



Colorado Commission on Judicial Discipline: 1995 Annual Report

Introduction and Overview

The following report details the Colorado Commission on Judicial Discipline's background and report of activities for calendar year 1995.

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 Colorado's Commission was created, only five other states had disciplinary commissions to supplement impeachment as the traditional method for removing judges. Today, all 50 states and the District of Columbia have these types of disciplinary commissions.

Colorado's voters amended the constitutional provisions affecting the Commission in 1982, making changes to the Commission's procedures and membership. The Commission's name was changed from the Colorado Commission on Judicial Qualifications to the Colorado Commission on Judicial Discipline. The Commission's membership also 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 Colorado Supreme Court. Appointments made by the Governor require approval by the Colorado State Senate. While Commission members serve four-year terms without salary, they do receive reimbursement for actual and necessary expenses.

At the close of 1995, the Commission membership included:

| <i>Member</i> | <i>Home Town</i> | <i>Category</i> |
|---------------------|------------------|-----------------|
| Barbara L. Crowfoot | Fort Collins | Citizen |
| Phillip S. Figa | Englewood | Attorney |
| Benjamin C. Glidden | Black Forest | Citizen |
| John M. Holcomb | Denver | Citizen |
| Eric C. Jorgenson | Fort Morgan | Attorney |
| M. Jon Kolomitz | La Junta | District Judge |
| Roy G. Olson, Jr. | Evergreen | County Judge |

Ruth A. Steel
Paul D. Tallman
William L. West

Englewood
Cheyenne Wells
Greeley

Citizen
County Judge
District Judge

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 267 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 of Colorado.

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 Denver County Court 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 file a complaint against a judge by completing forms provided by 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 a decision or order a judge may have 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 this 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 allegations; and, conducting legal research into the substantive area of alleged misconduct. The Commission's staff is used to conduct all investigations and reviews.

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, order the judge to undergo a specific remedial program. The Commission may also begin a formal action against the judge. In each case, the complainant is fully informed in writing 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 retained 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 [Article VI, § 23(3)(g), *Colorado Constitution*, and §§ 24-72-401 and 402, Colorado Revised Statutes].

While requests for the disqualification of a judge in a matter pending before that judge are not automatically granted, the Commission does have the 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 themselves.

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 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 also disqualify themselves if they live in the same judicial district as the respondent-judge; if they are 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.

1995 Caseload Description

During 1995, the Commission responded to 1455 telephone calls or personal visits to its offices either to answer questions about the Commission's responsibilities or to direct individuals to proper agencies or offices that could address their questions. The Commission also distributed a total of 505 complaint forms to individuals requesting these forms.

At the close of 1995, the Commission received a total of 135 new complaints in addition to four cases carried over from 1994. When considering the total number of complaints the Commission received during 1995, its caseload in 1995 decreased approximately one-half compared to 1994. This decrease, explained in greater detail below, is attributed to an intensive judicial ethics training program for all judges undertaken by the Commission during 1995 as well as greater citizen education on the role of the Commission in addressing public concerns about the conduct of Colorado's judges.

At the close of 1995, the Commission had processed to completion a total of 138 cases and carried over one case into calendar year 1996. Corrective actions taken against judges in 1995 totaled four of the total 138 complaint/case dispositions.

1995 Case Attributes

Judges

Of the total 138 cases disposed of in 1995, complaints filed involved 93 of the 267 judges at all levels of the state judicial system.

These 267 judges consist of 115 district judges; 99 county judges; 30 senior judges; and 23 appellate judges.

