

RULES OF THE COMMISSION ON JUDICIAL PERFORMANCE

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Rule 101. Interested Party

Judges who are members of the commission or of the Supreme Court may not participate as such in any commission proceedings involving themselves.

Rule 102. Confidentiality and Disclosure

(a) (Scope of rule) Except as provided in this rule, all papers filed with and proceedings before the commission shall be confidential. Nothing in this rule prohibits the respondent judge or anyone other than a commission member or member of commission staff from making statements regarding the judge's conduct underlying a complaint or proceeding.

(b) (Disclosure after institution of formal proceedings) When the commission institutes formal proceedings, the following shall not be confidential:

(1) The notice of formal proceedings and all subsequent papers filed with the commission and the special masters, all stipulations entered, all findings of fact and conclusions of law made by the special masters and by the commission, and all disciplinary determinations made by the commission;

(2) The formal hearing before the special masters and the appearance before the commission.

(c) (Explanatory statements) The commission may issue explanatory statements under Article VI, section 18(k) of the California Constitution.

(d) (Submission of proposed statement of clarification and correction regarding commission proceedings by judge) Notwithstanding rule 102(a), if public reports concerning a commission proceeding result in substantial unfairness to the judge involved in the proceeding, including unfairness resulting from reports which are false or materially misleading or inaccurate, the involved judge may submit a proposed statement of clarification and correction to the commission and request its issuance. The commission shall either issue the requested statement, advise the judge in writing that it declines to issue the requested statement, or issue a modified statement.

(e) (Disclosure to complainant) Upon completion of an investigation or proceeding, the commission shall disclose to the person complaining against the judge that the commission (i) has found no basis for action against the judge, (ii) has taken an appropriate corrective action, the nature of which shall not be disclosed, or (iii) has publicly admonished, censured, removed, or retired the judge. The name of the judge shall not be used in any written communication to the complainant, unless formal proceedings have been instituted. Written communications to the complainant in which the judge's name is not used shall include the date of the complaint as a cross-reference.

(f) (Public safety) When the commission receives information concerning a threat to the safety of any person or persons, information concerning such a threat may be provided to the person threatened, to persons or organizations responsible for the safety of the person threatened, and to law enforcement and/or any appropriate prosecutorial agency.

(g) (Disclosure of information to prosecuting authorities) The commission may release to prosecuting authorities at any time information which reveals possible criminal conduct by the judge or former judge or by any other individual or entity.

(h) (Disclosure of records of disciplinary action to public entity upon request or consent of judge) If a judge or former judge requests or consents to release of commission records of disciplinary action to a public entity, the commission may release those records.

(i) (Disclosure of records of disciplinary action to appointing authorities) Pursuant to Article VI, section 18.5 of the California Constitution, the commission shall, upon request, provide to the Governor of any State of the Union, the President of the United States, or the Commission on Judicial Appointments the text of any private admonishment or advisory letter issued after March 1, 1995 or any other disciplinary action together with any information that the commission deems necessary to a full understanding of the commission's action, with respect to any applicant under consideration for any judicial appointment, provided that:

(1) The request is in writing; and

(2) Any information released to the appointing authority is simultaneously provided to the applicant.

All information disclosed to appointing authorities under this subdivision remains privileged and confidential. Private admonishments and advisory letters issued before March 1, 1995 shall only be disclosed under this section with the judge's written consent.

(j) (Disclosure of information regarding pending proceedings to appointing authorities) The commission may, upon request, in the interest of justice or to maintain public confidence in the administration of justice, provide to the Governor of any State of the Union, the President of the United States, the Commission on Judicial Appointments, or any other state or federal authorities responsible for judicial appointments information concerning any pending investigation or proceeding with respect to any applicant under consideration for any judicial appointment, provided that:

(1) The request is in writing; and

(2) Any information released to the appointing authority is simultaneously provided to the applicant.

All information disclosed to appointing authorities under this subdivision remains privileged and confidential.

(k) (Disclosure of information to public entities upon retirement or resignation)

If a judge retires or resigns from judicial office after a complaint is filed with the commission, at the time of closing the complaint, investigation or other proceeding, the commission may, in the interest of justice or to maintain public confidence in the administration of justice, release information concerning the complaint, investigation and proceedings to the State Bar, to prosecutorial agencies, to state or federal authorities responsible for judicial appointments, to regulatory agencies, or to the Chief Justice of the California Supreme Court, provided that the commission has completed a preliminary investigation.

Rule 103. Protection from Liability for Statements

The making of statements to the commission, the filing of papers with or the giving of testimony before the commission, or before the masters appointed by the Supreme Court pursuant to rule 121, shall not give rise to civil liability for the person engaged in such acts. This privilege extends to any motions or petitions filed in the Supreme Court, as well as papers filed in connection therewith. No other publication of such statements, papers or proceedings shall be so privileged.

