
Colorado Commission on Judicial Qualifications: 1981 Annual Report

Background

The Commission on Judicial Qualifications has been in existence since 1967. It derives its authority from Article VI, § 23(3) of the Constitution of the state of Colorado.

Its purpose is to investigate complaints against judges, hold informal or formal hearings as a fact-finding body, and take informal action or present recommendations to the Colorado Supreme Court for formal action.

Organization and Staffing

While the Commission operates independently, it is officed within the

judicial branch. Its operating budget is provided through the Judicial Department and its rules are promulgated by the Colorado 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.

Present Commission members are:

<i>Member</i>	<i>Residence</i>	<i>Type</i>	<i>Term Ends</i>
Hugh H. Arnold	Greeley	District Judge	1984
Kenneth E. Barnhill, Jr.	Denver	Attorney	1985
Thelma Carter	Sterling	Citizen	1983
Blanche T. Cowperthwaite	Denver	Citizen	1984
James Golden	Grand Junction	Attorney	1985
Harold P. Moss	Grand Junction	County Judge	1984
William D. Neighbors	Boulder	District Judge	1984
Harold D. Reed	Denver	District Judge	1985
John R. Tracey	Pueblo	County Judge	1984

Commission members serve without salary, but receive reimbursement for actual and necessary expenses. Biographical sketches of the members are available at the Commission office: Room 215, State Judicial Bldg., 2 E. 14th Avenue, Denver, Colorado 80203.

The Commission's staff consists of a half-time executive director and a full-time administrative secretary. Assistance is provided as needed by the Judicial Department's legal officer. The Commission also employs investigators and examiners for formal hearings as needed.

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 which interferes with the performance of official duties which is or is likely to become permanent.

The concept of willful misconduct includes, but is not limited to, the following acts:

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

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.

The Commission's jurisdiction extends over the more than 215 justices and judges who serve in the Colorado state court system. The Commission does not

have jurisdiction over the judges who sit in the Denver County Court or any of the municipal judges in the state. The City and County of Denver has established a separate qualifications commission for its county judges.

Process and Procedure

Requests for an investigation of a judge are filed with the Commission on forms available at the Commission's office. Copies of every complaint filed are distributed to each of the Commission's members.

The Commission now holds bimonthly meetings during which it reviews complaints. Many complaints are dismissed following initial discussion and evaluation by the Commission on grounds they are frivolous, unfounded, outside the Commission's jurisdiction or appellate in nature (involving legal issues which can only be reviewed by an appellate court).

If a complaint is dismissed for any of these reasons, the judge is not notified of the complaint. In the event the Commission determines 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 may present additional information to the Commission.

Preliminary investigations may include reviewing court transcripts; studying the judge's response; 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. The Commission's staff or an investigator may be used to conduct some or all of a preliminary investigation.

Following the preliminary investigation, the Commission may decide to dismiss the case, continue the investiga-

tion and hold an informal hearing, or begin formal proceedings against the judge. The complainant is advised of the Commission's decision.

If an informal hearing is conducted, the judge and the Commission discuss the charges contained in the complaint. At this point, the Commission may dismiss the complaint if it finds no proof of misconduct, take informal action against the judge (such as a private admonishment, reprimand or censure either in person or by letter; order a physical or mental examination of the judge; or enter into an agreement with the judge regarding a specific remedial program), or proceed to a formal action.

The Commission can begin a formal action by hiring an attorney to act as its examiner. The examiner prepares a

written complaint against a judge and files it with the Commission. The examiner and the judge are both present at the formal hearing before the Commission. The Commission may then dismiss the case, take any informal action described above, or make its recommendation to the Colorado Supreme Court that the judge be censured, retired or removed from office.

All matters before the Commission are handled in strictest confidence, pursuant to a constitutional requirement. While requests for disqualification of a particular judge to hear a particular matter are not automatically granted, the Commission does have authority to disqualify a judge. Complaints against judges who are members of the Commission are disclosed to the judges but they do not

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participate in any decision made involving their case.

Commission members who practice law or sit on the bench in the same judicial district as a judge against whom a complaint is brought disqualify themselves from participation in that case.

