

DENVER COUNTY COURT
JUDICIAL DISCIPLINE COMMISSION

DENVER RULES OF JUDICIAL DISCIPLINE

Revised and Adopted on November 6, 2024 to be effective as of November 16, 2024

Jason A. Anderson

Jason A. Anderson (Nov 27, 2024 09:23 MST)

Jason Anderson
COMMISSION MEMBER

Karen L. Brody

Karen L. Brody (Nov 27, 2024 22:35 MST)

Judge Karen Brody, Chair
COMMISSION MEMBER

Nolbert Chavez

Nolbert Chavez (Nov 27, 2024 09:26 MST)

Nolbert Chavez
COMMISSION MEMBER

Chrissy Faraci

Chrissy Faraci (Nov 26, 2024 14:38 MST)

Chrissy Faraci
COMMISSION MEMBER

Jay S. Grant

Jay S. Grant (Nov 27, 2024 11:08 MST)

Judge Jay Grant
COMMISSION MEMBER

Aaron Hyatt

Aaron Hyatt (Nov 22, 2024 20:27 MST)

Aaron Hyatt
COMMISSION MEMBER

Linda Weirnerman

Linda Weirnerman (Nov 27, 2024 07:27 MST)

Linda Weirnerman
COMMISSION MEMBER

Kerri Lombardi

Presiding Judge Kerri Lombardi
EX-OFFICIO

Preamble

In 1902, the City and County of Denver consolidated into a single municipality, forming a unified governing body that manages both local and state affairs. It operates independently within Colorado as a separate governing entity, empowered by the Colorado Constitution and the Denver Charter to adopt its own ordinances and rules. This authority provides the City and County of Denver with a level of self-governance, allowing it to function with relative autonomy from the state.

In 1962, Colorado voters approved a Constitutional Amendment that created the Denver County Court (the “DCC”), which began operations in 1965. The state recognized the need for a court uniquely designed to adjudicate both municipal and state laws within the consolidated City and County of Denver. This dual jurisdiction required a tailored judicial structure, and the DCC was established to meet this need. Unlike other courts in Colorado, the DCC operates independently of the state and relies entirely on taxes collected by the City and County of Denver for funding, rather than receiving state funds.

In 1966, Colorado replaced partisan judicial elections with a merit-based selection process. To implement merit selection at the DCC, the City and County of Denver created a Judicial Nomination Commission (the “JNC”) under § 4.1.4 of the Denver Charter. The JNC evaluates judicial candidates and submits recommendations to the Mayor of the City and County of Denver, who makes the final appointments.

The Colorado Constitution, the Denver Charter, and the City and County of Denver collectively establish the DCC’s autonomy from state oversight. Consequently, the Colorado Commission on Judicial Discipline, which oversees judicial conduct and disability for other courts, does not have authority over DCC judges. Instead, the City and County of Denver created the DCC Judicial Discipline Commission (the “Commission”), in 1972, under § 4.4.1 of the Denver Charter to oversee judicial discipline for the DCC.

Since its inception, the Commission has functioned as an independent oversight body for the DCC judiciary. The Mayor of the City and County of Denver appoints all voting members of the Commission. Additionally, the Presiding Judge, appointed to that position by the Mayor, serves the Commission as an *Ex-Officio*, non-voting member. The Commission submits its findings and recommendations to the Mayor, who holds the sole authority to censure, suspend, remove, or retire a judge from office.

The Denver Charter, under § 4.4.2, authorizes the Commission to create and enforce its procedural rules, known as the Denver Rules of Judicial Discipline (the “Rules”). The Commission most recently updated the Rules in 2002. This 2024 revision represents the diligent efforts of Commission members to improve the quality and effectiveness of the Rules. In revising the Rules, the Commission focused on expanding public access, enhancing transparency, and ensuring due process.

The Commission expanded public access to its proceedings by increasing communication with complainants throughout the disciplinary process [Rules 16(d), 20], making records of proceedings and other Commission materials more accessible to the public [Rules 5(f), 8(h)-(i), 36(i), 37(f), 44], and requiring the publication of an annual report that includes summaries of the year’s proceedings [Rule 8(j)].

Transparency of Commission proceedings has been enhanced by codifying many procedures to ensure consistency and clarity in the Commission’s operations [Rules 14, 16, 19, 37, 40, 41, 42, 43]. To reinforce public confidence in the high ethical standards of the

Commission, the Rules now provide more specific guidelines for Commission membership and establish a Code of Conduct for members to follow [Rules 3, 4].

The Commission has also enhanced due process in its proceedings to promote impartiality and fairness. To separate investigatory and adjudicative functions, the Commission introduced a neutral panel of Special Masters to oversee formal adjudications and make recommendations [Rules 22, 29, 34, 35, 37(c)]. Evidentiary processes have been expanded and codified to establish clear guidelines and improve consistency [Rules 25, 27, 28, 32]. The Rules also increase information-sharing capabilities with individuals and agencies responsible for monitoring judicial conduct, as well as those who can assist in the decision-making process [Rules 8(c)(6), 16(e), 19(b)(5), 36(e)(1)]. Finally, the Rules expand procedural rights for judges, including the right to counsel and protections for mental and physical disabilities that may impact their conduct [Rules 11, 16(c), 17, 18, 36, 38(b)].