Rule 104. Duty to Cooperate; Response by Respondent Judge

(a) A respondent judge shall cooperate with the commission in all proceedings in accordance with Government Code section 68725. The judge's cooperation or lack of cooperation may be considered by the commission in determining the appropriate disciplinary sanction or disposition as well as further proceedings to be taken by the commission but may not be considered in making evidentiary determinations.

(b) A respondent judge shall, within the time limits set forth in rules 110(a) and 111(a), respond to the merits of a staff inquiry letter or preliminary investigation letter.

(c) A respondent judge shall, within the time limits set forth in rule 119(b), file an answer to a notice of formal proceedings which comports with the requirements set forth in rule 119(c).

(d) A respondent judge shall file all other responses and documents required in commission proceedings within such reasonable time as the commission may prescribe, and shall comply with all other requirements of commission proceedings, including the discovery requirements set forth in rule 122.

Rule 105. Medical Examination

A judge shall, upon a finding of good cause by seven members of the commission and within such reasonable time as the commission may prescribe, submit to a medical examination ordered by the commission. The examination must be limited to the conditions stated in the finding of good cause. No examination by a specialist in psychiatry may be required without the consent of the judge.

Rule 106. Judge's Representation by Counsel

A judge may be represented by counsel in all commission proceedings. The written communications of counsel shall be deemed to be the written communications of the judge. Counsel has the authority to bind the judge as to all matters except a stipulation as to discipline.

Any paper filed with the commission and any written statement made to the commission or to its staff must be signed by the judge or the judge's counsel. A stipulation as to discipline must be signed by the judge. The signing of any document or statement warrants that the signer has personal knowledge of the matter contained in the document or statement or has investigated the matter and has a good faith belief in the accuracy of the representations contained in the document or statement.

This rule applies to the filing of responses to staff inquiry letters and preliminary investigation letters under rules 110 and 111, to the filing of answers in formal proceedings under rule 119, and to all other filings with the commission and the masters and all other correspondence with the commission.

Rule 107. Notice Requirements

(a) (Notices of staff inquiry, preliminary investigation, intended private admonishment, and intended public admonishment) All notices of a staff inquiry, preliminary investigation, or intended private admonishment or public admonishment shall be sent to the judge at chambers unless otherwise requested, and a copy thereof shall be mailed to counsel of record. If the notice relates to a staff inquiry, the notice shall be given by first-class mail. If the notice relates to a preliminary investigation or intended private admonishment or public admonishment, the notice shall be given by prepaid certified mail return receipt requested. Envelopes containing such notices shall be marked "personal and confidential"; the inscription "Commission on Judicial Performance" shall not be used on the envelopes.

(b) (Service of notice of formal proceedings, other notices and correspondence in connection with formal proceedings) After institution of formal proceedings, the service of the notice of formal proceedings shall be made as set forth in rule 118, and the giving of

notice or sending of other correspondence in connection with the formal proceedings shall be accomplished as set forth in rule 126.

Rule 108. Extensions of Time

(a) (Extensions for response to staff inquiry and preliminary investigation letters, and for answer to notice of formal proceedings) A judge may, upon submission of a written request for extension to the chairperson prior to the expiration of time for filing a response to a staff inquiry letter under rule 110, a response to a preliminary investigation letter under rule 111, or an answer to a notice of formal proceedings under rule 119, obtain a 30-day extension of time for filing the response to staff inquiry letter, response to preliminary investigation letter, or answer to notice of formal proceedings.

(b) (Extension of time for commencing hearing to obtain reasonable discovery or for other reasons) The chairperson of the commission or the presiding master may extend the time for commencing a hearing before the special masters upon a showing of good cause to permit either party to obtain reasonable discovery as provided in these rules, or for other reasons set forth in a showing of good cause.

(c) (Extension of time for filing report of the masters) The chairperson may, upon request of the masters, extend the time for the filing of the report of the masters under rule 129.

(d) (Extension of time for filing opening briefs to commission) The judge or the examiner may, upon submission of a written request for extension to the chairperson prior to the expiration of time for filing opening briefs to the commission under rule 130(a), obtain a 30-day extension of time for filing opening briefs to the commission.

(e) (Other extensions of time) Any other or further extension of time may be granted by the chairperson of the commission only upon a showing of good cause.

