

Colorado Commission on Judicial Qualifications 1982 Annual Report

The following is an excerpt of the 1982 Annual Report of the Commission on Judicial Qualifications. As of July 1, 1983, significant changes have been made on the structure and various other aspects of Commission organization. For the full 1982 Report or more information on the newly instituted changes, contact the Commission office, Colorado Judicial Bldg., 2 E. 14th Ave., Room 215, Denver, CO 80203.

Background and Organization

The Commission on Judicial Qualifications was created in 1966 when Colorado voters approved an amendment to the state constitution that replaced the political process of electing judges with a system based on merit selection, appointment and retention. The Commission's purpose is to investigate and act upon allegations of improper conduct by judges. At the time it 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.

The Commission presently consists of nine members: three district court judges and two county court judges appointed by the Supreme court; two lawyers, each having practiced for at least ten years in Colorado, appointed by majority action of the Governor, the Chief Justice and the Attorney General; and two citizen members, who cannot be judges or attorneys, appointed by the Governor. All members are appointed for four-year terms.

The voters again amended the Constitution in November, 1982, causing substantial changes in the commission's procedures and membership that will become effective on July 1, 1983. At that time, the name of the commission will be changed to the Commission on Judicial Discipline, and its membership will be expanded from nine to ten members. The new commission will be comprised of two county judges, two district judges, two attorneys and four citizens.

Commission members serve without salary, but receive reimbursement for actual and necessary expenses.

The Commission's staff consists of a part-time executive director and a full-time administrative secretary. The Commission also employs investigators and examiners for formal hearings as needed. 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 Supreme Court.

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 consti-

tutional 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 state court system. It does not have jurisdiction, however, 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

Any person may request an investigation of a judge by filing a complaint with the Commission on forms available at the Commission's office. The Commission may also commence investigations on its own motion without filing a complaint. Either way, copies of every complaint filed or action commenced are distributed to each of the Commission's members.

Complaints are reviewed during the Commission's bi-monthly meetings. Many complaints are dismissed following the initial discussion and evaluation by the Commission because 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 to 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 dismiss the case; continue the case for further action, investigation or review; issue a private admonishment, reprimand or censure, either in person or by letter to the judge; order a physical or mental examination of the judge; or enter into an agreement with the judge for a specific remedial program. The Commission may also decide to begin a formal action against the judge. In each case, the complainant is advised of the Commission's decision.

A formal action is commenced when the Commission hires an attorney to act as its examiner. The examiner prepares a written complaint against a judge, files it with the Commission and a formal hearing is scheduled. The examiner and the judge (or his attorney) are present at the formal hearing. The Commission may then dismiss the case, take any of the informal actions described above, or recommend 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 participate in any decision made involving their case. Commission members who 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 1982, 78 complaints against judges were filed with the Commission, and six investigations were commenced on the Commission's own motion. Of these 84 new cases, 61 were against district judges, 21 against county judges, and one each against appellate and senior judges. This is about a 16 percent increase in caseload over the previous year. The new filings were brought against 60 judges.

Following a historical trend, most of the cases (55) were filed by litigants. Ten complaints were filed by attorneys, and 13 were filed by people not directly involved in litigation. Civil, domestic and criminal categories each accounted for approximately one-third of this year's new cases. Three cases were filed against judges as a result of their personal, off-the-bench conduct, rather than their conduct as sitting judges.

Of the 80 cases closed during 1982, including carry-over cases from the previous year, 27 were dismissed following initial review by the Commission (18 because they were appellate in nature and 9 because they were unfounded or not within the Commission's jurisdiction). Judges were asked to respond to complaints in 53 cases, all but 11 of which were dismissed following the Commission's subsequent review. Since far fewer cases underwent preliminary investigations in 1981, these figures suggest that the matters now brought to the Commission's attention are more serious, or that the Commission is now examining judicial conduct more closely. Twelve investigations were conducted by Commission members or its staff (twice as many as last year), and three cases were turned over to outside investigators.

The Commission filed three formal complaints in 1982. It also requested the medical examination of two judges, one of whom was granted a medical disability retirement.

As a result of the Commission's work during the last fifteen years, 7 judges have been ordered to retire for disability, 22 judges have resigned or retired during or following Commission investigation, and the Commission has issued 54 private admonitions or

reprimands. 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.

Detailed tables and descriptions of sample cases are available in the full Report and can be obtained from the Commission's office.

Legislative Matters

The Commission has long supported attempts to clarify its authority and to make its structure and function more understandable to the public. Many of the changes brought about by the passage of Amendment No. 3 in the 1982 general election will achieve these purposes. However, the changes related to confidentiality and the appointment of Commission members were considered to be potentially detrimental to the effectiveness of the Commission in carrying out its public responsibilities. As a result, the Commission did not support the amendment as it appeared in the 1982 ballot. The Colorado Bar Association also opposed the measure. However, now that the amendment has passed, the Commission will work diligently to assure that the new provisions are implemented quickly and effectively in the coming year.

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

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