however, the Commission shall prepare and distribute printed forms ~~for the convenience of complainants. Complaints must include allegations to guide a complainant in making a request for evaluation of judicial conduct. Commission staff will make reasonable accommodations for a person with disabilities in preparing and filing a request.~~

### Rule 13. Preliminary Proceedings Review of Complaints and Preliminary Evaluation

(a) Evaluation of facts which, if true, would constitute the Request. ~~The executive director or one or more grounds for discipline~~ members of a Judge.

~~(a) Review. The~~ the ~~Commission or the executive director,~~ upon receipt and without undue delay, shall ~~review~~ evaluate each ~~complaint~~ request to determine whether ~~the complaint~~ it alleges sufficient ~~cause to warrant further evaluation and investigation~~ grounds for the Commission to consider disciplinary or disability proceedings. The evaluation may include a preliminary review of documentation, including court records.

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

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

(1) ~~Do~~ The request does not allege ~~facts which, if true, would provide~~ sufficient grounds for disciplinary or disability proceedings;

(2) Dispute ~~The request disputes a Judge's rulings on motions, evidence, procedure, or sentencing; a Judge's findings of fact; and conclusions of law; or rulings on evidence, procedure, or other matters that are within the jurisdiction of the trial or appellate courts, unless the Judge's conduct in considering and issuing such a decision provides to resolve, without providing grounds for disciplinary or disability proceedings;~~

(3) ~~Are~~The allegations are frivolous; or

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

~~(e)~~ **Preliminary Evaluation.** ~~If Reply to the review does not result in dismissal of the complaint, the Request. The executive director, or a member of the Commission, the Commission staff, or an investigator shall conduct~~provide a preliminary evaluation~~written explanation to the complainant of the results of the allegations for consideration by the Commission. A Judge need not be notified of a preliminary~~its evaluation.

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

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

#### **Rule 14. Investigation and Notice to Judge**

~~(a) Investigation.~~ ~~The Commission shall consider the preliminary evaluation, and if it finds that there are sufficient grounds for disciplinary proceedings, it shall commence an investigation which may be conducted by the executive director, a member of the Commission, the Commission staff, or an investigator.~~

~~(b) Notice to Judge.~~ As soon as practicable, after ~~finding~~the members of the Commission have concluded that the allegations are sufficient grounds for disciplinary proceedings~~to be processed as a complaint,~~ the Commission shall ~~notify~~provide written notice to the Judge of the ~~complaint, its preliminary evaluation, and the investigation. The notice shall include the nature of the allegations and the name of the complainant (or describe the reasons for an investigation that was commenced on the Commission's own motion).~~allegations and commence an investigation. A copy of the Rules shall be included with the notice or incorporated by reference into the notice. The Commission is not required to notify a Judge of a request for evaluation that the Commission determined to be insufficient for consideration as a complaint.

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

(c) **Expedited Notice and Investigation.** ~~The executive director may commence an investigation and provide~~ If the notice required by section (b) of this Rule, without advance approval by the Commission, if the alleged misconduct includes a lack of diligence to request alleges an unreasonable delay in performing judicial duties or other circumstances which, in the ~~executive director's reasonable discretion, warrant attention before the next meeting~~ good faith judgment of the executive director, require immediate commencement of disciplinary or disability proceedings, the executive director may process the request as a complaint, notify the judge, and begin the investigation without the prior approval of the members of the Commission.

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

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

### **Rule 15. Independent Medical Examination**

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

### **Rule 16. [NO CHANGE]**

### **Rule 17. Disqualification of a Judge**

When a complaint is filed against a Judge, the Commission may order the Judge disqualified, on request of the complainant or on the Commission's own motion, in any litigation in which the complainant is involved. Disqualification will be ordered only when the circumstances warrant such relief. After completion of the disqualifying litigation, the order for disqualification shall terminate unless extended by the Commission.

## PART C. FORMAL PROCEEDINGS

**Rule 18. – 22.** [NO CHANGE]

### **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 condition](#). If the Judge is exonerated of allegations of misconduct in a matter that does not involve disability issues and the Commission determines that the Judge's payment of witness fees and expenses would work a financial hardship or injustice upon the Judge, then it may pay or reimburse such fees and expenses.

