



Colorado Commission on Judicial Discipline: 1996 Annual Report

Introduction and Overview

The following report details the Colorado Commission on Judicial Discipline's ("Commission") background and report of activities for calendar year 1996.

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 fifty states and the District of Columbia have these types of disciplinary bodies.

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 1996, 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	Englewood	Citizen
Paul D. Tallman	Cheyenne Wells	County Judge
William L. West	Greeley	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 284 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 court judges and the City of Lakewood has a Judicial Review Commission that considers grievances against its municipal court 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, other 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; files it with the Commission; and, after the judge has had 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 the strictest of confidence, pursuant to constitutional and statutory requirements (Article VI, Section 23 (3) (g), *Colorado Constitution*, and Sections 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.

1996 Caseload Description

During 1996, the Commission responded to 2240 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 478 complaint forms to individuals requesting these forms.

At the close of 1996, the Commission had received a total of 136 new complaints in addition to one (1) case carried over from 1995. When considering the total number of complaints the Commission received during 1996, its caseload in 1996 was comparable to the number of complaints it received in 1995. This comparable number of complaints, as explained in greater detail below, is attributed to an intensive judicial ethics training program for all judges undertaken by the commission during 1996 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 1996, the Commission had processed to completion a total of 135 cases and carried over two (2) cases into calendar year 1997. Corrective actions taken against judges in 1996 totaled four of the total 135 complaint/case dispositions. In addition, one (1) judge decided to resign from office while a formal proceeding was pending against that judge and one (1) judge was ordered to be retired by the Colorado Supreme Court due to a physical disability that had become permanent.

1996 Case Attributes

Judges

Of the total 135 cases disposed of in 1996, complaints filed involved 95 of the 284 judges at all levels of the state judicial system.

These 284 judges consist of 115 district judges; 99 county judges; 47 senior judges; and 23 appellate judges.

As indicated in Table 1, nearly three-fourths, or 73 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 (1996)

<i>Type of Judge</i>	<i>Number</i>	<i>Percentage</i>
District Judge	98	73%
County Judge (full-time)	17	13
County Judge (part-time)	2	1
Senior Judge	4	3
Appellate Judge	10	7
Juvenile Judge	3	2
Probate Judge	1	1
TOTAL	135	100%

Case Type

In 1996, types of cases giving rise to complaints were weighted toward criminal, domestic and civil matters respectively.

As indicated in Table 2, 40 percent of all complaints filed involved criminal proceedings; 27 percent of all complaints filed involved domestic cases; and 19 percent of all complaints filed involved civil cases. Three percent, or four complaints, arose as a result of a judge's off-the-bench conduct.

Table 2
Type of Case Giving Rise to Complaint (1996)

<i>Type of Case</i>	<i>Number</i>	<i>Percentage</i>
Civil	26	19%
Criminal	54	40
Domestic	37	27
Juvenile	4	3
Off-bench Conduct	4	3
Small Claims	1	1
Probate	9	7
TOTAL	135	100%

Subject Matter of Complaints

During 1996, the subject matter of complaints generally dealt with a complainant's dissatisfaction with a judge's legal ruling. As Table 3 indicates, approximately 43 percent of



Van Gilder Insurance Corporation

Serving Colorado since 1905

(303) 837-8500

LAWYERS PROFESSIONAL LIABILITY INSURANCE

State Administrator for the Continental Casualty Company Lawyers Protector Plan®

(Continental Casualty Company is one of the CNA Insurance Companies. CNA is a registered Service Mark of the CNA Financial Corporation, CNA Plaza, Chicago, Illinois 60685)

all complaints 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 (1996)

<i>Subject Matter</i>	<i>Number</i>	<i>Percentage</i>
Dissatisfaction with a Legal Ruling	58	43%
Administrative or Procedural Concern	16	12
Partiality or Favoritism	33	24
Injudicious Courtroom Demeanor or Control	5	4
Administrative Inefficiency or Delay in Decision-making	4	3
Personal Misconduct Either On- or Off-the-Bench	4	3
Racial, Ethnic or Gender Bias	14	10
Physical or Mental Disability	1	1
TOTAL	135	100%

