
Colorado Commission on Judicial Qualifications: 1980 Annual Report

BACKGROUND

In 1966, the Colorado Constitution was amended, creating new methods of selecting, appointing and retaining state judges. The amendments established local nominating commissions for district and county judges, a statewide nominating commission for appellate judges, and a statewide Commission on Judicial Qualifications. The thrust of these amendments was to replace the political process of electing judges with one based on merit selection, appointment and retention. Complementary to the package, the Commission was created to investigate and act upon allegations of improper conduct by judges. The Commission derives its authority from Article VI, § 23(3) of the Constitution.

At the time the Commission was created, only five other states had disciplinary commissions to supplement impeachment as the traditional method of removing judges. Now all of the states and the District of Columbia have judicial disciplinary commissions. A state commission such as Colorado's typically will investigate a complaint against a judge, hold informal or formal hearings as a fact-finding body, and then take informal action or present recommendations to a state supreme court for final action.

As a constitutional entity, the Colorado Commission is independent of other state agencies or branches of government. As a practical matter, however, the Commission operates within the judicial branch. Its operating budget is provided through the Colorado Judicial Department, its rules are adopted by the Supreme Court, and its day-to-day activities are handled by the staff of the State Court Administrator. Moreover, all of the Commission's final recommendations for retirement or removal of a judge must be acted upon by the Supreme Court.

The Commission consists of nine members. Three district court judges and two county court judges are appointed by the Supreme Court. Two lawyers, each having practiced for at least ten years in Colorado, are appointed by majority action of the Governor, the Chief Justice, and the Attorney General. The other two members, who must be citizens but not judges or attorneys, are appointed by the Governor. All members are appointed for four-year terms.

Inquiries about the Commission's activities should be directed to its office, Room 215, State Judicial Building, 2 E. 14th Avenue, Denver, Colorado 80203, (303) 861-1111.

RESPONSIBILITIES AND POWERS

The Commission has constitutional jurisdiction to investigate allegations of and act upon a judge's:

- willful misconduct in office;
- willful or persistent failure to perform judicial duties;
- intemperance;
- disability that interferes with the performance of official duties which is or is likely to become permanent.

By interpretation and as part of the Commission's rules adopted by the Supreme Court in 1978, the concept of willful misconduct includes, but is not limited to, the following acts:

- conduct prejudicial to the administration of justice;
- conduct that brings the judicial office into disrepute;
- conduct that violates the Colorado Code of Judicial Conduct.

The Commission exercises its jurisdiction over 217 justices and judges who serve in the Colorado state court system. The Commission does not have jurisdiction over the sixteen county judges who sit in the Denver County Court or the more than 200 municipal judges in Colorado. Because of a unique constitutional provision that kept the Denver County Court out of the state system, the Denver county judges are subject to a separate qualifications commission established in the charter for the City and County of Denver. Municipal judges have never been part of the state court system and are not included within the scope of the Commission's constitutional authority.

The Commission's jurisdiction includes misconduct stemming from the violation of criminal laws. In addition, the Supreme Court may take action under the companion section of the constitutional amendment adopted in 1966 by which it can suspend and remove a

justice or judge of any state court who is convicted of a felony or offense involving moral turpitude.

PROCESS AND PROCEDURE

Request for an Investigation

Any person may request an investigation of a judge by filing a request for an investigation or "complaint" with the Commission. Forms for this purpose are available in the Commission's office. The Commission may also commence investigations on its own motion.

The Commission's administrative secretary enters each complaint in a chronological log and sends a copy of the complaint to each member of the Commission. The complaint is assigned to a specific Commission member for detailed study and analysis. This member will be responsible for reporting on that particular complaint in detail at the next Commission meeting.

Complaints for investigation are considered by the entire Commission during its regular quarterly meeting. Many complaints are dismissed following initial discussion and evaluation by the Commission on the grounds they are frivolous, unfounded, outside the Commission's jurisdiction, or "appellate in nature."

"Appellate in nature" means that the action which is reported in the complaint is a proper subject of review by an appellate court and outside of the Commission's jurisdiction. In other words, it is a matter of interpretation or application of law and that can only be reviewed by an appellate court. The Commission has no power to second-guess or review a trial judge's decision, nor can it reverse or change court orders. The court to which a specific case must be appealed is determined by the constitution and statutes, and specific appellate procedures govern each case.

Informal Proceedings

The Commission chooses from several alternatives following its initial evaluation. It may dismiss a complaint on the grounds already discussed, in which case the judge is not notified about the complaint, or it may decide to conduct a preliminary investigation to learn more about the judge's alleged misconduct. If further investigation is warranted, the judge is told of the complaint and the name of the complainant or the fact that the Commission is proceeding on its own motion. The judge is then given an opportunity to respond to the complaint and to present any information requested by or useful to the Commission.

