

## **RULES OF THE COMMISSION ON JUDICIAL PERFORMANCE**

*Adopted October 24, 1996, effective December 1, 1996. As last amended, effective May 13, 2015.*

Rule 101	Interested Party
Rule 102	Confidentiality and Disclosure
Rule 103	Protection from Liability for Statements
Rule 104	Duty to Cooperate; Response by Respondent Judge
Rule 105	Medical Examination
Rule 106	Judge's Representation by Counsel
Rule 107	Notice Requirements
Rule 108	Extensions of Time
Rule 109	Commencement of Commission Action
Rule 110	Staff Inquiry; Advisory Letter after Staff Inquiry
Rule 111	Preliminary Investigation
Rule 111.4	Legal Error
Rule 111.5	Correction of Advisory Letter
Rule 112	Monitoring
Rule 113	Notice of Intended Private Admonishment
Rule 114	Private Admonishment Procedure
Rule 115	Notice of Intended Public Admonishment
Rule 116	Public Admonishment Procedure
Rule 116.5	Negotiated Settlement During Preliminary Investigation
Rule 117	Use and Retention of Commission Records
Rule 118	Notice of Formal Proceedings
Rule 119	Answer
Rule 119.5	Filing with the Commission During Formal Proceedings
Rule 120	Disqualification
Rule 120.5	Suspension; Termination of Suspension; Removal of Suspended Judge
Rule 121	Setting for Hearing Before Commission or Masters
Rule 122	Discovery Procedures
Rule 123	Hearing
Rule 124	Media at Hearing
Rule 125	Evidence
Rule 125.5	Exhibits at Hearing
Rule 126	Procedural Rights of Judge in Formal Proceedings
Rule 127	Discipline by Consent
Rule 128	Amendments to Notice or Answer; Dismissals
Rule 129	Report of Masters
Rule 130	Briefs to the Commission

Rule 131	Participation by Non-Parties
Rule 132	Appearance Before Commission
Rule 133	Hearing Additional Evidence
Rule 134	Commission Vote
Rule 134.5	Rule of Necessity
Rule 135	Record of Commission Proceedings
Rule 136	Finality
Rule 137	Retroactivity
Rule 138	Definitions

## **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.

[Adopted 12/1/96.]

## **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 determinations of removal, censure and public admonishment 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 (1) has found no basis for action against the judge or determined not to proceed further in this matter, (2) has taken an appropriate corrective action, the nature of which shall not be disclosed, or (3) has publicly admonished, censured, removed, or retired the judge, or has found the person unfit to serve as a subordinate judicial officer. Where a matter is referred to the commission by a presiding judge or other public official in his or her official capacity, disclosure under this

subdivision concerning that matter shall be made to the individual serving in that office at the time the matter is concluded. The name of the judge shall not be used in any written communication to the complainant, unless formal proceedings have been instituted or unless the complainant is a presiding judge or other public official in his or her official capacity. Written communications 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 to public entity upon request or consent of judge)** If a judge or former judge requests or consents to release of commission records to a public entity, the commission may release that judge's records.

**(i) (Disclosure of records of disciplinary action to appointing authorities)** 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.

If a disclosure about a pending matter is made and that matter subsequently is closed by the commission without discipline being imposed, disclosure of the latter fact shall be made promptly to the appointing authority and the judge.

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

**(k) (Disclosure of information to the State Bar upon retirement or resignation)** If a judge retires or resigns from office or if a subordinate judicial officer retires, resigns or is terminated from employment after a complaint is filed with the commission, or if a complaint is filed with the commission after the retirement, resignation or termination, 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, provided that the commission has commenced a preliminary investigation or other proceeding and the judge or subordinate judicial officer has had an opportunity to respond to the commission's inquiry or preliminary investigation letter.

**(l) (Disclosure of information about subordinate judicial officers to presiding judges)** The commission may release to a presiding judge or his or her designee information concerning a complaint, investigation or disposition involving a subordinate judicial officer, including the name of the subordinate judicial officer, consistent with the commission's jurisdiction under article VI, section 18.1 of the California Constitution.

