



# Colorado Commission on Judicial Discipline 1987 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. Today, 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.

<i>Member</i>	<i>Home Town</i>	<i>Category</i>
William H. McNichols, Jr.	Denver	Citizen
Patricia A. Hall	Durango	County Judge
Robert R. Duncan	Denver	Attorney
Peter I. Alpert	Ft. Morgan	District Judge
Barbara L. Crowfoot	Ft. Collins	Citizen
Lena Elliott	Grand Junction	Citizen
Joyce S. Freeman	Denver	Citizen
C. Dennis Maes	Pueblo	Attorney
William A. Martinez	San Luis	County Judge
Joyce S. Steinhardt	Englewood	District Judge

The commission's staff consists of a part-time executive director and a full-time administrative secretary. The com-

mission 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.

## Commission 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 284 justices, judges and senior 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 400 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 Commission that considers grievances against its municipal judges.

## Commission 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 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 publically 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 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 disqualify themselves from participation in that case.

## 1987 Caseload Description

For 1987, the commission received a record number of new complaints. When considering total complaint/case dispositions, the commission business was up 26 percent over 1986.

However, when considering total corrective actions taken against judges as a percentage of complaint/case dispositions, there was no increase in corrective actions taken in 1987 compared with 1986.

In 1987, the commission received 167 new complaints. In addition, it dealt with 3 cases carried over from 1986.

At the close of 1987, the commission had processed to completion a total of 160 cases and carried over 10 cases into calendar year 1988. Corrective action taken against judges in 1987 totaled 12, or 7.5 percent, of the total 160 complaint/case dispositions.

## 1987 Case Attributes

### Judges

Of the total 160 cases disposed of in 1987, complaints filed involved 97 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. Three complaints were filed against Colorado Court of Appeals judges. No complaints were filed against justices of the Colorado Supreme Court.

**Table 1**  
*Type of Judge Named in Complaints (1987)*

<i>Type of Judge</i>	<i>Number</i>	<i>Percentage</i>
District Judge	115	72%
County Judge (full-time)	23	14
County Judge (part-time)	12	8
Senior Judge	5	3
Appellate Judge	3	2
Juvenile Judge	2	1
<b>TOTAL</b>	<b>160</b>	<b>100%</b>

### Case Type

In 1987, types of cases giving rise to the complaints were weighted toward criminal matters, with domestic and civil cases following in second and third places respectively.

As indicated in Table 2, 36 percent of all complaints filed involved criminal proceedings. Domestic cases accounted for 23 percent and civil matters accounted for 19 percent. Only 2 percent of complaints arose as a result of a judge's off-the-bench conduct.

**Table 2***Type of Case Giving Rise to Complaint (1987)*

<i>Type of Case</i>	<i>Number</i>	<i>Percentage</i>
Criminal	57	36%
Domestic	36	23
Civil	30	19
Juvenile	16	10
Small Claims	10	6
Off-bench Conduct	4	2
Not Ascertainable	3	2
Disability retirement	4	2
<b>TOTAL</b>	<b>160</b>	<b>100%</b>

*Type of Complainant*

During 1987, there were several categories of complainants. Table 3 details the categories of these complainants.

The vast majority, nearly 8 out of 10, were individuals directly involved as litigants in cases in which the respondent judge presided. Approximately 11 percent of complainants were from individuals who were not directly involved in cases, but perhaps were a relative (*e.g.*, mother, father) of a litigant. Four percent of the complaints were brought by attorneys.

Finally, the commission, on its own motion, initiated 7 percent of the cases (or 11 complaints).

**Table 3***Type of Complainant (1987)*

<i>Complainant</i>	<i>Number</i>	<i>Percentage</i>
Litigant in Case	124	78%
Attorney in Case	7	4
People Not Directly Involved	18	11
Commission Motion	11	7
<b>TOTAL</b>	<b>160</b>	<b>100%</b>

*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 5 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 54 percent of all complaints filed. The remainder of the complaints were distributed among the remaining 17 judicial districts of the State of Colorado.

*Commission Action*

During commission meetings held to discuss the 167 new cases filed during 1987 and the 3 carry-over cases from 1986, the commission resolved 160 complaints.

As Table 4 indicates, the commission requested responses from judges in 40 of the cases. Furthermore, as indicated by Table 5, the commission requested its staff to investigate 15 complaints, and it retained special counsel to handle 3 complaints.

**Table 4***Commission Request for Judge Response (1987)*

<i>Request</i>	<i>Number</i>	<i>Percentage</i>
Yes	40	25%
No	120	75%
<b>TOTAL</b>	<b>160</b>	<b>100%</b>

**Table 5***Investigation by Commission or Special Counsel (1987)*

<i>Investigation</i>	<i>Number</i>	<i>Percentage</i>
Staff	15	9%
Special Counsel	3	2%
No Investigation	142	89%
<b>TOTAL</b>	<b>160</b>	<b>100%</b>

**Complaint Disposition**

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

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Of the 160 cases processed to completion by the commission during 1987, 148 cases were dismissed following review by the commission. Of these dismissals, approximately 70 percent (102 of 148 cases) were dismissed based on a finding of "no misconduct" after commission review. In addition, a significant number (33 cases) were found to be appellate in nature and, therefore, outside the legal jurisdiction of the commission.

