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August 25, 2025

Colorado Judicial Discipline Rulemaking Committee
Ralph L. Carr Judicial Center
1300 Broadway, Suite 210
Denver, CO 80203

Re: Public Notice and Comment as to Proposed Colo. RJD Amendments and Request for Evaluation of Judicial Conduct; Appendices 1-6

Dear Committee Members:

SUMMARY

In November 2024, 73% of Colorado voters approved Amendment H, mandating that the state's judicial discipline system operate with objective independence, fairness, and public transparency. The amendment specifically directs this Committee to adopt rules defining:

- Standards of proof,
- Confidential reporting procedures, and
- Complainant rights.

Rather than fulfilling this mandate, this Committee offers only *pro forma* rule changes that will further insulate judges who violate their ethical duties from public accountability. This Committee's actions reflect a troubling conflict of interest—the Committee appears to function as a proxy for the Justices of the Colorado Supreme Court who seek to perpetuate a 6-year pattern of engaging in and concealing the most serious forms of judicial misconduct, which include a multi-million-dollar public fraud.

By knowingly assisting the Justices in their misconduct, refusing to disclose conflicts or disqualify themselves, and disregarding credible reports of misconduct from multiple individuals, this Committee's members have created probable cause to suspect violations of law, including but not limited to:

- First-Degree Official Misconduct (§ 18-8-404, C.R.S.) and
- Retaliation Against a Witness or Victim (§ 18-8-706, C.R.S.).

In light of these concerns, I respectfully request the following actions:

1. **Formation of a Conflict-Free Special Commission, Adjudicative Panel, and Special Tribunal**

   That the non-conflicted members of the Colorado Commission on Judicial Discipline (the CCJD)—District Court Judge Reed Owens and County Court Judge Meredith Patrick McCord—form a special commission, request the formation of a conflict-free special adjudicative panel, and request the formation of a conflict-free special tribunal under Colo. RJD 41 and Colo. Const. Art. VI, § 23(3)(f)(II) to consider:

   - These public comments and this request for evaluation (RFE) of judicial conduct, and
   - The prior anonymous RFE dated October 24, 2024.

   The special commission should also:

   - Recognize complaints under Colo. RJD 13(b) and begin investigations under Colo. RJD 14(a) and
   - Make all appropriate referrals (judges, attorneys, and public officials) to law enforcement (federal, state, local) and regulatory authorities, including but not limited to:

     - Colorado Office of Judicial Performance Evaluation (OJPE)
     - Colorado Office of Attorney Regulation (OARC)
     - U.S. District Court for the District of Colorado's Committee on Conduct
     - Colorado Commission on Civil Rights
     - Colorado State Auditor
     - Colorado Independent Ethics Commission (IEC)
     - U.S. Department of Justice
     - Federal Bureau of Investigation

2. **Independent Investigation by Another State's Attorney General**

   That Colorado State Auditor Kerri Hunter exercise her authority under § 24-31-111(5), C.R.S. to appoint another state's attorney general as a Special Assistant Attorney General (SAAG) to investigate and prosecute—civilly and/or criminally—allegations of public fraud committed by the Justices, Attorney General Phil Weiser, Secretary of State Jena Griswold, and Governor Jared Polis.

3. **Legislative Referral for Conflict-Free Federal and Out-of-State Investigations**

   That, during its current special session, the Colorado General Assembly pass a joint resolution formally requesting a conflict-free investigation and potential civil/criminal

prosecutions through the U.S. Department of Justice and Federal Bureau of Investigation. The joint resolution would further direct the Colorado State Auditor to appoint an another state's attorney general as a SAAG to investigate the allegations of public fraud under Colorado's Fraud Hotline statute (§ 2-3-110.5, C.R.S.) and the Colorado False Claims Act (§§ 24-31-101, et. seq., C.R.S.).

4. Dissolution of the Current Committee

That this Committee disband itself and withdraw its proposed rule changes, which improperly shield the Justices and other judges who have violated the Colorado Code of Judicial Conduct (the Code)).

5. Adoption of Comprehensive Rule Revisions

Upon reformation of a conflict-free Committee, adopt rule changes consistent with Amendment H's transparency mandate and nationally recognized best practices, including:

Structural Reforms

a. Replace the current special master system with the Colorado Judicial Discipline Adjudicative Board (the CJDAB) as the final adjudicative body.

b. Provide for en banc review and decision-making by the CJDAB.

c. Confirm the CCJD's discretion to utilize its special cash fund and directly appoint outside special counsel, when needed.

d. Conform Colo. RJD 41 to Colo. Const. Art. VI, § 23(3)(f)(II) so that special tribunals are composed of no more than one randomly selected court of appeals judge or district court judge from the same judicial district.

e. Define processes for appointing special commissioners/adjudicators when a quorum of non-conflicted members does not exist.

Transparency Measures

f. Establish anonymous and confidential reporting procedures.

g. Eliminate restrictions on the CCJD's communications with the press and the public as imposed by the Justices through Colo. RJD 3.5(c)(2).

h. Eliminate the Colo. RJD 6.5(e) certification requirement.

i. Require that the CCJD notify the OJPE of pending complaints, motions for temporary suspension, and informal dispositions.

j. Require the CJDAB to maintain a public website and to publish its final decisions in the West National Reporter System.

k. Define "public records" broadly to include administrative records, financial records, and the records of formal proceedings, available free of charge.

Jurisdiction and Standards of Proof

l. Clarify the CCJD's constitutional jurisdiction over all Colorado judges of courts of record (including private judges, CJDAB members, magistrates, some ALJs, and some municipal judges (other than Denver County Court judges who are subject to a constitutional exception)).

m. Remove the limitations periods for judicial misconduct allegations, consistent with federal standards.

n. Apply reasonable basis and probable cause standards for initiating investigations and filing charges.

o. Consistent with federal standards, replace the current "clear and convincing evidence" burden of proof with a preponderance of evidence standard in both the imposition of informal discipline and in formal discipline proceedings.

p. Clarify the CJDAB's authority over temporary suspensions under Colo. RJD 34 and provide appellate review.

Complainant and Victim Rights

q. Define the complainant's (and victims') standing and access to the CCJD's record of proceedings.

r. Provide an opportunity for complainants and victims to assert and enforce grounds for disqualification.

s. Apply Canon Rule 2.11 disqualification standards to the CCJD, the CJDAB, and this Committee.

t. Recognize complainants' and victims' rights to judicial and appellate review in both informal and formal proceedings.

Sanctions and Enforcement

u. Prohibit diversion plans with deferred dismissal where misconduct warrants a private censure, a public reprimand, or a public censure.

v. Harmonize the definitions of private and public reprimands/censures.

w. Recognize aggravated sanctions for concealment or obstruction.

x. Provide for recoupment of a suspended judge's salary/benefits upon adjudication.

y. Authorize the CCJD to recover reasonable attorney's fees as a prevailing party, with reciprocal provision for judges in bad-faith prosecutions.

These actions, reforms, and rule changes are necessary to restore public trust, ensure impartial adjudication of judicial misconduct, and fulfill the constitutional mandate overwhelmingly approved by Colorado voters.

DISCUSSION

The Justices of the Colorado Supreme Court abandoned their honor,[1] integrity, and obligations to enforce an appropriate tone at the top when they collectively decided to excuse State Court Administrator's Office (SCAO) Chief of Staff Mindy Masias's dishonesty and alteration of financial records. Instead of terminating Masias for cause, the Justices proceeded to negotiate a $2.66-2.75 million sole-source *quid pro quo* contract that was preconditioned upon Masias signing a non-disclosure agreement (NDA). The Justices approved the Masias Contract despite the individual Justices, Governor Jared Polis, and Attorney General Phil Weiser each having received an anonymous Fraud Hotline complaint that detailed Masias's financial misconduct and other malfeasance within the SCAO. Then, when the existence of the Masias Contract was made public, the Justices began a 6-year ongoing conspiracy intended to cover up their own judicial misconduct through a government-wide pattern of non-disqualification, intimidation, and retaliation reinforced by publicly funded self-investigations, public relations strategies, and hush money payments (NDAs). Put more plainly, the Justices got caught after they collectively approved and began paying a $2.66-2.75 million bribe with taxpayer funds. The public fraud involved and the subsequent cover up continues to wrongfully cost taxpayers tens of millions of dollars. The Justices' collective misconduct has already been proven through the stipulated disciplinary opinion in *Matter of Coats*, 2023 CO 44 and the Justices' own official public statements. Nevertheless, the Justices (other than former Chief Justice Nathan Coats) have persevered in their corrupt efforts to avoid ***any*** accountability.

[1] *See generally* Chenise S. Kanemoto, *Bushido in the Courtroom: A Case for Virtue-Oriented Lawyering*, 57 S.C. L. Rev. 357 (2005).

When the Colorado Commission on Judicial Discipline (the CCJD) sent each of the Justices letters (dated June 13, 2022 and July 1, 2022) requesting their disqualification from the then-pending proceedings in *Coats* and other matters related to judicial discipline (which included legislative reforms, rulemaking, and the hearing of other judicial discipline cases), the Justices simply ignored the CCJD. Instead, the Justices proceeded to coordinate the abuse of their own and Governor Jared Polis's appointment powers to stack the boards and commissions responsible for attorney and judicial oversight with their cronies.[2] The Justices are overtly violating Canon Rules 1.1 (Compliance with Law), 1.2 (Promoting Confidence in the Judiciary), 1.3 (Abuse of Prestige of Judicial Office), 2.2 (Impartiality and Fairness), 2.3 (Bias, Prejudice, and Harassment), 2.4 (External Influences on Judicial Conduct), 2.5 (Competence and Cooperation), 2.6 (Ensuring the Right to be Heard), 2.9 (Ex Parte Communications), 2.10 (Judicial Statements on Pending and Impending Cases), 2.11 (Disqualification), 2.12 (Supervisory Duties), 2.13 (Administrative Appointments), 2.15 (Responding to Judicial and Lawyer Misconduct), 2.16 (Cooperation with Disciplinary Authorities), 3.1 (Extrajudicial Activities in General), and 4.1 (Political and Campaign Activities) of the Colorado Code of Judicial Conduct ("the Code"). Likewise, the judges who have been appointed to the now-conflicted boards and commissions through this collusion[3] are themselves complicit in violating Canon Rules 1.1, 1.2, 1.3, 2.2, 2.3, 2.4, 2.5, 2.6, 2.9, 2.10, 2.11, 2.12, 2.13, 2.15, 2.16, 3.1, and 4.1. It deserves emphasis that even the creation of appearances of impropriety is sufficient grounds for judicial discipline, including under Canon Rules 1.1, 1.2, 1.3, 2.2, 2.3, 2.5, 2.6, 2.11, and 2.13. Judges, attorneys, and judicial employees have mandatory duties to report both judicial and attorney misconduct. § 13-5.3-106, C.R.S.; Canon Rules 2.15 and 2.16; Colo. RPC 8.3. The judges and attorneys appointed to the now-conflicted boards and commissions are further violating Colo. RPC 8.4(f) (knowingly assisting a judge violate the Code or other laws). The citizen members, who are violating their duties to enforce the Code, the Colo. RJD, the Colo. RPC, and other ethical rules are also abusing their offices without any oversight from their appointing authorities or from law enforcement.

