



COLORADO
Commission on Judicial
Discipline
2023 Annual Report

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Colorado Commission on Judicial Discipline Annual Report for 2023

Background and Jurisdiction

Originally, Colorado's Judiciary developed as a "frontier" system of decentralized courts with the Colorado Supreme Court, a limited number of District Courts, and a larger number of justices of the peace. This system relied upon partisan elections to select judges. Through this politicized system, there were frequent problems with incompetent, corrupt, and biased judges. In 1962, the Colorado Legislature referred a constitutional amendment to reform the structure of the Judiciary to voters. The amendment passed with an overwhelming majority. Implemented in 1965, the amendment abolished justices of the peace, defined higher qualifications for judges, and provided the Colorado Supreme Court with authority to define uniform standards, rules, and procedures for all lower courts.

In 1966, the League of Women Voters with the support of the Colorado Bar Association used Colorado's initiative process to present a second amendment directly to the voters. Through this amendment (Amendment 3), Colorado adopted the Missouri Plan for judicial selection. Amendment 3 passed with a 53% majority. According to Amendment 3, Colorado's current process for judicial selection requires nominating commissions to select up to 3 nominees for a judicial vacancy. In turn, the nominees are considered for appointment by the Governor. Following appointment, all judges serve a provisional 2-year term. Then, if retained by voters, judges serve regular terms with retention elections at the end of each term.¹ Supreme Court Justices serve 10-year terms, Court of Appeals Judges serve 8-year terms, District Court Judges serve 6-year terms, and County Court Judges serve 4-year terms.

The Colorado Commission on Judicial Discipline ("the Commission") was created through Amendment 3 in conjunction with Colorado's evolution to an appointive system of judicial selection. The overriding purpose of Colorado's merit-based system of judicial selection, retention, and oversight is to reinforce judicial independence through an ongoing and reliable verification of judicial qualifications. The Commission's unique function is to protect the public interest in circumstances where, due to disability or violation of ethical standards, a judge is unable to perform the duties of his or her office. The jurisdiction and authority of the Commission is set forth in Article VI § 23(3) of the Colorado Constitution, which originally became effective in 1967.

The Colorado Code of Judicial Conduct (the "Code") includes four Canons that provide the basic principles of judicial ethics. The Code is patterned upon the American Bar Association's 2007 Model Code of Judicial Conduct. The Commission monitors the Judiciary's compliance with the Code's Canons through disciplinary proceedings. Disputes about a judge's decisions generally remain matters

¹ A system of Commissions on Judicial Performance was statutorily created in 1988 to provide voters with relevant information and recommendations in retention elections. § 13-5.5-101, et. seq., C.R.S.; H.B. 1079 (1988).

for the trial and appellate courts to resolve as part of their inherent functions. The Commission is not authorized to change a judge's ruling.

The Colorado Rules of Judicial Discipline ("Colo. RJD"), issued by the Colorado Supreme Court, govern the Commission's disciplinary and disability proceedings. The Code and Colo. RJD are published as Chapter 24 of the Colorado Rules of Civil Procedure (C.R.C.P.). Colo. RJD 13 provides a process through which the Executive Director and/or individual Commissioners review requests for evaluation of judicial conduct to determine whether reasonable grounds exist to recognize a complaint against a judge and to take further action. Such further actions, may include notifying the subject judge of the complaint, conducting further investigation, and making a determination to dismiss the complaint, to impose private discipline, or to commence formal proceedings for public discipline. Colo. RJD 16.

More specifically, Colo. Const. Art. VI § 23(3)(e) and Colo. RJD 35 provide for remedial action which may result in:

1. A confidential private disposition such as an admonition, reprimand, or censure; or
2. A diversion program, including training or docket management reports that are designed to improve the conduct of the judge.

In addition, the Commission may commence formal proceedings to address misconduct for which privately-administered discipline would be inappropriate or inadequate. If a subject judge disagrees with the Commission's determination imposing privately-administered discipline, the subject judge may also require formal proceedings. Colo. RJD 35(i). In formal proceedings, Colo. RJD 36 authorizes the Colorado Supreme Court, on the recommendation of the Commission, to order the sanctions of removal, retirement, public reprimand, or public censure. Likewise, following disability proceedings, Colo. RJD 33.5 recognizes the Colorado Supreme Court's authority to order a judge's retirement upon finding that the judge is permanently disabled or likely to become permanently disabled.

For a full understanding of the scope of the Commission's disciplinary authority, it is important to note the following:

- The Commission's jurisdiction includes disciplinary matters involving judges of the County Courts and District Courts, together with judges of the Denver Probate Court, Denver Juvenile Court, and Colorado Court of Appeals; the justices of the Colorado Supreme Court; judges and justices in the senior judge program who serve during vacations or illnesses and assist with busy dockets; and retired judges and justices who are appointed by the Supreme Court to preside in specific cases.
- Excluded from the Commission's jurisdiction are magistrates, municipal judges, and administrative law judges ("ALJs"). Also excluded are federal court judges.