**Rule 24. – 25.** [NO CHANGE]

### **Rule 26. Hearing**

(a) **In General.** At the time and place designated by notice, the special masters shall hear and take evidence, as required by Article VI, Section 23(3)(e) of the Constitution. Special counsel shall present the case in support of the formal charges. The presiding special master shall rule on all motions and objections made during the hearing, subject to the right of the Judge, the Judge's counsel, or special counsel to appeal a ruling to all of the special masters. The special masters shall provide a report to the Commission, as required by Article VI, Section 23(3)(e) of the Constitution [and Rule 32](#), which shall be approved by majority vote of the special masters. In the event that a majority of the special masters cannot agree on the content of the report, each special master shall issue a report.

(b) [NO CHANGE]

**Rule 27. – Rule 33.** [NO CHANGE]

### **Rule 33.5. Disability Proceedings**

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

(b) – (h) [NO CHANGE]

(i) **Public Orders.** All recommendations of the special master(s) and orders of the Supreme ~~court~~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, ~~through~~<sup>by</sup> its chair ~~or, the~~ executive director, 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 Court may require additional information from the Commission.

(b) – (f) [NO CHANGE]

### Rule 35. Dispositions

(a) – (g) [NO CHANGE]

(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~~<sup>g</sup>).

(i) [NO CHANGE]

**Rule 36. – Rule 36.5.** [NO CHANGE]

## PART E. SUPREME COURT ACTION

### Rule 37. Recommendations

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

(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(~~fg~~).

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

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

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

the stipulated resolution and the record of proceedings shall be confidential pending the Court's consideration, and if approved by the Court, the stipulated resolution and the record of proceedings shall remain confidential, subject to the provisions of Rule 6.5(fg).

### **Rule 38. Exceptions**

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

### **Rule 39. [NO CHANGE]**

### **Rule 40. Decision**

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

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### Rule 1. [NO CHANGE]

### Rule 2. Definitions

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

(a) – (e) [NO CHANGE]

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

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

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

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

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

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

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

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

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

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

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

- (q) **“Member”** means a member or special member of the Commission.
- (r) **“Misconduct”** means conduct by a Judge that does not comply with the Code or Colo. RJD.
- (s) **“Notice”** means a letter or other writing sent by mail, unless otherwise specified in the Rules, to a Judge at the Judge’s chambers or last known residence, to an address designated by the Judge, or to the Judge’s counsel of record.
- (t) **“Participant”** means a member, special member, the executive director, Commission staff, complainant, Judge, the Judge’s counsel, special counsel, special master, witness, investigator, or any other person who obtains knowledge of a proceeding in the course of an investigation or prosecution by the Commission.
- (u) **“Party”** means the Commission, special counsel, the Judge, or the Judge’s counsel.
- (v) **“Presenter”** means one or more members who are designated by the Commission or by the executive director to evaluate and report on a complaint to the Commission.
- (w) **“Proceedings”** means informal or formal proceedings, including, but not limited to, consideration of a request for evaluation of judicial conduct; the investigation of a complaint; a meeting or hearing of or with the Commission, its staff, special counsel, or special masters; a disciplinary disposition; a disciplinary sanction; a disability disposition; or a communication with respect thereto.
- (x) **“SCAO”** means the Office of the State Court Administrator.
- (y) **“Request for evaluation of judicial conduct” or “request”** means a request by a complainant for the Commission to consider whether there is a reasonable basis for the commencement of disciplinary or disability proceedings.
- (z) **“Rules”** as cited herein means Colo. RJD.
- (aa) **“Special counsel”** means an attorney or attorneys appointed by the Commission to serve as counsel to the Commission on such matters as the Commission may request including, but not limited to, the investigation or disposition of a complaint, a motion for temporary suspension of a Judge under Rule 34, and the prosecution of a complaint in formal proceedings.
- (bb) **“Special master”** means a person appointed by the Supreme Court to preside over hearings.
- (cc) **“Special members”** are persons appointed by the Commission to serve as alternates to members.
- (dd) **“Supreme Court” or “Court”** means the Colorado Supreme Court.

### **Rule 3. Organization and Administration**

(a) – (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) [NO CHANGE]

(2) Respond to inquiries about the Commission or the Canons;

(3) Process requests for evaluation of judicial conduct;

(4) – (12) [NO CHANGE]

(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 request for evaluation of judicial conduct is received by the Commission (or a complaint is commenced on the Commission's motion) (A) during the Judge's term of office or within one year following the end of the judge's term of office or the effective date of the Judge's retirement or resignation, with respect to alleged misconduct or disability occurring during the Judge's term of office; or (B) during the Judge's service in the senior judge program or within one year following the end of the Judge's service in the senior judge program, with respect to alleged misconduct or disability occurring during the Judge's service in the senior judge program.

