Colorado Commission on Judicial Discipline: 1984 Annual Report

Background and Organization

Colorado's first disciplinary commission for judges 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. 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 such commissions.

The voters amended the constitution again in 1982, and made substantial changes in the commission's procedures and membership that became effective the following year. The most visible changes involved the commission's name and composition. The name was changed from the Commission on Judicial Qualifications to the Commission on Judicial Discipline. The commission membership was expanded to include more citizen members.

The commission now consists of ten members: two 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 the Governor; and four citizen members, who cannot be judges or attorneys, appointed by the Governor. All appointments made by the Governor must be approved by the Senate.

Commission members are appointed to four-year terms. They serve without salary, but receive reimbursement for actual and necessary expenses. The current commission members are as follows:

Member	*Home Town*	*Category*
Hugh H. Arnold	Greeley	District Judge
Kenneth E. Barnhill, Jr.	Arvada	Attorney
Blanche T. Cowperthwaite	Denver	Citizen
F. Lynn French	Delta	County Judge
James Golden	Grand Junction	Attorney
William H. McNichols, Jr.	Denver	Citizen
Henry E. Nieto	Lakewood	County Judge
Harold D. Reed	Denver	District Judge
Ruth Steel	Denver	Citizen
Joyce Tavrow	Englewood	Citizen

The commission's staff consists of a part-time executive director and a full-time administrative secretary. The commission also employs investigators and examiners as needed for investigations and formal hearings. While the commission operates independently, it is housed within the judicial branch of government. Its procedural rules must be approved by the Supreme Court, and its operating budget is provided through the Judicial Department.

Responsibilities and Powers

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

- Willful misconduct in office, including misconduct which, 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;
- Any conduct that constitutes a violation of the Code of Judicial Conduct; or
- Disability interfering with the performance of judicial duties, which is, or is likely to become, of a permanent character.

Misconduct involving a violation of criminal laws may fall within the commission's jurisdiction, although the Supreme Court can take action directly to suspend or remove a state judge convicted of a felony or offense involving moral turpitude.

The commission has jurisdiction over the conduct of the 222 justices and judges who serve in the state court system. It does not have jurisdiction, however, over the 16 county court judges in Denver nor the more than 200 full- and part-time municipal judges located in cities and towns throughout the state. Local municipalities have approached judicial discipline in different ways. While complaints against judges in most cities must go to the city council or mayor, the City and County of Denver has a separate Commission on Judicial Qualifications to handle complaints against its county judges, and the City of Lakewood recently established a Judicial Review Committee to consider grievances against municipal 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 or by letter addressed to the

commission. The commission may also commence investigations on its own motion without filing a complaint. Copies of every written complaint are distributed to each of the commission members.

Complaints are reviewed during the commission's regular bimonthly meetings. The commission may also hold special meetings, hearings, and telephone conference calls as needed throughout the year. Some complaints are dismissed following initial discussion and evaluation by the commission because they do not fall within the responsibilities and powers granted to the commission under the constitution. The commission dismisses many complaints, for example, which involve legal issues that can only be reviewed by an appellate court.

If a complaint is dismissed following the initial review, the judge is not notified of the complaint. If 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 outside 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 admonition, 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 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 after the judge responds to the formal complaint. The examiner and the judge, together with the judge's attorney if the judge has one, are present at the formal hearing before the entire commission. After hearing the evidence, the commission may dismiss the case, take any of the informal actions described above, or recommend to the Colorado Supreme Court that the judge be removed, retired, suspended, censured, reprimanded or otherwise disciplined.

All matters before the commission are handled in strictest confidence, pursuant to constitutional and statutory requirements. While requests for the disqualification of a judge in a matter pending before that judge are not automatically granted, the commission does have authority to disqualify a judge under certain circumstances. Complaints against judges who are members of the commission are

disclosed to them, and they must respond to all complaints whether frivolous or not. Commission members do not participate in any decision-making involving a case against them. Judicial members who sit on the bench in the same judicial district as a judge against whom a complaint is brought will disqualify themselves from participation in that case.

Caseload Description

Seventy-eight complaints involving 60 different judges were filed with the commission in 1984. Sixty-one of the new cases were against district judges and 17 against county judges. In addition, the commission usually receives about twice as many inquiries as it does complaints, and this year was no exception. During the year the staff responded to approximately 160 requests for information about commission procedures and jurisdiction. (For statistical purposes, multiple complaints against a judge that arise from the same situation are counted as a single filing; however, this year, no such complaints were filed.)

Most of the new cases (56) were filed by litigants. Seven complaints were filed by attorneys, and 15 were filed by people not directly involved in litigation. Civil and criminal matters accounted for 62 new cases filed. The remaining 16 arose from domestic relations cases or as the result of the personal, off-the-bench conduct of judges rather than their conduct as sitting judges.

