

Feature

Colorado Commission on Judicial Discipline: 1991 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 1991, the Commission membership included:

<i>Member</i>	<i>Home Town</i>	<i>Category</i>
Barbara L. Crowfoot	Ft. Collins	Citizen
Lena A. Elliott	Grand Junction	Citizen
Joyce S. Freeman	Denver	Citizen
John D. Gehlhausen	Lamar	Attorney
Ruth A. Golden	Steamboat Springs	Citizen
Sharon A. L. Hansen	Cortez	County Judge
Eric C. Jorgenson	Fort Morgan	Attorney
Marguerite T. Langstaff	Littleton	County Judge
O. Edward Schlatter	Salida	District Judge
John J. Vigil	Westminster	District Judge

The Commission's staff consists of an executive director and general counsel. 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 magistrates, 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 regularly scheduled 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; evaluating 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 all 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. For each case, the complainant is fully informed about each stage of the Commission's decision-making process.

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. Judge-member com-

missioners do not participate in any decisions involving complaints 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 automatically disqualify themselves from participation in that case.

1991 Caseload Description

For 1991, the Commission received a total of 183 new complaints in addition to ten cases carried over from 1990. When considering total complaint/case dispositions, the Commission caseload during 1991 increased approximately 8 percent when compared with 1990.

At the close of 1991, the Commission had processed to completion a total of 192 cases and carried over one case into calendar year 1992. Corrective actions taken against judges in 1991 totaled eleven, or 6 percent, of the total 192 complaint/case dispositions.

1991 Case Attributes

Judges

Of the total 192 cases disposed of in 1991, complaints filed involved 103 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, 73 percent of all complaints filed were against district judges. Other complaints filed were primarily against county judges, either full-time or part-time.

Table 1
Type of Judge Named in Complaint (1991)

<i>Type of Judge</i>	<i>Number</i>	<i>Percentage</i>
District Judge	141	73%
County Judge (full-time)	22	12
County Judge (part-time)	15	8
Senior Judge	8	4
Appellate Judge	4	2
Juvenile Judge	2	1
TOTAL	192	100%

Case Type

In 1991, types of cases giving rise to complaints were weighted toward criminal, civil and domestic matters.

As indicated in Table 2, 43 percent of all complaints filed involved criminal proceedings; 25 percent of all complaints filed involved civil cases; and 22 percent of all complaints filed involved domestic cases. Four percent of complaints arose as a result of a judge's off-the-bench conduct.

Table 2
Type of Case Giving Rise to Complaint (1991)

<i>Type of Case</i>	<i>Number</i>	<i>Percentage</i>
Civil	47	25%
Criminal	83	43
Domestic	43	22
Juvenile	6	3
Off-bench Conduct	7	4

Small Claims	4	2
Probate	2	1
TOTAL	192	100%

Type of Complainant

During 1991, there were several categories of complainants. Table 3 details the categories of these complainants.

The vast majority, nearly eight out of ten, were individuals directly involved as litigants in cases in which the respondent-judge presided. Approximately 8 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. Nine percent of the complaints were brought by attorneys.

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

Table 3
Type of Complainant (1991)

Complainant	Number	Percentage
Litigant in Case	152	79%
Attorney in Case	17	9
People Not Directly Involved	15	8
Commission Motion	8	4
TOTAL	192	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 40 percent of all complaints filed. The remaining 60 percent of the complaints were distributed among judges from sixteen of seventeen judicial districts in the state of Colorado and judges from the Colorado Court of Appeals. It should be noted that during 1991, no complaints were filed against judges of the 12th Judicial District or against justices of the Colorado Supreme Court.

Table 4
Complaints Filed By Judicial District (1991)

Judicial District (Number of Judges)	Number	Percentage
1 (15)	20	10%
2 (24)	25	13
3 (4)	1	1
4 (18)	16	8
5 (8)	7	4
6 (5)	2	1
7 (10)	12	6
8 (8)	10	5
9 (8)	4	2

10 (9)	6	3
11 (7)	15	8
12 (8)	0	0
13 (11)	7	4
14 (5)	2	1
15 (6)	2	1
16 (5)	18	9
17 (13)	4	2
18 (21)	22	11
19 (7)	4	2
20 (9)	7	4
21 (6)	1	1
22 (3)	3	2
Court of Appeals (16)	4	2
Supreme Court (7)	0	0
TOTAL	192	100%

Commission Action

During Commission meetings held to discuss the 183 new cases filed during 1991 and the ten carry-over cases from 1990, the Commission resolved 192 complaints.

As Table 5 indicates, the Commission requested responses from judges in fifty-four of the cases. Furthermore, as indicated by Table 6, the Commission requested its staff to investigate forty complaints and it retained special counsel to handle two complaints.

Table 5
Commission Request for Judge Response (1991)

Request	Number	Percentage
Yes	54	28%
No	138	72
TOTAL	192	100%

Table 6
Investigation by Commission or Special Counsel (1991)

Investigation	Number	Percentage
Staff	40	21%
Special Counsel	2	1
No Investigation	150	78
TOTAL	192	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 192 cases processed to completion by the Commission during 1991, 181 cases were dismissed following review by the Commission. Of these dismissals, approximately 40 percent (seventy-one of the 181 cases) were dismissed based on a finding of "no misconduct" after Commission review. In addition, a significant number (eighty-three of the 181 cases, or 46 percent) were found to be appellate in nature and, therefore, outside the legal jurisdiction of the Commission.