Rule 109. Commencement of Commission Action

(a) (Receipt of written statement) Upon receiving a written statement alleging facts indicating that a judge is guilty of willful misconduct in office, persistent failure or inability to perform the duties of office, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or that the judge has a disability that seriously interferes with the performance of the duties of office and is or is likely to become permanent, or that the judge has engaged in an improper action or a dereliction of duty, the commission may

(1) In an appropriate case, determine that the statement is obviously unfounded or frivolous and dismiss the proceeding;

(2) If the statement is not obviously unfounded or frivolous, make a staff inquiry to determine whether sufficient facts exist to warrant a preliminary investigation; or

(3) If sufficient facts are determined in the course of a staff inquiry or otherwise, make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held.

(b) (Staff inquiry or preliminary investigation on commission's own motion) The commission may make a staff inquiry or preliminary investigation on the basis of information received by the commission not contained in a written report indicating that a judge is guilty of willful misconduct in office, persistent failure or inability to perform the duties of office, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or that the judge has a disability that seriously interferes with the performance of the duties of office and is or is likely to become permanent, or that the judge has engaged in an improper action or a dereliction of duty.

(c) (Notification of disposition at the judge's request) Upon written request from a judge who is the subject of a complaint before the commission, the commission shall notify the judge in writing of the disposition of the complaint if

(1) The judge's request to the commission specifically describes the underlying incident giving rise to the complaint;

(2) The pendency of the complaint has become generally known to the public;
or

(3) The judge has received written notice of the complaint from someone who is not associated with the commission.

Rule 110. Staff Inquiry; Advisory Letter after Staff Inquiry

(a) (Notice prior to issuance of advisory letter) If the commission makes a staff inquiry, the judge shall be notified of the inquiry and the nature of the charge, before the commission issues an advisory letter. The respondent judge so notified shall be afforded a reasonable opportunity in the course of the inquiry to present such matters as the judge may choose. A reasonable time for a judge to respond to an inquiry letter shall be 20 days from the date the letter was mailed to the judge unless the time is extended pursuant to rule 108.

(b) (Termination of staff inquiry) If the staff inquiry does not disclose sufficient cause to warrant issuance of a confidential advisory letter or further proceedings, the commission shall terminate the staff inquiry and notify the judge in writing of such action if the judge was notified of the staff inquiry pursuant to subdivision (a).

(c) **(Advisory letter)** At any time after notice of a staff inquiry and a reasonable opportunity to respond has been given to the judge, the commission may determine that the judge's conduct does not constitute a basis for further proceedings and issue a confidential advisory letter to the judge.

Rule 111. Preliminary Investigation

(a) **(Notice)** If the commission commences a preliminary investigation, the judge shall be notified of the investigation and the nature of the charge, and shall be afforded a reasonable opportunity in the course of the preliminary investigation to present such matters as the judge may choose. A reasonable time for a judge to respond to a preliminary investigation letter shall be 20 days from the date the letter was mailed to the judge unless the time is extended pursuant to rule 108.

(b) **(Termination of investigation)** If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the commission shall terminate the investigation and notify the judge in writing.

(c) **(Advisory letter)** At any time after notice of a preliminary investigation and a reasonable opportunity to respond has been given to the judge, the commission may determine that the judge's conduct does not constitute a basis for further proceedings and may terminate the investigation by issuing a confidential advisory letter to the judge.

Rule 112. Monitoring

The commission may defer termination of a preliminary investigation for a period not to exceed two years for observation and review of a judge's conduct. The judge shall be advised in writing of the type of behavior for which the judge is being monitored. (Such disclosure shall not limit the commission's consideration of misconduct involving other types of behavior which may be observed or reported during the period of monitoring.)

Rule 113. Notice of Intended Private Admonishment

If after a preliminary investigation the commission determines that there is good cause for a private admonishment, the commission may issue a notice of intended private admonishment to the judge by certified or registered mail. The notice shall include a statement of facts found by the commission and the reasons for the proposed admonishment. The notice shall also contain an advisement as to the judge's options under rule 114.

Rule 114. Private Admonishment Procedure

A judge who receives a notice of intended private admonishment pursuant to rule 113 has the following options:

(a) (Acceptance of private admonishment) The judge may choose not to contest the intended private admonishment. If the judge does not contest the intended private admonishment within 30 days after the mailing of a notice of intended private admonishment, the admonishment becomes effective.

(b) (Appearance before commission) The judge may, within 30 days of the mailing of a notice of intended private admonishment, file with the commission written objections to the intended private admonishment, waive the right to formal proceedings pursuant to rule 118, and demand an appearance before the commission to contest the intended private admonishment.

After the time set for the appearance before the commission, the commission may:

- (1) Close the matter without disciplinary action;
- (2) Close the matter with a confidential advisory letter; or
- (3) Issue a private admonishment.