The 2024 revisions of the Denver Rules of Judicial Discipline mark a significant milestone in the Commission's commitment to high ethical standards, accountability, fairness, and public trust in the Denver County Court. The Commission continues its work ensuring that Denver County Court judges and magistrates serve the public honorably and uphold the highest standards of justice.

PART A: GENERAL PROVISIONS

Rule 1. Scope, Objectives, Disclaimer and Title

- (a) **Scope.** These Rules apply to all of the functions, responsibilities, and proceedings of the Denver County Court Judicial Discipline Commission (the "Commission") involving the removal, retirement, suspension, censure, reprimand or other discipline of Judges pursuant to §4.4.1 through §4.4.5 of the Denver Municipal Charter.
- (b) **Purpose.** The purposes of the Commission and these Rules shall be to protect the public from any improper conduct and behavior of judges; to preserve the integrity of the judicial process; to maintain public confidence in the judiciary to create a greater awareness of proper judicial behavior on the part of the judiciary and the public; and, to provide for the expeditious and fair disposition of complaints of judicial misconduct or disability.
- (c) **Disclaimer.** These Rules do not create or constitute any contractual rights between or among the Commission, the County Court, the City and County of Denver, any judge, any magistrate and/or any complainant. Any Rule contained herein may, not less than 10 days after being adopted, in writing, by the Commission, be modified, rescinded or revised. The Commission reserves the right, subject to this Rule 1(c), to unilaterally modify, rescind or revise the provisions of these Rules at any time as needed to implement the Commission's mandate.
- (d) **Title.** These Rules shall be known as the Denver Rules of Judicial Discipline and may be abbreviated as D.R.J.D.
- (e) **Available to Public.** The Commission shall make these Rules available to the public.

Rule 2. Definitions

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

- (a) "**Attorney Regulation**" means the office of Attorney Regulation Counsel.
- (b) "**Commission**" means the Denver County Court Judicial Discipline Commission.
- (c) "**Chair**" means a Member elected by the Commission to administer the business of the Commission and preside at all Meetings of the Commission, any Member appointed to preside at a hearing, or any person designated as "acting chair".
- (d) "**Code,**" "**Canons,**" or "**Canon Rules**" mean the provisions of the Colorado Code of Judicial Conduct as amended.
- (e) "**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.

- (f) "**Judge**" means any appointed or retained or senior judge of the Denver County Court 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 an offense involving moral turpitude. This definition does include full- and part-time magistrates of the County Court of the City and County of Denver, whose conduct is monitored and disciplined by the Presiding Judge of the Denver County Court.
- (g) "**Mail**" and "**mailed**" mean first-class mail or personal delivery.
- (h) "**Mayor**" means the mayor of the City and County of Denver.
- (i) "**Meeting**" means an assembly of the Commission in person, by telephone, or virtually, for any purpose other than the taking of evidence during a hearing.
- (j) "**Member**" means a member of the Commission or alternates acting as Special Members.
- (k) "**Misconduct**" means conduct by a Judge that does not comply with the Code or these Rules.
- (l) "**Notice**" means a letter or other writing sent by mail, unless otherwise specified in the Rules, to a Judge at his or her last known residence, unless the Judge requests otherwise, with a copy mailed to the judge's counsel of record.
- (m) "**Participant**" means a member, special member, the Presiding Judge, 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.
- (n) "**Party**" means the Commission, Special Counsel, the Judge, or the Judge's counsel.
- (o) "**Presenter**" means one or more Members who are designated by the Commission or by the Presiding Judge to evaluate and report on a complaint to the Commission.
- (p) "**Presiding judge**" means the presiding judge of the County Court for the City and County of Denver.
- (q) "**Proceedings**" include a complaint; a response to complaint; the review, evaluation, and 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.
- (r) "**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 37, and the prosecution of a complaint in formal proceedings. Said Special Counsel may be a member of the staff of the Denver City Attorney's office.

- (s) "**Special Master**" means a person appointed by the Commission 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 seven Members plus the Presiding Judge serving in an ex-officio capacity as provided in §4.4.1(B) of the Denver City Charter. The members of the Commission shall not receive any salary or compensation for their services as a Member. Any Member who is related by blood or marriage within the third degree to a Judge shall be disqualified from any matter concerning that Judge.
- (b) **Officers.** The Commission shall elect from its membership a chair, a vice-chair, and an executive secretary, each of whom shall serve renewable one-year terms from January 1 to December 31 each year. The vice-chair shall act as chair in the absence of the chair, and in the absence of both, the Members present may select an acting chair. An officer's position and authority shall continue beyond his or her term of office until a successor is duly elected.
- (c) **Special Members.** The Commission may appoint Special Members to serve in the place of a Member who recuses or who is disqualified with respect to a complaint, or who may be temporarily unable to perform his or her duties as a Member.
- (d) **Presiding Judge.** The Presiding Judge is an ex-officio, nonvoting advisory Member of the Commission. The Presiding Judge and the Presiding Judge's staff shall have the following duties and responsibilities:
 - (1) Establish and maintain a permanent office;
 - (2) Receive information, allegations, and complaints;
 - (3) Review and evaluate complaints;
 - (4) Conduct investigations;
 - (5) Recommend dispositions;
 - (6) Maintain Commission records;

- (7) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Mayor;
 - (8) Prepare the Commission's budget, if any, and administer its funds;
 - (9) Employ the Commission's staff;
 - (10) Prepare an annual report of the Commission's activities for presentation to the Mayor and, upon request, to the public;
 - (11) Employ Special Counsel, investigators, or other experts as necessary to investigate and process matters before the Commission;
 - (12) Disclose all reports and outcomes; and
 - (13) Perform such other duties as these Rules or the Commission may require.
- (e) **Meetings.** Meetings of the Commission shall be held at the call of the chairperson, the vice-chairperson, or the Presiding Judge, or at the request of three Members of the Commission. The Commission may conduct Meetings by telephone conference call or virtually.
- (f) **Quorum.** Four Members must be present for the transaction of business by the Commission.