- Because County Court judges in the City and County of Denver are appointed by the Mayor rather than the Governor and handle cases involving municipal ordinances as well as state law, their conduct is not monitored by the Commission. Instead, disciplinary matters involving these judges are addressed by the Denver County Court Judicial Discipline Commission.
- In addition to its oversight of attorneys under the Colorado Rules of Professional Conduct (“Colo. RPC”), Attorney Regulation is responsible for examining Code compliance by attorneys who perform judicial functions as magistrates, municipal court judges, and ALJs.
- The Office of the State Court Administrator (“SCAO”) oversees the performance and conduct of employees of the judicial branch other than judges, but the Commission’s responsibilities overlap with SCAO in situations involving conduct between judges and employees.
- The Commission’s disciplinary and disability functions are contrasted with the responsibilities of the Office of Judicial Performance Evaluation (“Judicial Performance”). Judicial Performance collects views from jurors, litigants, attorneys, other judges, law enforcement, court staff, and others involved in judicial proceedings regarding a judge’s general competence and overall performance; provides periodic performance reports to the judge; and disseminates public reports of its findings prior to the judge’s next retention election.

Senate Bill (SB) 22-201 Reforms

Previously, the Commission received its funding and support through attorney registration fees. C.R.C.P. 227 (2021). More specifically, the Colorado Supreme Court’s Office of Attorney Regulation Counsel (“Attorney Regulation”) supported the Commission with attorneys acting as special counsel and with investigation support. With the enactment of SB 22-201 (§§ 13-5.3-101, et seq., C.R.S.), the Commission, through the creation of a new Office of Judicial Discipline (“the Office”), now has its own staff to evaluate, investigate, and prosecute requests for evaluation of judicial conduct.

Starting in Fiscal Year 2022 (July 1, 2022 through June 30, 2023), the Commission receives its operational funding through the Colorado Legislative Assembly’s appropriation of the State General Fund. In addition, § 13-5.3-104, C.R.S. creates a special revolving cash fund to allow the Commission to fund outside services necessary to perform its constitutional mandate. The purpose of these funding changes adopted through SB 22-201 is to reinforce the Commission’s independence from other entities, including the Colorado Judicial Department and the Colorado Supreme Court. 2023 marked the first six months of operation under the new funding process.

Beyond funding changes, Senate Bill 22-201 made additional changes that include:

- a) the authorization of information sharing between the Commission and other judicial discipline oversight entities (§ 13-5.3-105, C.R.S.),
- b) recognition that the Colorado Judicial Department has mandatory reporting obligations and duties to share information with the Commission (§ 13-5.3-106, C.R.S.),

- c) requirements that the Colorado Supreme Court confer with the Commission and follow a public process when proposing rules, guidelines, or procedures related to judicial discipline (§ 13-5.3-107, C.R.S.),
- d) requirements that the Commission track specific data as part of its reporting duties under the “State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act” (§ 13-5.3-108, C.R.S.), and
- e) codification of the Commission’s access to resources through the Colorado Attorney General’s Office (§ 13-5.3-109, C.R.S.).

2023 Legislation

As a result of a bi-partisan legislative Interim Committee on Judicial Discipline, which met through the Summer and early Fall of 2022, two proposals were debated and enacted in 2023: House Concurrent Resolution (HCR) 23-1001 and House Bill (HB) 23-1019. A third bill to create a judicial ombudsman’s office (HB 23-1205) also passed.

HCR 23-1001 will be placed on the 2024 general election ballot for consideration by voters as an amendment to the Colorado Constitution. Some of the provisions contained in HB 23-1019 are conditioned upon ratification of the constitutional amendment proposed through HCR 23-1001.

The structural changes to Colorado’s judicial discipline system contemplated through HCR 23-1001, HB 23-1019, HB 23-1205 are significant.

HCR 23-1001, if approved by the voters in November, 2024 would:

- Reform the current dispute resolution structure and redefines the role of the Colorado Supreme Court in that system. The Commission will continue to investigate and prosecute judicial misconduct claims. A new adjudicative board will hear the trials of misconduct claims. The board is comprised of 4 district court judges, 4 attorneys, and 4 citizens. A randomly selected panel of the board (panel), comprised of one judge, one attorney, and one citizen, conducts formal proceedings in a case. The Colorado Supreme Court will be limited to a traditional appellate role.
- Define circumstances that require recusal of the entire Colorado Supreme Court and substitution by a Special Tribunal composed of judges drawn from the Colorado Court of Appeals and the Colorado District Courts.
- Change Colorado Constitution Article VI, § 23(3)(g) to recognize that records in judicial disciplinary matters generally become public upon the commencement of formal proceedings.
- Create a multi-perspective rule-making committee to promulgate procedural rules relating to judicial discipline.

- **HB 23-1019**
 - Makes changes in the process for how judge members are appointed.
 - Requires a public process for rulemaking through the rulemaking committee proposed by HCR 23-1001.
 - Adds more specific data reporting requirements according to § 13-5.3-108, C.R.S. and directs that the Commission’s website include data search functionality and provide for the online submission of request for evaluation forms, including confidential or anonymous requests.
 - Directs the Commission to designate a point of contact to provide requestors with information about the judicial discipline process and the status of a case upon recognition of a complaint.
 - Authorizes the judge member of an adjudicative panel proposed through HCR 23-1001 to use the judge’s staff to provide for the panel’s administrative needs.
 - Repeals §§ 24-72-401 and 24-72-402, C.R.S., which currently make it a misdemeanor offense to disclose the contents of the Commission’s records or recommendations prior to filing with the Colorado Supreme Court.

- **HCR 23-1205**
 - Creates an independent conflict-free judicial ombudsman’s office to assist judicial personnel to address employment or judicial discipline related concerns, including through the facilitation of anonymous or other communications with the Commission and other appropriate entities.

Number of Judges Subject to the Commission’s Jurisdictional Authority in 2023

In December 2023, subject to pending retirements and appointments, the Colorado state judiciary was comprised of approximately 408 judges and justices, including 119 judges in the County Courts; 213 judges in the District Courts (with one judge in Denver Probate Court and three judges in Denver Juvenile Court); 22 Court of Appeals judges; and seven Colorado Supreme Court justices. In addition, the Senior Judge Program included 47 senior judges active at year-end 2023.