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[2] Colorado Attorney General Phil Weiser has similarly abused his appointment authority by colluding with the Justices and Governor Jared Polis in the conflicted selection of the members of Colorado's judicial nominating commissions. Colo. Const. Art. VI, § 24(4) (attorney members of nominating commissions chosen by majority action of governor, attorney general, and chief justice). The composition of the judicial nominating commissions becomes a critical part of the judicial discipline process when a judge or justice is removed from office and a replacement is selected. If any of the justices or judges involved in the Masias Controversy are ultimately removed from office, it will be necessary to recompose the various nominating commissions through a conflict-free process. *See* David Migoya, *Appellate Court Nominees Include One of the Most-Reversed Judges and a Lawyer Tied to Memo Scandal*, DENVER GAZETTE, November 1, 2023 (Assistant Solicitor General Grant Sullivan nominated to Colorado Court of Appeals despite his reported role in concealing the material Masias Memo from the Colorado State Auditor).

[3] 5th Judicial District Court Judge Reed Owens and El Paso County Court Judge Meredith Patrick McCord were appointed to the CCJD following the adoption of Amendment H. Accordingly, Judge Owens and Judge Patrick McCord were presumably appointed through the random process defined by § 13-5.3-102(2)(b), C.R.S. Unless Judge Owens and Judge Patrick McCord have endorsed the misconduct of the other members of the CCJD, they have not violated the Code.

The Justices and their co-conspirators have continued to evade ***any*** accountability for their significant misconduct by ignoring and (through a complicit CCJD) quietly dismissing a detailed anonymous request for evaluation (RFE) of judicial conduct and an accompanying anonymous Fraud Hotline complaint, both dated October 20, 2024.[4] Copies of the October 20, 2024 RFE, its appendices, and the Fraud Hotline complaint were made part of the legislative record at the April 28, 2025 hearing of the Colorado Senate Judiciary Committee.

The collusion and cronyism that undermine the effectiveness of Colorado's judicial and attorney discipline systems as well as oversight of elected officials persist despite legislative reforms and voters approving Amendment H / HCR 23-1001 with a 73% majority. Amendment H should have removed the Colorado Supreme Court's control over Colorado's constitutional judicial discipline system through the separation of enforcement, adjudicatory, and appellate functions and by removing the Colorado Supreme Court's control over rulemaking. Ultimately, this Committee's composition and its conflicted promulgation of meaningless or detrimental rule changes are substantial violations of the Code, the Colo. RPC, and criminal laws that include the offenses of First-Degree Official Misconduct, § 18-8-404, C.R.S.[5], and Retaliation Against a Witness or Victim, § 18-8-706, C.R.S. Because of the corruption of Colorado's judicial discipline, judicial performance evaluation, attorney discipline, and law enforcement systems, however, legislative and direct voter oversight are the only plausible paths to accountability left under state law. For the reasons explained in these public comments and in the appended op-ed articles,[6] this Committee and its rulemaking process have been made a farce. The Justices and their co-conspirators have intentionally prevented the administration of justice by suppressing, obstructing, or otherwise interfering with every investigation of their misconduct that has occurred. The rulemaking process is now being used to augment that historic cover up.

In addition to my comments supporting the adoption of alternative and additional rules, I formally request the creation of a special commission, a special adjudicatory panel, and a special tribunal appointed through conflict-free processes to evaluate, prosecute, adjudicate, and review the Justices' proven violations of the Code. According to Colo. RJD 34(a), adequate grounds already exist for the Justices' immediate suspension from judicial office pending judicial

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[4] David Migoya, *Federal Probe of Judiciary Scandal in Colorado Requested at Hearing*, DENVER GAZETTE, April 28, 2025.

[5] According to § 18-8-404, C.R.S., it is a crime for a public servant to knowingly 1) engage in the unauthorized exercise of official functions, 2) to refrain from performing their legal duties, or 3) to violate a statute, rule, or regulation related to their office. § 18-1-901(3)(o), C.R.S. provides:

> "Public servant" means any officer or employee of government, whether elected or appointed, and any person participating as an advisor, consultant, process server, or otherwise in performing a governmental function, but the term does not include witnesses.

[6] Christopher Gregory, *Opinion: Colorado's Highest Court Has Lost Credibility*, COLORADO POLITICS, May 1, 2025 (Appendix 1); Christopher Gregory, *Perspective: Above the Law*, DENVER GAZETTE, June 15, 2025 (Appendix 2); Christopher Gregory, *Feedback: System Skewed to Benefit Disciplined Judges*, COLORADO POLITICS, July 24, 2025 (Appendix 3).

discipline proceedings. I also call upon the Colorado General Assembly to pass a joint resolution during its current special session. The necessary joint resolution (which will not require a fiscal note[7]) would refer the Masias Controversy to the U.S. Department of Justice, to the Federal Bureau of Investigation, and to an outside state's attorney general for conflict-free investigation and prosecution. Ultimately, following full, legitimate, and conflict-free investigations, the Colorado General Assembly will be able to determine whether impeachment proceedings are warranted as to the justices, judges, and elected officials involved in the Masias Controversy.

To be perfectly clear, these public comments are dually filed as a Colo. RJD 12 request for evaluation (RFE) of judicial conduct as to the following justices, judges, private judges, and members of the Colorado Judicial Discipline Adjudicative Board (CJDAB)[8]:

- Angela Arkin;
- Karen Ashby;
- Maria Berkenkotter;
- Brian Boatright;
- Jill Brady;
- Jeff Chostner;
- Laurie Clark;
- Christopher Cross;
- Eric Elliff;
- Laura Ellis;
- Richard Gabriel;
- Sara Garrido;
- Tyrone Glover;
- Justin Haenlein;
- Melissa Hart;
- James Hartmann;
- William Hood, III;
- Bryon Large;
- Gretchen Larson;
- Monica Márquez;

[7] According to §§ 24-31-101(1)(g) and 24-31-111(5), C.R.S., the Colorado State Auditor (through the Legislative Audit Committee) has the authority to directly appoint a special assistant attorney general (including another state's attorney general) to complete a fraud investigation under the Fraud Hotline statute, § 2-3-110.5, C.R.S. and/or the Colorado False Claims Act, Title 24, Art. 31, Pt. 12. The costs of a special assistant attorney general are paid through funds already appropriated to the Colorado Office of the Attorney General through its annual budget. It will be important for the Colorado State Auditor to select another state's attorney general from a state that has a comparable civil false claims act. Appendix 4 (proposed joint resolution and list of states with comparable civil false claims acts).

[8] The members of the CJDAB are: Jeff Chostner (attorney), Eric Elliff (Judge), Laura Ellis (attorney), Tyrone Glover (attorney), Grechen Larson (judge), Colleen McManamon (citizen), Kristen Mix (attorney), Jeff Swanty (citizen), Jeannie Valliere (citizen), Vincente Vigil (judge), and Leanne Wheeler (citizen).

- Robert McGahey;
- Bonnie McLean;
- Colleen McManamon;
- William Meyer;
- Kristen Mix;
- Crista Newmyer-Olsen;
- Nancy Rice;
- Carlos Samour;
- Kevin Sidel;
- Elizabeth Starrs;
- Jeff Swanty;
- Jeannie Valliere;
- Vincente Vigil;
- Leanne Wheeler; and
- Mariana Vielma.

I am mindful that at least some of the individuals listed above may have been unwittingly drafted to participate in the Justices' overall scheme to suppress, obstruct, and interfere with the judicial discipline process. How the individuals respond to this RFE and these public comments, however, will determine whether they are knowingly violating the Code and are subject to judicial discipline. This RFE also expressly requests that a conflict-free special commission evaluate the allegations of judicial misconduct presented through the October 20, 2024 RFE, its appendices, and its accompanying Fraud Hotline complaint.

In addition, these public comments and this RFE are submitted as a complaint as to the conduct of the members of the CCJD (excluding Judge Reed Owens and Judge Meredith Patrick McCord), former Chair Mindy Sooter, former Secretary Mariana Vielma, former Commissioner Bonnie McLean, Executive Director Anne Mangiardi, Special Counsel Jeff Walsh, and General Counsel Gina Cannan under Colo. RJD 3.5(b), (h). The CCJD, its Executive Director, its Special Counsel, and its General Counsel continue to retaliate against and ignore numerous individuals (including myself) who have come forward to report substantial judicial misconduct. The CCJD and its staff are not following the law, are intentionally violating the constitutional rights of victims of judicial misconduct, are facilitating public fraud, and have abdicated their duties to perform the CCJD's constitutional mandate, as defined by Colo. RJD 1(b).[9] Accordingly, probable cause exists to suspect that the CCJD's current and former members, its Executive

[9] Colo. RJD 1(b) states:

> **Constitutional Mandate.** The Constitutional mandate of the Commission is to protect the public from improper conduct of judges; preserve the integrity of the judicial process; maintain public confidence in the judiciary; create a greater awareness of proper judicial behavior on the part of the judiciary and the public; and provide for the fair and expeditious disposition of complaints of judicial misconduct or judicial disabilities.

Director, its Special Counsel, and its General Counsel have committed or are committing the crimes of First-Degree Official Misconduct, § 18-8-404, C.R.S. and Retaliation Against a Witness or Victim, § 18-8-706, C.R.S. To the extent that the CCJD continues to obstruct a fair, impartial, and conflict-free inquiry into the conduct of its current and former members and its staff, potential remedies include a civil action for whistleblower retaliation and petitioning a court to compel prosecution according to § 16-5-209, C.R.S.

1. The public deserves to understand the nature and ramifications of the conflicts of interest involved in this Committee exercising its rulemaking function.

Under Colo. Const. Art. VI, § 23(3)(k)(I), this Committee's authority includes defining: 1) the standards of proof, 2) confidential/anonymous reporting procedures that protect victims, and 3) complainant rights in the judicial discipline process. Traditionally, the rulemaking function has also defined the CCJD's jurisdiction over a "judge," limitations periods, and the remedies available in judicial discipline proceedings. *See* Colo. RJD 2(a), 4(a), 35-36. Because the judicial discipline structure is civil, preventative, and remedial in its purposes, rulemaking changes are not constrained by constitutional prohibitions against retroactive legislation. *Calder v. Bull*, 3 U.S. 386, 399 (1798) (Iredell, J.) (application of *ex post facto* clause of the U.S. Constitution limited to criminal laws; "[T]he true construction of the prohibition extends to criminal, not civil, cases."); *City of Golden v. Parker*, 138 P.3d 285, 289-90 (Colo. 2006) (Colo. Const. Art. II, § 11's prohibition against retroactive legislation allows retroactive changes in civil laws that are procedural or remedial; even when a vested right is impaired, retroactivity will depend upon balancing of public interests in the exercise of the state's police powers). Within this context, it is incredibly important that this Committee perform its function in a conflict-free manner.

