

Colorado Commission on Judicial Discipline: 1994 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: 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 1994, the Commission membership included:

<i>Member</i>	<i>Home Town</i>	<i>Category</i>
Barbara L. Crowfoot	Fort Collins	Citizen
Joyce S. Freeman	Denver	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 and an administrative assistant. 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 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 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 17 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 also may commence investigations on its own motion without a written complaint.

Complaints are reviewed during the Commission's regularly-scheduled meetings. The Commission also may 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 also may 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 grant-

ed, 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 participating in that case. Judge Commission members may also disqualify themselves from participating in a case if they are close, personal friends of the respondent-judge or if for any other reason their participation in a respondent-judge's case may raise an appearance of impropriety. Citizen and attorney Commission members may disqualify themselves if they live in the same judicial district as the respondent-judge; if they are close, personal friends of the respondent-judge; or if for any other reason their participation in a respondent-judge's case may raise an appearance of impropriety.

1994 Caseload Description

For 1994, the Commission received a total of 290 new complaints in addition to two cases carried over from 1993. When considering the total number of complaints the Commission received in 1994, its caseload in 1994 increased over 34 percent compared to 1993.

At the close of 1994, the Commission had processed to completion a total of 288 cases and carried over four cases into calendar year 1995, an increase in case dispositions of 32 percent.

Corrective actions taken against judges in 1994 totaled three of the total 288 complaint/case dispositions.

1994 Case Attributes

Judges

Of the total 288 cases disposed of in 1994, complaints filed involved 130 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 court judges. Other complaints filed were primarily against full-time county court judges or appellate court judges.

Table 1
Type of Judge Named in Complaint (1994)

<i>Type of Judge</i>	<i>Number</i>	<i>Percentage</i>
District Judge	172	60%
County Judge (full-time)	55	19
County Judge (part-time)	14	5
Senior Judge	5	2
Appellate Judge	41	14
Juvenile Judge	1	0
TOTAL	288	100%

Case Type

In 1994, types of cases giving rise to complaints were weighted toward criminal, civil and domestic matters.

As indicated in Table 2, over half of all complaints filed, 51 percent, involved criminal proceedings; 25 percent of all complaints filed involved civil cases; and 19 percent of all complaints filed involved domestic cases. Two percent, or five complaints, arose as a result of a judge's off-the-bench conduct.

Table 2

Type of Case Giving Rise to Complaint (1994)

Type of Case	Number	Percentage
Civil	71	25%
Criminal	148	51
Domestic	56	19
Juvenile	2	1
Off-bench Conduct	5	2
Small Claims	2	1
Probate	4	1
TOTAL	288	100%

Subject Matter of Complaints

During 1994, the subject matter of complaints generally dealt with a complainant's dissatisfaction with a judge's legal ruling. As Table 3 indicates, nearly 8 out of 10 of all complaints filed (79 percent) dealt with an individual's dissatisfaction with the judge's legal rulings in that individual's case. As explained above, the Commission is not an appellate court and does not have any authority to review the substantive issues involved in a judge's ruling. The Commission must dismiss any complaints involving legal issues that can be reviewed only by an appellate court.

Table 3

Subject Matter of Complaints (1994)

Subject Matter	Number	Percentage
Dissatisfaction with a Legal Ruling	227	79%
Administrative or Procedural Concern	22	8
Partiality or Favoritism	14	5
Injudicious Courtroom Demeanor or Control	8	3
Administrative Inefficiency or Delay in Decision-making	8	3
Personal Misconduct Either On- or Off-the-Bench	7	2
Racial, Ethnic or Gender Bias	1	0
Physical or Mental Disability	1	0
TOTAL	288	100%

Type of Complainant

During 1994, there were several categories of complainants. Table 4 details the categories of these complainants. The vast majority of complainants, nearly 9 out of 10 (89 percent), were individuals who were directly involved as litigants in cases in which the respondent-judge presided. Approximately seven percent of complaints came from individuals who were not directly involved in cases, but perhaps were a relative (e.g., mother, father) of a litigant. Three percent of the complaints were brought by attorneys.

Finally, the Commission, on its own motion, initiated two complaints in 1994.

Of note in 1994 was the growing number of complaints that came from individuals incarcerated in state correctional facilities. Exactly one-third (96) of the 288 complaints filed in 1994 came from individuals incarcerated for criminal offenses.

Table 4

Type of Complainant (1994)

Complainant	Number	Percentage
Litigant in Case	257	89%
Attorney in Case	9	3
People Not Directly Involved	20	7
Commission Motion	2	1
TOTAL	288	100%

District

Complaints filed by judicial district are reported in Table 5 (see next page). After each judicial district, the number of judges serving in that district is listed in parentheses.

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 16 of 17 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 1994, no complaints were filed against judges in the 16th Judicial District (La Junta, Colorado).