The Commission and the Office of Judicial Discipline

The Commission is comprised of Colorado citizens who serve without compensation, except for reimbursement of travel and other reasonable expenses incurred in performing their duties. The composition of the Commission is determined by Colo. Const. Art. VI, § 23 (3)(a) and (b). It includes two district court judges and two county court judges, who are selected by the Supreme Court; two lawyers who have practiced in Colorado for at least ten years, neither of whom may be a justice or

judge, and who are appointed by the Governor with the consent of the Senate; and four citizens, who are not and have not been judges, who are not licensed to practice law in Colorado, and who are appointed by the Governor with the consent of the Senate. Members serve four-year terms and may be reappointed. Members of the Commission as of December 2023 are listed at the end of this report.

The organization and administration of the Commission and the Office are addressed in § 13-5.3-102, C.R.S., § 13-5.3-103, C.R.S., and Colo. RJD 3. The Executive Director's duties, subject to the general oversight of members of the Commission, include the operation of the Office; the preliminary evaluation and investigation of misconduct allegations; the maintenance of records and statistics; the employment and supervision of investigators and special counsel; the preparation and administration of the Commission's operating budget; and the publication of this annual report.

The Executive Director and the Office's legal assistant manage the intake of RFEs. When appropriate, potential complainants are redirected to Judicial Performance, Attorney Regulation, the Denver County Court Judicial Discipline Commission, or, if a municipal judge is involved, the city or town where the judge presides. The Commission also responds to inquiries from the Judiciary regarding application of the Code.

In 2023, the Commission met in February, April, June, August, October, and December. These meetings occurred in-person, virtually, or through a combination of both formats. In addition to its regular meetings, the Commission may hold special meetings.

The Commission launched its website in 2010. The website was substantially updated in 2023 to make the Commission's RFE form available online and to provide expanded access to case precedent and additional legal resources. The website provides essential information to the public, including an explanation of the Commission's procedures; frequently asked questions; annual reports from 1980 to the present; and links to the Colorado Constitution, Code, and Colo. RJD. The website has significantly increased the transparency of the Commission's authority and proceedings. The Commission continues to work on enhancing its website to provide data search functions and to include an online portal for the submission of requests for evaluation of judicial conduct, as contemplated through HB 23-1019.

Scope of the Commission's Jurisdictional Authority

Article VI, Section 23 of the Colorado Constitution establishes the jurisdiction of the Commission. The focus, under provisions of the Constitution, is on a judge's conduct, rather than a judge's rulings.

It is important for litigants to understand that the Commission has no authority to change a judge's orders on matters that come before the courts. Colo. RJD 5(e) mandates that disputes about a judge's rulings on motions, evidence, procedure, findings of fact, conclusions of law, sentencing, or other aspects of litigation are not considered grounds for disciplinary measures. Such disputes are to be

resolved by the trial and appellate courts in accordance with the powers vested in the judiciary by Colo. Const. Art. VI, § 1.

Requestors/complainants often are disappointed to learn that the Commission lacks authority to become involved in situations that do not involve the conduct of a judge. This can present especially difficult situations for self-represented (*pro se*) litigants who do not understand appellate procedures. Allegations that focus on these matters will not provide a reasonable basis for consideration as a complaint, unless the dispute involves grounds for a Canon violation in addition to the issues that are under the jurisdiction of the courts.

Nor does the Commission have jurisdiction to consider allegations of misconduct by attorneys in their capacity as magistrates, municipal judges, administrative law judges, prosecuting attorneys, court-appointed defense counsel, or attorneys in private practice. Allegations of misconduct by attorneys are considered by Attorney Regulation. In addition, the Commission has no authority to consider allegations of misconduct by sheriff deputies, police officers, jail staff, staff of facilities operated by the Colorado Department of Corrections, or federal judicial officers.

The Commission does not act upon or respond to repetitive communications that do not comply with the instructions provided on the Commission's website, meet the standards for evaluation provided through Colo. RJD 13(c), or otherwise satisfy the jurisdictional requirements of Colo. Const. Art. VI, § 23(d).

Grounds for Judicial Discipline

Colo. Const. Art. VI, § 23(3)(d) and Colo. RJD 5 provide the grounds for disciplinary proceedings to address alleged violations of the Code as well as:

- Willful misconduct in office, including misconduct that, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice.
- Willful or persistent failure to perform judicial duties, including incompetent performance of judicial duties.
- Intemperance, including extreme or immoderate personal conduct, recurring loss of temper or control, abuse of alcohol, or the use of illegal narcotic or dangerous drugs.

Colo. Const. Art. VI, Section 23(3)(d) also provides that a judge “may be retired for disability interfering with the performance of his duties which is, or is likely to become, of a permanent character.”

Notably, the grounds for discipline recognized through Colo. Const. Art. VI, § 23(3)(d) predate changes in the American Bar Association's (ABA) Model Code of Judicial Conduct adopted in 1972. The 1972 version of the Model Code moved the original Model Code (adopted by the ABA in 1924)

from aspirational recommendations to an enforceable system of written ethical standards. By adopting its merit-based systems of judicial selection, retention, and discipline during the 1960s, Colorado became a model for other judicial discipline systems nationally. Colorado's current Code of Judicial Conduct adopts the ABA's 2007 Model Code with minor variations.