When the Colorado House of Representatives originally proposed that this Committee's composition provide the CCJD with greater influence to ensure rulemaking that facilitates equal enforcement of the Code, then-Senator Bob Gardner opposed the House's version of HCR 23-1001. Gardner's position and his opposition to removing the Justices' authority to appoint members of the CCJD aligned with the Justices' unethical lobbying. To reward Gardner for his fealty and continued participation in the Justices' cover up, Governor Polis subsequently appointed Gardner to the CCJD to replace Mindy Sooter (whose reappointment was rejected by the Colorado Senate).[10] The result of the Justices' undue influence upon the legislative process and their subsequent coordinated abuse of their appointment powers is that this Committee and

[10] When confronted with allegations that CCJD Chair Mindy Sooter and CCJD Vice-Chair Jim Carpenter had retaliated against me for my internal reporting of judicial misconduct (specifically the Masias Controversy and Justice Brian Boatright's concealment/non-reporting of former Denver Presiding Juvenile Court Judge D. Brett Woods's habitual intemperance and retaliation), Governor Jared Polis persisted in lobbying the full Colorado Senate to proceed with approving his re-appointment of Sooter and Carpenter to the CCJD. A copy of the talking points that Governor Polis circulated are attached as Appendix 5. Without explanation or recourse through judicial review, the Colorado Independent Ethics Commission (IEC) refused to exercise jurisdiction to investigate my complaint that Governor Polis has abused his appointment powers. Appendix 6; *See also Colorado Ethics Watch v. Indep. Ethics Comm'n*, 2016 CO 21, ¶¶ 24-67 (Gabriel, J., dissenting) (confidentiality of IEC complaint evaluation should not preclude complainant from seeking judicial review of dismissal decision).

the other judicial oversight authorities are stacked with the Justices' cronies and co-conspirators. This Committee's rulemaking is nothing more than a continued effort to shield the Justices from ***any*** accountability under the Code. To understand how the members of this Committee are themselves violating or assisting the Justices in violating the Code, it is necessary to consider how the members of this Committee were selected. It is also important to understand the nature of the conflicts of interest which require the disqualification of individuals from this Committee and from participation in its rulemaking function.

Unlike the random process now required for the Colorado Supreme Court to appoint judge members to the CCJD, the Justices directly selected the judge members of the CJDAB and the Court's share of the members of this Committee. The Justices selectively appointed 2nd Judicial District Court Judge Eric Eliff, 21st Judicial District Court Judge Gretchen Larson, 12th Judicial District Court Judge Crista Newmyer-Olsen, and 19th Judicial District Court Judge Vincente Vigil to the CJDAB. In addition, the Justices selectively appointed Justice Richard Gabriel, Presiding Disciplinary Judge Bryon Large, former 19th Judicial District Court Chief Judge / Senior Judge James Hartmann, and attorney Nancy Cohen to this Committee. The CJDAB, in turn, appointed Colleen McManamon, Kristen Mix, Jeff Swanty, and Vincente Vigil to this Committee. The CCJD apparently appointed Commissioner Ingrid Barrier, Executive Director Anne Mangiardi, Special Counsel Jeff Walsh, and attorney David Beller to this Committee. Governor Jared Polis appointed Amanda Hollander as this Committee's victim advocate member.

The conflicts and coordinated abuse of the Justices' powers in violation of Canon Rules 1.1, 1.2, 1.3, 2.11, and 2.13 goes much deeper than the composition of this Committee. In addition to her appointment and election as Vice Chair of this Committee, the Justices have appointed attorney Nancy Cohen to the Colorado Supreme Court's Advisory Committee on the Practice of Law (the Advisory Committee). The Advisory Committee, together with its subsidiary Legal Regulation Committee, oversees the Court's attorney regulation system and the Court's Office of Attorney Regulation Counsel (OARC). C.R.C.P. 242.3. Ms. Cohen also regularly represents subject judges in judicial discipline proceedings and has a direct, personal, and substantial financial interest in this Committee's rulemaking function (particularly its ability to define jurisdiction, burdens of proof, and sanctions). As a senior judge, former Chief Judge Hartmann is a contractor subject to the Justices' direct supervision through SCAO.[11] Accordingly, Chief Judge Hartmann has a direct, personal, and substantial financial interest in this Committee's rulemaking function. Similarly, Judge Bryon Large was directly appointed by the Justices to his position as Presiding Disciplinary Judge and, ultimately, serves at their pleasure subject to oversight by the Advisory Committee.[12] Judge Large similarly has a direct, personal, and

[11] § 24-51-1105, C.R.S. (chief justice approves retired judges for senior judge program and determines judges' continued participation); *see also* David Migoya, *State Court Administrator Admits He "Missed" Discipline Advisory and Allowed "Hairy Chest" Jurist Into Senior Judge Program*, DENVER GAZETTE, August 9, 2022 (Chief Justice Boatright used his authority to terminate senior judge Thomas Ensor's contract over allegations in Masias Memo that, while serving as active judge, Ensor had rubbed his "hairy chest" on female court staff's back).

[12] C.R.C.P. 242.6(a) provides: "**Presiding Disciplinary Judge.** The supreme court appoints one or more Presiding Disciplinary Judges to serve at the pleasure of the supreme court." C.R.C.P. 242.6(d) further provides, in relevant

substantial financial interest in this Committee's rulemaking function. As discussed *infra*, attorney David Beller represented former 13th Judicial District Court Judge Justin Haenlein in a pending judicial discipline proceeding when the CCJD appointed him to this committee. In addition to Ms. Cohen, the Justices have appointed Mr. Beller to the Advisory Committee. Given the opportunity to assist his client to engage in further misconduct, Mr. Beller also has a direct, personal, and substantial financial interest in this Committee's rulemaking function. The appointment of Justice Richard Gabriel to this Committee, however, is the most egregious violation of the Justices' appointment power when Justice Gabriel was, himself, directly involved in the approval of the $2.66-2.75 million *quid pro quo* Masias Contract and the broader Masias Controversy.

***Matter of D. Brett Woods,* 2024 CO 72**

David Brett Woods was the Presiding Denver Juvenile Court Judge. In that role, Judge Woods heard some of the most sensitive cases involving the most vulnerable populations. In December of 2023, as Executive Director of the CCJD, I requested Judge Woods's temporary suspension under Colo. RJD 34(a) after evidence confirmed Judge Woods' habitual intemperance (alcohol abuse), including while on the bench. Following Judge Woods' suspension, the CCJD's investigator discovered further evidence that Judge Woods had retaliated against a court administrator who had internally reported / raised concerns about Judge Woods's alcohol abuse in 2019 (concurrent with the negotiation and approval of the Masias Contract). The retaliation against the court administrator was facilitated through a coerced and publicly funded non-disclosure agreement. The CCJD's investigator further discovered that Judge Woods's alcohol abuse and retaliation had been reported to Justice Brian Boatright, Court of Appeals Judge Karen Ashby, and Denver Juvenile Court Judge Laurie Clark. Justice Boatright, Judge Ashby, and Judge Clark, however, knowingly concealed Judge Woods's unfitness and misconduct by not reporting to the CCJD (as they were required to do under Canon Rule 2.15(A)).

Through a January 9, 2024 in-person meeting with CCJD member Stefanie Trujillo, I internally reported my suspicion that I was being retaliated against by CCJD Chair Mindy Sooter, CCJD Vice Chair James Carpenter, and other members of the CCJD for my efforts to hold the Justices' responsible for their individual roles in approving the Masias Contract. I also informed Ms. Trujillo of the then-recently discovered evidence of retaliation in *Woods* and Justice Boatright's 4-year long concealment of Judge Woods's unfitness/misconduct. The following day, and as I predicted, the CCJD's members proceeded to retaliate against me and voted for my termination. I, however, was not informed that I was being summarily terminated until January 19, 2024 (after I had made the CCJD's 2024 SMART Act presentation to the Joint House and Senate Judiciary Committees on January 12, 2024). On March 3, 2024, the press reported on the grounds for Judge Woods's suspension and the non-reporting by Judge Ashby, Justice Boatright, and Judge Clark.[13] Nevertheless, on March 6, 2024, the Senate Judiciary Committee proceeded

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part: "**Disqualification.** The Presiding Disciplinary Judge must refrain from taking part in a proceeding in which a similarly situated judge would be required to disqualify. . ."

[13] David Migoya, *Colorado Supreme Court Chief Justice and Others Aware of Colleague's Drinking Problem, But Kept Silent*, DENVER GAZETTE, March 3, 2024.

to recommend the confirmation of Ingrid Barrier and Stefanie Trujillo's appointments to the CCJD despite the reported coverup involving Judge Woods.

This Committee's Vice-Chair Nancy Cohen represented Judge Woods in his disciplinary proceedings. The October 20, 2024 RFE specifically raised the conflicts involved in the CCJD's Special Counsel Jeff Walsh continuing to prosecute the Woods matter and the Colorado Supreme Court hearing the case, which included allegations of misconduct by Justice Boatright. RFE (October 20, 2024), pp. 16 fn. 19, 127 fn. 175, 135, 137 fn. 188, 257, 268, 281-82, 305. Instead of seeking the formation of a special commission, the appointment of outside special counsel, and the formation of a Special Tribunal according to Colo. RJD 41, Special Counsel Walsh, Ms. Cohen, and the Justices colluded to resolve the Woods matter through a stipulated disciplinary opinion (which did not address Judge Ashby's, Justice Boatright's, or Judge Clark's facilitation/non-reporting of Judge Woods's admitted unfitness and misconduct). *Matter of Woods*, 2024 CO 72. Jeff Walsh, as "Special Counsel and Interim Executive Director," filed the CCJD's recommendation for stipulated discipline on November 15, 2024 (10 days after the 2024 General Election) and the Justices issued a *per curiam* disciplinary opinion on December 9, 2024. The coordinated involvement of Ms. Cohen, Special Counsel Walsh, and the Justices in covering up Justice Boatright's violations of Canon Rules 2.15 and 2.16 is directly relevant to the conflicted composition of this Committee and the violations of the Code that are occurring through this Committee's promulgation of its proposed rule changes.