(c) (Formal proceedings) The judge may, within 30 days of the mailing of a notice of intended private admonishment, file with the commission a demand for formal proceedings pursuant to rule 118.

This rule applies to notices of intended private admonishment issued after the effective date of these rules.

Rule 115. Notice of Intended Public Admonishment

If the commission determines following a preliminary investigation that there is good cause for public discipline, the commission may issue a notice of intended public admonishment to the judge by certified or registered mail. The notice shall include a statement of facts found by the commission and the reasons for the proposed admonishment. The notice shall also contain an advisement as to the judge's options under rule 116.

Rule 116. Public Admonishment Procedure

A judge who receives a notice of intended public admonishment pursuant to rule 115 has the following options:

(a) **(Acceptance of public admonishment)** The judge may choose not to contest the intended public admonishment. If the judge does not contest the intended public admonishment within 30 days after the mailing of a notice of intended public admonishment, the admonishment becomes effective.

(b) **(Appearance before commission)** The judge may, within 30 days of the mailing of a notice of intended public admonishment, file with the commission written objections to the intended public admonishment, waive the right to formal proceedings under rule 118, and demand an appearance before the commission to contest the intended public admonishment.

After the time set for the appearance before the commission, the commission may:

- (1) Close the matter without disciplinary action;
- (2) Close the matter with a confidential advisory letter;
- (3) Issue a private admonishment; or
- (4) Issue a public admonishment.

(c) **(Formal proceedings)** The judge may, within 30 days of the mailing of a notice of intended public admonishment, file with the commission a demand for formal proceedings pursuant to rule 118.

This rule applies to notices of intended public admonishment issued after the effective date of these rules.

Rule 117. Use and Retention of Commission Records

(a) **(Use of records outside the limitation period)** Commission records of complaints against a judge shall not be used for any purpose if the complaints (1) relate to actions occurring more than six years prior to the commencement of the judge's current term and (2) did not result in issuance of an advisory letter, public or private admonishment, censure, or removal of the judge.

(b) **(Records disposition program)** The commission shall adopt a records disposition program designed to dispose of those records which cannot be used for any purpose under this rule or which are no longer necessary for the performance of its duties.

Rule 118. Notice of Formal Proceedings

(a) **(Issuance of notice)** After the preliminary investigation has been completed, if the commission concludes that formal proceedings should be instituted, the commission shall

without delay issue a written notice to the judge advising the judge of the institution of formal proceedings to inquire into the charges against the judge. Such proceedings shall be entitled:

“BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE Inquiry Concerning Judge _____, No. _____.”

(b) **(Content of notice)** The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of the duty to file a written answer to the charges within 20 days after service of the notice upon the judge.

(c) **(Service of notice)** In formal proceedings instituted on or after March 1, 1995, after a notice of formal proceedings is signed by the chairperson of the commission, the notice shall be served by personal service of a copy thereof on the judge, unless the judge personally or through counsel waives personal service and consents to service by mail. If there is no consent to service by mail and it appears to the chairperson of the commission upon affidavit that, after reasonable effort for a period of 10 days, personal service could not be had, service may be made upon the judge by mailing, by prepaid certified or registered mail, copies of the notice addressed to the judge at the judge’s chambers and last known residence.

(d) **(Public announcement)** Not less than five days after service of the notice of formal proceedings as set forth above, the commission shall issue a public announcement advising that formal proceedings have been instituted, and shall make public the notice of formal proceedings. The public announcement shall set forth the date the judge’s answer to the notice of formal proceedings is due, and shall indicate that the answer to the notice of formal proceedings will be made public.

Rule 119. Answer

(a) **(Pleadings and motions)** The notice of formal proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

(b) **(Filing of answer)** Within 20 days after service of the notice of formal proceedings the judge shall file with the commission an answer, which shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. One 30-day extension of time may be obtained by the filing of a written request with the chairperson of the commission before expiration of the initial period for responding to the notice of formal proceedings. The chairperson may grant a further extension of time only upon timely written request establishing good cause for a further extension of time.

(c) **(Content of answer)** The answer shall be as complete and straightforward as the information reasonably available to the respondent judge permits. The answer shall (1) admit each allegation which is true, (2) deny each allegation which is untrue, and (3) specify each

allegation as to the truth of which the judge lacks sufficient information or knowledge. If a respondent judge gives lack of information or knowledge as a reason for a failure to admit or deny any allegation, the respondent judge shall state in the answer that a reasonable inquiry concerning the matter in the particular allegation has been made, and that the information known or readily obtainable is insufficient to enable the respondent judge to admit or deny the matter.