The preliminary investigation may include reviewing transcripts of court proceedings, studying the response from the judge under investigation, obtaining statements from lawyers, judges, clerks, litigants, or other persons who may have some knowledge of the incident complained of, and, if needed, conducting legal research into the substantive area of alleged misconduct. An investigator may be employed to conduct some or all of this investigation.

Following the preliminary investigation, the Commission must decide whether to dismiss the case, to continue the investigation and hold an informal hearing, or to begin formal proceedings against the judge. The complainant is normally advised of the Commission's decision at this point.

If the Commission elects to conduct an informal hearing, the judge involved is invited to appear before the Commission to discuss the charges contained in the complaint. Following the hearing or any additional investigation, the Commission can dismiss the complaint when there is no proof of misconduct, take some informal action against the judge, or proceed to the formal stage on the basis of the evidence discovered during the investigation. The informal actions or sanctions

that are permitted by the Commission's rules include private admonishment, reprimand or censure, either in person or by letter; an order for physical or mental examination of the judge; or acceptance by the judge of a specific program (for example, training) aimed at curtailing or eliminating the judge's conduct.

Formal Proceedings

When the Commission decides to proceed to a formal hearing, it retains an examiner, usually an outside attorney, to prepare and present written charges—the Commission's formal complaint—against the judge. A copy of the formal charge or complaint is served on the judge with a notice setting forth the time and place of the formal hearing. The judge is specifically advised that he may retain counsel to represent him. As part of the preparation for the formal hearing, the examiner may conduct a further investigation or use the Commission's original investigator for this purpose. Either before or after the formal hearing, in a sufficiently serious case, the Commission may recommend to the Supreme Court that the judge be temporarily suspended from performing judicial duties.

At the conclusion of the formal hearing, the Commission may dismiss the case, take informal action as described above or recommend to the Colorado Supreme Court that the judge be censured, retired or removed from office. The Commission carefully weighs any recommendation for removal or retirement inasmuch as such action would result in the end of a person's judicial career.

Confidentiality of Proceedings

The Constitution requires that proceedings before and papers filed with the Commission be confidential. Moreover, the testimony given before the Commission during any of its proceedings is privileged and cannot serve as the basis for a

civil defamation action. The issue of confidentiality has generated much criticism, but the Commission believes that confidentiality serves an appropriate and vital public purpose. Most of the complaints before the Commission are unfounded and could seriously and without justification affect the reputations of individuals, judges and the judiciary as a whole if they were disclosed to the public.

For example, in almost every dispute which reaches court, the person against whom the decision is rendered is often dissatisfied with the decision. In many instances, the dissatisfied party feels that the judge must have been biased or prejudiced, or for some other reason did not conduct himself or herself properly. These grievances can best be handled confidentially.

Disqualification of Judges When Litigation is Pending

A person who files a complaint against a judge while the person is involved in litigation before that judge may ask the Commission to disqualify the judge in the case. Requests for disqualification are not granted automatically, however. If the complaint is dismissed, the judge is not informed about the matter and no conflict of interest problem arises. If the complaint merits further investigation, the Commission may decide that the judge should be disqualified from hearing the case. Such requests are carefully studied for the obvious reason that the opportunity to question a judge's conduct should not become a means of judge-shopping.



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Disqualification of a Commission Member

If a complaint is filed against a judge who is a member of the Commission, the judge will be disqualified from participating in the initial evaluation and care is taken to withhold the identity of the complainant from him. Complaints are then handled as they are for other judges. At the appropriate time, the judge-member may have to decide if he wants to be disqualified from the lawsuit which gave rise to the complaint. Moreover, the judge will be disqualified from participating in any follow-up on the complaint against himself.

In addition to the precautions taken when complaints are filed against Commission members, a member who is an attorney or a judge will not participate in deliberations involving a judge in the member's judicial district.

CASELOAD DESCRIPTION

During 1980, seventy-three requests for investigation were filed with the Commission. This is a 19 percent increase over the preceding year and the largest number of cases filed against different judges in any year since the Commission began operations in 1967. Although this increase is dramatic when compared with the fifty-nine cases filed in 1979, the long-term trend is difficult to forecast since caseload fluctuates from year to year. The annual caseload, however, has increased steadily from the ten cases filed in the Commission's first year.

Source of Complaints

Of the seventy-three complaints filed this year, fifty-two were brought against district judges, twenty against county judges, and one against a retired judge serving in the senior judges program. No complaints were lodged against appellate judges. This distribution of complaints

follows an historical trend. Since 1967, about 76 percent of the complaints filed involved district judges, 21 percent county judges, and less than 2 percent each for appellate judges and senior judges.

Most of the complaints filed during 1980 (about 81 percent) were received from citizens who were litigants in cases. Ten (roughly 14 percent) were filed by citizens not directly involved in litigation, and four (5 percent) were filed by attorneys.