Private Judges

This Committee has promulgated its proposed rule changes in the context of the press reporting that a number of private judges violated their duties under Canon Rule 4.1(A)(4) by making political contributions while appointed to hear cases.[14] Citing ambiguity in the Colo. RJD's definition of an "active judge," Executive Director Anne Mangiardi and the CCJD disclaimed having jurisdictional authority over the private judges, who include former Chief Justice Nancy

[14] Canon Rule 4.1(A)(4) provides: "**(A)** Except as permitted by law,* or by this Canon, a judge or a judicial candidate* shall not: . . . (4) solicit funds for, pay an assessment to, or make a contribution* to a political organization or a candidate for public office[.]" Through records obtained from the Colorado Secretary of State's Office and the Federal Election Commission, the following private judges were identified as having made political contributions prohibited by Canon Rule 4.1(A)(4):

- Angela Arkin;
- William Meyer;
- Kevin Sidel;
- Elizabeth Starrs;
- Nancy Rice;
- Robert McGahey; and
- Christopher Cross.

David Migoya, *Judges Made Campaign Contributions Despite Rules Prohibiting the Practice*, DENVER GAZETTE, April 1, 2025.

Rice.[15] The only justification for not disciplining the identified private judges is claimed ambiguity in the Colo. RJD, which could be readily remedied through the exercise of this Committee's rulemaking authority.

A number of the private judges identified as violating Canon Rule 4.1(A)(4) work for Colorado's largest mediation and arbitration groups, Judicial Arbiter Group, Inc. (JAG) and Judicial Arbitration and Mediation Services, Inc. (JAMS-Denver).[16] Neither JAG nor JAMS-Denver verifies the disciplinary histories of their judge arbitrators/mediators with the CCJD as allowed by Colo. RJD 6.5(d)(9) and as part of their hiring processes. In at least one case where he was appointed as private judge, JAG Managing Arbiter and ADA Coordinator William Meyer has refused to disqualify himself even after publicly admitting that he had violated Canon Rule 4.1(A)(4) and that he was self-reporting his misconduct to the CCJD. *See* Migoya, s*upra* at fn. 14. It is unknown whether Judge Meyer or any of the other private judges who violated Canon Rule 4.1(A)(4) notified parties in their cases of the violation(s) with opportunities for the parties to request disqualification. In yet another conflict of interest, the Justices have appointed private judge and JAG Arbiter Angela Arkin to the Advisory Committee. The Chair of this Committee, former U.S. Magistrate Judge, and CJDAB attorney member Kristen Mix, is employed by JAG. Chair Mix has a direct, personal, and substantial financial interest in this Committee's rulemaking function and its impacts upon her colleagues, who have admittedly engaged in judicial misconduct as appointed private judges employed at JAG.[17] Chair Mix's non-

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[15] David Migoya, *Critics Decry "Black Hole" of Oversight for Code Violations by Appointed Judges in Colorado*, DENVER GAZETTE, April 27, 2025. It is unclear why none of the private judges who self-reported their violations of Canon Rule 4.1(A)(4) did not insist upon a public reprimand for their failure to meet the minimum standards of judicial conduct.

[16] JAG employs the following private judges identified as having violated Canon Rule 4.1(A)(4):

- Angela Arkin;
- William Meyer;
- Nancy Rice; and
- Elizabeth Starrs.

JAMS employs the following private judges identified as having violated Canon Rule 4.1(A)(4):

- Robert McGahey; and
- Christopher Cross

[17] *See* Canon Rule 2.11 (listing circumstances that require *sua sponte* judicial disqualification). In addition to her conflicted appointment to this Committee and her participation in its rulemaking process, CJDAB member Kristen Mix openly violated Canon Rules 1.1, 1.2, 1.3, and 2.10 by delivering an April 23, 2025 keynote address to a combined meeting of the Colorado American Inns of Court on the subject of "judicial independence." Mix prefaced her lecture by publicly praising Justice Richard Gabriel for his receipt of the 2024 American Inns of Court 10th Circuit Professionalism Award. Mix then proceeded to highlight the litigation between President Donald Trump and large law firms, to list numerous pending federal cases, and to call out individual federal district court judges whose specific rulings she agreed with. Justice Gabriel, U.S. Magistrate Judge N. Reid Neureiter, U.S. Magistrate Judge Kathyrn Starnella, and other judges were in the audience when Mix delivered her remarks. Mix explained that her retirement from the federal bench (without recognizing her judicial/quasi-judicial appointments to the CJDAB and to this Committee) allowed her to publicly comment on the various pending and impeding cases.

disqualification and her participation in rulemaking that gives her the authority to indirectly excuse her colleagues' publicly admitted judicial misconduct creates significant appearances of impropriety.

***Matter of Justin B. Haenlein*, CCJD Case No. 24-176**

Former 13th Judicial District Court Judge Justin Haenlein admitted to abusing the prestige of his judicial office and unlawfully providing legal representation to pursue his sexual interests in a former client he represented as a criminal defense attorney. Judge Haenlein's admitted misconduct included: 1) exchanging sexually explicit text messages and images with the former client, 2) continued provision of legal advice to the former client in her pending allocation of parental responsibilities case after Judge Haenlein ascended the bench, 3) contributing to the former client's living expenses, 4) not recusing himself and presiding (for more than 2-years) over a new criminal case involving the former client, and 5) intentionally interfering with another judge's orders setting bond for the former client's ex-boyfriend. "Order Regarding Public Censure," *Matter of Haenlein*, CCJD Case No. 24-176 (CJDAB July 18, 2025).[18] Based upon these admissions, Judge Haenlein further admitted that his judicial misconduct violated Canon Rules 1.1, 1.2, 2.11, and 3.10 of the Code. The Order is notable in its failure to recognize Judge Haenlein's abuse of the prestige of judicial office and actual bias under Canon Rules 1.3, 2.2, and 2.3.[19]

Despite the obvious gravity of his misconduct and the apparent timing of when the CCJD received the underlying RFE or reliable information resulting in recognition of a complaint, Judge Haenlein proceeded to seek judicial retention through the November 5, 2024 general election. Both Judge Haenlein and the CCJD withheld disclosure of Judge Haenlein's pending judicial discipline proceedings from the 13th Judicial District Performance Commission.[20] Consequently, the 13th Judicial District Performance Commission unanimously made a mistaken and unreliable recommendation that Judge Haenlein "Meets Performance Standards," including having sufficient judicial integrity. Voters, in turn, approved Judge Haenlein's retention with a 57% majority. The adjudicative panel's final disciplinary order does not address Judge Haenlein's violations of Canon Rules 1.1, 1.2, 1.3, 2.2, 2.3, 2.16, and 4.1, as those rules relate to his dishonesty in seeking retention.

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[18] In yet another perversion of the judicial discipline process, the CCJD kept the identity of Judge Haenlein's former client and her ex-boyfriend confidential, claiming that they were the victims rather than co-conspirators and beneficiaries of judicial misconduct. This phony confidentiality, in turn, was used to excuse the full public disclosure of the evidence and allegations of Judge Haenlein's misconduct under the Code. [TR (4/11/25 Status Conf.), pp. 26:15-27:1 (Special Counsel Walsh explaining intentionality of submitting a sanitized stipulation that did not disclose identities of witnesses / co-conspirators)].

[19] If parallel attorney discipline proceedings are ever brought against Judge Haenlein under Colo. RPC 8.4, they would be resolved before the Presiding Disciplinary Judge and this Committee's member, Bryon Large.

[20] While professing the importance of transparency, David Beller acknowledged Judge Haenlein having been retained by voters as part of his remarks during the adjudicative panel's April 11, 2025 status conference. [TR (4/11/25 Status Conf.) p. 35:11-25].

Following the election, the CCJD requested Judge Haenlein's temporary suspension under Colo. RJD 34(a). On November 24, 2024, the Colorado Supreme Court granted the request and issued its order suspending Judge Haenlein. Judge Haenlein was represented throughout his judicial discipline proceedings by this Committee's member, David Beller. Instead of resigning and allowing the judicial discipline process to move forward, Judge Haenlein remained on temporary paid suspension. Judge Haenlein's suspension required the Colorado Judicial Department, at the taxpayers' expense, to assign senior judges to perform Judge Haenlein's judicial duties. The CCJD delayed initiating formal proceedings and did not request the assignment of a CJDAB adjudicative panel until March 27, 2025. In the interim, Judge Haenlein continued to receive his full $16,566.50 per month salary plus benefits. Presumably, Judge Haenlein used his salary and benefits to pay the costs of Mr. Beller's representation.

After the CCJD initiated formal proceedings, the CJDAB assigned the matter to an adjudicative panel composed of Tyrone Glover, Jeff Swanty, and Vincente Vigil. A status conference was held before the adjudicative panel on April 11, 2025.[21] At the status conference, Executive Director Mangiardi, Special Counsel Walsh, and Mr. Beller all allowed misrepresentations that Judge Haenlein's removal/resignation and public censure was the most stringent / sole remedy available to the adjudicative panel. [TR (4/11/2025 Status Conf.) pp. 37:5-22,[22] 40:2-23, 40:25-

[21] To have the status conference included in the CJDAB's public record of proceedings, I had to personally pay for the $283.97 costs of transcription. The transcript was, then, posted with other case filings on the Weld Combined Court's website. https://www.coloradojudicial.gov/node/13168.

[22] Special Counsel Walsh stated:

> Okay. So, what I want to say is there are -- the Commission is very limited in what it can do. And what the -- basically, as Mr. Beller has indicated, Judge Haenlein is -- the anticipation is tendering his resignation. ***That is as severe as it gets. There's nothing more the Commission can do.***
>
> And so, if you're dissatisfied as a Panel with what the Commission's options are here, the Commission has taken this case very seriously. It has pursued this case aggressively and it has sought the ultimate sanction, which the parties have agreed to. ***And there's nothing more that can be done.***
>
> * * *
>
> I'm going to represent to you as the Commission's Counsel and as an officer of the Court, this stipulation contains the universe of facts of the alleged misconduct here.
>
> * * *
>
> That is not done to try to whitewash things. ***It's not done to try to protect the judiciary or the reputation of the judiciary or of Judge Haenlein***. That's not what's going on.
>
> * * *
>
> ***I think I speak on behalf of Mr. Beller*** as well as not -- as a fellow officer of the Court. We're, you know, it's -- you know, sorry that we don't have this quite the way you guys would like it presented as yet, ***we will get it there and give you the information we hope that you need so that you can make an informed choice about what the best resolution here is***.

41:6, 41:14-42:13, 42:23-43:16, 51:22-52:22, 58:1-11]. Special Counsel Walsh further argued that the impacts of Judge Haenlein's paid suspension and the burdens of the 13th Judicial District Court assigning senior judges to Judge Haenlein's caseload supported expedited approval of the stipulation.[23] To its credit, the panel rejected the CCJD and Judge Haenlein's mutual request to resolve the case only on the face of the unpublished stipulation. [TR (4/11/25 Status Conf.) p. 53:1-10]. The panel set deadlines for the CCJD to file formal charges and for Judge Haenlein to file his answer. The panel scheduled a second status conference for May 8, 2025. When Judge Haenlein filed his answer on April 29, 2025,[24] he also submitted his belated resignation effective

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> [TR (4/11/25 Status Conf.), pp. 37:11-22, 38:23-39:1, 39:5-7, 62:3-9] (emphasis added).