During 1984, the commission resolved 81 cases, including carry-over from the previous year, and held ten meetings and one telephone conference. Fifty-four cases were dismissed following an initial review by the commission. Judges were asked to respond to 27 complaints, 18 of which were subsequently dismissed because the allegations could not be substantiated during a preliminary investigation. The commission issued corrective actions in eight of the remaining cases and recommended that the Supreme Court reprimand a judge publicly in one case. The Court rejected the recommendation and directed the commission to dismiss the complaint.

The disposition of the complaints and the commission's cumulative workload for the last two years are shown in the following table.

Caseload Disposition for Calendar Years 1983 and 1984

	1983	*1984*
Cases pending at year beginning	24	20
Complaints received during year	76	78
Total caseload	100	98
Complaints Dismissed:		
Request withdrawn, additional information not submitted, matter became moot, or was received administratively	7	4
Appellate in nature	14	35
Lack of jurisdiction or unfounded	7	4
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	36	28
Retirement or resignation during or following investigation, while case still pending	1	1
Dismissed following Supreme Court review		1
Total complaints dismissed	65	73
Corrective Actions:		
Admonition, censure or reprimand, either by private letter or personal appearance	11	8
Medical disabilities	4	0
Total corrective actions	15	8
Total cases terminated	80	81
Cases pending at year end	20	17

As a result of the commission's activity during the last seventeen years, nine judges have been ordered retired for disability, and the commission has issued 73 private admonitions or reprimands. Although not necessarily reflected in the statistics, 25 judges have resigned or retired during or following commission investigations. The commission emphasizes, however, that many judges resign or retire from the Colorado judicial system each year for reasons completely unrelated to the disciplinary activities of the commission.

Sample Cases

The commission is often asked to describe the types of misconduct it considers serious enough to merit discipline. Excluding the recommendations it made to the Supreme Court, the following are examples of judicial misconduct that required action by the commission during 1984. As used here, admonitions consist of a private, informal action of the commission, providing a warning against future misconduct or oversight by the judge for behavior that suggests the appearance of impropriety even though it meets minimum standards of judicial conduct. Reprimands are private, formal actions of the commission involving judicial conduct that is unacceptable but not a serious enough problem to merit a formal recommendation to the Supreme Court.

Over the last few years, the commission has issued admonitions to judges who:

—Appeared in court unreasonably late;
—Failed to disclose information pertinent to a lawsuit in which the judge was personally involved as a litigant;
—Made rude and insensitive remarks while on the bench;
—Made inappropriate remarks concerning litigation pending in another judge's court;
—Conducted a trial in an unorthodox manner;
—Seemed unconcerned about legitimate reasons provided by the attorneys in the case for rescheduling a trial date;
—Made a decision in a case prior to deadline for filing of briefs;
—Delayed a decision for over one year;
—Commented to attorneys indicating the manner in which he might rule if a controversy were presented to him as a county judge.

The commission issued reprimands to judges who:

—Communicated with one party in a lawsuit without proper notice to the other party;

—Exhibited disparity in the manner in which two litigants in the same lawsuit were treated;

—Delayed a final decision in a trial for more than a year;

—Used inappropriate language in court and ruled on a continuance without hearing evidence;

—Assisted *pro se* in preparing a joint motion and stipulation for amendment of final decree and thereafter sought enforcement of the order resulting from the motion;

—In judge's capacity as an attorney in a child custody case, failed to inform an acquaintance that he was acting as an attorney and not as a judge. The acquaintance would have relinquished the child to the judge (had the child been present) based on his assumption that the judge was acting in his capacity as a judge;

—Participated in bank matters involving the parties to a lawsuit that was pending before the judge, and created an appearance of impropriety by the imprudent use of his judicial position during private business negotiations.

The commission also made suggestions to judges concerning the overall management of dockets, referred complainants to other agencies or departments for the resolution of their problems, and aided in the administrative resolution of several matters.

Conclusion

The commission's caseload remained relatively constant during 1984. The actual workload was much greater than the preceding year, however, since several difficult and complex cases were handled during the year, including one case that received considerable national and local publicity.

During the year, the commission continued its work on the new rules of procedure required because of the reorganization that went into effect in 1983. The rules have been extensively revised, and they will be submitted to the Supreme Court in early 1985 for final approval. The new version of the rules will contain a clarification of the rule pertaining to confidentiality.

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 seventeen years suggests that it has succeeded in improving and strengthening the judiciary while carrying out its public responsibilities. The commission continues to perform a vital role in maintaining a fair and impartial judiciary. Since the judicial selection and tenure system is based on merit rather than political election, the commission views itself as serving an important role in maintaining the balance between judicial independence and public accountability.