A total of eleven 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, reprimand or censure to the respondent judges.

Table 7
Caseload Disposition for
Calendar Years 1989, 1990 and 1991

<i>Disposition</i>	<i>1989</i>	<i>1990</i>	<i>1991</i>
Cases pending at year beginning	11	7	10
Complaints received during year	139	181	183
TOTAL CASELOAD	150	188	193
Complaints Dismissed:			
Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	4	4	26
Appellate in nature	50	66	83
Lack of jurisdiction or unfounded	0	0	0
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	82	100	71
Retirement or resignation during or following investigation, while case still pending	0	1	1
Dismissed following Supreme Court review	0	0	0
TOTAL COMPLAINTS DISMISSED	136	171	181
Corrective Actions:			
Admonition, censure or reprimand, either by private letter or personal appearance	7	7	11

Retirement for medical disabilities	0	0	0
Public reprimand by Supreme Court	0	0	0
TOTAL CORRECTIVE ACTIONS	7	7	11
TOTAL CASES TERMINATED	143	178	192
CASES PENDING AT YEAR END	7	10	1

Cumulative Overview

As a result of the commission's activity during the last twenty-five years, seventeen judges have been ordered retired for disability, and the Commission has issued 139 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, thirty-one judges have resigned or retired during or following Commission investigations. However, the Commission emphasizes 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 1991 are highlighted 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 sug-

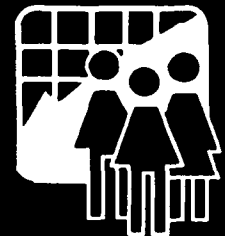
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gests the appearance of impropriety even though it meets minimum standards of judicial conduct.

Reprimands and 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.

During 1991, as examples, the Commission issued private admonitions, reprimands or censures to judges who:

- Engaged in *ex parte* contacts with litigants and attorneys in criminal cases pending before the judge, a violation of Canons 1; 2 A. and B.; and, 3 A. (4), Colorado Code of Judicial Conduct;
- Delayed issuing a decision in a civil case for over two years, a violation of Canon 3 A. (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 3 A. (3), Colorado Code of Judicial Conduct;
- Engaged in an *ex parte* communication with a witness who would be testifying in a case scheduled to be heard in the judge's court, a violation of Canons 1; 2 A. and B.; and, 3 A. (4), Colorado Code of Judicial Conduct;
- Made inappropriate remarks about the conduct of an attorney to a member of the press, a violation of Canons 1 and 3 A. (6), Colorado Code of Judicial Conduct;
- Heard a case involving an individual that was a client in the part-time judge's law firm, a violation of Canons 1; 2 A. and B.; 3 C. (1) (a), (b), and (c); 8 B. (7); and, 8 C. (1) and (3), Colorado Code of Judicial Conduct;
- Strongly suggested to a litigant that the litigant file a grievance against the litigant's attorney, a violation of Canons 1 and 2 A., Colorado Code of Judicial Conduct; and,
- Became intemperate and verbally abusive toward an employee of a business establishment, a violation of

Canons 1 and 2 A. and B., 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 1991, the Commission's overall caseload increased over past years. When considering total corrective actions taken against judges during 1991 as a percentage of total complaint/case dispositions, there was also an increase in the number of corrective actions taken in 1991 compared with 1990.

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-five 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 selection, 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 News

continued from page iv

Wallace, Julie Seavy, Hubert Safran, Herb Galchinsky, Lauren Cabot, Frank Lopez, Mary Ann Coyne and Curt Heiatke.

A special thanks to judges and attorneys who have acted as Teen Court judges since October: Judge **James Flanigan**, Judge **Edward Carelli**, **Frank Lopez** and **Jim Covino**.

LEND-A-LAWYER

The Lend-A-Lawyer program, which provides *pro bono* services to the indigent in rural areas, is looking for volunteer attorneys. If you are interested in participating in the program, contact **Barb Piwinski** at the CBA offices.

SPECIALTY BARS

The **Colorado Hispanic Bar Association** recently held its annual meeting and award banquet in Denver. **Michael Olivas**, associate dean and professor of law at the University of Houston, spoke on "Latinos and the Law—Prospects and Pitfalls." Father **Patrick Valdez** was given an award

for Community Service; **Ralph Torres** received the Outstanding Lawyer of the Year Award; and **JoAnn Viola Salazar** was recognized as the Outstanding Young Hispanic Lawyer of the Year.

The **Colorado Women's Bar Association** ("CWBA"), in cooperation with the CU Center for Health Ethics and Policy, will sponsor a luncheon presentation entitled "Healthcare in the '90s" on March 18. The catered luncheon will be held at the downtown Denver offices of Davis, Graham & Stubbs from 11:45 A.M.-1:30 P.M. Speakers will be State Sen. **Sally Hopper**, **Ralph S. Pollack** and **Patricia A. Butler**. For additional information, call the CWBA in Denver at (303) 298-1313.

NEW SPECIALTY BAR OFFICERS

Sam Cary Bar Association: President, **Penfield Tate III**; President-elect, **Chalk Mitchell**; Secretary, **Rita Bookner**; Treasurer, **Karen Grissett**; Board of Governors Representative, Hon. **Bob Russell**.

Colorado Hispanic Bar Association: President, **John Barajas**; President-elect, **Chris Miranda**; Treasurer, **Glen-da Dominguez**; Secretary, **Jo Ann Viola Salazar**.