[23] Special Counsel Walsh's comments confirm the collusion between the CCJD and Mr. Beller to delay resolution of Judge Haenlein's case with an ultimate bare public censure and without a request for attorney's fees, costs, or recoupment of Judge Haenlein's salary and benefits. Special Counsel Walsh stated:

> We haven't filed a complaint, mostly because ***Mr. Beller and I have been acutely aware of the fact that Judge Haenlein is on temporary suspension right now. He's being paid.*** And that has been the circumstance for four months now. And while he's also being paid while not working, the 13th Judicial District is currently laboring under the burden of being down a judge. And that I'm sure is a struggle for them.
>
> ***So time has been of the essence for Mr. Beller and I to try to resolve this***, and as quickly and as efficiently as possible. And so reaching a stipulated agreement, I mean, basically the stipulation that we've tendered to the Panel is (indiscernible) the format of what stipulations looked like previously under the previous rules.
>
> * * *
>
> And so really, ***my request on behalf of the Commission***, is for the -- for this Panel to accept this stipulation, and really just tell us where we need to file it. And we'd like to get the case resolved just as quickly as possible, ***given that when the case becomes public*** and everyone kind of knows what's happening, the Judicial Department and the 13th Judicial District in particular, is going to be able to get some relief here quickly and start proceeding.
>
> * * *
>
> ***[Y]ou know, currently, Judge Haenlein is being paid $16,500 a month to not work.***
>
> * * *
>
> And so, we want -- and the 13th is down a judge. And so, we're very interested in getting this moving as fast as possible.
>
> [TR (4/11/25 Status Conf.) pp. 18:3-15, 18:19-19:1, 56:3-4, 56:6-8] (emphasis added).

[24] Judge Haenlein's Answer asserts that this Committee's failure to adopt rules and procedures to conform to Amendment H / HCR 23-1001 is an affirmative defense to the charges against Judge Haenlein. The Answer states:

> The Adjudicative Panel is operating without any clearly articulated rules or procedures. The absence of rules and procedures may deny Judge Haenlein his constitutional right to due process of law.

April 30, 2025. On May 1, 2025, my op ed article *Opinion: Colorado's Highest Court Has Lost Credibility* was published in *Colorado Politics*. Appendix 1. The article asserted that the CCJD, the CJDAB, and this Committee have been rigged by the Justices, the CCJD, and Governor Jared Polis abusing their appointment powers. After the filing of Judge Haenlein's answer and announcement of his resignation, the Senate Judiciary Committee voted to forward the reappointments of CCJD Chair Mindy Sooter and Vice Chair James Carpenter to the full Senate with ***unfavorable*** recommendations.[25] With the full Senate vote on Sooter and Carpenter's reappointments pending, Mr. Beller filed a May 6, 2025 motion to vacate the May 8, 2025 status conference.[26] The adjudicatory panel granted the motion on May 7, 2025 (the same day that the Senate rejected Sooter's reappointment (19-16) and barely approved Carpenter's reappointment (16-19)).[27]

On June 15, 2025, my op-ed *Perspective: Above the Law* was published in *The Denver Gazette*. Appendix 2. The article specifically called out the adjudicative panel's refusal to publish the proposed stipulation in *Haenlein* and how the stipulated outcome of a bare public censure would defraud the public and provide Judge Haenlein with a substantial windfall (approximately $120,000 including being excused from paying attorney's fees and costs according to Colo. RJD

In filing Judge Haenlein's answer, however, attorney David Beller was less than candid by failing to publicly disclose / explain that he is, himself, a member of this Committee with authority to retroactively amend the Colo. RJD (including defining what sanctions are available against his client under Colo. RJD 36). As part of the April 11, 2025 status conference, adjudicative panel member Tyrone Glover disclosed that he and Mr. Beller had an extended history of serving together on various boards and as part of a brief office sharing arrangement. [TR (4/11/25 Status Conf.) p. 5:11-7:1]. Mr. Glover's disclosure (contrasted with the non-disclosure of Mr. Beller's conflicts despite the other panel members, Executive Director Mangiardi, and Special Counsel Walsh's knowledge of them) only highlights the appearances of impropriety that existed with Mr. Beller serving on this Committee while simultaneously representing Judge Haenlein in his pending case. *See also* [TR (4/11/25 Status Conf.) p. 12:14-17 (Judge Vincente Vigil explaining how he is a member of this Committee), 16:19-23 (Beller mentioning rulemaking through this Committee and inadvertently referencing the Advisory Committee without disclosing his membership on both)].

[25] David Migoya, *Colorado Senate Committee Balks at Governor's Judicial Discipline Nominations*, DENVER GAZETTE, May 6, 2025.

[26] In his motion, David Beller continued to maintain that a bare public censure, following Judge Haenlein's resignation, was the only sanction the adjudicative panel could impose. In the motion, Mr. Beller states:

> The Adjudicative Panel's options at this point are, therefore, to accept the parties' stipulation to public censure, or at the Panel's discretion, dismiss the complaint, or impose public or private discipline (e.g. reprimand or censure). See, House Concurrent Resolution 23-1001(e)(I), Colo. Const. Art. XI § 23(3)(e)(II). Judge Haenlein's resignation moots all available options other than dismissal of the complaint, reprimand, or censure. *Id.*
>
> "Motion to Vacate Status Conference," *Matter of Haenlein*, CCJD Case No. 24-176, p. 2, ¶ 4 (May 6, 2025).

[27] David Migoya, *Senate Rejects Colorado Judicial Discipline Appointee While Approving Another*, DENVER GAZETTE, May 7, 2025.

36(g)). Despite some finger waiving over the adjudicative panel's authority to impose "*other discipline* as provided by the Colorado Constitution," the adjudicative panel ignored my public criticisms and accepted the stipulation that allowed Judge Haenlein's unjust enrichment. July 18, 2025 Order, p. 1. I followed up with a second op-ed *Feedback: System Skewed to Benefit Disciplined Judges* that was published in *Colorado Politics* on July 24, 2025. Appendix 3.[28] This Committee responded by posting notice of its proposed rule changes on July 29, 2025. Interestingly, the public notice of the proposed rule changes explains that the rules had already been adopted on an interim basis, effective June 5, 2025 and June 18, 2025. This Committee, however, did not notify the public of its interim rule adoptions until it posted the July 29, 2025 notice on the CCJD website.

The non-enforcement and facilitated public fraud in *Haenlein* follows a pattern of collusion between the Justices, the CCJD, and subject judges to reward the most serious forms of judicial misconduct by unjustly enriching the subject judges. Through substantially similar circumstances, the CCJD (through Interim Executive Director and Special Counsel Jeff Walsh), subject judge John Scipione, Scipione's counsel John Gleason, and the Justices colluded to allow Scipione to 1) retain his salary and benefits while suspended / on self-initiated disability status, 2) avoid paying a full assessment of attorney's fees and costs, and 3) avoid contribution obligations for the Judicial Department's settlement of workplace harassment complaints. *Matter of Scipione*, 2024 CO 23. Through the Justices' final disciplinary opinion, former Judge Scipione received an approximately $250,000 publicly funded windfall.

The outcomes in both *Haenlein* and *Scipione* are examples of substantial public fraud collectively perpetuated by the Justices, the CCJD, the subject judges, and the subject judges' attorneys.

2. This Committee's proposed amendments to the Colo. RJD are *pro forma* and will only facilitate further judicial misconduct.

As part of its Fiscal Year 2023-24 budget request, the CCJD received a $25,000 appropriation to work with a national organization such as the American Bar Association or the National Center for Judicial Ethics on rule amendments in anticipation of the adoption of Amendment H by voters. Had the CCJD used its funding, comprehensive temporary rules could have been in place immediately when Amendment H became effective January 4, 2025. Instead, through premeditated incompetence, the CCJD did not consult with the ABA or the National Center. The CCJD delayed drafting any proposed rules until after the Justices and Governor Polis could stack this Committee and the CJDAB with conflicted appointments. The apparent result is this Committee proposing meaningless *pro forma* rule changes that do nothing but further obstruct the realization of a meaningful, independent, and publicly accountable judicial discipline system.

[28] Following my op ed article and the announcement of this Committee's rule change proposals, the press also recognized David Beller's dual representation of Judge Haenlein and his membership on this Committee with Anne Mangiardi, Jeff Swanty, Jeff Walsh, and Vincente Vigil. Michael Karlik, *Colorado Judicial Discipline Rules Released for Public Comment*, COLORADO POLITICS, August 6, 2025.

This Committee proposes rule changes that add a new Colo. RJD 3.6 and amend the existing Colo. RJD 34 and Colo. RJD 37(e).

Instead of amending Colo. RJD 2(a) to include the members of the CJDAB in the definition of a "judge" with an accompanying amendment of the Code's applicability section, this Committee proposes a "code of conduct" through Colo. RJD 3.6 that essentially mirrors the code of conduct for CCJD members and staff in Colo. RJD 3.5. Notably, the Justices did not engage in any meaningful consultation with the CCJD when they adopted/imposed Colo. RJD 3.5 on October 12, 2021 while the disciplinary proceedings in *Coats* were pending. As the judges who will adjudicate other judges' charged misconduct, there is no reason why the members of the CJDAB (judges, attorneys, and citizens) are not held to the same standards under the Code.[29] In a particularly distasteful provision (proposed Colo. RJD 3.6(g)(2)), this Committee has given the Colorado Supreme Court's Judicial Ethics Advisory Board (the CJEAB) authority to determine what circumstances require or do not require a member of the CJDAB to disqualify himself or herself. In the past, the Chair of the CJEAB, Alec Rothrock, saw no ethical problems with the CJEAB issuing an advisory opinion despite his law firm representing the subject judge while judicial discipline proceedings were then-pending. Although this Committee proposes a disqualification rule for the CJDAB, it does not propose a disqualification rule for its own proceedings (including the current promulgation of these amended rules).

Without explanation, this Committee proposes amending Colo. RJD 34 so that the Colorado Supreme Court continues to control when a subject judge may be temporarily suspended pending judicial discipline or disability proceedings. With the creation of the CJDAB, suspension determinations should be made by the full CJDAB or at least the adjudicatory panel that will be hearing the discipline or disability proceedings. Importantly, the proposed amendments to Colo. RJD 34 do not include a provision for circumstances where the subject judge is a justice, which now requires the formation of a special tribunal under Colo. RJD 41 and Colo. Const. Art. VI, § 23(3)(f)(II). Again without explanation, this Committee moves the existing standard for temporary suspension (which expressly includes non-cooperation in the judicial discipline process) and subsumes it with a highly subjective and overly stringent "substantial threat of serious harm" standard.[30] Consistent with principles of equity, a temporary suspension is

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[29] As the CCJD's Executive Director, I had requested that all members of the adjudicative panels (including the attorney and citizen members) receive the same rate as a per diem judge for their services. This appropriation is discussed in the final fiscal note for HCR 23-1001. For all intent and purposes, the members of the CJDAB are all judges.