Type of Complainant

During 1996, there were several categories of complainants. Table 4 details the categories of these complainants. The vast majority of complainants, approximately 9 out of 10 (87 percent), were individuals who were directly involved as litigants in cases in which the respondent-judge presided. Approximately 7 percent of complaints came from individuals who were not directly involved in cases, but perhaps were a friend or relative (e.g., mother, father, or sibling) of a litigant. Three percent of the complaints were brought by attorneys. The commission, on its own motion, initiated 3 complaints in 1996.

Finally, of note in 1996 was the number of complaints that came from individuals incarcerated in state correctional facilities. Exactly one-third (45) of the 135 complaints disposed of in 1996 came from individuals incarcerated for criminal offenses.

Table 4
Type of Complainant (1996)

<i>Complainant</i>	<i>Number</i>	<i>Percentage</i>
Litigant in Case	117	87%
Attorney in Case	4	3
People Not Directly Involved	10	7
Judge Self-report	1	1
Commission Motion	3	2
TOTAL	135	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 number of judges and caseload), the greater the number of complaints filed. For example, the 5 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 41 percent of all complaints filed. The remaining 59 percent of the complaints were distributed among judges from 14 of 17 judicial districts in the state of Colorado and judges from the Colorado Court of Appeals and the Colorado Supreme Court. It should be noted that during 1996, no complaints were filed against judges in the 3rd Judicial District (Trinidad); the 6th Judicial District (Durango); or the 7th Judicial District (Montrose).

Table 5
Complaints Filed By Judicial District (1996)

<i>Judicial District (Number of Judges)</i>	<i>Number</i>	<i>Percentage</i>
1 (16)	10	8%
2 (24)	20	15
3 (4)	0	0
4 (21)	15	11
5 (7)	5	4
6 (5)	0	0
7 (10)	0	0
8 (8)	10	8
9 (8)	2	1
10 (9)	6	4
11 (7)	8	6
12 (8)	5	4
13 (11)	1	1
14 (5)	2	1
15 (6)	3	2
16 (5)	3	2
17 (13)	5	4
18 (22)	18	13
19 (7)	7	5
20 (9)	1	1
21 (6)	3	2
22 (3)	1	1
Court of Appeals (16)	3	2
Supreme Court (7)	7	5
TOTAL	135	100%

Commission Action

During Commission meetings held to discuss the 136 new cases filed during 1996 and the one carry-over case from 1995, the Commission resolved 135 complaints.

As Table 6 indicates, the Commission requested responses from judges in 12 of the cases. Furthermore, as indicated by Table 7, the Commission requested its staff to investigate 12 complaints. Special counsel was retained to investigate one complaint.

Table 6*Commission Request for Judge Response (1996)*

<i>Request</i>	<i>Number</i>	<i>Percentage</i>
Yes	12	9%
No	123	91
TOTAL	135	100%

Table 7*Investigation by Commission or Special Counsel (1996)*

<i>Investigation</i>	<i>Number</i>	<i>Percentage</i>
Staff	12	9%
Special Counsel	1	1
No Investigation	122	90%
TOTAL	135	100%

Complaint Disposition

The disposition of complaints and the Commission's cumulative workload for the last 3 years are shown in Table 8.

Of the 135 cases processed to completion by the Commission during 1996, 129 cases were dismissed following review by the Commission. Of these dismissals, approximately 21 percent (27 of the 129 cases) were dismissed based on a finding of "no misconduct" after Commission review. In addition, 102 of the 129 cases, or 79 percent, were found to be "appellate in nature" and, therefore, outside the legal jurisdiction of the Commission.

A total of 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, reprimand, or censure to the respondent-judge.

In one case, the respondent-judge chose to resign rather than continue with a formal proceeding that was pending against the judge. Finally, in one case, the Colorado Supreme Court ordered the retirement of a judge due to a physical disability that had become permanent in nature.