Rule 4. 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 Presiding Judge, and staff of the Commission in the performance of their duties shall be in accordance with this Rule 4.
- (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 4. 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 Presiding Judge 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.

- (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 Mayor'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 Mayor 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 § 4.4.2(B) of the Denver Charter and Denver RJD 8.
- (2) **Communications.** Neither the Presiding Judge, 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 Presiding Judge, 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 Presiding Judge 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 Presiding Judge, 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 4(d) also shall apply to the conduct of the Presiding Judge and staff.

(e) **Political Activity.**

- (1) **Judicial Campaigns.** No Member, staff, or the Presiding Judge 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 Presiding Judge 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 City and County of Denver Resources.**

- (1) **Judicial Branch Policies.** Members and Commission staff who utilize information technology, electronic communications, computers, or other resources provided by the City and County of Denver 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 Mayor. 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.** 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 Presiding Judge and Staff.**
- (1) **Complaints Regarding the Presiding Judge.** If a member receives a complaint about the conduct of the Presiding Judge, 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 Presiding Judge.
 - (2) **Complaints Regarding Staff.** If a member receives a complaint about the conduct of a staff member, other than the Presiding Judge, the member shall refer the complaint either to the Presiding Judge, the Chair, or the Vice-Chair.

Rule 5. 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) (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 with the City in its senior judge program or within one year following the end of the Judge's service in the City's senior judge program, with respect to alleged misconduct or disability occurring during the Judge's service in the senior judge program.
- (2) **Continuing Jurisdiction.** The jurisdiction of the Commission to fulfill its mandate under 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) **General Powers.** The Commission shall have the power to receive information, investigate, conduct hearings, take informal remedial action, and make recommendations to the Mayor concerning allegations of judicial misconduct, allegations of mental or physical disability of judges, matters of voluntary retirement for disability, violations of the Code of Judicial Conduct, or extra-judicial conduct which reflects adversely on the judiciary.
- (c) **Evidentiary Powers.** Any Member of the Commission may administer oaths and affirmations, compel by subpoena the attendance and testimony of witnesses, including the Judge as witness, and provide for the inspection of documents, books, accounts, and other records.
- (d) **Contempt Powers.** The misconduct of any person in the presence of the Commission while it is performing official duties, resistance to or obstruction of any lawful process, order or Rule of the Commission, failure of Judge to comply with an order or request of the Commission, or a violation of the rule of confidentiality pertaining to Commission proceedings shall constitute contempt, either direct or indirect. Any Participant in a Commission proceeding may be cited for contempt of the Commission by order of the County Court. Contempt hearings shall be conducted before the Commission, which shall advise the County Court of its findings, conclusions and recommendations with respect to the alleged contempt, and the County Court may impose such penalties or sanctions as it deems appropriate. Any and all contempt proceedings shall be conducted pursuant to Rule 407, C.R.C.P.

- (e) **Administrative Powers.** The Commission may adopt administrative policies, rules of procedure or forms for its internal operation or proceedings that do not conflict with the provisions of these Rules.
- (f) **Communications.** The Commission may distribute information to the judiciary and the public concerning its authority and procedures.

Rule 6. Magistrates

Section 4.3.2 of the Denver Charter provides that the Presiding Judge may appoint full time and part time magistrates "who shall hold such appointments so long as their services are satisfactory to the Presiding Judge." Because said magistrates are at-will employees who serve at the pleasure of the Presiding Judge, it shall be within the sole discretion of the Presiding Judge as to whether to seek a recommendation from the Commission regarding a matter involving a magistrate in accordance with Section 4.3.3 of the Denver charter. If the Presiding Judge elects to seek a recommendation from the Commission regarding a matter involving a magistrate, it shall not alter the at-will status of a magistrate, nor shall Rules 14-44 apply to magistrates.

Rule 7. 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, or the use of illegal narcotic or dangerous drugs; or
 - (4) Any conduct that constitutes a violation of the Code of Judicial Conduct.
- (b) **Additional Grounds for Removal or Retirement.** In addition to the grounds delineated in subsection (a), grounds for removal or retirement of a judge shall include any disability interfering with the performance of judicial duties which is, or is likely to become, of a permanent character.
- (c) **Failure to Cooperate.** Failure or refusal of a Judge to cooperate or the intentional misrepresentation of a material fact during any stage of a disciplinary proceeding may constitute willful misconduct in office.

- (d) **Misconduct Distinguished from Error.** In the absence of fraud, corrupt motive, bad faith, or any of the above grounds, the Commission shall not take action against a judge for making erroneous findings of fact or legal conclusions which are subject to appellate review.
- (e) **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 or (iii) cause for contempt proceedings under Rule 5(d).