[30] *Compare* added Colo. RJD 34(a) and amended Colo. 34(d) *with* existing Colo. RJD 34(a) (moved to proposed Colo. RJD 34(b)(1)):

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

appropriate whenever a judge's conduct or circumstances present an imminent risk of irreparable harm (including risks to public safety, obstruction of the judicial discipline process, impairment of the integrity of the judicial process, or diminishment of public confidence in the judiciary). *See LTCPRO, LLC v. Johnson*, 2024 COA 123, ¶17 (listing required elements for party to obtain preliminary injunction). The "substantial threat of serious harm" standard is nonsense. At no time in the history of the CCJD did the Colorado Supreme Court deny a pre-dispositional request for a judge's temporary suspension and there is no evidence that the authority to request temporary suspensions has ever been misused. The proposed amendments to Colo. RJD 34 also fail to provide for the unsealing / publication of temporary suspension records once a judicial discipline case becomes public with the filing of formal proceedings. *See* Colo. Const. Art. VI, § 23(3)(g)(1). The unsealing of temporary suspension records upon the filing of formal proceedings would allow the public to make their own determinations as to whether suspension requests are made and ruled on appropriately. This Committee's proposed amendments to Colo. RJD 34 reduce rather than reinforce the public transparency mandated by Amendment H. Of equal significance, the proposed amendments to Colo. RJD 34 do not include a mechanism for recoupment of an ultimately sanctioned subject judge's salary and benefits received while suspended. *But see* Colo. Const. Art. VI, § 23(2) (defining procedure through which judge's salary is suspended following conviction of felony or crime of moral turpitude subject to appeal); Appendices 2 and 3 (describing how this Committee and the adjudicatory panel facilitated subject judge Justin Haenlein receiving an approximately $120,000 windfall by prolonging his paid suspension under Colo. RJD 34).

This Committee's proposed amendments to Colo. RJD 37(e) are primarily focused upon continuing a mechanism through which the CCJD and a subject judge may resolve formal proceedings through a stipulated resolution. The proposed rule allows the CCJD to file a stipulation in lieu of filing a formal complaint. Like the existing rule, however, the proposed rule does not provide any standing or opportunity for the complainant or other victims of judicial misconduct to object to the stipulated resolution, particularly the agreed sanction. The proposed rule also does not provide a mechanism for the CJDAB to require disclosure of a more detailed record of the allegations and evidence compiled through the CCJD's Colo. RJD 14 and Colo. RJD 16(b)(4) investigation(s). Indeed, the proposed Colo. RJD 37(e) strikes text that previously contemplated the filing of both the stipulated resolution and "the record of proceedings," as further defined by Colo. RJD 33. The proposed Colo. RJD 37(e) is amended to state, "The stipulated resolution shall become public when it is filed with the Adjudicative Board Panel." Despite this change, this Committee and the adjudicative panel in *Haenlein*, have refused to publish the stipulation relied upon to resolve that case. *See* Appendices 2 and 3; *see also* [TR (4/11/25 Status Conf.), p. 11:4-14 (confirming that the adjudicative panel had received a copy of the unpublished stipulation)]. Like the other proposed rule changes, the amendments to Colo. 37(e) do not promote greater transparency. Instead, the amendments only reinforce a judicial discipline system that encourages backroom deals and opportunities to minimize the subject judge's accountability for misconduct.

Collectively, the rule amendments proposed by this Committee do nothing more than further entrench a failed judicial discipline system that focuses upon the self-protection of disciplined judges rather than fully remedying the harms caused by judicial misconduct and deterring future

misconduct. With these proposed rule changes, neither individual victims nor the public are given any voice in the judicial discipline process.

3. A series of revisions is necessary to remedy the Colorado judicial system's ongoing failure to hold the Justices of the Colorado Supreme Court accountable for their already proven and substantial violations of the Code.

STRUCTURAL REFORMS

- **Replace the current special master system with the CJDAB as the final adjudicative body:** Under the existing Colo. RJD, many of the functions of the CJDAB were delegated by the Colorado Supreme Court to one or more special masters. Colo. RJD 2, 4, 10, 18-20, 21.5, 22, 25-27, 29-30, 32-34, 36-40. All references to special masters in the Colo. RJD need to be updated to refer to the CJDAB or its assigned panels. Because the CJDAB is now authorized to enter final disciplinary orders with the Colorado Supreme Court and a Special Tribunal limited to performing appellate functions, the Colo. RJD must be generally updated to conform to the changed constitutional procedures. Moreover, the procedures for disability cases need to be updated to reflect the assignment of a full CJDAB panel to make both preliminary and final determinations. *See* Colo. RJD 33.5(b)(4) (allowing appointment of single special master rather than full panel of special masters in disability proceedings).

- **Provide for en banc review and decision-making by the CJDAB:** In order to ensure that assigned panels are complying with the Code and other laws, the Colo. RJD should be amended to include authority for the CJDAB to exercise en banc review either *sua sponte* or upon the request of a party with standing (including a complainant or victim). En banc review would have been appropriate prior to CJDAB panel's issuance of its final disciplinary order in *Haenlein*. Additionally, the Colo. RJD should define what types of administrative and other actions require en banc decisions (rather than decisions made by individual CJDAB panels).

- **Confirm the CCJD's discretion to utilize its special cash fund and directly appoint outside special counsel, when needed:** § 13-5.3-102(3)(e), C.R.S. provides that the CCJD may "employ attorneys or appoint outside special counsel pursuant to sections 24-31-101(1)(g) and 24-31-111 who serve at the pleasure of the commission[.]" Ostensibly, § 13-5.3-102(3)(e), C.R.S. allows the Colorado Attorney General to control which attorneys the CCJD is able to appoint to perform services paid through the CCJD's special cash fund, including needs to appoint outside special counsel to address internal disqualifications. The Colo. RJD should be amended to clarify that utilization of the special cash fund occur in the sole discretion of the CCJD, consistent with § 13-5.3-104(6), C.R.S. ("Money in the fund may be used for payment of the expenses for evaluations, investigations, formal proceedings, or special projects that the commission has determined are to be undertaken by personnel other than or in addition to those employed by the office."). Additionally, the Colo. RJD should clarify that the CCJD (not the chief justice) determines whether the attorney general "is unable, has

failed, or refuses to provide legal services" allowing the CCJD to directly appoint special assistant attorneys general (SAAGs) according to § 24-31-111(5), C.R.S. and § 13-5.3-109, C.R.S.

- **Conform Colo. RJD 41 to Colo. Const. Art. VI, § 23(3)(f)(II) so that special tribunals are composed of no more than one randomly selected court of appeals judge or district court judge from the same judicial district:** When confronted with grounds for their disqualification from the *Coats* case, the Justices responded by adopting Colo. RJD 41, which authorizes the formation of special tribunals to recompose the Colorado Supreme Court where specific conflicts exist. Colo. RJD 41, however, merely replaces the Justices with randomly selected members of the Colorado Court of Appeals. The CCJD opposed this structure and had, instead, argued for the special tribunals to be composed of both court of appeals and district court judges, with no more than one judge appointed from the same court or judicial district. Even though the Colorado Legislature adopted the CCJD's proposed structure/composition of the special tribunals through HCR 23-1001, the Justices refused the CCJD's June 2023 request for a conforming amendment to Colo. RJD 41. With voters now having adopted HCR 23-1001 / Amendment H, there is no reason why Colo. RJD 41 should not be amended to respect the constitutional change.

- **Define processes for appointing special commissioners and special adjudicators when a quorum of non-conflicted members does not exist:** There is currently no provision in the Colo. RJD that implements the CCJD's authority to appoint special commissioners when there is less than a quorum of non-conflicted remaining members or where, as in the Masias Controversy, the appointing authorities are themselves conflicted. The Colo. RJD should be amended to allow any remaining non-conflicted members of the CCJD and/or the CJDAB to appoint special commissioners or special adjudicators (regardless of whether there is a quorum or majority of non-disqualified members left). In circumstances where the entire CCJD or the entire CJDAB is disqualified, the CCJD and the CJDAB should be recomposed with the random selection of judge members according to the process defined in § 13-5.3-102(2)(b), C.R.S. In turn, the randomly selected judge members / special commissioners would have authority to appoint the remaining special attorney and citizen members.

TRANSPARENCY MEASURES

- **Establish anonymous and confidential reporting procedures:** Colo. Const. § 23(3)(g)(II)(A), (C)(IV), § 13-5.3-111(2), C.R.S., and § 13-5.3-112, C.R.S. require that the CCJD provide a process for confidential and/or anonymous reporting with recognition that complainants who identify themselves are entitled to notice and information sharing throughout the judicial discipline process. The Colo. RJD should be amended to further define the CCJD's obligations to keep complainants informed as well as how to publicly respond to anonymous complaints. The CCJD should be required to post a dispositional memorandum on its website when it resolves an anonymous

complaint through a jurisdictional dismissal or through the imposition of an informal disposition under Colo. RJD 35. Where appropriate to provide context, the CCJD should have authority to post the anonymous RFE with redaction of the subject judge's name. Although the Colorado General Assembly failed to stand it up and defunded it, the Colorado Office of the Judicial Discipline Ombudsman (COJDO) is a necessary tool for facilitating anonymous and other confidential reporting. § 13-3-120, C.R.S. The Colo. RJD should be amended to define the information sharing and other cooperation expected between the CCJD and the COJDO.

- **Eliminate restrictions on the CCJD's communications with the press and the public as imposed by the Justices through Colo. RJD 3.5(c)(2):** Through Colo. RJD 3.5(c)(2), the Justices attempted to impose an unconstitutionally overbroad gag order with respect to CCJD's communications with the public and the news media. Colo. RJD 3.5(c)(2) conflicts with Colo. RJD 6.5(d) which allows disclosures "in the interest of justice or public safety" or that are "reasonably necessary . . . to fulfill the Commission's Constitutional mandate under Rule 1(b)." With the CCJD's role having changed to primarily a prosecution function, its Commissioners and staff should have the same opportunities to communicate with the public and the media as afforded by Colo. RPC 3.6(b), (c) and 3.8(f), particularly following the filing of formal proceedings. Colo RJD 3.5(c)(2) should be stricken and replaced with cross-references to Colo. RPC 3.6 and 3.8(f).

- **Eliminate the Colo. RJD 6.5(e) certification requirement**: Currently, Colo. RJD 6.5(e) requires certification before the CCJD may share requested records with attorney regulation agencies or law enforcement. This restriction is not supported by any legitimate public policy justifications and conflicts with the CCJD's authority to share information with law enforcement or OARC "in order to protect the public or the judiciary or to further the administration of justice." Colo. RJD 6.5(d)(2). Accordingly, Colo. RJD 6.5(e) should be stricken in its entirety.