Cumulative Overview

As a result of the Commission's activity during the last 30 years, 19 judges have been ordered retired for disability, and the Commission has issued 153 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, 39 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.

Table 8*Caseload Disposition for Calendar Years 1994, 1995 and 1996*

<i>Calendar Year</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>
Cases pending at beginning of year	2	4	1
Complaints received during year	290	135	136
TOTAL CASELOAD	292	139	137

Complaints Dismissed:

Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	5	0	0
Appellate in nature	244**	103**	102**
Lack of jurisdiction or unfounded	0	0	0
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	35	31	27

TOTAL COMPLAINTS

DISMISSED BY COMMISSION	284	134	129
--------------------------------	------------	------------	------------

Other Actions:

Retirement or resignation during or following investigation, while case still pending	1	0	1
Dismissed following Supreme Court review	0	0	0

RETIREMENTS OR DISMISSALS BY SUPREME COURT

	1	0	1
--	---	---	---

Corrective Actions:

Admonition, reprimand or censure, either by private letter or personal appearance	3	4	4
Retirement for medical disabilities	0	0	1
Public reprimand by Supreme Court	0	0	0
TOTAL CORRECTIVE ACTIONS	3	4	5
TOTAL CASES TERMINATED	288	138	135

CASES PENDING AT YEAR END	4	1	2
----------------------------------	----------	----------	----------

**In 1994, 1995 and 1996, 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.

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 falling outside the minimum standards of judicial conduct.

Reprimands and censures are private, informal actions of the Commission involving judicial misconduct that the Com-

mission determines is in violation of the canons of the Colorado Code of Judicial Conduct and, therefore, unacceptable. In reaching these types of disciplinary findings, the Commission determines that the misconduct, while serious, does not merit a formal hearing or recommendation to the Colorado Supreme Court for the judge's public discipline or removal from office.

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 domestic relations 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 and a customer of a business establishment, a violation of Canons 1 and 2 A. and B., Colorado Code of Judicial Conduct;
- Demonstrated rudeness and verbally abusive behavior toward a police officer while that officer was investigating a traffic stop involving the judge, a violation of Canons 1 and 2 A., Colorado Code of Judicial Conduct; and,
- Pled guilty to driving while their ability was impaired by alcohol, a violation of Canons 1 and 2 A., Colorado Code of Judicial Conduct.

Beginning in 1992 and continuing through 1996, the Commission undertook a proactive educational program to inform new and continuing judges of their duties and responsibilities under the 8 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 1996, the Commission's overall caseload remained constant compared with 1995. When considering total corrective actions taken against judges during 1996 as a percentage of total complaint/case dispositions, there was an equal number of corrective actions taken against state judges in 1996 compared with 1995.

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 thirty 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 serves to maintain the balance between independence and accountability in the judiciary.

For further information about the Commission, its role and responsibilities, please write Rick Wehmhoefer, Executive Director and General Counsel, Colorado Commission on Judicial Discipline, 1301 Pennsylvania Street, Suite 260, Denver, Colorado 80203, or call him at (303) 837-3601.

Colorado Appellate Courts to Host Appellate Practice Symposium: May 30

On May 30, the Colorado Supreme Court and Court of Appeals will host a symposium on Colorado appellate practice at the Colorado State Judicial Building in Denver. The program will feature a mock oral argument with critique and analysis from appellate judges and a bench-bar luncheon. In addition, judges and experienced appellate practitioners will address topics including a day in the life of an appeal, clerk's office procedures for processing appeals, effective briefing, avoiding appellate traps, preparing persuasive petitions for *certiorari*, ethics issues in appeals, and Rule 21 practice. The program will close with a question and answer session with state appellate judges, followed by a cocktail reception.

Continuing Legal Education in Colorado, Inc. ("CLECI") will accept registrations for this event. Enrollment is limited to 125 persons on a first-come, first-served basis. For more information or to register, call CLECI in Denver at (303) 860-0608.