

## Feature

# Colorado Commission on Judicial Discipline: 1992 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 1992, the Commission membership included:

<i>Member</i>	<i>Home Town</i>	<i>Category</i>
Barbara L. Crowfoot	Fort 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
John J. Vigil	Westminster	District Judge
William L. West	Greeley	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 Colorado Supreme Court, and its operating budget is approved and provided by the Colorado state legislature.

### 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 Colorado 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-time and part-time municipal court judges serving on the bench 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 Judicial Performance Commission 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. It is the policy of the Commission to accept and review all complaints filed even if such complaints relate solely to a complainant's disagreement with the decision the judge has entered in a case. 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. As previously stated, for example, the Commission must dismiss any complaints involving 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 automatically disclosed to them, and they must respond to all complaints, whether frivolous or not. Judge-member commissioners 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.

## 1992 Caseload Description

For 1992, the Commission received a total of 219 new complaints in addition to one case carried over from 1991. When considering total complaint/case dispositions, the Commission caseload during 1992 increased approximately 12 percent when compared with 1991.

At the close of 1992, the Commission had processed to completion a total of 216 cases and carried over four cases into calendar year 1993. Corrective actions taken against judges in 1992 totaled two of the total 216 complaint/case dispositions.

## 1992 Case Attributes

### Judges

Of the total 216 cases disposed of in 1992, complaints filed involved 120 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, 71 percent of all complaints filed were against district judges. Other complaints filed were primarily against full-time or part-time county judges.

**Table 1**  
*Type of Judge Named in Complaint (1992)*

<i>Type of Judge</i>	<i>Number</i>	<i>Percentage</i>
District Judge	153	71%
County Judge (full-time)	26	12
County Judge (part-time)	11	5
Senior Judge	6	3
Appellate Judge	18	8
Juvenile Judge	2	1
<b>TOTAL</b>	<b>216</b>	<b>100%</b>

### Case Type

In 1992, types of cases giving rise to complaints were weighted toward criminal, domestic and civil matters.

As indicated in Table 2, 38 percent of all complaints filed involved criminal proceedings; 36 percent of all complaints filed involved domestic cases; and 17 percent of all complaints filed involved civil cases. Three percent of complaints arose as a result of a judge's off-the-bench conduct.

**Table 2**  
*Type of Case Giving Rise to Complaint (1992)*

<i>Type of Case</i>	<i>Number</i>	<i>Percentage</i>
Civil	36	17%
Criminal	83	38

Domestic	78	36
Juvenile	4	2
Off-bench Conduct	8	3
Small Claims	2	1
Disability Retirement	1	1
Probate	4	2
<b>TOTAL</b>	<b>216</b>	<b>100%</b>

### Type of Complainant

During 1992, 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 13 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. Seven 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 (1992)*

<i>Complainant</i>	<i>Number</i>	<i>Percentage</i>
Litigant in Case	169	78%
Attorney in Case	16	7
People Not Directly Involved	27	13
Commission Motion	4	2
<b>TOTAL</b>	<b>216</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 44 percent of all complaints filed. The remaining 56 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 and Colorado Supreme Court. It should be noted that during 1992, no complaints were filed against judges of the 15th Judicial District.

**Table 4**  
*Complaints Filed By Judicial District (1992)*

<i>Judicial District (Number of Judges)</i>	<i>Number</i>	<i>Percentage</i>
1 (15)	26	12%
2 (24)	30	14
3 (4)	2	1

4 (18)	16	7
5 (8)	9	4
6 (5)	1	1
7 (10)	2	1
8 (8)	23	11
9 (8)	6	3
10 (9)	9	4
11 (7)	10	4
12 (8)	1	1
13 (11)	4	2
14 (5)	5	2
15 (6)	0	0
16 (5)	6	3
17 (13)	5	2
18 (21)	27	13
19 (7)	6	3
20 (9)	6	3
21 (6)	2	1
22 (3)	2	1
Court of Appeals (16)	10	4
Supreme Court (7)	8	3
<b>TOTAL</b>	<b>216</b>	<b>100%</b>

### Commission Action

During Commission meetings held to discuss the 219 new cases filed during 1992 and the one carry-over case from 1991, the Commission resolved 216 complaints.

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

**Table 5**  
*Commission Request for Judge Response (1992)*

<i>Request</i>	<i>Number</i>	<i>Percentage</i>
Yes	36	17%
No	180	83
<b>TOTAL</b>	<b>216</b>	<b>100%</b>

**Table 6**  
*Investigation by Commission or Special Counsel (1992)*

<i>Investigation</i>	<i>Number</i>	<i>Percentage</i>
Staff	22	10%
Special Counsel	2	1
No Investigation	192	89%
<b>TOTAL</b>	<b>216</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 216 cases processed to completion by the Commission during 1992, 210 cases were dismissed following review by the Commission. Of these dismissals, approximately 21

percent (forty-five of the 210 cases) were dismissed based on a finding of "no misconduct" after Commission review. In addition, 158 of the 210 cases, or 75 percent, were found to be "appellate in nature" and, therefore, outside the legal jurisdiction of the Commission.