- **Require that the CCJD notify the OJPE of pending complaints, motions for temporary suspension, and informal dispositions:** As demonstrated in *Haenlein*, the CCJD's current failures to inform the Judicial Performance Commissions that a judge who is standing for retention faces pending judicial discipline proceedings result in the respective Judicial Performance Commissions making retention recommendations based upon incomplete or misleading information. In turn, voters are provided misinformation, and the value of the Judicial Performance Commissions' recommendations are brought into doubt. The Colo. RJD should be amended (concurrently with the State Judicial Performance Commission's rules) to require that the CCJD notify the Colorado Office of Judicial Performance Evaluation whenever a RFE is recognized as a complaint under Colo. RJD 13(b), a judge is temporarily suspended under Colo. RJD 34, or an informal disposition is imposed under Colo. RJD 35.

- **Require the CJDAB to maintain a public website and to publish its final decisions in the West National Reporter System:** With its consideration of *Haenlein*, the CJDAB adopted an ad hoc system for publication of case filings and the panel's final disciplinary order. In order to maintain the documentation of precedential decisions, the Colo. RJD should include rules and a process through which all final judicial disciplinary dispositions and orders are included in the West National Reporter System. For informal dispositions, it is possible for the CCJD to submit an anonymized summary (similar to the summaries contained in annual reports). For formal dispositions, the CJDAB should follow a process similar to the Colorado Supreme Court's previous publication of judicial discipline opinions in the Pacific Reporter. In addition to publishing final dispositions and opinions in the National Reporter System, a rule should be adopted requiring the CJDAB to make case filings publicly available on its website, including transcriptions of its hearings. A protocol is also needed to define under what circumstances the identities of victims or minor children should be protected by redaction, the use of initials, or the use of anonymized monikers (i.e. Victim 1, etc.) in case filings and the CCJD's record of proceedings.

- **Define "public records" broadly to include administrative records, financial records, and records of formal proceedings, available free of charge**: The CCJD's, the CJDAB's, and this Committee's administrative and financial records should be made publicly available by amendment of the Colo. RJD. Moreover, the Colo. RJD should recognize that the CCJD's investigation records, record of proceedings (including but not limited to the RFE, the Colo. RJD 14(a) notice letter, and the subject judge's response(s)), and all other communications with the subject judge or their counsel become public records upon the filing of formal proceedings.[31] The CCJD should make such records available (in electronic form) to the public free of charge. The Colo. RJD should further require that the CJDAB post the complete record of formal judicial disciplinary proceedings (including recordings of hearings and/or transcripts and all case filings) on its website free of charge to the public. Likewise, the Colo. RJD should require the CJDRC to post the full record of rule promulgations on the CCJD's or its own website. The CJDRC's record should contain recordings and/or transcriptions of its public hearings. Like the CJDAB's court files, the CJDRC's records of rulemaking should be made available to the public free of charge. Tailored redactions and the anonymization of victim, witness, and child names can be allowed by rule, as necessary to protect legitimate privacy interests.

[31] Recognition that a subject judge may appeal an informal disposition without losing his or her rights to confidential proceedings can be distinguished through the rule amendments. Colo. Const. § 23(3)(c.5)(1) ("Appeals to the adjudicative board are confidential."). Judicial disability proceedings also remain confidential following the adoption of Amendment H. *See generally* Colo. Const. § 23(3) (no changes to § 23(3)(d) provision that judge "may be retired for disability interfering with the performance of his duties which is, or is likely to become, of a permanent character").

JURISDICTION AND STANDARDS OF PROOF

- **Clarify the CCJD's constitutional jurisdiction over all Colorado judges of courts of record (including private judges, CJDAB members, magistrates, some ALJs, and some municipal judges (other than Denver County Court judges who are subject to a constitutional exception)):** Although it has been long accepted that Colo. Const. Art. VI, § 23 does not apply to municipal judges, administrative law judges, or to magistrates, that interpretation is not supported by the text of § 23. Rather, § 23 states that its provisions apply to any "justice or judge of a court of record of this state." *See also* Colo. Const. Art. VI, § 1 (recognizing delegated authority of home rule cities and towns to create municipal and police courts); § 13-10-102(3), C.R.S. (allowing creation of qualified municipal courts of record); § 24-30-1003(2), C.R.S. (ALJ's required to "meet the same qualifications as a district court judge" and the OAC's proceedings are held on the record). The exclusion of Denver County Court Judges from the authority of the CCJD and the statewide judicial disciplinary system is separately and expressly provided through Colo. Const. Art. VI, § 26. Because magistrates perform nearly the same functions as judges (except presiding over jury trials), magistrates should be held to the same standard and process as judges under the Code. *See* § 13-6-501, C.R.S. (defining functions and duties of county court magistrates); § 13-5-201, C.R.S. (defining authority of district court magistrates in conjunction with supreme court rules). Similarly, private judges, the members of the CJDAB, and the Presiding Disciplinary Judge are judges of courts of record and should be included in the definition of a "judge" for the purposes of defining jurisdictional authority under Colo. Art. VI, § 23. Colo. RJD 2(a) (and potentially § 13-5.3-101(9)(a), C.R.S.) should be amended to include magistrates in the definition of a "judge." Colo. RJD 2(a) should be further amended to include private/appointed judges, administrative law judges (who sit on courts of record such as the Colorado Office of Administrative Courts), municipal court judges (who sit on qualified courts of record), the members of the CJDAB, and the Presiding Disciplinary Judge in the definition of a "judge." The inclusion of municipal court judges within the jurisdictional authority of Colo. Const. Art. VI, § 23 will also require amendment/clarification of the Code's Application section, subrule I, Comment 3.

- **Remove the limitations periods for judicial misconduct allegations, consistent with federal standards:** Since the formation of the CCJD in 1966, there has been a tradition of subject judges avoiding discipline by either intentionally concealing their misconduct or retiring/resigning to avoid scrutiny through the judicial discipline and judicial performance evaluation processes. As a consequence, there is a dearth of Colorado caselaw recognizing what constitutes judicial misconduct under the Code. Moreover, the current limitations period provided through Colo. RJD 4(b) creates circumstances that limit the CCJD's abilities to hold senior judges, private judges, and private arbitrators/mediators accountable for later discovered misconduct that occurred while they served as regular, active judges. Even if certain sanctions (such as suspension or removal) may not be possible following a judge's retirement or resignation, the public has a compelling and substantial interest in recognizing and memorializing what constitutes judicial misconduct under the Code. *Accord* Colo. RJD 1(b) (CCJD's

constitutional mandate includes "creat[ing] a greater awareness of proper judicial behavior on the part of the judiciary and the public"). Removing the limitations period for judicial discipline proceedings is further consistent with the federal Judicial Conduct and Disability Act of 1980 as well as the U.S. District Court for the District of Colorado's Attorney Rules. *In re Complaint of Judicial Misconduct*, 591 F.3d 638, 642 (U.S. Jud. Conf. 2009) (recognizing that there is no statute of limitations for federal judicial misconduct proceedings but that U.S. Courts Misconduct Rule 9 allows for dismissal where "the passage of time has made an accurate and fair investigation of the complaint impractical"); *see also* D.C.COLO.LAttyR 3(e) (attorney may resign from U.S. District Court's Bar only if in good standing, not counsel of record in active case, and not the subject of any disciplinary proceeding before the court); D.C.COLO.LAttyR 7 (complaint may be filed against any member of U.S. District Court's Bar (regardless of active/inactive status) and without any stated limitation period).

- **Apply reasonable basis and probable cause standards for initiating investigations and filing charges:** Existing Colo. RJD 13(b) and Colo. RJD 16(c) provide for increased thresholds of proof for the evaluation of an RFE (reasonable basis) and the imposition of private discipline or initiation of formal proceedings (preponderance of evidence). Although it is appropriate to require the CCJD to make a preponderance of evidence determination before imposing private discipline or other informal dispositions, the thresholds for recognizing a complaint to open an investigation and what is required to initiate of formal proceedings should follow standards similar to a criminal prosecution. In that context, a reasonable basis or reasonable suspicion justifies opening an investigation. *See, e.g., United States v. Smart*, 91 F.4th 214, 223 (4th Cir. 2024) (reasonable suspicion "low bar" "considerably less than preponderance of evidence but more than unparticularized suspicion). Probable cause that a subject judge has violated one or more specific provisions of the Code, the Colo. RJD, or Colo. Const. Art. VI, § 23(3) supports the initiation of formal proceedings (i.e. the filing of charges). *See, e.g. Petersen v. Garcia*, 2023 WL 3023017 (D. Colo. 2023) (describing probable cause as "not a high bar" where there is a reasonable belief that the defendant committed the offense charged). The Colo. RJD should be amended to conform or maintain the thresholds of proof to the well-established reasonable basis/suspicion and probable cause standards applied in criminal cases.

- **Consistent with federal standards, replace the current "clear and convincing evidence" burden of proof with a preponderance of evidence standard in both the imposition of informal discipline and in formal discipline proceedings:** Although the thresholds for investigation and the filing of charges should be lowered/made consistent with a criminal prosecution, judicial discipline proceedings are ultimately civil matters that only require proof through a preponderance of evidence. Colo. RJD 16 and Colo. RJD 31 should be amended to uniformly apply a preponderant burden of proof to both the CCJD's imposition of informal discipline and to the adjudication of formal proceedings through the CJDAB. Application of a preponderance of evidence standard is consistent with the federal Judicial Conduct and Disability Act of 1980 and recent

amendments to the U.S. District Court for the District of Colorado's attorney rules. *See In re Complaint of Judicial Misconduct*, 575 F.3d 279 (3d Cir. 2009) (applying preponderance of evidence standards to recognize various acts of self-reported judicial misconduct including private hosting of website containing sexually explicit materials by then-9th Circuit Court of Appeals Chief Judge Alex Kozinski and appropriateness of public admonishment; Judge Kozinski ultimately resigned following subsequent allegations of sexual and other workplace harassment); D.C.COLO.LAttyR 7(f) ("If the charges are sustained [by] a preponderance of the evidence, the Panel may censure, suspend, disbar, or otherwise discipline the respondent."); *see also* "Order and Certification," *In re Complaint of Judicial Misconduct*, Case No. 22-90121 (9th Cir. May 23, 2024) (Judicial Council applying preponderance standard to publicly admonish, request resignation, and recommend referral for impeachment of U.S. District Court for the District of Alaska Judge Joshua Kindred).