**(m) (Disclosure of information regarding disciplinary action and pending proceedings to the Chief Justice)** With respect to any judge who is under consideration for judicial assignment following retirement or resignation, or is sitting on assignment, the commission may, upon the request of the Chief Justice of California and with the consent of that judge, in the interest of justice or to maintain public confidence in the administration of justice, provide the Chief Justice information concerning any record of disciplinary action or any pending investigation or proceeding with respect to that judge, provided that:

(1) The request and consent are in writing;

(2) If the disclosure involves a pending investigation or proceeding, the judge has had an opportunity to respond to the pending investigation or proceeding; and

(3) Any information released to the Chief Justice is simultaneously provided to the judge seeking assignment.

If the disclosure involves disciplinary action, the commission may include any information the commission deems necessary to a full understanding of its action.

If a disclosure about a pending matter is made and that matter subsequently is closed by the commission without discipline being imposed, disclosure of the latter fact shall be made promptly to the Chief Justice and the judge.

All information disclosed to the Chief Justice under this subdivision remains privileged and confidential.

**(n) (Disclosure of information to presiding judges about possible lack of capacity or other inability to perform)** The commission may release to a presiding judge or his or her designee information concerning an investigation involving possible lack of capacity or other inability to perform judicial duties on the part of a judge of that court, except that no confidential medical information concerning the judge may be released.

**(o) (Disclosure of closing to judge who provides information to the commission)** Upon completion of the commission's review of a complaint or an investigation, the commission may notify a judge who is the subject of a complaint and has voluntarily provided information to the commission concerning the complaint, that the commission has found no basis for action against the judge or determined not to proceed further in the matter. The notification shall be in writing.

**(p) (Disclosure of information to regulatory agencies)** The commission may in the interest of justice, to protect the public, or to maintain public confidence in the administration of justice, release to a federal, state or local regulatory agency information which reveals a possible violation of a law or regulation within the agency's jurisdiction by a judge, former judge, subordinate judicial officer or former subordinate judicial officer, provided the commission has commenced a preliminary investigation.

In the event information is revealed under this subsection, the agency must be admonished that the fact that the commission has undertaken an investigation of the judge must remain confidential unless formal proceedings have been instituted.

[Adopted 12/1/96; amended 10/8/98, 2/11/99; interim amendment 5/9/01; amended 1/29/03; amended and interim amendment 8/26/04; amended 10/25/05, 5/23/07, 1/28/09, 3/23/11, 5/13/15.]

### **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.

[Adopted 12/1/96.]

#### **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.

(e) In accordance with California Evidence Code section 913, no inference shall be drawn as to any matter in issue or to the credibility of the judge based on a refusal to respond as required by this rule or to respond to a question at a hearing under rule 123 when such refusal is based on the exercise of the privilege against self-incrimination or of any other Evidence Code privilege or of any other privilege recognized by law.

[Adopted 12/1/96; amended 10/25/05.]

#### **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.

[Adopted 12/1/96.]

## **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.

[Adopted 12/1/96.]

## **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 a judge at chambers or at his or her residence unless otherwise requested, and a copy thereof shall be mailed to counsel of record. If a judge does not occupy chambers and his or her place of residence is unknown, the notice shall be sent to the judge's last known address. 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 (1) certified mail return receipt requested, or (2) overnight mail delivery with a proof of delivery service, or (3) personal service with proof of service. If the judge's last known address is outside of the United States, service shall be made by recorded delivery. Envelopes containing such notices shall be marked "personal and confidential"; the inscription "Commission on Judicial Performance" shall not be used on the envelopes. In the event of service by certified or recorded mail, service is complete at the time of mailing.

**(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.

[Adopted 12/1/96; amended 10/25/05.]

## **Rule 108. Extensions of Time**

**(a) (Extensions for response to staff inquiry letters)** 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, obtain a 30-day extension of time for filing the response to the staff inquiry letter.

**(b) (Extensions for response to preliminary investigation letter and for answer to notice of formal proceedings)** Upon a showing of good cause submitted by the judge, the chairperson may extend the time for filing a response to a preliminary investigation letter under rule 111 or for filing an answer to a notice of formal proceedings.

