

Feature



Colorado Commission on Judicial Discipline: 1989 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 fifty 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: four citizen members, who cannot be judges or attorneys, appointed by the Governor; two lawyers, each having practiced for at least ten years in Colorado, appointed by the Governor; and two district court judges and two county court judges appointed by the Supreme Court. 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. During 1989, the Commission membership included:

<i>Member</i>	<i>Home Town</i>	<i>Category</i>
Barbara L. Crowfoot	Ft. Collins	Citizen
Robert R. Duncan	Denver	Attorney
Lena A. Elliott	Grand Junction	Citizen
Joyce S. Freeman	Denver	Citizen
Sharon A. L. Hansen	Cortez	County Judge
Robert L. Hernandez	Pueblo	Attorney
O. Edward Schlatter	Salida	District Judge
Joyce S. Steinhardt	Englewood	District Judge
John J. Vigil	Westminster	County Judge

The Commission's staff consists of a part-time executive director and general counsel and a full-time administrative secretary. 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 General Assembly.

Commission Responsibilities and Powers

The Commission has constitutional jurisdiction to investigate and act on 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 271 justices, judges and senior judges who serve the state court system. It does not have jurisdiction over referees, the seventeen county court judges in Denver, nor the more than 300 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.

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 can be reviewed only 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 is used to conduct preliminary investigations.

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 also may 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 had 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 disqualify themselves from participation in that case.

1989 Caseload Description

For 1989, the Commission received a total of 139 new complaints, in addition to 11 cases carried over from 1988. When considering total complaint/case dispositions, the Commission caseload during 1989 was comparable to that of 1988.

At the close of 1989, the Commission had processed to completion a total of 143 cases and carried over 7 cases into calendar year 1990. Corrective action taken against judges in 1989 totaled 7, or 5 percent, of the total 143 complaint/case dispositions.

1989 Case Attributes

Judges

Of the total 143 cases disposed of in 1989, complaints filed involved 81 of the 271 judges at all levels of the state judicial system. The 271 judges consist of 110 district judges, 95 county judges, 43 senior judges and 23 appellate judges.

As indicated in Table 1, 70 percent of all complaints filed were against district judges. Other complaints were primarily against county judges, either full-time or part-time, and appellate judges in the Colorado Court of Appeals.

Table 1
Type of Judge Named in Complaint (1989)

<i>Type of Judge</i>	<i>Number</i>	<i>Percentage</i>
District Judge	100	70%
County Judge (full-time)	13	9
County Judge (part-time)	14	10
Senior Judge	4	3
Appellate Judge	9	6
Juvenile Judge	2	1
Probate Judge	1	1
TOTAL	143	100%

Case Type

In 1989, types of cases giving rise to complaints were weighted toward criminal and domestic matters.

As indicated in Table 2, 32 percent of all complaints filed involved criminal proceedings and 32 percent of all complaints filed involved domestic cases. Civil cases accounted for 26 percent. Five percent of complaints arose as a result of a judge's off-the-bench conduct.

Table 2
Type of Case Giving Rise to Complaint (1989)

<i>Type of Case</i>	<i>Number</i>	<i>Percentage</i>
Civil	38	26%
Criminal	45	32

Domestic	46	32
Juvenile	4	2
Off-bench Conduct	7	5
Small Claims	1	1
Probate	1	1
Not Ascertainable	1	1
TOTAL	143	100%

Type of Complainant

During 1989, there were several categories of complainants. Table 3 details the categories of these complainants.

The vast majority, 8 out of 10, were individuals directly involved as litigants in cases in which the respondent judge presided. Approximately 6 percent of complaints were from individuals who were not directly involved in cases, but perhaps were a relative (*e.g.*, mother or father) of a litigant. Six percent of the complaints were brought by attorneys.

Finally, the Commission, on its own motion, initiated 8 percent of the cases (or 11 complaints).

Table 3
Type of Complainant (1989)

Complainant	Number	Percentage
Litigant in Case	116	80%
Attorney in Case	8	6
People Not Directly Involved	8	6
Commission Motion	11	8
TOTAL	143	100%

District

Complaints filed by judicial district are reported in Table 4. After each judicial district, the number of judges serving in that district is listed in parenthesis. 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 48 percent of all complaints filed. The remainder of the complaints were distributed among the remaining seventeen judicial districts of the state of Colorado, Colorado Court of Appeals and the Colorado Supreme Court.

