Colorado Commission on Judicial Discipline 1986 Annual Report

Introduction

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 50 states and the District of Columbia have such commissions.

The voters of Colorado amended the constitution again in 1982, and made substantial changes in the commission's procedures and membership. The most visible changes involved the commission's name and membership 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.

Today, the commission 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 Colorado State 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 listed below.

Member	*Home Town*	*Category*
Kenneth E. Barnhill, Jr.	Arvada	Attorney
William M. Ela	Grand Junction	District Judge
Lena Elliott	Grand Junction	Citizen
Patricia A. Hall	Durango	County Judge
William A. Martinez	San Luis	County Judge
William H. McNichols, Jr.	Denver	Citizen
Mary J. Mullarkey	Denver	Attorney
Harold D. Reed	Denver	District Judge
Ruth A. Steel	Denver	Citizen
Joyce Tavrow	Boulder	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 are approved by the Supreme Court, and its operating budget is approved by the Colorado State Legislature.

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 Colorado 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 the state court system. It does not have jurisdiction over referees, the 17 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 Denver County Court Judicial Qualifications Commission to handle complaints against its county judges, and the City of Lakewood has the Judicial Review Commission that considers grievances against its municipal judges.

Process and Procedures

Any person may request an investigation of a judge by filing a complaint with the commission on forms available from the commission 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 for his or her personal review and consideration.

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 the complaints do not fall within the responsibilities and powers granted to the commission under the Colorado Constitution. For example, the commission dismisses any complaint which involves legal issues that only can 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

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 conducting legal research into the substantive area of the 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 publicly 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 a judge are not automatically granted, the commission does have the 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 cases against them.

Commission members who are judges and who sit on the bench in the same judicial district as a judge against whom a complaint is brought will disqualifty themselves from participation in that case.

1986 Caseload Description

For 1986, the commission received a record number of new complaints. When considering total complaint/case dispositions, the commission business was up 21 percent over 1985.

In 1986, the commission received 99 new complaints. In addition, it dealt with 31 cases carried over from 1985.

At the close of 1986, the commission had processed to completion a total of 127 cases and carried over 3 cases into calendar year 1987.

1986 Case Attributes

Judges:

Of the total 127 cases processed to completion in 1986, complaints filed involved 72 different judges at all levels of the state judicial system.

As indicated in Table 1, approximately three-fourths of all complaints filed were against district judges. Other complaints were primarily against county judges, either full-time or part-time. No complaints were filed against Colorado Court of Appeals judges or justices of the Colorado Supreme Court.

Table 1
Type of Judge Named in Complaints (1986)

Type of Judge	*Number*	*Percentage*
District Judge	93	73%
County Judge (full-time)	10	8%
County Judge (part-time)	20	16%
Senior Judge	4	3%
TOTAL	127	100%

Case Type:

In 1986, types of cases giving rise to the complaints were weighted toward criminal matters, with civil and domestic cases following in second and third places respectively.

As indicated in Table 2, over one-third of all complaints filed involved criminal proceedings. Civil and domestic matters accounted for an additional 37 percent. Only three percent of complaints arose from a judge's off-the-bench conduct.

Table 2
Type of Case Giving Rise to Complaint (1986)

Type of Case	*Number*	*Percentage*
Criminal	48	38%
Civil	26	20%
Domestic	21	17%
Small Claims	9	7%
Off-Bench Conduct	4	3%
Not Ascertainable	19	15%
TOTAL	127	100%

Type of Complainant:

During 1986, there were several categories of complainants. Table 3 details the categories of these complainants.

The vast majority, nearly 7 out of 10, were individuals directly involved as litigants in cases in which the judge presided. Approximately 20 percent of complaints were from individuals who were not directly involved in cases, but perhaps were a relative (*e.g.*, mother, father) of a litigant. Seven percent of the complaints were brought by attorneys.

Finally, the commission, itself, initiated five complaints.

Table 3
Type of Complainant (1986)

Complainant	*Number*	*Percentage*
Litigant in Case	87	69%
Attorney in Case	9	7%
People Not Directly Involved	26	20%
Commission Motion	5	4%
TOTAL	127	100%

District:

Complaints filed by judicial district are not reported. However, as might be expected, the larger the district (in terms of numbers of judges and caseload), the greater the number of complaints filed.

For example, the five judicial districts encompassing the Denver metropolitan area (1st Judicial District, 2nd Judicial District, 17th Judicial District, 18th Judicial District, and 20th Judicial District) accounted for approximately 40 percent of all complaints filed. The remainder of the complaints were distributed among the remaining 17 judicial districts of Colorado.

Commission Action:

During commission meetings held to discuss the 99 new cases filed during 1986 and the 31 carry-over cases from 1985, the Commission resolved 127 complaints.