**(c) (Extension of time for commencing hearing before the special masters)** In order to maintain public confidence in the integrity of the judiciary and protect the welfare of the public, all hearings before the special masters shall be heard at the earliest possible time after the issuance under rule 118 of the notice of formal proceedings. In accordance with this policy, extensions of time for commencing a hearing before the special masters are disfavored. 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, supported by declaration detailing specific facts showing that a continuance is necessary. Good cause does not include the ordinary press of business.

**(d) (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.

**(e) (Other extensions of time)** Any other or further extension of time, other than to demand an appearance before the commission to object to a private or public admonishment pursuant to rule 114(b) or 116(b), or to demand formal proceedings pursuant to rule 114(c) or 116(c), may be granted by the chairperson only upon a showing of good cause.

**(f) (Alternative authority)** The chairperson may delegate his or her authority under this rule to another member, and the commission may designate any member to act instead of the chairperson.

[Adopted 12/1/96; amended 10/8/98, 1/26/00, and 10/25/05; interim amendment 1/31/07; amended 5/23/07, 1/28/09, 10/19/11.]

## **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) (Staff inquiry or preliminary investigation of subordinate judicial officers)** The commission may make a staff inquiry or a preliminary investigation of a subordinate judicial officer whenever:

(1) The commission receives from a complainant a written request within 30 days after the date of mailing of notice to the complainant by the local court of the disposition of a complaint against a subordinate judicial officer, and the commission concludes that the local court may have abused its discretion in its disposition of such complaint;

(2) The commission receives from a local court a request that the commission investigate or adjudicate a complaint against a subordinate judicial officer;

(3) The commission receives from a local court information that a complaint resulted in the written reprimand, suspension, or removal of the subordinate judicial officer; or

(4) The commission receives from a local court information that a subordinate judicial officer resigned while an investigation was pending and before a final decision was made by the local court.

(5) The commission receives a complaint concerning a subordinate judicial officer who resigned or retired before the local court received the complaint.

Subsection (c) applies only to complaints about a subordinate judicial officer received in the local court on or after June 3, 1998; subdivision (1) of subsection (c) applies only in cases in which the complainant was apprised by the local court of the 30-day time limit for seeking review by the commission.

**(d) (Notification of disposition at the judge's request)** Upon 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.

[Adopted 12/1/96; amended 10/8/98; interim amendment 2/11/99; amended 1/29/03, 10/25/05, 3/23/11.]

#### **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) (Staff inquiry letter)** A staff inquiry letter shall include specification of the allegations, including, to the extent possible: the date of the conduct; the location where the conduct occurred; and, if applicable, the name(s) of the case(s) or identification of the court proceeding(s) in relation to which the conduct occurred. If the inquiry concerns statements made by or to the judge, the letter shall include the text or summaries of the comments.

**(c) (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).

**(d) (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.

[Adopted 12/1/96; amended 5/8/13.]

### **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) (Preliminary investigation letter)** A preliminary investigation letter shall include specification of the allegations, including, to the extent possible: the date of the conduct; the location where the conduct occurred; and, if applicable, the name(s) of the case(s) or identification of the court proceeding(s) in relation to which the conduct occurred. If the investigation concerns statements made by or to the judge, the letter shall include the text or summaries of the comments.

**(c) (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.

**(d) (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.

[Adopted 12/1/96; amended 5/8/13.]

### **Rule 111.4. Legal Error**

Discipline, including an advisory letter, shall not be imposed for mere legal error without more. However, a judge who commits legal error which, in addition, clearly and convincingly reflects bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty is subject to investigation and discipline.

[Adopted 5/8/13.]

### **Rule 111.5. Correction of Advisory Letter**

A judge who receives an advisory letter under either rule 110(c) or rule 111(c) may, within 30 days of the mailing thereof, apply to the commission for correction of an error of fact or law or both. The application shall be determined by the commission without an appearance by the judge before the commission unless the commission determines otherwise. Factual representations or information, including documents, letters, or witness statements, will be considered only if the factual information is relevant to the question of whether the advisory letter contains an error of fact.

[Adopted 10/25/05; interim amendment 3/23/11; amended 10/19/11.]

### **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.)

[Adopted 12/1/96.]

### **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 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. The notice may cite any discipline that was imposed on the judge prior to issuance of the notice.