The largest number of complaints filed in 1980 (about 40 percent) involved judges hearing civil cases other than domestic relations or small claims matters. The second largest number of complaints were equally divided between domestic relations and criminal cases (about 25 percent each). This is a clear reversal from 1979 when about one-half of the complaints originated from domestic relations litigation, with the remaining complaints about evenly distributed between other types of civil cases and criminal cases.

Disposition of Complaints

The Commission terminated seventy-two cases during 1980. Of these, two were resolved before any action was taken by the Commission, thirty-three were dismissed because the complaints involved legal issues that could only be resolved on appeal, fourteen were dismissed for lack of jurisdiction, and nineteen were dismissed when investigations failed to reveal any evidence of misconduct or other grounds for discipline. In addition, one case was dismissed when the judge, who had been temporarily suspended from performing judicial duties, resigned. Corrective action was taken against one judge for three separate complaints. The table below describes the caseload in more detail.

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***Commission on Judicial Qualifications
Caseload Disposition
Calendar Year 1980***

	<i>Number of Cases</i>	<i>Percent of Cases Terminated</i>
Cases pending January 1, 1980	13	
Complaints filed during 1980	<u>73</u>	
Total caseload	86	
Cases terminated:		
<i>Complaints dismissed</i>		
Request withdrawn or additional information not submitted	2	2.8
Appellate in nature	33	45.8
Lack of jurisdiction	14	19.4
No evidence or misconduct or any other ground for judicial discipline	19	26.4
Retirement or resignation dur- ing or following investigation	<u>1</u>	<u>1.4</u>
Total complaints dismissed	69	95.8
<i>Corrective Actions</i>		
Admonishment, censure or reprimand, either by private letter or personal appearance	<u>3*</u>	<u>4.2</u>
Total corrective actions	3	4.2
Total cases terminated	<u>72</u>	100.0
Cases pending December 31, 1980	14	

*Note: Three separate complaints involving the same judge.

The pattern of dispositions in 1980 is similar to that of prior years. Approximately one-half of the complaints filed against judges each year are dismissed by the Commission following an initial screening because the complaints raised appealable legal issues. Most of the remaining complaints are eventually dis-

missed following a preliminary investigation, either for lack of jurisdiction or because no evidence of misconduct was found. About 10 percent of the complaints filed each year require a more thorough investigation, including interviewing complainants, judges and potential witnesses and examining court

records. These cases frequently result in formal Commission hearings.

As a result of the Commission's work during the last thirteen years, six judges have been ordered retired for disability, twenty judges have resigned or retired following Commission investigation, and twenty-eight judges have been privately admonished, reprimanded or censured. No judges have been ordered removed by the Colorado Supreme Court since the Commission's inception, primarily because judges prefer to resign from office prior to the court's taking formal action against them. *The Commission emphasizes, however, that many judges resign or retire from the Colorado judicial system each year for reasons completely unrelated to any disciplinary activities of the Commission.*

Sample Cases

The Commission is often asked to describe the types of misconduct it considers serious enough to merit disciplinary action by the Commission or the Supreme Court. It has been reluctant to do this because of the constitutional requirement of strict confidentiality in all disciplinary matters involving judges. The Commission recently concluded that more information should be revealed as a matter of public interest, and it determined that non-confidential descriptions of a case could be released without infringing on individual rights or breaching the constitutional mandate. As a departure from previous annual reports, therefore, the Commission has selected the following examples to illustrate the types of serious judicial misconduct or disability that have required action by the Commission since its inception.



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Description of Conduct

Judge developed lapses of memory and had difficulty following trial procedure.

Judge became frustrated with defendant's challenges to the judicial system and sentenced him to jail for contempt for failure to enter a plea of guilty.

Judge developed heart problems exacerbated by courtroom stress.

Judge failed to manage docket properly, often came to court late, and frequently delayed in entering final judgments.

Judge personally investigated cases pending before the court, spoke with jurors and witness about cases during recesses, and gave widely disparate sentences in similar cases.

Judge had not entered final orders in a case in which all arguments had been heard and papers submitted more than a year before.

Judge used derogatory language in describing a person who came to his home late at night.

Judge became involved in altercation in a bar and appeared intoxicated in public.

Judge criticized small claims procedure and demeaned the litigation before him during a court hearing.

Commission Action

Early retirement recommended to Supreme Court and judge voluntarily retired.

Judge privately censured by the Commission in recognition of judge's pending retirement and defendant's improper provocations.

Commission recommended disability retirement and Supreme Court approved.

Commission recommended temporary suspension pending formal proceedings. Judge took suspension voluntarily and then retired.

Commission recommended temporary suspension which the Supreme Court granted. Judge subsequently resigned.

Commission asked judge to answer complaint and judge ruled on case before further Commission action was needed.