Rule 120. Disqualification

(a) (Disqualification upon determination of removal or retirement) If the commission determines that a judge should be removed or retired from office, the commission will, in its order of removal or retirement, also order pursuant to Article VI, section 18(b) of the California Constitution that the judge be disqualified from acting as a judge, without loss of salary, until the commission's determination becomes final or until any decision by the Supreme Court on any petition for review becomes final.

(b) (Disqualification upon notice of formal proceedings) Before the commission has reached a determination regarding removal or retirement of a judge, the commission may temporarily disqualify a judge without loss of salary upon notice of formal proceedings pursuant to Article VI, section 18(b) of the California Constitution if the commission determines that the continued service of the judge is causing immediate, irreparable, and continuing public harm. The judge shall be given written notice by prepaid certified or registered mail of the commission's intention to temporarily disqualify the judge and an opportunity to respond in writing within ten days of receipt of such notice. The time for filing a response shall not be subject to extension under rule 108. Upon the filing of a response or expiration of time for filing a response, the commission may issue an order of temporary disqualification.

(c) (Request for accelerated disposition of charges) A judge who is temporarily disqualified under subdivision (b) of this rule may request an accelerated disposition of the charges in the notice of formal proceedings by filing a written request with the commission. When such a request has been filed, the formal proceedings shall proceed without appreciable delay, and the commission may reduce the number of days provided in rules 122, 129, and 130 for the filing of papers in connection with the formal proceedings.

(d) (Duration of temporary disqualification) An order for temporary disqualification of a judge under subdivision (b) of this rule shall remain in effect until further order of the commission or until the pending formal proceedings have been concluded by the commission.

Rule 121. Setting for Hearing Before Commission or Masters

(a) **(Time for setting for hearing)** On filing or on expiration of the time for filing an answer, the commission shall set the matter for hearing.

(b) **(Appointment of special masters or master)** Unless the commission determines to hold the hearing before itself, the commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter, and to report to the commission. On a vote of seven members of the commission and with the consent of the judge involved, the commission may request the Supreme Court to appoint one special master in place of three special masters. Consent of the judge shall be defined as (i) written agreement by the judge or counsel of record, or (ii) failure to object in writing within 30 days of notice of the commission's intention to request the appointment of one special master.

(c) **(Requirements for special masters)** Special masters shall be judges. When there are three special masters, not more than two of them may be retired judges from courts of record.

(d) **(Notice to respondent judge of appointment of special masters and examiner)** Upon appointment of special masters or a single special master by the Supreme Court and appointment of an examiner by the commission, the respondent judge shall be given notice of the orders appointing the masters and the examiner, and the examiner shall be given notice of the order appointing the special masters.

(e) **(Notice of hearing)** The commission shall set a time and place for hearing before itself or before the masters and shall give notice by mail confirming the date and place of the hearing to the judge and the examiner at least 20 days before the hearing.

Rule 122. Discovery Procedures

(a) **(Exclusive procedures)** The procedures in this rule shall constitute the exclusive procedures for discovery. Discovery may be obtained only after a written notice of formal proceedings is issued.

(b) **(Applicability to both parties)** The examiner and the judge are each entitled to discovery from the other in accordance with these procedures.

(c) **(Initial discovery by trial counsel)** At the time of service of the notice of formal proceedings, the judge shall be provided copies of all documents and other information specified in rule 122(e) which is not privileged and is in the possession of the commission. Such information shall be made available at the commission offices.

(d) **(Discovery requests)** Discovery requests may be made in writing at any time after the filing of the notice of formal proceedings. All requests for discovery must be made in writing to the opposing side within 30 days after service of the answer to the written notice of formal proceedings or within 30 days after service of the written notice of formal

proceedings if no answer has yet been filed, or within 15 days after service of any amendment to the notice.

(e) (Inspection and copying) The following items may be inspected or copied by the side requesting discovery:

(1) The names, and if known, the business addresses and business telephone numbers of persons the opposing side then intends to call as witnesses at the hearing;

(2) The names, and if known, the business addresses and business telephone numbers of those persons who may be able to provide substantial material information favorable to the judge. Substantial material information favorable to the judge is evidence bearing directly on the truth of the charges relevant to the credibility of a witness intended to be called;

(3) All statements about the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called by either side;

(4) All statements about the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than the judge when it is claimed that an act or omission of the judge as to the person described is a basis for the formal proceeding;

(5) All investigative reports made by or on behalf of the commission, the examiner, or the judge, about the subject matter of the proceeding;

(6) All writings, including reports of mental, physical, and blood examinations, then intended to be offered in evidence by the opposing side;

(7) All physical items of evidence then intended to be offered in evidence;

(8) All writings or physical items of evidence which would be admissible in evidence at the hearing.