[Adopted 12/1/96; amended 2/11/99, 5/23/07.]

### **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 object to the intended private admonishment. If the judge does not demand formal proceedings or an appearance before the commission to object to the intended private admonishment within 30 days

after the mailing of a notice of intended private admonishment, the admonishment becomes effective.

**(b) (Appearance before the commission)** The judge may, within 30 days of the mailing of a notice of intended private admonishment, file with the commission a written demand for an appearance before the commission to object to the intended private admonishment, and waive the right to formal proceedings under rule 118 and to review by the Supreme Court. A judge who demands an appearance before the commission shall, within 30 days of the mailing of the notice of intended private admonishment, submit a written statement of the basis of the judge's objections to the proposed 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.

If the commission determines to issue discipline after an appearance under this rule, it may in its final decision modify the notice in response to the judge's written objections and any oral presentation.

An appearance before the commission under this rule is not an evidentiary hearing. Factual representations or information, including documents, letters, or witness statements, not previously presented to the commission during the preliminary investigation will not be considered unless it is shown that the new factual information is either: (1) (a) material to the question of whether the judge engaged in misconduct or the appropriate level of discipline, and (b) could not have been discovered and presented to the commission with reasonable diligence during the preliminary investigation, (2) offered to correct an error of fact in the notice of intended private admonishment, or (3) necessary to prevent a miscarriage of justice.

To be considered under this rule, new factual information must be presented at the time the judge submits written objections to the proposed admonishment. When newly presented factual information meets the criteria for consideration under this rule, the commission may investigate the new information before proceeding with its disposition pursuant to the appearance process. If this investigation discloses information of possible other misconduct, that information will not be considered in the disposition of the pending notice of intended private admonishment but may be the subject of a new staff inquiry or preliminary investigation.

**(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.

**(d) (Extensions of time)** The 30 days provided to demand formal proceedings or an appearance before the commission to object to an intended private admonishment pursuant to subdivisions (b) and (c) may not be extended. The time for filing a written statement of the judge's objections to the intended admonishment pursuant to subdivision (b) may be extended by the chairperson or the chairperson's designee upon a showing of good cause, if the judge has, within 30 days of the mailing of a notice of intended private admonishment, filed a demand for an appearance with a personal waiver of the right to formal proceedings and to review by the Supreme Court.

[Adopted 12/1/96; amended 1/29/03, 10/25/05, 1/28/09; interim amendment 3/23/11; amended 10/19/11, 5/8/13.]

### **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 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. The notice may cite any discipline that was imposed on the judge prior to issuance of the notice.

[Adopted 12/1/96; amended 2/11/99, 5/23/07.]

### **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 object to the intended public admonishment. If the judge does not demand formal proceedings or an appearance before the commission to object to the intended public admonishment within 30 days after the mailing of a notice of intended public admonishment, the admonishment becomes effective.

**(b) (Appearance before the commission)** The judge may, within 30 days of the mailing of a notice of intended public admonishment, file with the commission a written demand for an appearance before the commission to object to the intended public admonishment, and waive the right to formal proceedings under rule 118 and to review by the Supreme Court. A judge who demands an appearance before the commission shall, within 30 days of the mailing of the notice of intended public admonishment, submit a written statement of the basis of the judge's objections to the proposed 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.

If the commission determines to issue discipline after an appearance under this rule, it may in its final decision modify the notice in response to the judge's written objections and any oral presentation.

An appearance before the commission under this rule is not an evidentiary hearing. Factual representations or information, including documents, letters, or witness statements, not previously presented to the commission during the preliminary investigation will not be considered unless it is shown that the new factual information is either: (1) (a) material to the question of whether the judge engaged in misconduct or the appropriate level of discipline, and (b) could not have been discovered and presented to the commission with reasonable diligence during the preliminary investigation, (2) offered to correct an error of fact in the notice of intended public admonishment, or (3) necessary to prevent a miscarriage of justice.

To be considered under this rule, new factual information must be presented at the time the judge submits written objections to the proposed admonishment. When newly presented factual information meets the criteria for consideration under this rule, the commission may investigate the new information before proceeding with its disposition pursuant to the appearance process. If this investigation discloses information of possible other misconduct, that information will not be considered in the disposition of the pending notice of intended public admonishment but may be the subject of a new staff inquiry or preliminary investigation.

