

RULE CHANGE 2021(20)

COLORADO RULES OF JUDICIAL DISCIPLINE

Rule 3. Organization and Administration

(a) - (d) [NO CHANGE]

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

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

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

3.5. Code of Conduct for Members

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

(b) Consent and Enforcement.

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

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

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may recommend to the Governor's office that the appointment of an attorney member or non-attorney member should be rescinded and the member removed from the Commission; or recommend to the Supreme Court that the appointment of a judge member should be rescinded and the judge removed from the Commission.

(c) Confidentiality.

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

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

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

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

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

(d) Appearance of Impropriety.

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

(2) Representation before Commission. No member may represent a judge concerning disciplinary proceedings that are pending or known to be contemplated against the judge. No member shall establish or maintain a professional relationship with a complainant or witness in disciplinary proceedings that are pending or known to be contemplated against a judge.

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

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

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

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

(e) Political Activity.

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

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

(f) Use of State Resources.

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

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

(g) Disqualification.

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

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

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

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

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

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

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

(G) has a personal or professional relationship with a complainant or witness in the proceedings.

(2) Disclosure. Each member should disclose to the Commission any present or past family, personal, social, professional, financial, or business relationship with the subject judge, a lawyer

who is representing the subject judge, the complainant, or a witness; and either recuse from participation in the proceedings or defer to the remainder of the Commission members to determine whether the member should be disqualified from the proceedings in order to avoid the appearance of impropriety. A member who recuses from participation shall notify the Commission and the subject judge of the recusal and the date of the recusal, and shall certify to the subject judge that the member has had no involvement in any aspect of the proceedings after the date of recusal. The recusal shall also be immediately communicated to the supreme court. The Commission's annual report shall include information regarding all member recusals including the member's name and the date of the recusal.

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

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

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

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

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

(h) Complaints regarding the Executive Director and Staff.

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

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

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Amended and Adopted by the Court, En Banc, October 12, 2021, effective immediately as to all pending and future proceedings before the Commission.

By the Court:

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