As indicated in Table 1, two-thirds or 66 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 (1995) | | |
|--|--------|------------|
| Type of Judge | Number | Percentage |
| District Judge | 91 | 66% |
| County Judge (full-time) | 28 | 20 |
| County Judge (part-time) | 5 | 4 |
| Senior Judge | 3 | 2 |
| Appellate Judge | 11 | 8 |
| Juvenile Judge | 0 | 0 |
| TOTAL | 138 | 100% |

Case Type

In 1995, types of cases giving rise to complaints were weighted toward criminal, domestic and civil matters respectively. As indicated in Table 2, approximately one-half of all complaints filed, or 51 percent, involved criminal proceedings; 23 percent of all complaints filed involved domestic cases; and 20 percent of all complaints filed involved civil cases. Four 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 (1995) | | |
|---|--------|------------|
| Type of Case | Number | Percentage |
| Civil | 28 | 20% |
| Criminal | 70 | 51 |
| Domestic | 32 | 23 |
| Off-bench Conduct | 5 | 4 |
| Small Claims | 2 | 1 |
| Probate | 1 | 1 |
| TOTAL | 138 | 100% |

Subject Matter of Complaints

During 1995, the subject matter of complaints generally dealt with a complainant's dissatisfaction with a judge's legal ruling. As Table 3 indicates, approximately two-thirds of all complaints filed (66 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. Therefore, the Commission had no other option than to dismiss any complaints involving legal issues that can be reviewed only by an appellate court.

| Table 3 Subject Matter of Complaints (1995) | | |
|--|--------|------------|
| Subject Matter | Number | Percentage |
| Dissatisfaction with a Legal Ruling | 91 | 66% |
| Administrative or Procedural Concern | 7 | 5 |

| | | |
|---|-----|------|
| Partiality or Favoritism | 12 | 9 |
| Injudicious Courtroom Demeanor or Control | 11 | 8 |
| Administrative Inefficiency or Delay in Decision-making | 2 | 1 |
| Personal Misconduct Either On- or Off-the-Bench | 5 | 4 |
| Racial, Ethnic or Gender Bias | 10 | 7 |
| Physical or Mental Disability | 0 | 0 |
| TOTAL | 138 | 100% |

Type of Complainant

During 1995, there were several categories of complainants. Table 4 details the categories of these complainants. The vast majority of complainants, approximately 9 out of 10 (90 percent), were individuals who were directly involved as litigants in cases in which the respondent-judge presided. Approximately four percent of complaints came from individuals who were not directly involved in cases, but perhaps were a friend or relative (e.g., mother, father) of a litigant. Four percent of the complaints were brought by attorneys. The Commission, on its own motion, initiated three complaints in 1995.

Finally, of note in 1995 was the number of complaints that came from individuals incarcerated in state correctional facilities. Over one-third (49) of the 138 complaints disposed of in 1995 came from individuals incarcerated for criminal offenses.

| Table 4 Type of Complainant (1995) | | |
|---------------------------------------|--------|------------|
| Complainant | Number | Percentage |
| Litigant in Case | 123 | 90% |
| Attorney in Case | 6 | 4 |
| People Not Directly Involved | 6 | 4 |
| Commission Motion | 3 | 2 |
| TOTAL | 138 | 100% |

Complaints Filed by Judicial District

Complaints filed by judicial district are reported in Table 5. 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 37 percent of all complaints filed. The remaining 63 percent of the complaints were distributed among judges from 15 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 1995, no complaints were filed against judges in the 15th Judicial District (Lamar, Colorado) or the 22nd Judicial District (Cortez, Colorado).

Table 5
Complaints Filed By Judicial District (1995)

| <i>Judicial District (Number of Judges)</i> | <i>Number</i> | <i>Percentage</i> |
|---|---------------|-------------------|
| 1 (16) | 18 | 13% |
| 2 (24) | 13 | 9 |
| 3 (4) | 3 | 2 |
| 4 (21) | 14 | 10 |
| 5 (7) | 4 | 3 |
| 6 (5) | 1 | 1 |
| 7 (10) | 9 | 7 |
| 8 (8) | 11 | 8 |
| 9 (8) | 3 | 2 |
| 10 (9) | 4 | 3 |
| 11 (7) | 5 | 4 |
| 12 (8) | 4 | 3 |
| 13 (11) | 2 | 1 |
| 14 (5) | 3 | 2 |
| 15 (6) | 0 | 0 |
| 16 (5) | 4 | 3 |
| 17 (13) | 3 | 2 |
| 18 (22) | 11 | 8 |
| 19 (7) | 7 | 5 |
| 20 (9) | 7 | 5 |
| 21 (6) | 1 | 1 |
| 22 (3) | 0 | 0 |
| Court of Appeals (16) | 3 | 2 |
| Supreme Court (7) | 8 | 6 |
| TOTAL | 138 | 100% |

Commission Action

During commission meetings held to discuss the 135 new cases filed during 1995 and the four (4) carry-over cases from 1994, the Commission resolved 138 complaints.