Table 4
Complaints Filed by Judicial District (1989)

Judicial District (Number of Judges)	Number	Percentage
1 (14)	13	9%
2 (24)	28	19
3 (4)	0	0
4 (17)	17	12
5 (8)	3	2
6 (5)	2	2
7 (10)	6	4
8 (8)	9	6
9 (8)	4	3
10 (9)	4	3

11 (7)	2	2
12 (8)	0	0
13 (11)	5	3
14 (6)	2	2
15 (6)	0	0
16 (5)	2	2
17 (12)	9	6
18 (19)	16	11
19 (7)	6	4
20 (9)	5	3
21 (5)	0	0
22 (3)	1	1
Court of Appeals (16)	8	5
Supreme Court (7)	1	1
TOTAL	143	100%

Commission Action

During Commission meetings held to discuss the 139 new cases filed during 1989 and the 11 carryover cases from 1988, the commission resolved 143 complaints.

As Table 5 indicates, the Commission requested responses from judges in 34 of the cases. Furthermore, as indicated by Table 6, the Commission requested its staff to investigate 20 complaints and it retained special counsel to handle 2 complaints.

Table 5
Commission Request for Judge Response (1989)

Request	Number	Percentage
Yes	34	24%
No	109	76
TOTAL	143	100%

Table 6
Investigation by Commission or Special Counsel (1989)

Investigation	Number	Percentage
Staff	20	14%
Special Counsel	2	2
No Investigation	121	84%
TOTAL	143	100%

Complaint Disposition

The disposition of complaints and the Commission's cumulative workload for the last three years are shown in Table 7.

Of the 143 cases processed to completion by the Commission during 1989, 136 cases were dismissed following review by the Commission. Of these dismissals, approximately 60 percent (82 of 136 cases) were dismissed based on a finding of "no misconduct" after Commission review. In addition, a significant number (50 cases, or 37 percent) were found to be appellate in nature and, therefore, outside the legal jurisdiction of the Commission.

A total of 7 cases resulted in corrective actions taken against judges. In these cases, the Commission determined that there was judicial misconduct and issued private letters of admonition or reprimand to the named judges.

Table 7
*Caseload Disposition for
Calendar Years 1987, 1988 and 1989*

	1987	1988	1989
<i>Disposition:</i>			
Cases pending at year beginning	3	10	11
Complaints received during year	167	155	139
<i>Total Caseload</i>	170	165	150
<i>Complaints Dismissed:</i>			
Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	4	2	4
Appellate in nature	33	35	50
Lack of jurisdiction or unfounded	8	1	0
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	102	100	82
Retirement or resignation during or following investigation, while case still pending	1	2	0
Dismissed following Supreme Court review	0	0	0
<i>Total complaints dismissed</i>	148	140	136
<i>Corrective Actions:</i>			
Admonition, censure or reprimand, either by private letter or personal appearance	8	13	7
Retirement for medical disabilities	4*	1	0
Public reprimand by Supreme Court	0	0	0
<i>Total corrective actions</i>	12	14	7
<i>Total cases terminated</i>	160	154	143
<i>Cases pending at year end</i>	10	11	7

* The four complaints involved four judges.

Cumulative Overview

As a result of the Commission's activity during the last 23 years, 17 judges have been ordered retired for disability, and the Commission has issued 121 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, 29 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. Some examples of judicial misconduct that required action by the Commission during 1989 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 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 1989, the Commission issued private admonitions or reprimands to judges who:

- Showed favoritism toward a defendant in a criminal proceeding, a violation of Canon 2A., Colorado Code of Judicial Conduct;
- Made gender biased remarks during a court proceeding, a violation of Canons 1, 2A. and 3A. (2) and (3), Colorado Code of Judicial Conduct;
- Made gender biased remarks during an educational forum, a violation of Canon 1, Colorado Code of Judicial Conduct;
- Held an *ex parte* conversation with the parents of a defendant in a criminal case, a violation of Canons 2B. and 3A. (4), Colorado Code of Judicial Conduct;
- Did not disqualify from a case involving a corporation headed by a friend of the judge, a violation of Canons 2A. and B. and 3C. (1), Colorado Code of Judicial Conduct;
- Knowingly failed to follow the law in a criminal case and acknowledged this failure during the court proceeding, a violation of Canons 1 and 2A., Colorado Code of Judicial Conduct; and
- Tried to continue in a personal relationship with a courthouse employee after the relationship had ended and the judge had been advised by the chief district judge to cease any further interaction with the employee, a violation of Canons 1 and 2B. and 3A. (3), Colorado Code of Judicial Conduct.

The Commission 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

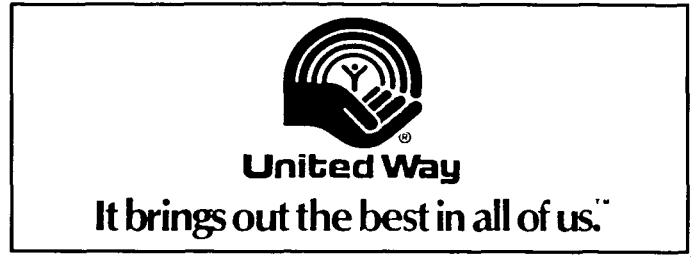
During 1989, the Commission's overall caseload remained constant compared with earlier years. However, when considering total corrective actions taken against judges during 1989 as a percentage of total complaint/case dispositions, there was a slight decrease in corrective actions taken in 1989 compared with 1988 and 1987.