The four Canons of the Code provide guidance for a judge's conduct in the courthouse and in the community:

Canon 1: A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Canon 2: A judge shall perform the duties of judicial office impartially, competently, and diligently.

Canon 3: A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Canon 4: A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Each Canon includes subsidiary Rules in support of the Canon, *e.g.*, Canon Rule 2.2 requires a judge to serve "fairly and impartially;" Canon Rule 2.5(A) requires a judge to "perform judicial and administrative duties competently and diligently;" Canon Rule 2.6 requires a judge to afford a litigant the right to be heard; Canon Rule 2.8 requires a judge to be patient and courteous to litigants and court staff; and Canon Rule 3.1 provides guidance for judges in their community activities. The Code includes 38 Canon Rules, which are further supplemented by comments and annotations.

Colo. RJD 33.5 provides extensive procedures for the evaluation and disposition of complaints involving disabilities. Disability proceedings focus on whether a judge has a physical or mental condition that is adversely affecting the judge's ability to perform judicial functions or to assist with his or her defense in disciplinary proceedings. The emphasis is on diagnosis and treatment and may involve transfer to temporary judicial disability inactive status pending a determination of the nature and degree of disability.

The Judicial Discipline Process in Colorado

Requests for Evaluation of Judicial Conduct

Any person may report allegations of judicial misconduct or a judicial disability to the Commission. Through June 30, 2017, such allegations could be filed on the Commission's complaint form or in the form of a letter or email that the Commission processed as a complaint. However, the Commission's experience had been that many persons filing "complaints" viewed the Commission's authority more

broadly than the jurisdiction granted to it under the Colorado Constitution. Complaints often focused on disputed legal issues that were reserved for the courts or on the conduct of persons other than judges. The Commission was concerned that the complaint terminology led to unrealistic expectations by the complainants about the authority of the Commission. Moreover, the Commission was concerned that the labeling of a “complaint” was inappropriately used by litigants as a means to pressure judges from disqualifying themselves from matters where the allegations raised were frivolous (i.e. without basis in fact or law). Consequently, the Colorado Rules of Judicial Discipline were clarified to allow for the filing of a request for evaluation of judicial conduct (an “RFE”) to report circumstances that may warrant the commencement of disciplinary or disability proceedings. Disciplinary proceedings can begin either with consideration of an RFE or by the Commission making its own determination that public or otherwise known circumstances present a reasonable basis for such disciplinary proceedings. Colo. RJD 13(f); *see also* Colo. RJD 2(w) (defining “proceedings”). Upon the determination that a reasonable basis exists either through an RFE or circumstances deemed reliable, a “complaint” is recognized, which requires the Commission to move forward with notifying the subject judge and conducting further investigation. Colo. RJD 13(b); Colo. RJD 14(a),(b). Explained differently, the term “complaint” now refers to a stage of the judicial disciplinary process where an RFE or other information is deemed non-frivolous and sufficient to support judicial disciplinary proceedings.

The Commission provides its RFE form on its website and in response to requests. The RFE form guides the requestor in providing the name of the judge, the date of the incident or incidents involved, pleadings, orders, or excerpts from transcripts. According to Colo. RJD 12, however, Commission will consider an RFE in the form of a letter or other format which describes the alleged misconduct or disability and provides relevant information about the requestor’s concerns. Consistent with the expectations of § 13-5.3-108(1)(g), C.R.S., the Commission has updated its RFE form to add a voluntary demographic survey. While the Commission will review anonymous RFEs, the practical result of an anonymous RFE along with the confidentiality requirements of Colo. Const. Art. VI, § 23(3)(e) prevent the Commission from notifying an anonymous requestor/complainant of the progress and disposition of an evaluation or investigation, as otherwise permitted under Colo. RJD 6.5(d), 13(d) and 14(b) and required by § 13-5.3-112, C.R.S.

The RFE may be mailed, delivered, emailed, or faxed to the Commission. Beyond RFEs submitted directly to the Commission, SB 22-201 (codified in relevant parts as §§ 13-5.3-105 and 13-5.3-106, C.R.S.) requires the Colorado Judicial Department to report “information in any form from any source that alleges or from which a reasonable inference can be drawn that a judge committed misconduct or is incapacitated.” § 13-5.3-101(5), C.R.S. (defining “complaint” for reporting purposes). The Judicial Department’s procedures for required reporting have also been further defined through Chief Justice Directive 22-01. Depending upon the allegations raised, the Commission will either treat the documents forwarded by the Department as an RFE or will contact the submitter (assuming sufficient contact information exists) to provide a copy of the Commission’s RFE form and instructions.

Arrangements can be made with the Commission's staff to accommodate disabled persons in preparing and filing an RFE.

Upon receipt of each RFE, the Executive Director reviews the allegations to determine whether it involves a judge and whether the allegations and the court's records provide sufficient evidence regarding the judge's conduct to warrant commencement of disciplinary proceedings. Allegations that involve disputes about a judge's decisions or that, based on the Executive Director's review, do not provide sufficient evidence of misconduct to satisfy the reasonable basis standard in Colo. RJD 13(c) for establishing a violation of the Canons, will not be referred to the members of the Commission for consideration. At each regular meeting of the Commission, the members review each of the Executive Director's decisions and may, after their consideration, reopen a case for further proceedings. Through this process, the entire Commission verifies the screening of RFEs.