Rule 8. Confidentiality and Privilege

- (a) **Confidentiality.** All papers and pleadings filed with and proceedings before the Commission, or before Special Masters appointed pursuant to these Rules, shall be confidential unless the Commission files a recommendation with the Mayor, or in the case of a magistrate, with the Presiding Judge, a recommendation that a Judge or magistrate be removed, retired, suspended, publicly censured, publicly reprimanded or disciplined, at which time the recommendation together with the supporting record of the proceedings shall no longer be confidential. The Commission may include as part of the record, if any, the pleadings in the case, transcripts of formal proceedings, affidavits and exhibits, findings of fact and conclusions of law, legal briefs, or any other documents pertinent to the Mayor's or Presiding Judge's consideration of the Commission's recommendation.
- (b) **Privilege.** Any papers or pleadings filed with the Commission or testimony given in Commission proceedings are considered privileged communications and, therefore, cannot be the subject of any legal action against a Participant in a Commission proceeding involving any claim, including a claim for defamation. All papers and pleadings filed with the Mayor, or in the case of a magistrate with the Presiding Judge, in support of a Commission recommendation shall continue to be privileged.
- (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 Mayor.
- (d) **Disclosure.** The Commission may release confidential information concerning a Judge when:
 - (1) An inquiry is initiated as a result of conduct that is or becomes the subject of widespread public concern, to such an extent that the release of information concerning insufficient cause to proceed or a finding of no misconduct would benefit the Judge or magistrate and the public, and the Judge or magistrate signs a waiver for this purpose;

- (2) A government agency or nominating commission requests information concerning the appointment of a Judge or former Judge or magistrate to another judicial position, and the Judge or magistrate signs a waiver for this purpose;
 - (3) An agency authorized to investigate the qualification of persons for admission to practice law requests information in order to evaluate a Judge's application for admission to the bar of another state, and the Judge signs a waiver for this purpose;
 - (4) The Mayor requests information pertaining to the appointment or assignment of a retired Judge or magistrate to judicial duties;
 - (5) The Commission notifies the Attorney Regulation of a complaint against a Judge or magistrate involving conduct that may violate the Colorado Rules of Professional Conduct; or
 - (6) A government agency investigating the conduct of a Judge requests information concerning that conduct and the Judge signs a waiver consenting to the release of information for this purpose.
- (e) **Use of Closed File.** A closed file involving a previous finding of misconduct may be used by the Commission in subsequent proceedings involving current allegations of misconduct against the same Judge or magistrate.
- (f) **Consultation With an Attorney.** It shall not be a breach of this Rule for a Participant to consult with or be represented by an attorney.
- (g) **Commission Investigations.** It shall not be a breach of this Rule for the Commission or anyone appointed by the Commission to investigate matters before it.
- (h) **Public Knowledge.** The Commission or the Judge, by motion filed with the Presiding Judge, may assert that allegations of misconduct, pending 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 Presiding Judge, in his 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 Mayor under Rule 41(c) or the Commission and the Judge stipulate to the resolution of formal proceedings under Rule 41(e).

- (i) **Available Records.** Upon the filing of a recommendation with the Mayor pursuant to section (a) of this Rule, the record of proceedings shall be available to the public, except as provided in Rule 41 or unless the Presiding Judge 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.
- (j) **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, witness, or other parties to the proceedings.
- (k) **Duty of Officials and Employees.** All officials and employees within the Commission, Presiding Judge's office, Special Counsel's office, Special Masters' offices, and the Mayor's Office shall conduct themselves in a manner that maintains the confidentiality mandated by these Rules.

Rule 9. Notice to Complainant

Upon termination of any proceedings hereunder, the Judge, the Judge's counsel, Special Counsel, and the person who initiated the proceedings shall be notified of the action taken by the Commission or the Mayor and shall be cautioned concerning the continuing confidentiality of Commission proceedings.

Rule 10. Service

- (a) **Service on Judge.** All papers in Commission proceedings may be served on a Judge in person or by mail, except that a notice of formal charges must be served on a Judge in person where it is reasonably feasible to do so, or by certified mail. Mail shall be sent to the residence of a Judge unless otherwise requested by the Judge. If counsel has appeared for a Judge, all papers, other than a notice of formal charges, may be served on counsel in lieu of service upon the Judge.
- (b) **Service on Commission.** Service of papers on the Commission shall be given by delivering or mailing the papers to the Commission's office c/o the Presiding Judge.
- (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 paper is timely served if mailed within the time permitted for service, and a time period dependent on that service begins to run three days after the paper is mailed.

Rule 11. 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, Presiding Judge, 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 36. Any notice to be served on the Judge shall also be served on the guardian ad litem.

Rule 12. Disqualification of an Interested Party

A Member of the Commission may not participate in any proceedings involving a Judge or magistrate who is related by blood or marriage within the third degree to such Member. The Presiding Judge may not participate in any proceedings as an *ex-officio* Member in proceedings against the Presiding Judge. Members of the Commission may disqualify themselves in any proceeding involving a Judge or magistrate who is a close personal associate or for any other reason the Member deems appropriate.

Rule 13. Immunity

Members of the Commission, Commission staff, and Special Counsel shall be absolutely immune from suit for all conduct in the course of their official duties.

Rule 14. Amendment of Rules

The Commission may enact any necessary amendments to these Rules or for any additional Rules that are needed to implement the Commission's constitutional mandate. Any person may request the adoption, amendment, or repeal of a Commission Rule by filing a petition with the Commission describing the proposed change and sending out the proposed Rule in full. A new or modified Rule shall not become effective until at least 10 days after being adopted, in writing, by the Commission.