**(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.

**(d) (Extensions of time)** The 30 days provided to demand formal proceedings or an appearance before the commission to object to an intended public admonishment pursuant to subdivisions (b) and (c) may not be extended. The time for filing a written statement of the judge's objections to the intended admonishment pursuant to subdivision (b) may be extended by the chairperson or the chairperson's designee upon a showing of good cause, if the judge has, within 30 days of the mailing of a notice of intended public admonishment, filed a demand for an

appearance with a personal waiver of the right to formal proceedings and to review by the Supreme Court.

[Adopted 12/1/96; amended 1/29/03, 10/25/05, 1/28/09; interim amendment 3/23/11; amended 10/19/11, 5/8/13.]

### **Rule 116.5. Negotiated Settlement During Preliminary Investigation**

At any time during a preliminary investigation or an admonishment proceeding under rules 113-116, the commission may designate trial counsel or another attorney authorized by the commission to negotiate with the judge a resolution of any matter at issue. A proposed resolution shall be jointly submitted to the commission, which may accept it, reject it or return it to the judge and examiner to consider modifications to it. No agreement between the judge and legal staff is binding unless approved by the commission. A settlement proposal rejected by the commission cannot be used against the judge in any proceedings. After formal proceedings are instituted, settlement negotiations are governed by rule 127.

[Adopted 5/23/07.]

### **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.

[Adopted 12/1/96.]

### **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)** After a notice of formal proceedings is signed by the chairperson of the commission, the chairperson's designee or other member designated by 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 mail, copies of the notice addressed to the judge at the judge's chambers and last known residence. In the event of service by certified mail, service is complete at the time of mailing.

**(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.

[Adopted 12/1/96; amended 2/11/99; interim amendment 10/25/05; amended 10/17/07.]

## **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 serve, in accordance with rule 119.5, and file with the commission an answer, which shall be verified and shall conform in style to subdivision (b) of rule 8.204 of the California Rules of Court. The chairperson, the chairperson's designee or other member designated by the commission may grant an extension of time only upon timely written request establishing good cause for an 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.

[Adopted 12/1/96; interim amendment 2/11/99; amended 1/26/00, 1/29/03.]

### **Rule 119.5 Filing with the Commission During Formal Proceedings**

**(a) (Procedures for filing)** After the institution of formal proceedings, all briefs and other papers to be filed with the commission shall be delivered to the commission office during regular business hours by hand delivery or by mail, or electronic or facsimile transmission as provided in this rule, and shall be accompanied by a proof of service of the document upon the other party or parties, and upon the special masters if they have been appointed in the matter. This includes documents submitted in conjunction with a hearing before the special masters, other than exhibits to be admitted at the hearing. Exhibits admitted at a hearing before the masters shall be transmitted to the commission office pursuant to rule 125.5. A document is filed with the commission when the original is stamped or otherwise marked “filed” with the date. The commission’s agent for purposes of filing documents after institution of formal proceedings is the Legal Advisor to Commissioners or the Legal Advisor’s designee. A filing may be evidenced by a conformed copy of the cover page of each document submitted for filing.

**(b) (Facsimile filing)** Facsimile filing means the transmission of a document by facsimile, directed to the Legal Advisor to Commissioners or the Legal Advisor’s designee.

**(c) (Electronic filing)** Electronic filing means the transmission of a document by electronic service to the electronic address of the commission, directed to the Legal Advisor to Commissioners or the Legal Advisor’s designee. The electronic address for filing pursuant to these rules is [filings@cjp.ca.gov](mailto:filings@cjp.ca.gov).

**(d) (Conditions for facsimile and electronic filing)** After the institution of formal proceedings, parties or non-parties pursuant to rule 131 may file documents with the commission electronically or by facsimile, subject to the following conditions:

**(1)** Original paper documents, with any required signatures, shall be delivered to the commission office by mail or hand delivery within five calendar days of the facsimile or electronic filing, and shall be accompanied by proof of service.

**(2)** A document transmitted electronically or by facsimile shall be deemed filed on the date received, or the next business day if received on a non-business day or after 5:00 p.m., provided the original paper document is received pursuant to subsection (1) of this subdivision.