As Table 6 indicates, the Commission requested responses from judges in 14 of the cases. Furthermore, as indicated by Table 7, the Commission requested its staff to investigate 14 complaints.

Table 6
Commission Request for Judge Response (1995)

| <i>Request</i> | <i>Number</i> | <i>Percentage</i> |
|----------------|---------------|-------------------|
| Yes | 14 | 10% |
| No | 124 | 90 |
| TOTAL | 138 | 100% |

Table 7
Investigation by Commission or Special Counsel (1995)

| <i>Investigation</i> | <i>Number</i> | <i>Percentage</i> |
|----------------------|---------------|-------------------|
| Staff | 14 | 10% |
| Special Counsel | 0 | 0 |
| No Investigation | 124 | 90% |
| TOTAL | 138 | 100% |

Complaint Disposition

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

Of the 138 cases processed to completion by the Commission during 1995, 134 cases were dismissed following review by the Commission. Of these dismissals, approximately 23 percent (31 of the 134 cases) were dismissed based on a finding of "no misconduct" after commission review. In addition, 103 of the 134 cases, or 77 percent, were found to be "appellate in nature" and, therefore, outside the legal jurisdiction of the Commission.

A total of four (4) 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 1993, 1994 and 1995*

| <i>Calendar Year</i> | <i>1993</i> | <i>1994</i> | <i>1995</i> |
|--|-------------|-------------|-------------|
| Cases pending at beginning of year | 4 | 2 | 4 |
| Complaints received during year | 216 | 290 | 135 |
| TOTAL CASELOAD | 220 | 292 | 139 |
| Complaints Dismissed: | | | |
| Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff | 1 | 5 | 0 |
| Appellate in nature | 166** | 244** | 103** |
| Lack of jurisdiction or unfounded | 0 | 0 | 0 |
| No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated) | 47 | 35 | 31 |
| TOTAL COMPLAINTS DISMISSED BY COMMISSION | 214 | 284 | 134 |

Other Actions:

| | | | |
|---|----------|----------|----------|
| Retirement or resignation during or following investigation, while case still pending | 2 | 1 | 0 |
| Dismissed following Supreme Court review | 0 | 0 | 0 |
| RETIREMENTS OR DISMISSALS BY SUPREME COURT | 2 | 1 | 0 |

Corrective Actions:

| | | | |
|---|------------|------------|------------|
| Admonition, censure or reprimand, either by private letter or personal appearance | 2 | 3 | 4 |
| Retirement for medical disabilities | 0 | 0 | 0 |
| Public reprimand by Supreme Court | 0 | 0 | 0 |
| TOTAL CORRECTIVE ACTIONS | 2 | 3 | 4 |
| TOTAL CASES TERMINATED | 218 | 288 | 138 |
| CASES PENDING AT YEAR END | 2 | 4 | 1 |

**In 1993, 1994 and 1995, 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 orders judges make or appellate matters reviewed by appellate court judges.

Cumulative Overview

As a result of the Commission's activity during the last 29 years, 18 judges have been ordered retired for disability, and the Commission has issued 149 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, 38 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 over the past few 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 few 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 A. and B.; 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;

- 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 1995, the Commission undertook a proactive 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 type of an educational program demonstrated positive results, particularly by contributing to a smaller number of complaints filed, and 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 1995, the Commission's overall caseload decreased approximately one-half compared with 1994. When considering total corrective actions taken against judges during 1995 as a percentage of total complaint/case dispositions, there was an equal number of corrective actions taken against state judges in 1995 compared with 1994.

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-nine 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.