

# Colorado Commission on Judicial Discipline 1985 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:

<i>Member</i>	<i>Home Town</i>	<i>Category</i>
Kenneth Barnhill	Arvada	Attorney
William M. Ela	Grand Junction	District Judge
Lena Elliott	Grand Junction	Citizen
Patricia A. Hall	Durango	County Judge
Wallace Lundquist	Canon City	County Judge
William H. McNichols, Jr.	Denver	Citizen
Mary J. Mullarkey	Denver	Attorney
Harold Reed	Denver	District Judge
Ruth A. Steel	Denver	Citizen
Joyce Tavrow	Englewood	Citizen

The commission's part-time staff consists of an executive director and an 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 govern-

ment. 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 narcotics 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 over referees, 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 approach 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 has a Judicial Review Committee that considers 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 writing a letter addressed to the commission. The commission may also commence investigations on its own motion without a written 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 conferences 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 informed about the complaint and told 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 special counsel in proceedings against a judge. The attorney prepares a written statement of charges against a judge, files it with the commission, and, after the judge has an opportunity to respond to the charges, a formal hearing is scheduled. Special counsel 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 strict 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 decisions 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

In 1985, the Commission received 88 complaints involving 60 different judges. Fifty-eight of the complaints were against district judges and 30 against county judges. In addition, the commission usually receives about twice as many inquiries as

it does complaints, and this year was no exception. (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.)

During 1985, there were 68 complaints filed by litigants, 7 complaints filed by attorneys and 13 filed by people not directly involved in litigation. Civil and domestic matters accounted for 73 new cases filed. The remaining 15 arose from criminal cases or as a result of the personal, off-the-bench conduct of judges rather than their conduct as sitting judges.

During the six meetings it held in 1985, the commission resolved 74 cases, including some carry-over cases from the previous year. Fifty-nine cases were dismissed following an initial review by the commission, and 15 cases resulted in corrective actions consisting primarily of admonitions and recommendations for disability retirements. Overall, judges were asked to respond to 32 complaints, 11 of which were subsequently dismissed because the allegations could not be substantiated during a preliminary investigation. As a result of the highest number of filings in the commission's history and several long investigations, the commission's backlog increased by 14 cases over the preceding year.

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 1984 and 1985

Disposition:	1984	1985
Cases pending at year beginning	20	17
Complaints received during year	78	88
Total caseload	98	105
Complaints Dismissed:		
Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	4	13
Appellate in nature	35	8
Lack of jurisdiction or unfounded	4	11
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	28	27
Retirement or resignation during or following investigation, while case still pending	1	0
Dismissed following Supreme Court review	1	0
Total complaints dismissed	73	59
Corrective Actions:		
Admonition, censure or reprimand, either by private letter or personal appearance	8	11
Retirement for medical disabilities	0	4*
Total corrective actions	8	15
Total cases terminated	81	74
Cases pending at year end	17	31

\*The four complaints involved two judges.

As a result of the commission's activity during the last 18 years, 11 judges have been ordered retired for disability, and the commission has issued 84 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 for disability retirements, the following are examples of judicial misconduct that required action by the commission during 1985. 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.

In 1985, the commission issued admonitions to judges who:

- Violated Canon 3C of the Code of Judicial Conduct by not disqualifying himself on a case in which a close relative was an attorney for one of the parties;
- Violated Canon 3A(6) of the Code of Judicial Conduct by not abstaining from public comment about a pending proceeding in another court;

- Made inappropriate remarks which brought the judicial system into disrepute;
- Violated Canons 4C and 5B of the Code of Judicial Conduct regarding the antisolicitation of funds on the part of judges;
- Brought the judicial system into disrepute by appearing to be asleep during a hearing;
- Caused a hearing to be scheduled because of a change in judicial assignments and the parties to appear, and then failed to be present to hear the case;
- Failed to distinguish, among other things, between the role of a judge and that of a concerned citizen by initiating and participating in a community meeting held in the courthouse to consider possible criminal behavior of another member of the community.

The commission issued a reprimand to a judge who used inappropriate language in court and whose demeanor during the hearing gave the impression to the parties that they would not be able to have a fair and impartial hearing if they could not otherwise resolve their differences.

Over the last few years, the commission has 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;
- 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.

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The commission has also made suggestions to judges concerning the overall management of dockets, referred complaints 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 1985. The actual workload was much greater than the preceding year, however, since several difficult and complex cases were handled during the year.

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 eighteen 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 independence and accountability in the judiciary.

### Classified Ad Rates to Change

Beginning with the August issue (July 15 noon deadline), rates for classified advertisements will be changed. This means that all ads submitted after noon on June 16 will be charged the new rates as follows:

<b>Opportunities for Attorneys:</b>	members—75¢ per word, \$25 minimum
	non-members—75¢ per word, \$35 minimum
	Box charge—\$10 per month
<b>Positions Sought:</b>	members—up to 45 words free; 75¢ per word thereafter
	non-members—75¢ per word over 45 words, \$15 minimum
	(No box charge; however, wording will be counted)
<b>All other ads:</b>	75¢ per word, \$20 minimum

*Please make a note of these changes!*

## STAFF ATTORNEY

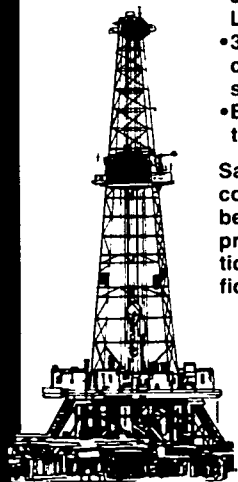
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