(f) (Compliance with request) If either side receives a written request for discovery in accordance with these procedures, the side receiving the request shall have a continuing duty to provide discovery of items listed in the request until proceedings before the masters are concluded. When a written request for discovery is made in accordance with these rules, discovery shall be provided within a reasonable time after any discoverable items become known to the side obligated to provide discovery.

(g) (Depositions) After initiation of formal charges against the judge, the commission or the masters shall order the taking of the deposition of any person upon a showing by the side requesting the deposition that the proposed deponent is a material witness who is unable or cannot be compelled to attend the hearing. If a deposition is ordered, the procedures stated

in Government Code section 68753 shall be followed. The side requesting the deposition shall bear all costs of the deposition.

(h) (Failure to comply with discovery request) If any party fails to comply with a discovery request as authorized by these procedures, the items withheld shall be suppressed or, if the items have been admitted into evidence, shall be stricken from the record. If testimony is elicited during direct examination and the side eliciting the testimony withheld any statement of the testifying witness in violation of these discovery procedures, the testimony shall be ordered stricken from the record. Upon a showing of good cause for failure to comply with a discovery request, the commission, master, or masters may admit the items withheld or direct examination testimony of a witness whose statement was withheld upon condition that the side against whom the evidence is sought to be admitted is granted a reasonable continuance to prepare against the evidence, or may order the items or testimony suppressed or stricken from the record. The commission may, upon review of any hearing, order any evidence stricken from the record for violation of a valid discovery request if the evidence could have been ordered stricken by the masters for violation of a valid discovery request.

(i) (Applicable privileges) Nothing in these procedures shall authorize the discovery of any writing or thing which is privileged from disclosure by law or is otherwise protected or made confidential as the work product of the attorney, including memoranda by commission staff and examiners. Statements of any witness interviewed by the examiner, by any investigators for either side, by the judge, or by the judge's attorney shall not be protected as work product.

(j) (Definition of statement) For purposes of these procedures, "statement" shall mean either (1) a written statement prepared by or at the direction of the declarant or signed by the declarant, or (2) an oral statement of the declarant which has been recorded stenographically, mechanically, or electronically, or which has been videotaped, transcribed, or summarized in writing.

(k) (Return of discovery, continued confidentiality of discovery) Upon the completion or termination of commission proceedings, the respondent judge shall return to the commission all materials provided to the judge under this rule that have not become part of the public record. All items provided in discovery pursuant to this rule remain confidential under rule 102 until and unless those items become part of the public record.

(l) (Protective orders) The commission or the masters may, upon application supported by a showing of good cause, issue protective orders to the extent necessary to maintain in effect such privileges and other protections as are otherwise provided by law.

Rule 123. Hearing

(a) (Hearing without answer or appearance by judge) At the time and place set for hearing, the commission, or the masters when the hearing is before masters, shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing. The examiner shall present the case in support of the charges in the notice of formal proceedings.

(b) (Consideration of failure to answer, appear, or respond to questions) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for censure, removal, retirement or public or private admonishment. In accordance with California Evidence Code section 913, no inference shall be drawn from the exercise of the privilege not to respond to questions on grounds of self-incrimination or the exercise of any other Evidence Code privilege, or of any other recognized privilege, as to any matter in issue or to the credibility of the judge. In accordance with California Evidence Code section 413, in reviewing the evidence and facts in the case against the judge, the commission and the masters may consider the judge's failure to explain or deny evidence or facts in the case or any willful suppression of evidence if that is the case, unless the failure or suppression is due to the judge's exercise of any legally recognized privilege. A lack of cooperation by the judge may be considered by the commission under rule 104.

(c) (Reporting of hearing) A verbatim record shall be made of the proceedings at the hearing.

(d) (Number of commission members at hearing) When the hearing is before the commission, not fewer than six members shall be present when the evidence is produced.

Rule 124. Media at Hearing

All applications for film or electronic coverage of hearings in formal proceedings are to be submitted to the commission a reasonable time prior to the commencement of the hearing. The commission shall promptly inform the respondent judge of any requests for film or electronic coverage of the hearing. Applications for film or electronic coverage of the hearing are to be decided by the chairperson of the commission or the chairperson's designee after conferring with the masters or presiding master, if masters have been appointed.

Rule 125. Evidence

(a) (Applicable law and agreed statement) The California Evidence Code shall be applicable to all hearings before the commission or masters. Oral evidence shall be taken only on oath or affirmation. The examiner or the judge may propose to the other party an agreed statement in place of all or a part of the testimony. An agreed statement shall not foreclose argument to the commission or masters.