Judge privately admonished by the Commission to avoid such behavior.

Judge temporarily suspended by the Supreme Court and ordered by the Commission to obtain medical examinations; suspension lifted following improved conduct and judge's agreement to change behavior.

Judge privately admonished by Commission.

RECOMMENDATIONS

For several years, the Commission has recommended changes which it believes would strengthen its role in the judicial process. These recommendations in effect

become goals that the Commission supports, although it may not have the authority or the resources to accomplish a given goal. For example, the Commis-

sion's recommendations for 1979 included a change of name to reflect the Commission's role more accurately, and an expansion of the administrative staff to enable the Commission to process cases more thoroughly and efficiently. In both instances, the proposed changes require implementation by other public bodies, and the recommendations were not achieved during the year.

The prospect for achieving these changes has improved, so these goals are included in this year's report with others that the Commission intends to support during the coming year. The Commission's recommendations for 1981 are:

1. *The name of the Commission should be changed to the "Commission on Judicial Discipline."* The present name of the Commission is misleading and confusing to the public. It should be changed to reflect the actual role that the Commission plays in the judicial system.

2. *The Commission's rules of procedure should be revised.* As the Commission's caseload has increased, the types of cases have become more varied and complex. As a result, it has become apparent that some of the Commission's rules and procedures should be simplified and clarified to improve efficiency in case processing and to make it easier for the public to understand the Commission's procedures. A revision of many of the forms and letters used by the Commission should also be undertaken as part of the overhauling of rules and procedures.

3. *More information should be disseminated to the public about the Commission's activities and responsibilities.* There is considerable confusion about the Commission's constitutional responsibilities and its role in the judicial system. For example, the Commission is frequently asked to review a judge's decision—a role that belongs exclusively to the appellate courts. It is also mistaken for the Supreme Court Grievance Committee which handles complaints against

lawyers. These problems could be reduced by expanding the distribution of the Commission's annual report or perhaps a less detailed publication and increasing the use of press releases and meetings with the print and broadcast media to discuss Commission activities.

4. *The Commission should meet more frequently.* The Commission has met quarterly since its inception and has held additional meetings as needed. The Commission will be testing a bimonthly meeting schedule in 1981 that should even out the workload of the commissioners and reduce delay in processing cases.

5. *The Commission should obtain a full-time executive director and expand its budget to accommodate the increase in caseload.* Since 1967, the number of cases which the Commission must consider has risen steadily. The staff of the State Court Administrator's office cannot continue to provide adequate staffing and administrative supervision for the Commission. This year, the General Assembly approved a full-time secretary for the Commission, a change that brought immediate improvements to the Commission's operation. The Commission recommends that this one-person staff be expanded by the addition of a full-time executive director who can also act as investigator. This recommendation was included in the Colorado Judicial Department's 1982 budget request.

CONCLUSION

The Commission performs a vital role in the Colorado judicial system. Since judicial selection and tenure is based on merit rather than political election, the Commission must serve as a balance between judicial independence and public accountability. Although much of the Commission's work is not visible to the public, every effort is made to act in the public interest while safeguarding individual rights and reputations from

unfounded accusations of misconduct. The Commission's performance during the last thirteen years suggests that it has

succeeded in improving and strengthening the judiciary while carrying out its public responsibilities.

NCCD to Hold Institute on Psychodrama, Sept. 25-27

The National College for Criminal Defense, a project of the ABA, National Association of Criminal Defense Lawyers and National Legal Aid and Defenders Association, will hold an institute on "Psychodrama" September 25-27 in Jackson, Wyoming. The program will use techniques which allow a person to explore the psychological dimensions of problems by acting out conflict situations. The psychodramatic method will be adapted to the courtroom situation by the faculty and staff by involving participants in simulated courtroom dramas drawn from professional experiences. Registration must take place by September 1. Contact NCCD, P.O. Drawer 14007, College of Law, University of Houston, Houston, TX 77021 or call (713) 749-2283.

Federal Bar Association Annual Convention

United States Supreme Court Justice, Byron R. White, is one of many distinguished and influential participants in the 1981 Federal Bar Association Annual Convention, to be held September 7-11 at the Denver Fairmont Hotel in Denver, Colorado. Among others, U.S. Labor Secretary Raymond J. Donovan; U.S. Senator Orrin Hatch, Chairman, Committee on Labor Law and Human Resources; Judge Sherman G. Finesilver; U.S. Magistrate Hilbert Schauer, District of Colorado; Howard Jenkins, Jr., Member, National Labor Relations Board; and Judge William S. Sessions will provide timely insights into current government policies and legal developments and prospects. For more information and registration coupons, call or write to the Conference Secretary, Federal Bar Association, 1815 H Street, NW, Washington, D.C. 20006, (202) 638-0252.