**(3)** The document shall be considered filed, for purposes of filing deadlines and the time to respond under these rules, at the time it is received electronically or by facsimile by the commission as set forth in subsection (2) of this subdivision.

(4) Upon receipt of a facsimile or electronically filed document, the commission shall promptly send the filer confirmation that the document was received.

(e) **(Signatures)** When the document to be filed requires the signature of any person, the document shall be deemed to have been signed by that person if filed electronically or by facsimile.

(f) **(Electronic and facsimile service)** After the institution of formal proceedings, documents may be served by electronic means or by facsimile on another party, a party's attorney, or the special masters when the party, attorney, or special master has agreed to accept electronic service and/or facsimile service, provided the documents have been submitted to the commission office at the same time by the same method of service with the original to be submitted in accordance with subdivision (d), subsection (1).

[Adopted 2/11/99; amended 10/25/05; interim amendment 1/31/07; amended 5/23/07; interim amendment 10/17/12; amended 5/8/13.]

## **Rule 120. Disqualification**

(a) **(Disqualification upon determination to remove, retire or bar from assignments)** 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. If the commission determines to censure and bar a former judge from receiving assignments, the commission will, in its order of censure, also order that the judge be barred from receiving assignments 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.

If good cause for disqualification is apparent, the commission may issue a notice of intention to temporarily disqualify the judge along with a notice of formal proceedings. Subsequent to the filing of a notice of formal proceedings, the examiner may file with the commission a motion to temporarily disqualify the judge. The commission's notice of intention to disqualify or the examiner's motion to disqualify shall be by personal service or service upon the judge's counsel. If such service cannot be effectuated, service shall be by prepaid certified mail upon the judge at his or her chambers and last known residence. If service is by mail, the

notice shall be accompanied by an affidavit or certificate of mailing and an affidavit shall be filed regarding the inability to effectuate personal service or service upon counsel.

The judge shall have an opportunity to respond in writing within 10 days of receipt of the commission's notice of intention to disqualify or the examiner's motion to disqualify, or within 15 days after the mailing of the notice, whichever occurs first. The time for filing a response shall not be subject to extension under rule 108. The judge's response may include points and authorities in support of any legal arguments, and may include verified statements, other testimony, medical or other expert reports and any other evidence in opposition to the facts on which the commission's notice of intention to disqualify or the examiner's motion to disqualify is based. Upon the filing of a response or expiration of time for filing a response, the commission may issue an order of temporary disqualification.

**(c) (Accelerated disposition of charges)** In cases in which a judge is temporarily disqualified under rule 120(b) the disposition of the charges in the notice of formal proceedings shall be accelerated and the formal proceedings shall proceed without appreciable delay. In such cases, 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.

[Adopted 12/1/96; amended 10/8/98, 2/11/99.]

### **Rule 120.5 Suspension; Termination of Suspension; Removal of Suspended Judge**

**(a) (Felony)** When the commission receives proof that a judge has pled guilty or no contest to, or has been found guilty of, a felony under California or federal law, the commission shall promptly issue an order suspending the judge from office without salary.

**(b) (Crime punishable as a felony or that involves moral turpitude)** When the commission receives proof that a judge has pled guilty or no contest to, or has been found guilty of, a crime that is not a felony under California or federal law but is punishable as a felony under that law or involves moral turpitude under that law, the commission shall promptly issue a notice of intention to suspend the judge without salary in accordance with subdivision (e) of this rule.

**(c) (Reversal of conviction)** If a judge is suspended by reason of article VI, section 18, subdivision (c) of the California Constitution, and the commission receives proof that the conviction has been reversed, the commission shall promptly issue a notice of intention to terminate the suspension in accordance with subdivision (e) of this rule.

**(d) (Finality of conviction)** If a judge is suspended by reason of article VI, section 18, subdivision (c) of the California Constitution, and the commission receives proof that the

conviction is final, the commission shall promptly issue a notice of intention to remove the judge from office in accordance with subdivision (e) of this rule.

**(e) (Notice)** Any notice issued pursuant to this rule shall be in accordance with the following:

**(1)** The notice shall be given to the judge or judge's counsel and to the examiner or other attorney designated by the commission to receive notice in the matter.