Commission Action

During Commission meetings held to discuss the 290 new cases filed during 1994 and the two carry-over cases from 1993, the Commission resolved 288 complaints.

As Table 6 indicates (see next page), the Commission requested responses from judges in fourteen of the cases. Furthermore, as indicated by Table 7 (see next page), the Commission requested its staff to investigate fifteen complaints.

Table 5
Complaints Filed By Judicial District (1994)

<i>Judicial District (Number of Judges)</i>	<i>Number</i>	<i>Percentage</i>
1 (15)	30	10%
2 (24)	49	17
3 (4)	4	1
4 (18)	33	12
5 (8)	3	1
6 (5)	6	2
7 (10)	4	1
8 (8)	12	4
9 (8)	11	4
10 (9)	13	5
11 (7)	11	4
12 (8)	2	1
13 (11)	3	1
14 (5)	2	1
15 (6)	2	1
16 (5)	0	0
17 (13)	10	3
18 (21)	25	9
19 (7)	7	2
20 (9)	14	5
21 (6)	4	1
22 (3)	2	1
Court of Appeals (16)	7	2
Supreme Court (7)	34	12
TOTAL	288	100%

Table 6
Commission Request for Judge Response (1994)

<i>Request</i>	<i>Number</i>	<i>Percentage</i>
Yes	17	6%
No	271	94
TOTAL	288	100%

Table 7
Investigation by Commission or Special Counsel (1994)

<i>Investigation</i>	<i>Number</i>	<i>Percentage</i>
Staff	15	5%
Special Counsel	0	0
No Investigation	273	95
TOTAL	288	100%

Complaint Disposition

The disposition to complaints and the Commission's cumulative workload for the last three years are shown in Table 8.

Of the 288 cases processed to completion by the Commission during 1994, 284 cases were dismissed following review

by the Commission. Of these dismissals, approximately 12 percent (35 of the 284 cases) were dismissed based on a finding of "no misconduct" after Commission review. In addition, 244 of the 284 cases, or 86 percent, were found to be "appellate in nature" and, therefore, outside the legal jurisdiction of the Commission.

A total of three cases resulted in corrective actions taken against judges. In those cases, the Commission determined that there was judicial misconduct and issued a private letter of admonition or reprimand to the respondent-judges.

Table 8
*Caseload Disposition for
Calendar Years 1992, 1993 and 1994*

<i>Disposition:</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>
Cases pending at year beginning	1	4	2
Complaints received during year	219	216	290
TOTAL CASELOAD	220	220	292
Complaints Dismissed:			
Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	7	1	5
Appellate in nature	158*	166*	244*
Lack of jurisdiction or unfounded	0	0	0
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	45	47	35
TOTAL DISMISSED	210	214	284
Retirement or resignation during or following investigation, while case still pending	4	2	1
Dismissed following Supreme Court review	0	0	0
Corrective Actions:			
Admonition, censure or reprimand, either by private letter or personal appearance	1	2	3
Retirement for medical disabilities	1	0	0
Public reprimand by Supreme Court	0	0	0
TOTAL CORRECTIVE ACTIONS	2	2	3
TOTAL CASES TERMINATED	216	218	288
CASES PENDING AT YEAR END	4	2	4

*In 1992, 1993 and 1994, 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 complaints about legal decisions or appellate matters.

Cumulative Overview

As a result of the Commission's activity during the last twenty-eight years, eighteen judges have been ordered retired for disability, and the Commission has issued 145 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-eight 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 Colorado 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 or control with a litigant in a civil case, a violation of Canons 1; 2; and 3 A. (3), Colorado Code of Judicial Conduct;
- Engaged in an *ex parte* communications 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;
- 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; and

- Demonstrated rudeness and verbally abusive behavior toward a customer at a business establishment near the judge's private office, a violation of Canons 1 and 2 A. and B., Colorado Code of Judicial Conduct.

Beginning in 1992 and continuing through 1994, 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 since 1992 compared to earlier years.

Also, in July 1994, based on the recommendation of the Commission, the Colorado Supreme Court, through Chief Justice Directive 94-01, announced the creation of, and promulgated procedural rules for, the Colorado Judicial Ethics Advisory Board. This board provides ethical advice to Colorado's state judges and justices and compliments the educational activities undertaken by the Commission. The board is composed of five members, with the Commission's executive director and general counsel serving as the board's Reporter.

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 1994, the Commission's overall caseload increased approximately 34 percent compared with 1993. When considering total corrective actions taken against judges during 1994 as a percentage of total complaint/case dispositions, there was a similar number of corrective actions taken against state judges in 1994 compared with 1993.

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-eight 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.

The 1995 Colorado Women's Bar Association Convention is May 19-21. See page 1020.