PART B: PRELIMINARY PROCEEDINGS

Rule 15. 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 or magistrate. 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 this purpose. Complaints must allege facts that, if true, would constitute one or more grounds for discipline of a Judge. Any complaint against a magistrate will be handled pursuant to the terms of Rule 6 of these Rules.

Rule 16. Review of Complaints and Preliminary Evaluations

- (a) **Review.** The Commission or the Presiding Judge, upon receipt and without undue delay, shall review each complaint to determine whether the complaint alleges sufficient cause to warrant further evaluation and investigation.
- (b) **Dismissal.** The Commission or the Presiding Judge shall dismiss complaints that:
 - (1) Do not allege facts which, if true, would provide grounds for disciplinary proceedings;
 - (2) Dispute a Judge's findings of fact; conclusions of law; or rulings on evidence, procedure, or other matters within the jurisdiction of the trial or appellate courts, unless the Judge's conduct in considering and issuing such a decision provides grounds for disciplinary proceedings;
 - (3) Are frivolous; or
 - (4) Are otherwise beyond the jurisdiction of the Commission.
- (c) **Preliminary Evaluation.** If the review does not result in dismissal of the complaint, the Presiding Judge, a Member of the Commission, the Commission staff, or an investigator shall conduct a preliminary evaluation of the allegations for consideration by the Commission. A Judge need not be notified of a preliminary evaluation.
- (d) **Reply to the Request.** The Presiding Judge 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 review, preliminary evaluation, and subsequent proceedings, the Commission may consider relevant information contained in (1) a report of an investigation by the Office of the State Court Administrator regarding the conduct of a Judge and/or other employees of the judicial branch or (2) a report by Attorney Regulation regarding the misconduct of an attorney who has been appointed as a Judge or magistrate or attorney misconduct that involves a judge.

Rule 17. 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 Presiding Judge, a Member of the Commission, the Commission staff, or an investigator.
- (b) **Notice to Judge.** As soon as practicable after finding sufficient grounds for disciplinary proceedings, the Commission shall notify 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). A copy of the Rules shall be included with the notice or incorporated by reference into the notice. The Commission or the Presiding Judge, in their discretion, may determine when the complainant should be notified of the investigation.
- (c) **Expedited Investigation.** The Presiding Judge may commence an investigation and provide 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 judicial duties or other circumstances which, in the Presiding Judge's reasonable discretion, warrant attention before the next Meeting of the Commission.
- (d) **Judge's Response.** The Judge shall be afforded a reasonable opportunity to respond in writing to the preliminary evaluation and the investigation or to appear before the Commission.
- (e) **Temporary Suspension.** The Commission may request a temporary suspension of the Judge under Rule 37 during preliminary proceedings.

Rule 18. Independent Medical Examination

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

Rule 19. Determination

- (a) **Summary.** The Presiding Judge or the Commission shall appoint a Member to serve as the presenter who shall provide a summary of an investigation, including the allegations, the Judge's response, and other relevant evidence, to the other Members.
- (b) **Decision.** The Commission shall consider the summary of the investigation and by majority vote of the Members participating in person, by conference call, or virtually, exclusive of the presenter, dismiss the complaint under Rule 38(a) or take one of, or a combination of any of, the following measures:

- (1) Apply a private disciplinary disposition under subsections (c) through (i) of Rule 38;
 - (2) Initiate disability proceedings under Rule 36;
 - (3) Request a temporary suspension of the Judge under Rule 37;
 - (4) Appoint Special Counsel to review the summary, conduct such further investigation as may be appropriate, and advise the Commission regarding its options to address the allegations; and, upon consideration of Special Counsel's advice, dismiss the complaint, adopt a private disciplinary disposition, initiate disability proceedings, request a temporary suspension of the Judge pending further proceedings, determine that probable cause exists for the commencement of formal proceedings, or continue the investigation; or
 - (5) Retain an outside independent investigator and request a full report.
- (c) **Standard of Proof.** The standard of proof for a decision under section (b) of this Rule shall be the preponderance of evidence.

Rule 20. Disqualification of a Judge

When a complaint is filed against a Judge, the complainant may request that the Judge be disqualified in any particular case or cases in which the complainant is involved. Disqualification will be ordered only when the circumstances warrant such relief; otherwise the Commission may reject the complaint without prejudice, or hold the complaint for further action until any pending cases are resolved. After completion of an action on a matter concerning a Judge, the order for disqualification shall be terminated unless otherwise directed by the Commission, and the Judge shall be notified of the Commission's action.

PART C: FORMAL PROCEEDINGS

Rule 21. Statement of Charges, Notice, and Pleadings in Formal Proceedings

- (a) **Commencement of Formal Proceedings, Statement of Charges, and Notice.** Special Counsel shall commence formal proceedings in the name of the People of the City and County of Denver by serving a statement of charges together with a notice of formal charges on the Judge. the case shall be captioned "In re the Matter of the People of the City and County of Denver, Complainant, and Judge [name], Respondent."
- (1) The statement of charges shall state in ordinary and concise language the grounds for the charges with specific reference to the alleged misconduct and applicable Canons, Canon Rules, or Rules. The notice shall advise the Judge of his or her right to file an answer to the statement of charges, which shall include a response

to each allegation together with applicable affirmative defenses or mitigation factors.