(2) [NO CHANGE]

(b) – (d) [NO CHANGE]

(e) **Contempt Powers.** A Judge's refusal to comply with a disposition ordered under Colo. RJD 35 or the willful misconduct of a Judge or any other person during any stage of the Commission's investigation or consideration of a complaint in informal, formal, or disability proceedings, including, but not limited to, misrepresentation of a material fact, resistance to or obstruction of any lawful process, disruptive behavior, breach of confidentiality, or failure to comply with any of these Rules, may be grounds for direct or indirect contempt, as provided in C.R.C.P. 107. In formal proceedings or disability proceedings, direct contempt may be addressed summarily by the special masters. To address allegations of indirect contempt, the Commission shall request the Supreme Court to appoint a special master. The Commission shall be represented in contempt proceedings by special counsel who shall file a motion with the special master, verified by the executive director or a member of the Commission, alleging the grounds for contempt. The special master

may ex parte order a citation to issue to the person charged to appear and show cause at a designated date, time, and place why the person should not be held in contempt. The motion and citation shall be served on the person charged at least seven days before the time required for the person to appear before the special master. The special master shall conduct a hearing and file recommended findings of fact and conclusions of law regarding the alleged contempt with the Supreme Court. The Supreme Court shall consider the special master's recommendations and dismiss the citation or order remedial or punitive sanctions as it deems appropriate under C.R.C.P. 107.

(f) – (g) [NO CHANGE]

### **Rule 5. Grounds for Discipline**

(a) – (b) [NO CHANGE]

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

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

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

### **Rule 6. [NO CHANGE]**

#### **Rule 6.5. Confidentiality and Privilege**

(a) **Confidentiality.** The proceedings of the Commission and special masters, including all papers, investigative notes and reports, pleadings, and other written or electronic records, shall be confidential unless and until the Commission files a recommendation with the Supreme Court under Rule 37. The recommendation and the record of proceedings shall thereupon become public, subject to the limitations provided in Rule 37. The Supreme Court may enter a protective order requiring that certain portions of the record remain confidential upon a showing of good cause by the Commission, special counsel, special masters, or the Judge.

(b) – (c) [NO CHANGE]

(d) **Disclosures.** Subject to certification, when required by subsection (e)(2) of this Rule, confidentiality does not apply to (i) the disclosure of the records and proceedings reasonably

necessary for the Commission or the executive director to fulfill the Commission's Constitutional mandate under Rule 1(b) or (ii) disclosures in the interest of justice or public safety, including the following:

(1) – (2) [NO CHANGE]

(3) In response to an inquiry by the Supreme Court or SCAO concerning the qualifications of a Judge for appointment or reappointment to other judicial responsibilities (including the senior judge program), by an agency or official authorized to evaluate the qualifications of a Judge who has applied for or has been nominated for another judicial position, or by the Governor with respect to the qualifications of a Judge recommended by a nominating commission for appointment to another judicial position, the Commission shall disclose disciplinary dispositions under Rule 35 (other than 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 Office of Judicial Performance Evaluation (“Judicial Performance”) if the Commission determines, in its discretion, that disclosure to Judicial Performance is consistent with its Constitutional mandate under Rule 1(b) and on the condition that Judicial Performance will not publicly disclose such information or its source without independent verification by Judicial Performance;

(5) When a Judge has been convicted of a crime or has become subject to disciplinary measures taken by Attorney Regulation or a similar agency in another jurisdiction;

(6) – (9) [NO CHANGE]

(10) When the Commission or the executive director has knowledge of potential grounds for misconduct under state or federal law, a chief justice directive, or other rule applicable to the conduct of an employee of the state judicial branch (other than a judge) and provides such information to SCAO.