As Table 4 indicates, the commission requested judges to respond to 36 complaints. Furthermore, as indicated by Table 5, the commission requested its staff to investigate 14 complaints and it retained special counsel to handle 3 complaints.

Table 4
Commission Request for Judge Response

Request	*Number*	*Percentage*
Yes	36	28%
No	91	72%
TOTAL	127	100%

Table 5
Investigation by Commission or Special Counsel

Investigation	*Number*	*Percentage*
Staff	14	11%
Special Counsel	3	2%
No Investigation	110	87%
TOTAL	127	100%

Complaint Disposition

The disposition of complaints and the commission's cumulative workload for the last three years are shown in Table 6.

Of the 127 cases disposed of by the Commission during 1986, 116 cases were dismissed following review by the commission. Of these dismissals, approximately half (58 cases) were dismissed based on a finding of "no misconduct" after commission review. In addition, a significant number (32 cases) were found to be appellate in nature and, therefore, outside the legal jurisdiction of the commission.

A total of 11 cases resulted in corrective action consisting primarily of private letters of admonition or reprimand against judges. In nine cases, the commission determined that there was judicial misconduct and issued private letters of admonition, reprimand, or censure.

For the first time in the commission's history, the Colorado Supreme Court adopted a commission recommendation and issued a public reprimand to a judge for delay in issuing a decision.

Finally, in one case, a judge was retired for medical disabilities by order of the Colorado Supreme Court.

Table 6
Caseload Disposition for Calendar Years 1984, 1985 and 1986

Disposition:	*1984*	*1985*	*1986*
Cases pending at year beginning	20	17	31
Complaints received during year	78	88	99
Total Caseload:	98	105	130
Complaints Dismissed:			
Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	4	13	16
Appellate in nature	35	8	32
Lack of jurisdiction or unfounded	4	11	7

No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	28	27	58
Retirement or resignation during or following investigation, while case still pending	1	0	3*
Dismissed following Supreme Court review	1	0	0
Total complaints dismissed	73	59	116
Corrective Actions:			
Admonition, reprimand or censure, either by private letter or personal appearance	8	11	9
Retirement for medical disabilities	0	4**	1
Public reprimand by Supreme Court	0	0	1
Total corrective actions	8	15	11
Total cases terminated	81	74	127
Cases pending at year end	17	31	3

* The three complaints involved one judge.
** The four complaints involved two judges.

Cumulative Overview

As a result of the commission's activity during the last 20 years, 12 judges have been ordered retired for disability, and the commission has issued 93 private admonitions, reprimands or censures. The Colorado Supreme Court has issued one public reprimand.

Although not necessarily reflected in the statistics, 26 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, some examples of judicial misconduct that required action by the commission are shown below.

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, informal actions of the commission involving judicial conduct that is unacceptable but not serious enough to merit a formal recommendation the Supreme Court.

In 1986, the commission issued admonitions to judges who:

— Delayed the issuance of a final decision in an ongoing case;
— Used inappropriate language in a court proceeding and applied pressures on the litigants to settle a case;
— Made inappropriate remarks which brought the judicial system into disrepute;
— Gave the appearance of verifying false information on employment documents.

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

— Made inappropriate on-the-bench remarks regarding a public official;
— Communicated with one party in a lawsuit without proper notice to the other party;
— Became involved in a friend's court case;
— Exhibited disparity in the manner in which two litigants in the same lawsuit were treated;
— Used abusive language toward litigants in a court proceeding;
— Delayed a final decision in a trial for more than a year.

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 problems outside the jurisdiction of the commission, and aided in the administrative resolution of several matters.

Conclusion

The commission's caseload increased by 21 percent during 1986. The actual workload was much greater than the preceding year, due to several difficult and complex cases 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 twenty 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 comission views itself as serving an important role in maintaining the balance between independence and accountability in the judiciary.

For further information about the commission and its work, please call the Commission on Judicial Discipline in Denver at (303) 861-1111.

Constitution Through Popular Films Course at Denver Center Cinema to Start August 26: CLE Credit Approved

The CBA Bicentennial Committee and the ABA Committee on the Bicentennial has approved the offering of a course, entitled "The Constitution Through Popular Films," to be taught by David H. Miller, Esq. The classes begin at 6:15 P.M. Wednesday evenings at the Denver Center Cinema with a forty-minute lecture on constitutional principles and issues raised by the films. After screening the films, there will be another discussion period, lasting until 9:15 P.M. The class will include such films as *Warlock, The Man Who Shot Liberty Valence, The Autobiography of Ms. Jane Pittman, Abe Lincoln in Illinois, Advise and Consent, Twelve Angry Men, Seven Days in May, All the President's Men, Dirty Harry* and *Inherit the Wind*, among others. The course has been approved for 13 general CLE credits. Cost is $60. For registration, make check out to Bicentennial Committee and mail to CBA Bicentennial Committee, 1942 Broadway, #318, Boulder, CO 80302 by August 20, 1987.