Although much of the Commission's work is not completely visible to the public because of constitutional confidentiality limitations, 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-three 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 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.

For further information about the Commission, its role and responsibilities, please contact Rick Wehmhoefer, Executive Director and General Counsel, Colorado Commission on Judicial Discipline in Denver, Colorado, at (303) 861-1111 or 837-3601.



Bar Notes

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Committee, under the direction of **Ju-lian Izbiky**, ADR Committee Chairman. The directory's release is planned to coincide with Denver District Chief Judge John McMullen's innovative challenge to the bar to attempt ADR settlement methods (*see story page 1060*). The intention of the Committee is to make the directory available to judges, counsel and parties in all courts throughout the state and to make it

available on request from the CBA office. The Committee hopes to sell the directory at or below cost. It should also be noted that **S. W. Wendy Whicher**, who chaired the ADR subcommittee, is just completing a book commissioned by the General Practice Section of the ABA on the use of ADR in the general practice of law.

Hispanic National Bar Association ("HNBA") President **Jimmy Gu-**

rule addressed the CBA Board of Governors at its April 7 meeting. Gurule, past U.S. Assistant Attorney and chief prosecutor on the Kiki Camarena/DEA case updated the Board about the HNBA's upcoming annual convention to be held in Denver, September 6-9 at the downtown Hyatt Regency Hotel. For further information, contact **Dolores Atencio** at (303) 839-8772.

LEGISLATIVE UPDATE

The Colorado legislature has now adjourned and, while opinions differ on the impact of this session, the CBA had a very successful year. All of the bills which were CBA-sponsored passed and will become law on or after July 1. These bills include:

- H.B. 1222: Securities Recodification
- S.B. 74: Limited Liability Companies
- S.B. 109: Public Trustee Recodification
- H.B. 1048: Notice to Creditors of Decedents' Estates
- S.B. 157: Reauthorization of Colorado AIDS law

The joint Budget Committee also authorized the expenditure of monies to fully fund the raise in court-appointed counsel fees as directed by the Supreme Court in September.

Two major disappointments this year were the failure of the Fourth Judicial District district judge bill and the

demise of any judicial pay raise initiative. Since these are perennial issues, however, you can watch for both of these bills to be introduced in the legislature next year.

Two other bills of major concern to the CBA were satisfactorily resolved, at least for this session. These bills are S.B. 150, Sen. Terry Considine's legal reform bill, and H.B. 1067, Rep. Pat Grant's mandatory arbitration bill. As introduced, the legal reform bill contained a "modified English rule" provision for the award of attorney fees to the prevailing party. This provision was stricken from the bill, and CBA President Chris Brauchli has appointed a committee to study the impact of a modified English rule in Colorado. The committee began meeting in May.

H.B. 1067 began life as a statewide expansion of the Colorado Mandatory Arbitration program. However, due to a

fiscal note placed on the bill by the state Judicial Department, the bill was subsequently limited in scope to the eight judicial districts in which the program currently operates. The bill makes some changes to the system already in place, including allowing sanctions against counsel or any party acting in bad faith. The bill also provides a thirty-day extension of the time in which a case must go to arbitration; calls for a deposit up front of arbitrators' fees; and raises the disincentive for a trial *de novo* to \$1,500. Because the bill only extends the program for one year; this issue will be revisited next year also.

Watch your mailboxes for the 1990 edition of the CBA *Legislative Update*, a topical synopsis of all new laws of interest to attorneys. For information on any bills passed this session, call **Tom McMillen**, Director of Legislative Relations, at 860-1115 or 1-800-332-6736.

DBA Public Education Committee to Present Public Law Forums

Each year, the Denver Bar Association's Public Legal Education Committee presents free Public Law Forums to bring legal information on important issues to the community. All forums are held on Wednesday evenings at the downtown Denver Public Library Wyer Auditorium, beginning at 7 P.M.

The 1990 summer schedule of forums is as follows: Worker's Compensation, June 20; Child Custody and Visitation Issues (including Domestic Violence), June 27; AIDS Testing, Rights and Discrimination, July 11; Social Security Law, July 18; Consumer Fraud, July 25; Estate Planning, August 1; Toxics and the Environment, August 8; and Tort or Insurance Reform?, August 15. For more information, contact the DBA at 860-1115.