(e) [NO CHANGE]

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

(g) **Public Knowledge.** The Commission or the Judge, by motion filed with the Supreme Court, may assert that allegations of misconduct, the commencement of informal or formal proceedings, and/or the disposition of such proceedings have become generally known to the public and, in the interest of justice, should be publicly disclosed. The Judge or the Commission shall have 14 days to object to or request modifications to the proposed disclosure. The Supreme Court, in its

discretion, may deny such motion or order the disclosure as proposed or with such modifications as it deems necessary. Notwithstanding the disclosure of the nature, status, and result of the proceedings, the Commission's records, including but not limited to investigative reports, correspondence, and pleadings, shall remain confidential unless and until the Commission files a recommendation for sanctions in formal proceedings to the Supreme Court under Rule 37(c) or the Commission and the Judge stipulate to the resolution of formal proceedings under Rule 37(e).

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

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

#### **Rule 7. [NO CHANGE]**

#### **Rule 8. Service**

(a) – (b) [NO CHANGE]

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

(d) [NO CHANGE]

#### **Rule 8.5. Procedural Rights of Judge**

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

(b) [NO CHANGE]

#### **Rules 9. – 11. [NO CHANGE]**

## **PART B. INFORMAL PROCEEDINGS**

### **Rule 12. Request for Evaluation of Judicial Conduct**

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

### **Rule 13. Preliminary Proceedings**

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

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

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

- (1) The request does not allege sufficient grounds for disciplinary or disability proceedings;
- (2) The request disputes a Judge's rulings on motions, evidence, procedure, or sentencing; a Judge's findings of fact and conclusions of law; or other matters that are within the jurisdiction of the trial or appellate courts to resolve, without providing grounds for disciplinary or disability proceedings;
- (3) The allegations are frivolous; or
- (4) The allegations involve subject matter that is not within the jurisdiction of the Commission.

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

(e) **Reports from Other Offices.** In its evaluation and any subsequent proceedings, the Commission may consider relevant information contained in (1) a report of an investigation by SCAO regarding the conduct of a Judge and/or other employees of the judicial branch or (2) a

report by Attorney Regulation regarding (i) the misconduct of an attorney who has been appointed as a Judge or (ii) attorney misconduct that involves a Judge.

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

#### **Rule 14. Investigation and Notice to Judge**

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

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

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

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

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

#### **Rule 15. Independent Medical Examination**

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

#### **Rule 16. [NO CHANGE]**

### **Rule 17. Disqualification of a Judge**

When a complaint is filed against a Judge, the Commission may order the Judge disqualified, on request of the complainant or on the Commission's own motion, in any litigation in which the complainant is involved. Disqualification will be ordered only when the circumstances warrant such relief. After completion of the disqualifying litigation, the order for disqualification shall terminate unless extended by the Commission.

## **PART C. FORMAL PROCEEDINGS**

**Rule 18. – 22.** [NO CHANGE]

### **Rule 23. Witness Fees and Expenses**

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

**Rule 24. – 25.** [NO CHANGE]

### **Rule 26. Hearing**

(a) **In General.** At the time and place designated by notice, the special masters shall hear and take evidence, as required by Article VI, Section 23(3)(e) of the Constitution. Special counsel shall present the case in support of the formal charges. The presiding special master shall rule on all motions and objections made during the hearing, subject to the right of the Judge, the Judge's counsel, or special counsel to appeal a ruling to all of the special masters. The special masters shall provide a report to the Commission, as required by Article VI, Section 23(3)(e) of the Constitution and Rule 32, which shall be approved by majority vote of the special masters. In the event that a majority of the special masters cannot agree on the content of the report, each special master shall issue a report.

(b) [NO CHANGE]

**Rule 27. – Rule 33.** [NO CHANGE]

### **Rule 33.5. Disability Proceedings**

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

(b) – (h) [NO CHANGE]

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

## **PART D. DISPOSITIONS AND SANCTIONS**

### **Rule 34. Temporary Suspension**

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

(b) – (f) [NO CHANGE]

### **Rule 35. Dispositions**

(a) – (g) [NO CHANGE]

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

(i) [NO CHANGE]

**Rule 36. – Rule 36.5.** [NO CHANGE]

## **PART E. SUPREME COURT ACTION**

### **Rule 37. Recommendations**

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

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

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

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

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

### **Rule 38. Exceptions**

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

### **Rule 39. [NO CHANGE]**

### **Rule 40. Decision**

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

Amended and Adopted by the Court, En Banc, April 20, 2017, effective July 1, 2017.

By the Court:

Nancy E. Rice  
Chief Justice, Colorado Supreme Court