(b) (Prior disciplinary action) Any prior disciplinary action may be received in evidence to prove that conduct is persistent or habitual or to determine what action should be taken regarding discipline. Prior disciplinary action includes any disciplinary action which is in effect before the conclusion of a commission proceeding, including review by the Supreme Court.

Rule 126. Procedural Rights of Judge in Formal Proceedings

(a) (Enumeration of rights, subpoenas) When formal proceedings have been instituted, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. The judge shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter. Subpoenas are to be issued by the chairperson of the commission, the chairperson's designee, or the special masters. Subpoenas addressed to the commission or its staff may only be obtained from the special masters upon a showing of good cause with notice to the commission.

(b) (Transcripts) When a transcript of the testimony has been prepared at the expense of the commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings at the judge's expense, or the judge may arrange to procure a copy from the reporter at the judge's expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at the judge's expense.

(c) (Manner of service) Subject to rule 118 (c), concerning service of a notice of formal proceedings, all notices and correspondence in connection with formal proceedings shall be sent to the judge's chambers, unless otherwise requested, and a copy thereof shall be mailed to-counsel of record.

(d) (Appointment of conservator) If the judge is adjudged insane or incompetent, or if it appears to the commission at any time during the proceedings that the judge is not competent to act for himself or herself, the commission shall appoint a conservator unless the judge has a conservator who will represent the judge. In the appointment of such conservator, preference shall be given, whenever possible, to members of the judge's immediate family. The conservator may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to the conservator.

Rule 127. Discipline by Consent

(a) **(Negotiations)** Either respondent or the examiner may initiate negotiations on discipline by consent. Both the examiner and respondent must agree to any proposed disposition before submission to the commission. No agreement between the examiner and respondent is binding until approved by the commission.

(b) **(Submission to commission)** At any time after the initiation of formal charges and before final disposition, the respondent may agree with the examiner that the respondent shall admit to any or all of the charges in exchange for a stated sanction. The agreement shall be submitted to the commission, which shall accept or reject the agreement.

(c) **(Rejection of agreement)** If the stated sanction is rejected by the commission, the admission shall be withdrawn and cannot be used against the respondent in any proceedings.

(d) **(Affidavit of consent)** A respondent who consents to a stated sanction shall personally execute an affidavit stating that:

- (1) The respondent consents to the sanction;
- (2) The consent is freely and voluntarily rendered;
- (3) The respondent admits the truth of the charges as alleged; and
- (4) The respondent waives review by the Supreme Court.

Rule 128. Amendments to Notice or Answer; Dismissals

(a) **(Amendments)** The masters, at any time prior to the conclusion of the hearing, or the commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his or her defense against the matters charged thereby.

(b) **(Dismissals by examiner)** At any time after the filing of formal charges and before final disposition, where exigent circumstances prevent consideration by the full commission, the examiner, with the concurrence of the director/chief counsel and the chairperson, may dismiss any charge from the notice of formal proceedings, if it appears that the available evidence is insufficient to sustain the charge or that dismissal is otherwise in the interest of justice, and such dismissal is not tantamount to dismissal of the proceedings as a whole.

Rule 129. Report of Masters

(a) **(Transcript)** Upon the completion of a hearing before the masters, a transcript of the hearing shall be prepared.

(b) **(Submission of proposed findings of fact and conclusions of law)** Within 20 days after completion of the hearing transcript, the examiner and the respondent judge shall submit to the masters proposed findings of fact and conclusions of law, with citations to the transcript and exhibits, unless the masters waive the submission of such proposed findings and conclusions.

(c) **(Preparation of final report of masters)** Within 60 days after completion of the hearing transcript, the masters shall submit a final report to the commission. Within the 60-day period, the masters may require such additional briefing and argument by the examiner and the respondent judge as the masters may desire.

(d) **(Content of final report of masters)** The final report of the masters shall contain findings of fact and conclusions of law, along with an analysis of the evidence and reasons for the findings and conclusions, but shall not contain a recommendation as to discipline.

(e) **(Copy of report to judge and examiner)** Upon receiving the report of the masters, the commission shall promptly mail a copy to the judge and the examiner.

Rule 130. Briefs to the Commission

(a) **(Filing of opening briefs)** Within 15 days after the date of mailing of the copy of the masters' report to the judge as reflected on the proof of service by mail, the examiner or the judge may file with the commission opening briefs which may consist of objections to the report of the special masters and points and authorities concerning the issues in the matter, including the issue of sanctions. Objections to the masters' report and all factual statements shall be specific and shall be supported by reference to the book and page number of the record. Briefs shall conform in style to subdivision (c) of rule 15 of the California Rules of Court, shall follow the length limitations set forth in subdivision (e) of rule 15 of the California Rules of Court, and, when filed by the examiner, a copy shall be sent by first-class mail to the judge.