In the absence of a reasonable basis for disciplinary proceedings, the Commission will close the file and take no further action other than to advise the requestor of the reasons for its decision. The minimum thresholds for the Commission to recognize an RFE as a complaint are stated in Colo. RJD 13(c). By rule, the Commission may not act upon an RFE where:

- (1) The request does not allege sufficient grounds for disciplinary or disability proceedings;
- (2) The request disputes a Judge's rulings on motions, evidence, procedure, or sentencing; a Judge's findings of fact and conclusions of law; or other matters that are within the jurisdiction of the trial or appellate courts to resolve, without providing grounds for disciplinary or disability proceedings;
- (3) The allegations are frivolous; or
- (4) The allegations involve subject matter that is not within the jurisdiction of the Commission.

Colo. RJD 13(c).

Colo. RJD 14(a) recognizes that the Commission does not normally notify the judge of the allegations if the allegations do not warrant disciplinary proceedings.

If the Commission members determine that the matter referred to them by the Executive Director provides a reasonable basis on which to commence disciplinary or disability proceedings, the Commission will, in accordance with Colo. RJD 13(b), recognize the RFE as a complaint. The Executive Director then will notify the judge of the allegations and request the judge's response according to Colo. RJD 14(a). The Commission will examine the allegations in more detail, examine documentary materials (i.e. court records), and may conduct other forms of investigation, including interviews of witnesses. Investigative support was historically provided to the Commission by Attorney Regulation but became part of the Commission's internal functions in 2022. Presently, the Commission contracts for these investigation services on a case-by-case basis. The Executive Director

consults with the Commission and its Special Counsel to define the scope and direction of the Commission's investigations.

In situations where there are allegations of an unusual delay in a judge's issuance of a decision or urgent situations in which awaiting the next bi-monthly meeting of the Commission would aggravate the situation, the Executive Director is authorized by Colo. RJD 14(c) to notify the judge and commence judicial proceedings without the approval of the Commission members. Similarly, the Executive Director, the Commission's Chair, or Special Counsel may request a subject judge's temporary suspension under Colo. RJD 34(a) to avoid imminent or continuing harms to the public or the integrity of the judicial system.

Volume and Nature of Requests for Evaluation Received in 2023

During 2023, the Commission received a total of 344 RFEs, including complaints in other formats that the Commission considered as RFEs. This compares with 250 received in 2022, 200 in 2021, 199 received in 2020, 221 received in 2019, 200 in 2018, 154 in 2017, 152 in 2016, 175 in 2015, and an average of 180 RFEs and complaints received in prior years. The volume of RFEs received in 2023 reflects a greater than 50% increase from prior averages.

Of the 344 RFEs received by the Commission in 2023, 251 were dismissed upon an initial assessment through Colo. RJD 13(c). This proportion of dismissals is consistent with the experience of judicial discipline entities across the United States. Seventy-three of the cases that remained unresolved at the end of 2023 involved judges' financial disclosures. The remaining RFEs required the Commission to complete some level of investigation based upon colorable allegations that a judge's conduct may have violated the Code. The Commission ultimately dismissed 3 of these RFEs.

In 2023, RFEs were filed against judges in all 22 of the state's judicial districts. Five RFEs were filed against judges of the Court of Appeals and 11 RFEs were received as to justices of the Colorado Supreme Court surrounding *Anderson v. Trump*. More specifically, the RFEs were distributed as follows:

Judicial District / Court	RFEs Received	% of Total
1st Judicial District	22	6.39%
2nd Judicial District	42	12.23%
3rd Judicial District	3	0.87%
4th Judicial District	44	12.79%
5th Judicial District	12	3.48%
6th Judicial District	4	1.16%
7th Judicial District	13	3.77%
8th Judicial District	11	3.19%

Judicial District / Court	RFEs Received	% of Total
9th Judicial District	9	2.61%
10th Judicial District	14	4.06%
11th Judicial District	10	2.90%
12th Judicial District	6	1.74%
13th Judicial District	9	2.61%
14th Judicial District	2	.58%
15th Judicial District	3	0.87%
16th Judicial District	6	1.74%
17th Judicial District	16	4.65%
18th Judicial District	40	11.62%
19th Judicial District	12	3.48%
20th Judicial District	17	4.94%
21st Judicial District	8	2.32%
22nd Judicial District	4	1.16%
Court of Appeals	5	1.45%
Colo. Supreme Court	11	3.19%
Senior Judges	21	6.10%

The general nature of misconduct allegations received in 2023 can be summarized as follows:

Nature of the Allegation	RFEs	% of Total
Abuse of Contempt	3	.87%
Accommodation of Disability / Medical Needs	0	0.0%
Bias / Discrimination / Corruption	13	3.77%
Competency Proceedings	6	1.74%
Conduct re: Judicial Applications / Retention Elections	3	0.87%
Conflict of Interest	9	2.61%
Courtroom / Courthouse Management	3	.87%
Criminal Conduct	0	0.00%
Demeanor and Decorum	6	1.74%
Diligence / Delay / Competence	14	4.06%
Disputed Rulings--Legal / Factfinding Error	161	46.80%
Disputed Rulings--Legal / Factfinding Error (Crim. P. 35)	7	2.03%
Financial Irregularities	72	20.93%
General Impropriety or Appearance of Impropriety	5	1.45%
Harassment / Inappropriate Behavior	2	.58%

Nature of the Allegation	RFEs	% of Total
Intoxication/Substance Abuse	1	.29%
Judicial Performance	3	.87%
Judicial Disability	0	0.0%
Opportunity to be Heard	1	.58%
Personal / Extra-Judicial Conduct	3	0.87%
Prohibited Expression / Breach of Confidentiality	3	.87%
Qualifications for Office	0	0.0%
Sovereign Citizen / Generalized Conspiracy	24	6.97%
Supervisory Duties	5	1.45%
Other/Miscellaneous	0	0.0%