A total of 12 cases resulted in corrective actions taken against judges. In eight cases, the commission determined that there was judicial misconduct and issued private letters of admonition, reprimand, or censure.

In addition, in 4 cases, judges were retired for medical disabilities by order of the Colorado Supreme Court.

**Table 6**  
*Caseload Disposition for*  
*Calendar Years 1985, 1986 and 1987*

<i>Disposition:</i>	<i>1985</i>	<i>1986</i>	<i>1987</i>
Cases pending at year beginning	17	31	3
Complaints received during year	<u>88</u>	<u>99</u>	<u>167</u>
<i>Total Caseload</i>	105	130	170
<i>Complaints Dismissed:</i>			
Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	13	16	4
Appellate in nature	8	32	33
Lack of jurisdiction or unfounded	11	7	8
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	27	58	102
Retirement or resignation during or following investigation, while case still pending	0	3**	1
Dismissed following Supreme Court review	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total complaints dismissed</i>	59	116	148
<i>Corrective Actions:</i>			
Admonition, censure or reprimand, either by private letter or personal appearance	11	9	8
Retirement for medical disabilities	4*	1	4***
Public reprimand by Supreme Court	0	1	0
<i>Total corrective actions</i>	15	11	12
<i>Total cases terminated</i>	<u>74</u>	<u>127</u>	<u>160</u>
<i>Cases pending at year end</i>	31	3	10

\* The four complaints involved two judges.

\*\* The three complaints involved one judge.

\*\*\* The four complaints involved four judges.

## Cumulative Overview

As a result of the commission's activity during the last 21 years, 16 judges have been ordered retired for disability, and the commission has issued 101 private letters of admonition, reprimand, or censure against judges. The Colorado Supreme Court has issued one public reprimand against a judge.

Although not necessarily reflected in the statistics, 27 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 private, informal actions by 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 or censures are private, informal actions of the commission involving judicial conduct that is unacceptable but not serious enough to merit a formal recommendation to the Supreme Court for the public discipline or removal of a judge.

In 1987, the commission issued admonitions to judges who:

- Delayed the issuance of a final decision in an ongoing case;
- Used inappropriate language during court proceedings;
- Made inappropriate remarks which brought the judicial system into disrepute;
- Did not disqualify from a case involving a close friend.

Over the last few years, the commission has issued reprimands or censures 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 26 percent during 1987. However, when considering total corrective actions taken against judges during 1987 as a percentage of total complaint/case dispositions, there was no increase in corrective actions taken in 1987 compared with 1986.

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

The commission performs a vital role in maintaining a fair and impartial judiciary. Since the judicial selection and ten-

ure 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.

For further information about the commission, its role and responsibilities, please call the Commission on Judicial Discipline in Denver, Colorado, at (303) 861-1111 or 837-3601.

### Colorado Women's Bar Convention Was Held May 13-15 in Keystone



Diana Boulter



Martha Ezzard



Susan Martin with chicken feathers

The Eleventh Annual Convention of the Colorado Women's Bar Association, held May 13-15 at Keystone Resort, featured diverse programs and two special keynote speakers. The Saturday luncheon speaker was Diana Boulter, president and chief executive officer of the Denver Partnership, who discussed six criteria for creating and maintaining successful cities. At the Saturday evening banquet, Martha Ezzard, a former state senator now running for Congress, discussed women's roles in the political and economic system. After dinner, several members of The Untimely Motions presented a brief revue, including song-and-dance numbers by the talented Susan Martin.

### LEGAL MALPRACTICE FORUM COLUMN OFFERS \$1,000 PRIZE FOR BEST ARTICLE

The Colorado Bar Association is pleased to announce an essay contest associated with the *Legal Malpractice Forum* column. The sponsored legal malpractice insurer for the Colorado Bar Association (Home Insurance), its chief underwriter (Professional Underwriting Managers, Inc.), and its local insurance brokerage arm (The James Company) are jointly sponsoring a \$1,000 first place prize, \$500 second place prize, and \$250 third place prize related to articles submitted to this column on or before July 1, 1988.

The determination of the prize-winning entries will be made by an independent panel to be selected by *The Colorado Lawyer*. The criterion for the article is that it must concern some aspect of legal malpractice prevention, understanding or issue.

The technical requirements are as follows: manuscripts should be fifteen pages, 8½" x 11" size, double-spaced, including footnotes at the end. Citation style should follow "Blue Book" form. Authors are responsible for the accuracy of all citations. Use of appropriate subheadings is encouraged. All manuscripts should be submitted in duplicate and should be accompanied by the firm name and location or professional association of the author. All article submissions which are of publishable quality will be featured in the column whether or not the author wins one of the prizes.

Please send manuscripts to A. Craig Fleishman, Column Editor, Pryor, Carney and Johnson, P.C., Carrara Pl., 6200 So. Syracuse Way, Suite 400, Englewood, CO 80111-4796.