(2) Pleadings in formal proceedings shall follow the general format for civil pleadings. The statement of charges, notice of formal charges, the originals of all pleadings, and the orders of the Special Masters shall be filed in the office of the Presiding Judge, who shall maintain the record of proceedings.

(b) **Role of Special Counsel in Formal Proceedings.** At all times during formal proceedings, Special Counsel shall represent the People, acting by and through the Commission, and shall inform the Commission periodically concerning the status of the proceedings.

Rule 22. Special Masters

(a) **Appointment.** After Special Counsel has served the statement of charges and notice of formal charges on the Judge and filed copies thereof with the Presiding Judge, the Commission, through the Presiding Judge, shall appoint three Special Masters to preside over formal proceedings who shall hear and take evidence concerning the charges and provide a report to the Commission in accordance with the Constitution and these Rules. The appointees may be retired justices or active or retired judges of courts of record, who have no conflicts of interest and who are able to serve diligently and impartially as Special Masters. Unless otherwise designated, the judge first named in the Commission'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.

Rule 23. Response of Judge

The Judge shall file a response to the statement of charges with the Presiding Judge within 21 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 24. Setting for Hearing

After the filing of the Judge's response under Rule 23, or if the Judge does not file a response under Rule 23, the presiding Special Master shall order that the formal proceedings are at issue and shall schedule a hearing regarding the matters contained in the statement of charges and the response, if any. The Special Masters shall serve notice on all parties of the location and date of the hearing, which shall begin no later than 91 days after the at issue date, unless extended for good cause by order of the presiding Special Master.

Rule 25. Discovery

- (a) **Purpose and Scope.** This Rule 25 shall govern discovery in judicial discipline and disability proceedings. C.R.C.P. 26 shall not apply to such proceedings, except as provided in this Rule or as ordered by the presiding Special Master.
- (b) **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 the 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 of 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 of the Presiding Judge or 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 a maximum of 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) 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.
 - (4) A party may serve on the adverse party a maximum of 20 requests for admission, written interrogatories, each of which consist of a single request. The scope and

manner of proceeding by way of written interrogatories and the use thereof shall otherwise be governed by C.R.C.P. 36.

- (5) When the mental or physical condition of the Judge has become an issue in the proceeding, the Presiding Judge or presiding Special Master, on motion of any part 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 have the opportunity to respond to the motion; and the Judge may request a hearing before the Presiding Judge or 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.
- (e) **Good Cause.** In determining good cause pursuant to section (d) of this Rule, the Presiding Judge or 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 discovery or disclosure 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 or expense, including the issuance of one or more of the following orders:

- (1) That the disclosure or discovery not be had;
- (2) That the disclosure or discovery may be had only on specified terms and conditions, including designation of the time or place;
- (3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) That certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;
- (5) That discovery be conducted with no one present except persons designated by the Special Masters; and
- (6) That a deposition, if sealed, be opened only by order of the Special Masters.

If the motion for a protective order is denied in whole or in part, the Special Masters, on such terms and conditions as are just, may order that any party or other person provide or permit discovery. The provisions of C.R.C.P. 37(a)(4) apply to an award of expenses incurred with regard to the motion.

Rule 26. Subpoena and Inspections

The Commission and the Judge shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the Judge as witness, and to provide for the production and inspection of documents, books, accounts, and other records. Subpoenas may be issued by the chair, the Presiding Judge, Special Counsel, the Judge's counsel, or a Special Master and shall be served in the manner provided by law for the service of subpoenas in a civil action. A party requesting or issuing a subpoena shall file a copy of each subpoena with the Special Masters; shall notify all parties of the issuance and service of each subpoena; and shall not cancel any subpoena without the approval of the presiding Special Master or the agreement of the parties.

Rule 27. Witness Fees and Expenses

All witnesses shall receive fees and expenses in the amount allowed by law. Fees and expenses of witnesses shall be borne by the party calling them. If physical or mental disability of the judge is an issue in the case, the Commission shall reimburse the judge for the reasonable fees and expenses of the witnesses whose testimony relates to the disability. If the judge is exonerated of the allegation, and the Commission

determines that the imposition of witness fees and expenses would work a financial hardship or injustice upon the judge, then it may order that those fees and expenses be reimbursed.

Rule 28. Prehearing Procedures

The Special Masters may direct the parties to appear in person, by telephone, or virtually for prehearing procedures which shall generally follow C.R.C.P. 16, but in a manner suitable for formal proceedings.

Rule 29. Hearing

- (a) **In General.** At the time and place designated by notice, the Special Masters shall hear and take evidence, as required by Section 4.4.2 of the Denver Charter. 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 Section 4.4.2 of the Denver Charter, 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) **Failure to Appear.** The failure of the judge to appear at the hearing may be considered an admission of the charges in the complaint, unless it appears that such failure was due to circumstances beyond the judge's control.

Rule 30. Procedures and Rules

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

Rule 31. Amendments to Pleadings

The Commission may in the interest of justice allow or require amendments to pleadings at any time in accordance with the Colorado Rules of Civil Procedure.

Rule 32. 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 14 days prior to the date of hearing.

Rule 33. Standard of Proof

The standard of proof in all formal proceedings before the Commission shall be clear and convincing evidence. The standard of proof in all other proceedings before the Commission shall be the preponderance of the evidence.