The number of RFEs (including those relating to multiple judges) involving various types of judges are as follows:

Type of Judge	RFEs	% of Total
County Court Judge	85	24.71%
District Court Judge	222	64.54%
Court of Appeals Judge	5	1.46%
Colo. Supreme Court Justice	11	3.19%
Senior Judge	21	6.10%

During 2023, known demographic information relating to judges under discipline or investigation and those directly affected by the potential misconduct can be summarized as follow (does not include data from 73 ongoing financial disclosure cases):

Demographic of Judges	RFEs
Male Judges	16
Female Judges	6
White Judges	17
Black or African American Judges	2
Hispanic Judges	4
LGBTQ+ Judges	2

Demographic of Impacted Persons	RFEs
Male	10
Female	13
White	20
Black or African American	1
Native American	0
Asian	1

Demographic of Impacted Persons	RFEs
Native Hawaiian or Pacific Islander	0
Hispanic or Latino	1
LGBTQ+	1

Phases and Types of Proceedings



The Commission's proceedings, after a finding of a reasonable basis for a complaint, may involve several phases, including: (1) an **investigation and notice to the judge**, under Colo. RJD 14; (2) **consideration and disposition** through informal proceedings in which the members decide whether, after further consideration, the complaint should be dismissed or that one or more of several disciplinary dispositions under Colo. RJD 35, should be ordered; (3) directions to the judge to undergo an **independent medical examination**, as authorized by Colo. RJD 15; 4) **disability proceedings**, under Colo. RJD 33.5; (5) **formal proceedings**, pursuant to Colo. RJD 18, involving a trial before three special masters appointed by the Supreme Court² which could result in a recommendation to the Supreme Court for the retirement of the judge or a public disciplinary order; (6) and/or, if necessary, the Commission may request the Supreme Court to order the **temporary suspension** of a Judge under Colo. RJD 34, with pay, pending the resolution of disciplinary proceedings.

Investigation and Notice to the Judge

Under the provisions of Colo. RJD, the members of the Commission, at each of their meetings, consider the Executive Director's evaluation of RFEs and authorize an investigation of those RFEs it deems sufficient to warrant consideration as a complaint.

In 2023, investigations were performed by the Executive Director, the Commissioner's Special Counsel, contracted investigators and, if necessary, by investigators on the staff of the Office of the Attorney General. According to Colo. RJD 14(a), the Executive Director notifies the subject judge of the investigation and the nature of the allegations after the Commission has recognized a RFE as a

complaint according to Colo. RJD 13(b). The judge is afforded an opportunity to respond either in writing or by appearing before the Commission. Colo. RJD 14(d).

Each investigation involves action that is appropriate under the circumstances, such as an examination of court records; a review of written transcripts or audio recordings of proceedings; interviews of witnesses; an evaluation of the judge's response; and requests for further information from the complainant or the judge.

Consideration and Dispositions

After the investigation, the Commission considers the disposition of the complaint in informal proceedings. The complaint is assigned to one of the members of the Commission who examines the allegations, the judge's response, and the results of the investigation. The member then presents the complaint and the evidence to the other members for their consideration. Colo. RJD 16(a). Allegations of misconduct must be established by a preponderance of the evidence. Colo. RJD 16(c). A decision is made by majority vote of the members participating in the meeting, exclusive of the presenting member. Colo. RJD 16(b).

When a complaint has been considered by the Commission in informal proceedings, the dispositions available (either singly or in combination), under Colo. RJD 16 and 35, include:

² Colorado Constitution Article VI, § 23(3)(e) recognizes that the Commission can either: 1.) "order a formal hearing to be held before it concerning the removal, retirement, suspension, censure, reprimand, or other discipline of a justice or a judge"; or 2. Request that the Supreme Court appoint three special masters. Previous versions of the Colo. RJD defined procedures for hearings before the Commission, itself.

- (a) **In General.** At the time and place set for hearing, the commission or the masters shall proceed with the formal hearing whether or not the judge has filed a response or appears at the hearing. Special counsel shall present the case in support of the formal charges. The chairperson or presiding master shall rule on all motions and objections made during the hearing, subject to the right of any member who disagrees with the ruling to appeal to all of the members of the commission or the masters who are present. The vote of the majority present shall prevail on all findings of fact and conclusions of law.

Colo. RJD 26 (1987).

The current version of the Colo. RJD omits such procedures.

- dismissal of a complaint in which misconduct cannot be established by a preponderance of the evidence. However, a dismissal may be accompanied by the Commission’s expression of concern about the circumstances.
- “Admonish[ing] the subject judge privately for an appearance of impropriety, even though the Judge's behavior otherwise meets the minimum standards of judicial conduct.” Colo. RJD 35(d);
- privately reprimanding the subject judge “for conduct that does not meet the minimum standards of judicial conduct.” Colo. RJD 35(e);
- privately censuring the subject judge for misconduct that “which involves a substantial breach of the standards of judicial conduct.” Colo. RJD 35(f);
- requiring a diversion plan in which the judge obtains training, counseling, or medical treatment or provides periodic docket management reports to the Commission, which can be combined with a private admonishment, reprimand, or censure. Colo. RJD 35(c); and
- entering a stipulated private disposition that could include the judge’s resignation or retirement. Colo. RJD 35(h).

Beyond private dispositions, the Commission can also initiate disability proceedings under Colo. RJD 33.5 or make a finding of probable cause to commence formal proceedings under Colo. RJD 18.