(b) **(Response to briefs)** Within 10 days after the filing of opening briefs, the examiner or the judge may file with the commission a response.

(c) **(Reply to response)** Within 5 days after the filing of a response, the examiner or the judge may file a reply to the response.

Rule 131. Participation by Non-Parties

Briefs of amicus curiae will be considered by the commission if they present legal issues or represent perspectives not otherwise presented or represented by the parties. An amicus curiae brief may not be used to present inadmissible or non-admitted evidentiary materials to the commission.

A brief of an amicus curiae may be filed only if accompanied by the written consent of all parties, or upon a motion demonstrating to the chairperson of the commission or the chairperson's designee that the filing of the brief would be helpful to the commission in the resolution of the pending matter. When consent to the filing of a brief of an amicus curiae is refused by a party to the case, a motion for leave to file the brief, accompanied by the proposed brief, may be presented to the chairperson or the chairperson's designee. The motion shall concisely state the nature of the applicant's interest and set forth facts or questions of law that have not been, or reasons for believing that they will not be, presented by the parties and their relevancy to the disposition of the case. The motion may be in letter form but may not exceed four pages. The commission shall forward copies of any such motion and proposed brief to both the examiner and the judge.

The cover of the amicus brief must identify the party supported, and the brief shall not exceed 50 pages in length. Evidentiary references shall include citation to the record before the commission.

An amicus brief shall be submitted or filed within the time limits prescribed for the party that the brief supports. No reply briefs or briefs of an amicus curiae in support of reconsideration shall be received.

Any brief of an amicus curiae that fails to comply with this rule will not be considered by the commission.

Rule 132. Appearance Before Commission

Upon receipt of the masters' report and any objections, the commission shall give the judge and the examiner an opportunity to be heard orally before the commission, and written notice of the time and place of such hearing shall be mailed to the judge, at least 10 days prior thereto.

Rule 133. Hearing Additional Evidence

(a) The commission 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 hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge at least 10 days prior to the date of hearing.

(b) In any case in which masters have been appointed, the hearing of additional evidence shall be before such masters, and the proceedings therein shall be in conformance with the provisions of rules 121 to 130, inclusive.

Rule 134. Commission Vote

The commission may privately or publicly admonish, censure, remove or retire a judge. The affirmative vote of six members of the commission who have considered the record and report of the masters and who were present at any oral hearing as provided in rule 121 or, when the hearing was before the commission without masters, of six members of the commission who have considered the record, and at least four of whom were present when the evidence was produced, is required for a private or public admonishment or censure, removal or retirement of a judge or for dismissal of the proceedings.

Rule 135. Record of Commission Proceedings

The commission shall maintain records of all actions taken by the commission concerning a judge. Notice of any disciplinary determination and notice of any disqualification under Article VI, section 18(b) of the California Constitution shall be mailed to the judge. In all formal proceedings, the commission shall prepare a transcript of the testimony and of all proceedings and shall make written findings of fact and conclusions of law.

Rule 136. Finality

A commission determination to impose discipline upon a judge following formal proceedings under rule 118 shall become final 30 days after the date of the order regarding the disciplinary determination.

Rule 137. Retroactivity

Those cases in which formal proceedings have been instituted on or before February 28, 1995 will be governed by the provisions of Article VI, section 18 of the California Constitution which are operative and in effect as of February 28, 1995. Those cases in which formal proceedings are instituted on or after March 1, 1995 will be governed by the provisions of Article VI, section 18 of the California Constitution operative as of March 1, 1995.

Rule 138. Definitions

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

(a) “Commission” means the Commission on Judicial Performance.

(b) “Judge” means a judge of any court of this state or a retired judge who has elected to serve on senior judge status or former judge as provided in California Constitution Article VI, section 18(d).

(c) “Chairperson” includes the acting chairperson.

(d) “Masters” means the special master or special masters appointed by the Supreme Court upon request of the commission.

(e) “Presiding master” means the master so designated by the Supreme Court or, if no designation is made, the judge selected by the panel.

(f) “Examiner” means the counsel designated by the commission to gather and present evidence before the masters or commission with respect to the charges against a judge.

(g) “Shall” is mandatory and “may” is permissive.

(h) “Mail” and “mailed” include ordinary mail and personal delivery.

(i) “Filing” means delivering to commission staff at the commission office during regular business hours. A filing may be evidenced by a conformed copy of the cover page of each document submitted for filing. To be filed, a document must be accompanied by a proof of service of the document upon the other party or parties.