Caseload Description

During 1981, 69 requests for investigation were filed with the Commission. In addition, three investigations were commenced on the Commission's own motion. This is approximately the same caseload as that filed in 1980.

Commission on Judicial Qualifications Caseload Disposition Calendar Years 1980 and 1981

	1980	1981
Cases pending at year beginning	13	12
Complaints received during year	<u>73</u>	<u>72</u>
Total caseload	86	84
 Complaints Dismissed:		
Request withdrawn, additional information not submitted, or matter became moot	2	4
Appellate in nature	33	19
Lack of jurisdiction or unfounded	14	13
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	19	20
Retirement or resignation during or following investigation	<u>1</u>	<u>2</u>
<i>Total complaints dismissed</i>	69	58
 Corrective Actions:		
Admonishment, censure or reprimand, either by private letter or personal appearance	<u>5^a</u>	<u>6</u>
<i>Total corrective actions</i>	<u>5</u>	<u>6</u>
Total cases terminated	74	64
Cases pending at year end	12	20 ^b

Notes:

- a. One judge received a private censure and a private admonition. The other judge was privately censured for conduct arising out of three complaints. This is a correction from the 1980 report.
- b. Of the 20 cases still pending, the Commission is monitoring the behavior of 3 judges, has filed a formal complaint against one judge, and has requested a medical examination of another judge. Most of the remaining 20 are under preliminary investigation or have not yet been initially reviewed by the Commission.

Of the cases filed, 53 were against district judges, 21 against county judges, and one each against appellate and senior judges. (Some complaints included more than one judge.)

Following the historical trend, most of the cases (57) were filed by litigants, 7 were filed by attorneys, and 8 were filed by those not directly involved in litigation.

The largest number of complaints involved judges hearing civil cases and domestic relations. Sixteen were filed as a result of criminal matters. Of the 3 cases brought on the Commission's own motion, one case was based on a voluntary disclosure of a personal health problem affecting performance, one case was based on the non-payment of a judge's personal debt, and one was based on numerous calls and complaints involving a judge's decision on sentencing.

Of the total 64 cases closed during 1981 (including some cases filed previously), 39 were dismissed following initial review by the Commission. Judges were requested to respond to complaints in 23 cases, all but one of which were dismissed upon the Commission's subsequent review. Six investigations were conducted by Commission members or staff, and an investigator was hired to conduct investigations in two cases. The Commission filed one formal complaint

and requested a medical examination of the judge in another. Two judges retired or resigned during or following investigation. *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.*

As a result of the Commission's work during the last fourteen years, 6 judges have been ordered retired for disability, 22 judges have resigned or retired following Commission investigation, and 34 judges have been privately admonished, reprimanded or censured.

The table below shows a cumulative two-year caseload in more detail.

In 6 out of the 64 cases terminated, the Commission contacted the judges involved to call their attention to important issues raised in various complaints, even though the judges' actions did not constitute actual misconduct. Following are examples:

- Delays in rendering decision, particularly child custody cases.
- Apparent appearance of impropriety, in which the judge was requested to disqualify himself in similar situations in the future.
- Abuse of contempt powers, in which the judge was urged to familiarize himself more thoroughly with limita-

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tions imposed upon contempt powers of a judge.

—Miscellaneous procedural matters, including discrepancies in rules, ambiguities in forms used, and failure to adequately advise litigants of appellate rights.

In another case, the Commission brought contempt charges against a complainant/attorney stemming from his breach of confidentiality. No willfulness was found to exist and the contempt charge was dismissed.

In another informal action, the Commission urged a court to reschedule an earlier trial than that which had been set, because there had been an undue delay in the case coming to trial. The Commission

also made suggestions to the Chief Justice, urging that there be consistent, system-wide guidelines for the scheduling of civil trials which have been continued due to the necessity of scheduling criminal or other priority matters.

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. 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.

Description

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.

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.

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*Description**Committee Action*

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

Judge privately admonished by the Commission to avoid such behavior.

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

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

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

Judge privately admonished by Commission.

Legislative Matters

The legislature approved a part-time executive director in 1981. The Commission still supports changes that would improve its operation or the understanding of the public and intends to pursue these during the coming year.

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 fourteen years suggests that it has succeeded in improving and strengthening the judiciary while carrying out its public responsibilities.

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



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