Independent Medical Examination

In situations where the Commission deems it necessary, it may order the judge to undergo an examination by a qualified provider to evaluate the judge's physical and mental health. Colo. RJD 15. This may lead to a diversion program involving medical treatment, counseling, and/or training, rather than disciplinary measures. It could also result in commencement of disability proceedings.

Disability Proceedings

Colo. RJD 33.5 provides extensive procedures and requirements for conducting proceedings in which the Commission can evaluate and consider whether a “judge suffers from a physical or mental condition that affects the judge’s ability to perform judicial functions or to assist with his or her defense in disciplinary proceedings.”

The Supreme Court may enter orders appropriate to the nature and anticipated duration of the disability, including transfer of the Judge to temporary judicial disability status; retirement for a permanent disability; and/or transfer of the Judge to lawyer and judicial disability inactive status.

Formal Proceedings

Formal proceedings involve a trial conducted under the Colorado Rules of Civil Procedure to address allegations of misconduct which the Commission determines cannot be adequately addressed by informal proceedings and private remedial measures. If the Commission finds probable cause to commence formal proceedings, it appoints special counsel to review the allegations and evidence of misconduct. With changes created through Senate Bill 22-201, the Commission now employs its own internal special counsel. Senate Bill 22-201 also provided the Commission with resources to arrange for special counsel and investigation support through the Colorado Attorney General's Office or in the private sector, as needed.

Special counsel prepares and serves a statement of charges on the judge. The Commission, then, requests the Supreme Court to appoint three special masters – from among retired justices or active or retired judges who have no conflicts of interest and are able to serve diligently and impartially – to preside over the trial.

Based on findings made by the special masters or a stipulated resolution of the charges, the Commission will file a recommendation for action by the Supreme Court, under Colo. RJD 36 and 37, which may involve dismissal of the charges; a remand of the complaint to the Commission for disability proceedings; or one or more of the following sanctions:

- Suspension without pay for a specified period;
- Removal from office or retirement;
- Public reprimand or censure;
- Private dispositions under Colo. RJD 35; and/or
- Measures reasonably necessary to curtail or eliminate the judge's misconduct, such as a diversion plan or deferred discipline plan.

The Commission is further authorized to seek an assessment of attorney's fees and costs in both informal and formal disciplinary proceedings. Colo. Const. Art. VI, § 23(3)(e); Colo. RJD 35(g); Colo. RJD 36(g).

Confidentiality

Colo. Const. Article VI, Section 23(3)(g), provides that "all papers filed with and proceedings before the Commission" are confidential, unless and until such time as the Commission files a recommendation with the Colorado Supreme Court at the conclusion of formal proceedings. Informal disciplinary proceedings remain confidential. Colo. RJD 6.5 clarifies that this confidentiality requirement does not prohibit the Commission from interviewing witnesses; cooperating with Judicial Performance, Attorney Regulation, SCAO, or law enforcement; or responding to requests from the Supreme Court, judicial nominating commissions, or the Senior Judge Program concerning the

disciplinary record, if any, of a judge who is under consideration for another judicial position. However, the details of the Commission's consideration of disciplinary measures continue to be confidential.

Under Colo. RJD 33.5(i), orders issued by the appointed special master(s) in disability proceedings as well as orders issued by the Colorado Supreme Court in such proceedings are public. Other case filings and records, however, remain confidential. Likewise, under Colo. RJD 34(f), a temporary suspension order in disciplinary proceedings is public upon issuance by the Colorado Supreme Court with other records remaining confidential pending the filing of recommendations under Colo. RJD 37.

In addition, Colo. RJD 6(h) authorizes the publication in this annual report of a summary of proceedings that resulted in a private disposition – without disclosing the date, location, the judge, or other parties – or a public sanction. Colo. RJD 6.5(g) also authorizes the Commission or a judge to request that the Supreme Court approve the release of information about a disciplinary proceeding if the allegations of misconduct “have become generally known to the public and, in the interest of justice, should be publicly disclosed.”

Disciplinary Actions Taken in 2023

Colo. RJD 6.5(h) authorizes the publication in this annual report of summaries of proceedings which have resulted in disciplinary dispositions or sanctions without disclosing the date or location of the misconduct or the identity of the judge or other parties.

Public Discipline

Former Chief Justice Nathan B. Coats was publicly censured for failure to “perform judicial and administrative duties competently and diligently” as required by Canon Rule 2.5(A) of the Colorado Code of Judicial Conduct. This case stemmed from the former Chief Justice's actions surrounding the Mindy Masias contract controversy. Because this case involved the former Chief Justice, the sitting Supreme Court Justices recused themselves in this matter per Colo. RJD 41 and did not participate in their usual role as the final arbiters of judicial discipline. Instead, a Special Tribunal was convened. The Special Tribunal was comprised of seven members of the Colorado Court of Appeals: Hon. David M. Furman, Hon. Anthony J. Navarro, Hon. Elizabeth L. Harris, Hon. Rebecca R. Freyre, Hon. Craig R. Welling, Hon. Jaclyn C. Brown, Hon. Christina F. Gomez. *See People v. Coats*, 2023 CO 44.