- **Clarify the CJDAB's authority over temporary suspensions under Colo. RJD 34 and provide appellate review:** Colo. RJD 34 should be amended to replace the Colorado Supreme Court with the CJDAB (or an assigned panel) as the court / judicial body that determines whether a subject judge should be temporarily suspended based upon thresholds similar to those required for the issuance of preliminary injunctions. In turn, the subject judge, the CCJD, and/or a complainant should have the right to appeal the CJDAB or its panel's decision granting or denying a temporary suspension request to the Colorado Supreme Court or to a Special Tribunal. To ensure that requests for temporary suspensions are not brought arbitrarily and that disciplinary proceedings do not languish indefinitely, Colo. RJD 34 should be amended to require the filing of charges and the initiation of formal proceedings within 21 days of the CCJD submitting a Colo. RJD 34(a) request. Moreover, Colo. RJD 34 should be amended to cross-reference an amended Colo. RJD 36, which will allow for recoupment of a suspended judge's salary and benefits as part of a disciplinary adjudication. It deserves emphasis that temporary suspensions under Colo. RJD 34 apply to judicial discipline proceedings whereas Colo. RJD 33.5 defines the process for suspensions in judicial disability proceedings.

COMPLAINANT AND VICTIM RIGHTS

- **Define the complainant's (and victims') standing and access to the CCJD's record of proceedings:** A complainant should have access to the CCJD's investigation record, record of proceedings, and correspondence with the subject judge whenever a complaint is resolved by dismissal, private disposition, stipulation, or the initiation of formal proceedings. Where necessary, provision can be made to protect the identities of victims, witnesses, minor children, etc. provided that the complainant has a meaningful opportunity to seek judicial review (as defined through other rule amendments). Moreover, the CCJD's investigation record, record of proceedings, and correspondence with the subject judge should be made publicly available upon the filing of formal proceedings.

- **Provide an opportunity for complainants and victims to assert and enforce grounds for disqualification:** Under the existing Colo. RJD, a subject judge may request the disqualification of members of the CCJD but a complainant may not. Moreover, a CCJD member or a justice/judge who recuses himself or herself need not explain the reasons for the recusal. The Colo. RJD should be amended to recognize a process for both complainants and victims to request the disqualification of members of the CCJD, the CJDAB, and the Colorado Supreme Court or a Special Tribunal. Similar to what is required under D.C.COLO.LCivR 40.1(f), the recusal of a member of the CCJD, the CJDAB, the Colorado Supreme Court, or a Special Tribunal should occur "by [public] written order stating the reasons." The disqualification decisions of members of the CCJD, the CJDAB, and the CJDRC should be posted immediately on the CCJD's and CJDAB's respective websites, including recusals that occur in response to anonymous RFEs or complaints initiated *sua sponte* by the CCJD according to Colo. RJD 13(f).

- **Apply Canon Rule 2.11 disqualification standards to the CCJD, the CJDAB, and this Committee:** Current Colo. RJD 3.5 and proposed Colo. RJD 3.6 do not cross-reference and make Canon Rule 2.11 the foundational standard for the disqualification obligations of commissioners, board members, committee members, and staff. In the interests of consistency, the Colo. RJD should be amended to require that the CCJD, the CJDAB, and this Committee's members and staff all uniformly comply with the disqualification standards defined by Canon Rule 2.11. To the extent that other provisions limit rather than expand grounds for required disqualification, they should be stricken.

- **Recognize complainants' and victim's rights to judicial and appellate review in both informal and formal proceedings:** The existing Colo. RJD and caselaw do not afford a complainant or victims with standing or procedures through which to challenge the CCJD's dismissal of an RFE, the sufficiency of an informal disposition, or the outcome of formal proceedings (including stipulated resolutions). *See also Higgins v. Owens*, 13 P.3d 837 (Colo. App. 2000) (affirming jurisdictional dismissal of C.R.C.P. 106 challenge to Commission's dismissal of RFE without investigation). Under the federal Rules for Judicial Conduct and Judicial Disability Proceedings and the Judicial Conduct and Disability Act of 1980, complainants may petition the respective Circuit Court of Appeals' Judicial Council to review a Chief Judge's dismissal of a judicial misconduct complaint. 28 U.S.C. § 352(c)-(d); U.S. Courts Misconduct Rules 18 and 19. When the merits of a complaint are ultimately ruled on by the Judicial Council, there are further mechanisms for review through the federal courts' Committee on Judicial Conduct and Disability and the federal courts' Judicial Conference. 28 U.S.C. § 357; U.S. Courts Misconduct Rules 21 and 22. The Colo. RJD should be amended to provide a structure that allows a complainant to seek judicial and appellate review of decisions made throughout the judicial discipline process. Consistent with the procedures for federal judicial misconduct proceedings, a requestor or complainant should have the right to request review of the CCJD's preliminary dismissal decisions by the full CJDAB. If a recognized complaint is resolved through dismissal, an informal disposition, or formal

proceedings, the complainant should have the right to judicial review and/or appellate review through the CJDAB and/or the Colorado Supreme Court or a Special Tribunal.

SANCTIONS AND ENFORCEMENT

- **Prohibit diversion plans with deferred dismissal where misconduct warrants a private censure, a public reprimand, or a public censure:** The availability and requirements of diversion plans that include a deferred dismissal should be better defined under Colo. RJD 35(c). Such diversion plans should not be available in circumstances providing grounds for a subject judge's private censure under Colo. RJD 35(f), public reprimand under Colo. RJD 36(e), or public censure under Colo. RJD 36(e).

- **Harmonize the definitions of private and public reprimands/censures:** Colo. RJD 36(e) should be amended to conform the grounds for public reprimand and public censure to the grounds for private reprimand and private censure under Colo. RJD 35(e)-(f), respectively.

- **Recognize aggravated sanctions for concealment or obstruction:** Under the current Colo. RJD, there are no deterrents against a judge intentionally concealing misconduct that justifies his or her removal from judicial office. To remedy this, the sanctions available through Colo. RJD 36 should be amended to include the availability of forfeiture or fines in cases where a subject judge intentionally concealed the existence and evidence of his or her judicial misconduct. For example, if the Justices are found responsible for their obstruction, non-reporting, and non-cooperation with the CCJD as to the Masias Controversy, available remedies should include the forfeiture of the salaries and benefits they received since they began concealing their misconduct on June 3, 2019 (when the Masias Contract was executed a second time after receipt of the April 15, 2029 anonymous Fraud Hotline complaint). Likewise, former 18th Judicial District Court Judge John Scipione should be held accountable for his concealment of an inappropriate sexual relationship with his subordinate that occurred when he worked as a magistrate (before becoming a judge through further misrepresentations). *Scipione*, ¶20. Former 13th Judicial District Court Judge Justin Haenlein's more than 2-year concealment of his non-disqualification is a further example of circumstances where aggravated sanctions are appropriate. Imposing aggravated sanctions for concealment or obstruction will encourage the self-reporting of judicial misconduct (as required through Canon Rules 2.15 and 2.16) and prevent harms to the public from continuing unaddressed. The imposition of a precedent setting aggravated sanction for concealment or obstruction would be a powerful deterrent and likely to prevent similar judicial misconduct from ever happening again in the future.

- **Provide for recoupment of a suspended judge's salary/benefits upon adjudication:** Existing Colo. RJD 34 and Colo. RJD 36, as interpreted by the Justices in *Scipione*, are a perverse incentive for subject judges who face forgone removal to intentionally prolong their paid suspensions. The Colo. RJD should not incentivize further judicial misconduct

or provide the worst behaving judges with the biggest windfalls of taxpayer money (as compared with those subject judges who immediately resign pending further judicial discipline proceedings so as to not further harm the public). It is equally disturbing that, through his membership on this Committee and collusion with the CCJD, attorney David Beller was able to assist former Judge Justin Haenlein exploit the opportunity to prolong his paid suspension. In its existing form, the Colo. RJD only perpetuates public fraud and must be amended to include provisions for the automatic recoupment of a temporarily suspended judge's salary and benefits upon the judge's adjudication for violations of the Code (including circumstances where a subject judge has wrongfully invoked disability proceedings under Colo. RJD 33.5(c)). A subject judge should not have incentives to prolong or to gain false leverage in otherwise meritorious judicial discipline proceedings.

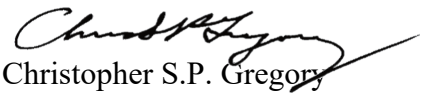
- **Authorize the CCJD to recover reasonable attorney's fees as a prevailing party, with reciprocal provision for judges in bad faith prosecutions:** Colo. RJD 35(g) allows the CCJD to directly assess attorney's fees and costs as part of an informal disposition. In contrast, Colo. RJD 36(g) allows the CCJD to recommend reimbursement for attorney's fees and costs with the Colorado Supreme Court authorized to determine whether the grounds for reimbursement are "appropriate and equitable in the circumstances." The availability of attorney's fees and costs to the CCJD arises from Colo. Const. Art. VI, § 23(e)(II), which now provides: "The adjudicative panel may also order that the costs of the investigation and hearing be assessed against such justice or judge." Essentially, the voters' intent is that the public should not subsidize a judge or justice prolonging meritorious judicial discipline proceedings. Colo. RJD 36(g) should be amended to recognize the CCJD's entitlement to attorney's fees and costs as a prevailing party, including in circumstances where a subject judge has wrongfully invoked disability proceedings under Colo. RJD 33.5(c). Conversely, and in fairness to the subject judge, Colo. RJD 36(g) should include a provision analogous to the Colorado Open Meetings Law that allows a subject judge to recover the reasonable costs of their defense if the adjudicatory panel finds that the CCJD's initiation and continued litigation of formal proceedings was frivolous, vexatious, or groundless. *Cf.* § 24-6-402(9)(b), C.R.S.; *see also Matter of Keenan*, 502 P.3d 1271 (Wash. 2022) (reversing and dismissing judicial discipline charges brought contrary to the Washington Code of Judicial Conduct and in violation of judge's expressive rights consistent with judicial office).

CONCLUSION

Amendment H charged this Committee with the simple task of adopting rules that define standards of proof, confidential reporting procedures, and complainant rights. Instead of proposing such rules, this Committee offers only *pro forma* rule changes focused upon further insulating dishonest and unethical judges from public accountability. Through its conflicted composition, this Committee is fundamentally flawed. The present promulgation of proposed rule changes is itself violative of various provisions in the Code. The proposed rule changes should be abandoned, this Committee should be dissolved and recomposed through a conflict-free appointment process, and, according to Colo. RJD 13(b), complaints should be recognized

as to some or all of the listed judges and members of the CJDAB. Additionally, complaints should be recognized based upon the allegations of judicial misconduct asserted in the October 24, 2024 RFE. Appropriate actions should also be taken to address the misconduct of the CCJD's current and former members and its staff. Once a new conflict-free rulemaking committee (along with a conflict-free CCJD and a conflict-free CJDAB) is formed, it will be appropriate for the CJDRC to resume its rulemaking function, including consideration of these and other public comments.

Sincerely,



Christopher S.P. Gregory
Enclosures (5)

Cc: The Colorado Commission on Judicial Discipline
The Colorado Office of the State Auditor / the Colorado Fraud Hotline
The Colorado Office of Judicial Performance Evaluation
Members of the Colorado General Assembly
The Denver Gazette
The Denver Post