

## Feature



# Colorado Commission on Judicial Discipline: 1990 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 law 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 1990, 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
Ruth A. Golden	Steamboat Springs	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 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 264 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 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 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.

## 1990 Caseload Description

For 1990, the Commission received a total of 181 new complaints in addition to seven cases carried over from 1989. When considering total complaint/case dispositions, the Commission caseload during 1990 increased approximately 24 percent over 1989.

At the close of 1990, the Commission had processed to completion a total of 178 cases and carried over ten cases into calendar year 1991. Corrective actions taken against judges in 1990 totaled seven, or 4 percent, of the total 178 complaint/case dispositions.

## 1990 Case Attributes

### Judges

Of the total 178 cases disposed of in 1990, complaints filed involved 109 of the 264 judges at all levels of the state judicial system. The 264 judges consist of 113 district judges; 97 county judges; 31 senior judges; and 23 appellate judges.

As indicated in Table 1, 60 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 and Colorado Supreme Court.

**Table 1**  
*Type of Judge Named in Complaint (1990)*

<i>Type of Judge</i>	<i>Number</i>	<i>Percentage</i>
District Judge	107	60%
County Judge (full-time)	16	9
County Judge (part-time)	11	6
Senior Judge	2	1
Appellate Judge	35	20
Juvenile Judge	5	3
Probate Judge	2	1
<b>TOTAL</b>	<b>178</b>	<b>100%</b>

### Case Type

In 1990, types of cases giving rise to complaints were weighted toward civil, domestic and criminal matters.

As indicated in Table 2, 35 percent of all complaints filed involved civil proceedings; 26 percent of all complaints filed involved domestic cases; and 24 percent of all complaints filed involved criminal cases. Six percent of complaints arose as a result of a judge's off-the-bench conduct.

**Table 2**  
*Type of Case Giving Rise to Complaint (1990)*

<i>Type of Case</i>	<i>Number</i>	<i>Percentage</i>
Civil	62	35%
Criminal	43	24

Domestic	47	26
Juvenile	8	5
Off-bench Conduct	11	6
Small Claims	5	3
Probate	2	1
<b>TOTAL</b>	<b>178</b>	<b>100%</b>

### Type of Complainant

During 1990, there were several categories of complainants. Table 3 details the categories of these complainants.

The vast majority, nearly 9 out of 10, were individuals directly involved as litigants in cases in which the respondent judge presided. Approximately 5 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. Six percent of the complaints were brought by attorneys.

Finally, the Commission, on its own motion, initiated two percent of the cases (or 4 complaints).

**Table 3**  
*Type of Complainant (1990)*

<i>Complainant</i>	<i>Number</i>	<i>Percentage</i>
Litigant in Case	155	87%
Attorney in Case	11	6
People Not Directly Involved	8	5
Commission Motion	4	2
<b>TOTAL</b>	<b>178</b>	<b>100%</b>

### 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 42 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 (1990)*

<i>Judicial District (Number of Judges)</i>	<i>Number</i>	<i>Percentage</i>
1 (15)	18	10%
2 (24)	23	13
3 (4)	3	2
4 (18)	11	6
5 (8)	4	2
6 (5)	0	0
7 (10)	6	4
8 (8)	8	4
9 (8)	5	3

10 (9)	8	4
11 (7)	8	4
12 (8)	1	1
13 (11)	4	2
14 (5)	0	0
15 (6)	0	0
16 (5)	0	0
17 (13)	7	4
18 (21)	23	13
19 (7)	5	3
20 (9)	3	2
21 (6)	4	2
22 (3)	2	1
Court of Appeals (16)	28	16
Supreme Court (7)	7	4
<b>TOTAL</b>	<b>178</b>	<b>100%</b>

### Commission Action

During Commission meetings held to discuss the 181 new cases filed during 1990 and the 7 carryover cases from 1989, the Commission resolved 178 complaints.

As Table 5 indicates, the Commission requested responses from judges in 40 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 3 complaints.

**Table 5**  
*Commission Request for Judge Response (1990)*

<i>Request</i>	<i>Number</i>	<i>Percentage</i>
Yes	40	22%
No	138	78
<b>TOTAL</b>	<b>178</b>	<b>100%</b>

**Table 6**  
*Investigation by Commission or Special Counsel (1990)*

<i>Investigation</i>	<i>Number</i>	<i>Percentage</i>
Staff	20	11%
Special Counsel	3	2
No Investigation	155	87
<b>TOTAL</b>	<b>178</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 7.

Of the 178 cases processed to completion by the Commission during 1990, 171 cases were dismissed following review by the Commission. Of these dismissals, approximately 58 percent (100 of 171 cases) were dismissed based on a finding of "no misconduct" after Commission review. In addition, a significant number (66 cases, or 39 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 censure to the named judges.

**Table 7**  
*Caseload Disposition for*  
*Calendar Years 1988, 1989 and 1990*

<i>Disposition</i>	<i>1988</i>	<i>1989</i>	<i>1990</i>
Cases pending at year beginning	10	11	7
Complaints received during year	155	139	181
<b>TOTAL CASELOAD</b>	165	150	188
<b>Complaints Dismissed:</b>			
Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	2	4	4
Appellate in nature	35	50	66
Lack of jurisdiction or unfounded	1	0	0
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	100	82	100
Retirement or resignation during or following investigation, while case still pending	2	0	1
Dismissed following Supreme Court review	0	0	0
<b>TOTAL COMPLAINTS DISMISSED</b>	140	136	171
<b>Corrective Actions:</b>			
Admonition, censure or reprimand, either by private letter or personal appearance	13	7	7
Retirement for medical disabilities	1	0	0
Public reprimand by Supreme Court	0	0	0
<b>TOTAL CORRECTIVE ACTIONS</b>	14	7	7
<b>TOTAL CASES TERMINATED</b>	154	143	178
<b>CASES PENDING AT YEAR END</b>	11	7	10

## Cumulative Overview

As a result of the commission's activity during the last 24 years, 17 judges have been ordered retired for disability, and the Commission has issued 128 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, 30 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 1990 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.

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 1990, the Commission issued private admonitions or censures to judges who:

- Engaged in *ex parte* contacts with an attorney in a criminal case pending before the judge, a violation of Canon 3A. (4), Colorado Code of Judicial Conduct;
- Delayed issuing a decision in a civil case for over two years, a violation of Canon 3A. (5), Colorado Code of Judicial Conduct;
- Experienced a loss of temper and control with litigants in a civil case, a violation of Canons 1 and 3A. (3), Colorado Code of Judicial Conduct;
- Attempted to engage in an *ex parte* communications with a litigant in a criminal case pending before the judge and, after the case was concluded, the judge contacted the litigant a second time, a violation of Canons 1; 2A. and B.; 3A. (4); and 5A., Colorado Code of Judicial Conduct;
- Made inappropriate remarks toward a witness in a criminal case, a violation of Canons 1 and 3A. (3), Colorado Code of Judicial Conduct;
- Displayed in the courthouse window a political cartoon that a member of the public concluded was offensive, a violation of Canons 1; 2A.; and 7A. (1) (d), Colorado Code of Judicial Conduct; and
- Delayed in issuing a decision in a domestic relations case for a period of over 10 months, a violation of Canon 3A. (5), 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 1990, the Commission's overall caseload increased over past years. When considering total corrective actions taken against judges during 1990 as a percentage of total complaint/case dispositions, there was a constant number of corrective actions taken in 1990 compared with 1989.

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-four 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.