Former Mesa County District Court Judge Lance Timbreza was publicly censured for sexually harassing an attorney at a Colorado Bar Association event. He resigned from his judicial position during the pendency of this disciplinary matter and ultimately stipulated that he violated Canon Rule 2.3 (harassment), Canon Rule 1.3 (abuse of the prestige of judicial office), and Canon Rule 1.2

(appearance of impropriety). Timbreza also stipulated to paying \$20,658.00 in attorneys' fees and costs related to the prosecution of this matter. Timbreza had previously been publicly censured (and suspended without pay for 30 days) for being convicted of an alcohol related driving offense. Per Colo. RJD 41(b), the Colorado Supreme Court recused from consideration of this matter; thus, a special tribunal was empaneled that was comprised of the following judges from the Court of Appeals: Hon. David Furman, Hon. Craig Welling, Hon. Lino Lipinsky de Orlov, Hon. Neeti Pawar, Hon. David Yun, Hon. Timothy Schutz, Hon. Katharine Lum. *See People v. Timbreza*, 2023 CO 16.

Former Fifth Judicial District Court Judge Mark Thompson was publicly censured for exhibiting poor temperament toward attorneys at a hearing, thus violating his duty to be patient, dignified, and courteous to the attorneys whom he berated in a rude, condescending, and mocking tone, which in turn created the appearance of personal animus against the attorneys. Thompson resigned from his judicial position during the pendency of this disciplinary matter and ultimately stipulated that he violated Canon Rule 1.2 (appearance of impropriety), Canon Rule 2.8 (temperament), and Canon Rule 2.11 (requirement to disqualify if judge's impartiality might reasonably be questioned). Thompson had previously been publicly censured (and suspended without pay for 30 days) for being convicted of misdemeanor disorderly conduct related to an incident in which he recklessly displayed an assault rifle during a dispute with his adult stepson. *See People v. Thompson*, 2023 CO 21.

Private Discipline

A judge was privately censured for engaging in an ongoing romantic relationship with an individual who the judge knew to be an illegal sex worker. The judge denied paying for sex. However, the judge's relationship with the individual involved the judge paying for part of the individual's living expenses, including rent, cell phone and utility bills. On one occasion, the judge possessed and transferred a quantity of marijuana to the individual under circumstances in which the quantity appeared to have possibly exceeded Colorado's legal possession limits. The judge stipulated to violating Canon Rule 1.1 (requiring compliance with the law), Canon Rule 1.2 (avoiding the appearance of impropriety and actual impropriety), and Canon Rule 3.1 (avoiding extrajudicial activities that appear to undermine the judge's independence, integrity, or impartiality). The judge resigned as a condition of the above discipline.

A judge was privately censured for retaliating against the judge's CJA (court judicial assistant) because the judge believed that the CJA was gossiping about the judge's extramarital affair with a judicial department employee (a romantic relationship which was conducted in violation of Chief Justice Directive 08-06). The judge sought to alter the terms and conditions of the CJA's employment in a manner that was unreasonable and inappropriate. As a result of frayed relations between the judge and the CJA, the CJA was ultimately transferred out of the judge's division. The judge then actively discouraged at least one other judge from hiring the CJA. Later, the judge falsely accused the CJA of making disparaging comments about the judge during the judge's retention election, and the judge sought to have the CJA disciplined based on the judge's erroneous belief that the CJA had made

disparaging comments about the judge during the re-election cycle. The judge stipulated to violating Canon Rule 1.1 (requiring compliance with the law and the judicial canons generally), Canon Rule 1.2 (avoiding appearance of impropriety and actual impropriety), Canon Rule 2.3 (barring harassment), Canon Rule 2.8 (demeanor), Canon Rule 2.12 (requiring that a judge deal with court staff with dignity and respect), Canon Rule 2.16 (barring retaliation for reporting misconduct), Canon Rule 4.2 (requiring that a judge, during a retention election, act in a manner that is consistent with the independence, integrity, and impartiality required of the judiciary). The judge resigned as a condition of the above discipline.

Commissioner Recusals Reported According to Colo. RJD 3.5(g)(2)

During 2023, the following Commissioners disqualified themselves from pending or impending judicial discipline matters:

Hon. Jill Brady: (December 8, 2023).

Hon. Bonnie McLean: (Feb. 10, 2023; April 21, 2023; June 16, 2023; August 18, 2023; October 13, 2023; December 8, 2023).

Hon. Mariana Vielma: (Feb. 10, 2023; June 16, 2023; October 13, 2023; December 8, 2023).

Hon. Sara Garrido: (April 21, 2023; June 16, 2023; August 18, 2023; October 13, 2023; December 8, 2023).

Commission Members and Staff

It is essential that the Commission operate effectively and with the public's confidence in monitoring the judiciary's conduct under the Canons. Members of the Commission reflect the geographic, ethnic, and racial diversity of the Colorado community.

As of December 31, 2023, the Commission's membership included:

<u>Member</u>	<u>City</u>	<u>Category of Appointment</u>
Mary (Mindy) V. Sooter, Chair	Boulder	Attorney
Jim Carpenter, Vice Chair	Englewood	Citizen
Ingrid Barrier	Denver	Attorney
Hon. Jill Brady	Colorado Springs	District Court Judge
Hon. Sara Garrido	Golden	County Court Judge
Gina Lopez	Towaoc	Citizen
Hon. Bonnie McLean	Centennial	District Court Judge
Marisa Pacheco	Pueblo	Citizen
Stefanie Trujillo	Commerce City	Citizen
Hon. Mariana Vielma	Brighton	County Court Judge

As of December 31, 2023, the Commission received its administrative and operational support through the Office of Judicial Discipline's staff:

Christopher S.P. Gregory, Executive Director

Jeffrey M. Walsh, Special Counsel

Sherri Hammerly, Office Manager / Executive Assistant

To obtain a copy of the Request for Evaluation of Judicial Conduct form, or for further information, please refer to the Commission's website - ccjd.colorado.gov - or contact the Commission directly at:

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