Rule 34. Report of the Special Masters

At the conclusion of the hearing in formal proceedings, the Special Masters shall issue and file with the Presiding Judge 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 its recommendations to the Commission for dismissal of the charges, a private disposition, or one or more sanctions. The Presiding Judge shall certify the Special Masters' report as part of the record of proceedings to be filed with the Mayor's Office, in accordance with Rule 41.

Rule 35. Record of Proceedings

The record of proceedings shall consist of the report of the Special Masters together with pleadings, motions, verbatim electronic or written transcripts of proceedings, affidavits, exhibits, findings of fact and conclusions of law, legal briefs, and any other documentation designated by the Commission for the Mayor'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 Mayor.

Rule 36. 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 proceeding.
- (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 22 appointment of three Special Masters, the Commission 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 Mayor, and otherwise act as provided in this Rule for action by three Special Masters; and
- (5) If the Commission 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 (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 Mayor, on the degree of the Judge's disability no later than 70 days 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 preceding the end of the temporary transfer period and report to the Commission [*on*] or before expiration of the 182 days. The Commission may order more frequent reports during the temporary transfer period, in its discretion. For good cause, the Commission 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 Commission shall consider the recommendations and enter any order appropriate under the circumstances;

- (iii) Recommend to the Mayor, the Transfer of the Judge to lawyer disability inactive status, if the Mayor 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 suspend the disciplinary proceeding. In accordance with the Denver Rules of Judicial Discipline, the Commission will petition the Mayor to 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 Mayor 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 Mayor 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 by the Commission, but the Judge shall remain in 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 Mayor, 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 Commission shall, after considering all relevant factors, enter an order appropriate in the circumstances, including but not limited to: (i) retiring the Judge under subsection (b)(5)(i) of this Rule; (ii) transferring the Judge to temporary judicial disability inactive status and evaluating the Judge's disability under provisions of subsection (b)(5)(ii); and/or (iii) transferring the Judge to lawyer disability inactive status under subsection (b)(5)(iii). A copy of the order shall be served on the Judge, his or her guardian, and the director of such institution. All such orders shall be public, in accordance with section (i) of this Rule.

(e) 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 Mayor for Approval or Rejection.
- (3) If the Mayor approves the stipulated disposition, it shall enter an order in accordance with its terms. If the stipulated disposition is rejected by the Mayor, 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 Presiding Judge 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 Mayor 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 Mayor 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 Mayor 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 Mayor written consent to the release of information and records relating to the disability. If requested by the Mayor 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 Denver or state 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 Mayor 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 37. Temporary Suspension

- (a) **Request to the Mayor.** The Commission, through its chair or Presiding Judge, or through Special Counsel to the Commission, may request the Mayor 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 Mayor may require additional information from the Commission.
- (b) **Order to Show Cause.** Upon a finding that the Mayor has been fully advised and that a temporary suspension is appropriate, the Mayor (1) shall issue an order for temporary suspension; (2) direct the Commission to issue an order to the Judge to show cause to the Commission in writing, within 21 days, why the Judge should not continue to be temporarily suspended from any or all judicial duties pending the outcome of preliminary or formal proceedings before the Commission; and (3) appoint an active, retired, or senior judge or a retired justice as Special Master to preside over a show cause hearing. The Mayor may issue an order for temporary suspension and an order to show cause to the Commission on its own motion.
- (c) **Hearing.** The Special Master shall conduct a hearing on the order to show cause within 28 days of the Judge's response to such order or such later date ordered by the Special Master, at which the Presiding Judge, Special Counsel, the Judge, Judge's counsel, and witnesses may appear and participate. Within seven days following the conclusion of the hearing, the Special Master shall file its findings and conclusions with the Mayor. Within the seven days thereafter, Special Counsel and the Judge or the Judge's counsel may file exceptions with the Mayor regarding the findings and conclusions. Upon its consideration of the findings, conclusions, and exceptions, the Mayor may affirm, modify, or terminate the temporary suspension.

- (d) **Further Order.** The Mayor 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 Mayor.
- (f) **Public Notice.** An order by the Mayor for temporary suspension shall become public upon its issuance. However, the Commission's investigation, pleadings, and other records with respect to the temporary suspension and its record of proceedings in preliminary or formal proceedings shall remain confidential unless and until a recommendation for sanctions or a recommendation for approval of a stipulated resolution is filed with the Mayor under Rule 41.

Rule 38. 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) **Disability Proceedings.** Initiate disability proceedings under Rule 36 or stipulate to voluntary retirement by the Judge for a disability under Rule 36(e);
- (c) **Diversion Plan.** Direct the Judge to follow a diversion plan, including but not limited to education, counseling, drug and alcohol testing, medical treatment, medical monitoring, or docket management, which may be accompanied by the deferral of final disciplinary proceedings;
- (d) **Private Admonishment.** Admonish the Judge privately for an appearance of impropriety, even though the Judge's behavior otherwise meets the minimum standards of judicial conduct;
- (e) **Private Reprimand.** Reprimand the Judge privately for conduct that does not meet the minimum standards of judicial conduct;
- (f) **Private Censure.** Censure the Judge privately for conduct 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;
- (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 8; or