A total of two cases resulted in corrective actions taken against judges. In one of these cases, the Commission determined that there was judicial misconduct and issued a private letter of admonition to the respondent judge. In the second case, the judge was ordered by the Colorado Supreme Court to be retired for a medical disability.

**Table 7**  
*Caseload Disposition for  
Calendar Years 1990, 1991 and 1992*

<i>Disposition</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>
Cases pending at year beginning	7	10	1
Complaints received during year	181	183	219
<b>TOTAL CASELOAD</b>	<b>188</b>	<b>193</b>	<b>220</b>
<i>Complaints Dismissed:</i>			
Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	4	26	7
Appellate in nature	66	83	158*
Lack of jurisdiction or unfounded	0	0	0
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	100	71	45
<b>TOTAL COMPLAINTS DISMISSED</b>	<b>170</b>	<b>180</b>	<b>210</b>
Retirement or resignation during or following investigation, while case still pending	1	1	4
Dismissed following Supreme Court review	0	0	0
<i>Corrective Actions:</i>			
Admonition, censure or reprimand, either by private letter or personal appearance	7	11	1
Retirement for medical disabilities	0	0	1
Public reprimand by Supreme Court	0	0	0
<b>TOTAL CORRECTIVE ACTIONS</b>	<b>7</b>	<b>11</b>	<b>2</b>
<b>TOTAL CASES TERMINATED</b>	<b>178</b>	<b>192</b>	<b>216</b>
<b>CASES PENDING AT YEAR END</b>	<b>10</b>	<b>1</b>	<b>4</b>

\*In 1992, the Commission dismissed a significant number of complaints following initial review because the complaints dealt solely with concerns about judicial decisions. Under the Colorado Constitution, such concerns about legal issues can be reviewed only by an appellate court. The Commission does not have jurisdiction over these appellate matters.

## Cumulative Overview

As a result of the Commission's activity during the last twenty-six years, eighteen judges have been ordered retired for disability, and the Commission has issued 140 private let-

ters 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-five 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 types of misconduct it considers serious enough to merit discipline. Some examples of judicial misconduct that required action by the Commission during past years 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 suggests 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.

Over the past years, as examples, the Commission has 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, violations of Canons 1; 2 A. and B.; and 3 A.(4), Colorado Code of Judicial Conduct;
- Delayed issuing decisions in civil cases, violations 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.

During 1992, the Commission undertook an educational program to inform new and continuing judges of their duties and responsibilities under the Canons of the Colorado Code of Judicial Conduct. The Commission concluded that this proactive educational program demonstrated positive results, particularly by contributing to a smaller number of corrective actions having to be taken against judges in 1992 compared to earlier years.

In addition to its oversight and educational activities, the Commission also provided reminders to judges concerning their conduct and activities that appeared to place them in danger of violating the Canons; made suggestions to judges concerning the overall management of their 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 1992, the Commission's overall caseload increased over past years. However, when considering total corrective actions taken against judges during 1992 as a percentage of total complaint/case dispositions, there was a decrease in the number of corrective actions taken against state judges in 1992 compared with 1991.

Although much of the Commission's work is not completely visible to the public because of constitutional confidentiali-

ty 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-six 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, Denver, Colorado, at (303) 837-3601.



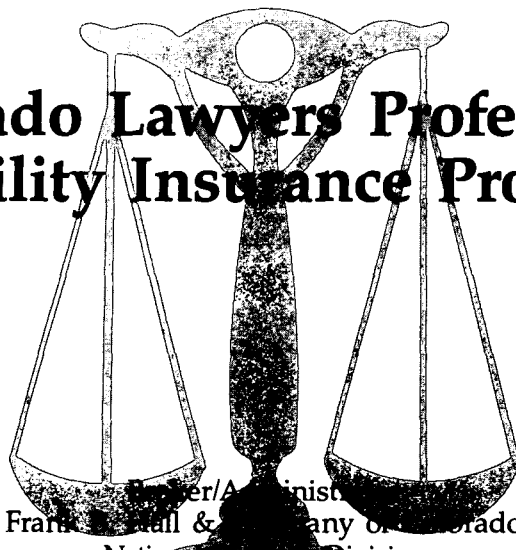
### 5K Walk/Run Benefits SafeHouse for Battered Women

The Colorado Women's Bar Association ("CWBA") and the Alliance of Professional Women ("APW") have joined with Norwest Bank Denver to sponsor "The Unified Team, The Sequel," a team of women to participate in the 1993 Lady Footlocker 5K Walk/Run for the Benefit of SafeHouse for Battered Women. The event will be held on June 27 at City Park in Denver.

Last year's Unified Team, also an effort of the CWBA, APW and Norwest, brought 265 walkers and runners to the 5K. They would like 1993's Sequel to the Unified Team to be even larger. For each team member recruited, Norwest will provide a bright blue running cap and an additional \$2 to SafeHouse. For each new Norwest account opened in conjunction with the race, Norwest will contribute an additional \$5 to SafeHouse. APW members can also win prizes by recruiting other Unified Team members.

Further information about the race is available by calling the CWBA in Denver at (303) 298-1313 or APW members Emily Ailts at (303) 777-2325 or Kelly Belue at (303) 899-4623 in Denver.

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