**(2)** The notice shall be by personal service or service upon the judge's counsel. If such service cannot be effectuated, service shall be by prepaid certified mail upon the judge at his or her chambers and last known residence. If service is by mail, the notice shall be accompanied by an affidavit or certificate of mailing and an affidavit shall be filed regarding the inability to effectuate personal service or service upon counsel. If the service is by certified mail, service is complete at the time of mailing.

**(3)** The judge shall have an opportunity to respond in writing within 10 days of receipt by the judge of a notice of intended suspension under subdivision (b) or a notice of intended removal under subdivision (d), or within 15 days after the mailing of the notice, whichever occurs first. Within five days after receipt of the judge's response, or within 20 days of the mailing of the notice if no response is filed, whichever occurs first, the examiner or other attorney designated by the commission may present points and authorities respecting the notice and in reply to any response. The commission may request additional briefing. Extensions of time under this subdivision are disfavored and will be granted only upon a specific and affirmative showing of good cause. Good cause does not include ordinary press of business.

**(4)** The examiner or other attorney designated by the commission shall have an opportunity to respond in writing within 10 days of receipt of a notice of intended termination of suspension under subdivision (c). Within five days after receipt of the response of the examiner or other attorney designated by the commission, or within 15 days of the mailing of the notice if no response is filed, whichever occurs first, the judge may present points and authorities respecting the notice and in reply to any response. The commission may request additional briefing. Extensions of time under this subdivision are disfavored and will be granted only upon a specific and affirmative showing of good cause. Good cause does not include ordinary press of business.

**(5)** Upon receipt of the points and authorities or reply or the expiration of the time for the filing thereof, whichever occurs first, or upon receipt of any additional briefs as may be requested by the commission, the commission shall promptly issue its order if it concludes that the relevant standards specified in article VI, section 18, subdivision (c) of the California Constitution have been met.

[Adopted 10/25/05.]

## **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 (1) written agreement by the judge or counsel of record, or (2) 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.

[Adopted 12/1/96.]

## **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 provided 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. Alternatively, if a judge requests that the materials be sent to a specific address, the commission shall provide the judge with copies of said documents and information at that address.

**(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 the filing of the notice of formal proceedings, depositions shall be allowed as provided in this subdivision. The party requesting the deposition shall bear all

costs for service of process, reporter, transcripts and facility usage, and in the case of a videotaped deposition to perpetuate testimony under subpart (1), all direct costs incurred in videotaping the deposition.

**(1) (Depositions to perpetuate testimony)** The commission or the special 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. Depositions to perpetuate testimony may be videotaped.

**(2) (Discovery depositions)** In addition to depositions to perpetuate testimony provided for under subpart (1) of this subdivision, discovery depositions are permitted as provided in this subpart (2). Discovery depositions may not be videotaped.

**a.** The judge shall have the right to take depositions of up to four material witnesses, and the examiner shall have the right to take depositions of the judge and up to three other material witnesses. Depositions of commission members or staff are not permitted. Bench officers, other than the respondent judge, and court staff shall be afforded counsel for the deposition, upon request, by the Administrative Office of the Courts.

**b.** If the examiner and judge stipulate in writing that a deposition may be taken as a matter of right under subpart (a), the commission shall issue a subpoena for such deposition. If the examiner and judge are unable to agree that a witness is material, or unable to agree concerning the manner, time and place of a deposition, the party seeking the deposition may file a request for deposition subpoena with the commission. Objections shall be filed within five days of filing the request. The commission may place restrictions or conditions on the manner, time and place of any deposition.

**c.** Each deposition upon oral examination is limited to one day of seven hours. Any objection during a deposition upon oral examination must be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation directed by the commission, or to present a motion to the commission that the deposition is being conducted in bad faith or in such manner unreasonably to annoy, embarrass or oppress the deponent or party.

**d.** Depositions shall be completed 30 days prior to the hearing, unless a cut-off time otherwise is set by the commission or by stipulation of the examiner and the judge.