- (i) **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 39. Sanctions

After considering the record of proceedings and the report of the Special Masters, in accordance with Section 4.4.2 of the Denver Charter, the Commission, by majority vote of the Members Meeting in person, by conference call, or virtually, including the vote of any Member who served as a presenter in prior proceedings, shall recommend that the Mayor dismiss the charges or order one or more of the following sanctions, except that a recommendation for removal shall require a majority vote of all Members of the Commission:

- (a) **Removal.** Remove the Judge from office;
- (b) **Retirement.** Order the retirement of the Judge;
- (c) **Suspension.** Suspend the Judge without pay for a specified period;
- (d) **Disability Proceedings.** Remand the matter to the Commission for disability proceedings or stipulate to voluntary retirement by the Judge for a disability under Rule 36(e);
- (e) **Public Reprimand or Censure.** Reprimand or censure the Judge publicly, either in person or by written order;
- (f) **Diversion or Deferred Discipline.** Require compliance with a diversion plan or deferred discipline plan;
- (g) **Costs and Fees.** Assess costs and fees incurred by the Commission, which may include a recommendation for reimbursement of its reasonable attorney fees, provided the recommendation includes grounds for such reimbursement that the Mayor determines to be appropriate and equitable in the circumstances; or
- (h) **Other Discipline.** Impose any other sanction or combination of sanctions, including dispositions under Rule 38, that the Mayor determines will curtail or eliminate the Judge's misconduct.

Rule 40. Conviction of a Crime

- (a) **Suspension.** Whenever a Judge has been found guilty, by a verdict or a plea of guilty in any state or federal court of the United States, of a felony or an offense involving moral turpitude, the Mayor, on the Mayor's own motion or upon petition filed by any person and a finding that such a finding of guilty was had, shall enter an order suspending the Judge from office and suspending the payment of the Judge's salary until such time as the Judge is sentenced.
- (b) **Removal.** Upon the sentencing of the Judge, the Mayor shall enter an order removing the Judge from office and declaring the Judge's office vacant; and also forfeiting the Judge's salary, retroactive to the date of the finding of guilty.
- (c) **Reversal or Acquittal.** If the judgment of guilty is reversed and a judgment of acquittal or a dismissal is then entered, the Judge shall recover the salary that had been forfeited pursuant to section (b) of this Rule together with the salary that would have accrued through the date of acquittal or dismissal. While reversal of a conviction does not entitle the Judge to resume his or her previous judicial office or to be paid a salary beyond the date of acquittal or the date of dismissal, the Judge will be eligible for consideration by a judicial nominating Commission for open positions and will be eligible to apply for the senior judge program.
- (d) **Effect of Pleas.** A plea of guilty or nolo contendere shall be equivalent to a finding of guilty for the purpose of this Rule.

PART E: MAYOR'S OFFICE ACTION

Rule 41. Recommendations

- (a) **Filing the Record of Proceedings and Recommendation.** Upon consideration of the report of the Special Masters, the Presiding Judge shall file the record of the proceedings and the Commission's recommendation to the Mayor for dismissal, sanctions, or a stipulated resolution with the Mayor.
- (b) **Dismissal.** If the Commission recommends dismissal, the dismissal and the record of proceedings shall remain confidential, unless it orders public disclosure under Rule 8.
- (c) **Sanctions.** The Commission may recommend one or more of the sanctions provided in Rule 39. The Commission's recommendation for sanctions and the record of proceedings shall become public upon filing the recommendation with the Mayor. The Presiding Judge 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 42. The Presiding Judge shall file proof of service of the recommendation and the notice with the clerk of the County court.
- (d) **Private Disposition.** As an alternative to sanctions, the Commission may recommend a private disposition under Rule 38. The Presiding Judge shall notify the Judge (or the

Judge's counsel) and the Mayor of the Commission's recommendation. The record of proceedings shall remain confidential until the Mayor determines whether to approve the disposition. If the Mayor approves the disposition, the record shall remain sealed and the disposition shall remain confidential, subject to the provisions of Rule 8. If the Mayor 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 these Rules; 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 Mayor 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 Mayor. However, if it provides for dismissal, the stipulated resolution and the record of proceedings shall be confidential pending the Mayor's consideration, and if approved by the Mayor, the stipulated resolution and the record of proceedings shall remain confidential, subject to the provisions of Rule 8.

Rule 42. Exceptions

Exceptions to the recommendation shall be filed by the Judge, the Judge's counsel, or Special Counsel with the Mayor and served on each other party to the proceedings within 21 days after service of the notice required by Rule 41. Exceptions shall be supported by an opening brief based on the record of the proceedings. A party opposing the exceptions shall have 21 days after the filing of the opening brief within which to file an answer brief, a copy of which shall be served on all parties. A party shall have 14 days after the filing of the answer brief within which to file a reply brief, a copy of which shall be served on all parties. If no exceptions are filed, the matter will stand submitted upon the 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 Mayor determines that the application of a particular Rule would be impracticable, inappropriate, or inconsistent in disciplinary proceedings.

Rule 43. Additional Findings

If the Mayor 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 Mayor. The Mayor may order additional proceedings in his or her discretion.

Rule 44. Decision

The Mayor 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 42. The Mayor 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 Mayor shall order it to become effective and issue any sanction provided in the stipulated resolution, unless the Mayor determines that its terms do not comply with Rule 41(e) or are not supported by the record of proceedings. The decision of the Mayor, including such sanctions as may be ordered, shall be final and shall be published.