**e.** Any motion under this subpart (2) shall be presented to the commission. The commission may designate the chairperson or the chairperson's designee to perform all or any part of its duties under this subdivision. If special masters have been appointed pursuant to rule 121, subdivision (b), the chairperson may designate one or more of them to perform all or any part of the commission's duties under this subpart.

**(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.

[Adopted 12/1/96; amended 1/29/03, 10/17/07, 3/23/11, 12/5/12.]

### **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 the charges 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 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.

[Adopted 12/1/96; amended 10/25/05.]

#### **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.

[Adopted 12/1/96.]

#### **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.

[Adopted 12/1/96.]

### **Rule 125.5 Exhibits at Hearing**

Original exhibits admitted at a hearing before the special masters shall be transmitted by the masters to the commission office at the completion of the evidentiary portion of the hearing, unless the masters determine that there is reason to retain the original exhibit or exhibits to assist in the preparation of their report to the commission. Any original exhibits retained by the masters shall be transmitted to the commission at or before the time the report of the masters is submitted to the commission.

[Interim adoption 1/31/07; adopted 5/23/07.]

### **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 may petition a court of competent jurisdiction for the appointment of a conservator unless the judge has a conservator who will represent the judge. If a conservator is or has been appointed for a judge, 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, giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to the conservator.

[Adopted 12/1/96; amended 5/23/07.]

### **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.

[Adopted 12/1/96.]

### **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.

[Adopted 12/1/96.]

### **Rule 129. Report of Masters**

**(a) (Transcript)** Upon the completion of a hearing before the masters, a transcript of the hearing shall be promptly prepared and submitted to the Legal Advisor who shall promptly mail a copy to each of the special masters, the examiner and the respondent judge.

**(b) (Submission of proposed findings of fact and conclusions of law)** Unless the masters specify an earlier date, 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, no later than 30 days after mailing of the hearing transcript. Submission to the masters shall occur by a delivery method that results in actual receipt by them of the documents on or before the specified due date for submission. The masters may waive the submission of such proposed findings and conclusions.

**(c) (Preparation of report of masters)** Within 45 days after mailing of the hearing transcript or within 15 days after submission of the parties' proposed findings of fact and conclusions of law, whichever occurs later, the masters shall submit a report to the commission. Prior to the submission of their report, the masters may require such additional briefing and argument by the examiner and the respondent judge as the masters may desire. Upon request of the presiding master, the chair of the commission or the chair's designee may grant additional time for the submission of the report of the masters to the commission.

**(d) (Content of report of masters)** The 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.

[Adopted 12/1/96; amended 1/29/03, 10/25/05, 3/23/11.]

### **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 (b) of rule 8.204 of the California Rules of Court, shall follow the length limitations set forth in subdivision (c) of rule 8.204 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.

[Adopted 12/1/96; amended 1/29/03, 3/23/11.]

### **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.

[Adopted 12/1/96.]

### **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.

[Adopted 12/1/96.]

### **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 may be before such masters or before the commission, and the proceedings therein shall be in conformance with the provisions of rules 121 to 130, inclusive.

[Adopted 12/1/96; amended 1/29/03.]

### **Rule 134. Commission Vote**

The commission may privately or publicly admonish, censure, remove or retire a judge, or find a person unfit to serve as a subordinate judicial officer. 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 132 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, censure, removal or retirement of a judge, or a finding that a person is unfit to serve as a subordinate judicial officer, or for dismissal of the proceedings.

[Adopted 12/1/96; amended 10/8/98, 2/11/99, 1/29/03.]

**Rule 134.5. Rule of Necessity**

A commission member shall not be subject to disqualification based on an actual or potential conflict of interest if his or her disqualification would prevent the existence of a quorum. This rule does not apply if a quorum can be convened with members who are not actually present. The basis of the commission member's actual or potential conflict and the reason the member's participation was necessary shall be recorded in the minutes and included in any resulting discipline.

[Adopted 5/23/07.]

**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.

[Adopted 12/1/96.]

**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.

[Adopted 12/1/96.]

**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.

[Adopted 12/1/96.]

## **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). For purposes of these rules, “judge” also means a court commissioner or referee, included as subordinate judicial officers in the commission’s jurisdiction under California Constitution, article VI, section 18.1.

(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.

[Adopted 12/1/96; amended 10/8/98, 2/11/99.]