



Colorado Commission on Judicial Discipline: 1997 Annual Report

Introduction and Overview

The following report details the Colorado Commission on Judicial Discipline's background and report of activities for calendar year 1997.

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 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 1997, 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 charged or 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 also holds special meetings, hearings and telephone conferences as needed throughout the year.

Some complaints are dismissed following initial discussion and evaluation by the Commission or its staff 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 Commission provides the judge an opportunity to respond to the complaint and to present additional information.

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 screens all complaints and conducts all reviews and 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 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 its 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. The special counsel and the judge, together with the judge's attorney if the judge has retained one, are present at all formal hearings 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.

Judge-member Commissioners who sit on the bench in the same judicial district as a judge against whom a complaint is brought are disqualified from participating in that case. Judge-member Commissioners also are disqualified from participating in a case if they are friends of the respondent-judge or if for any other reason their participation in that judge's case may raise an appearance of impropriety.

Likewise, citizen- and attorney-member Commissioners also are disqualified if they live in the same judicial district as the respondent-judge; if they are friends of that judge; or, if for any other reason, their participation in that judge's case may raise an appearance of impropriety.

1997 Caseload Description

During 1997, the Commission responded to 1,831 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 429 complaint forms to individuals requesting these forms.

At the close of 1997, the Commission had received a total of 114 new complaints in addition to two (2) cases carried over from 1996. When considering the total number of complaints the Commission received and processed during 1997, its caseload in 1997 was slightly lower when compared to the number of complaints it received in 1996. This somewhat lower number of complaints, as explained in greater detail below, can be attributed in part to an intensive judicial ethics training program for all judges continued by the Commission during 1997, as well as the Commission's staff taking a more proactive role in educating the general public on the role of the Commission in addressing concerns about the conduct of Colorado's judges.

At the close of 1997, the Commission had processed to completion a total of 116 cases and carried over no (0) cases into calendar year 1998. Corrective actions taken against judges in 1997 totaled four of the total 116 complaint/case dispositions. In addition, three (3) judges decided to resign or retire from office while complaints were pending against them.

1997 Case Attributes

Judges

Of the total 116 cases disposed of in 1997, complaints filed involved 72 of the 284 judges at all levels of the state judicial

system. In other words, some judges had more than one complaint filed against them during the course of the year.

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

As indicated in Table 1, over three-fourths, or 76 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 (1997)

Type of Judge	Number	Percentage
District Judge	88	76%
County Judge (full-time)	15	13
County Judge (part-time)	5	4
Senior Judge	0	0
Appellate Judge	7	6
Juvenile Judge	0	0
Probate Judge	1	1
TOTAL	116	100%

Case Type

In 1997, types of cases giving rise to complaints were weighted toward criminal and civil matters.

As indicated in Table 2, 70 percent of all complaints filed involved criminal proceedings and 16 percent of all complaints filed involved civil cases. Nine (9) percent, or ten (10) complaints, arose as a result of a judge's off-the-bench conduct.

Table 2
Type of Case Giving Rise to Complaint (1997)

Type of Case	Number	Percentage
Civil	19	16%
Criminal	81	70
Domestic	4	3
Juvenile	0	0
Off-bench Conduct	10	9
Small Claims	1	1
Probate	1	1
TOTAL	116	100%

Subject Matter of Complaints

During 1997, the subject matter of complaints generally dealt with a complainant's dissatisfaction with a judge's legal rulings in criminal cases. As Table 3 indicates, a total of 79 cases, or 68 percent of all complaints filed, 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

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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 could be reviewed only by an appellate court.

Table 3
Subject Matter of Complaints (1997)

<i>Subject Matter</i>	<i>Number</i>	<i>Percentage</i>
Dissatisfaction with a Legal Ruling	79	68%
Administrative or Procedural Concern	13	11
Partiality or Favoritism	6	5
Injudicious Courtroom Demeanor or Control	5	4
Administrative Inefficiency or Delay in Decision-making	2	2
Personal Misconduct Either On- or Off-the-Bench	10	9
Racial, Ethnic or Gender Bias	1	1
Physical or Mental Disability	0	0
TOTAL	116	100%

Type of Complainant

During 1997, there were several categories of complainants. Table 4 details the categories of these complainants. The vast majority of complainants, nearly 9 out of 10 (or 87 percent), were individuals who were directly involved as litigants in cases in which the respondent-judge presided. Approximately four (4) percent of complaints came from individuals who were not directly involved in cases, but perhaps were a friend or relative of the litigant (e.g., mother, father, or sibling). Three (3) percent of the complaints were brought by attorneys. The Commission, on its own motion, initiated six (6) complaints (or five (5) percent of all complaints) in 1997.

Finally, of note in 1997 was the high number of complaints that came from individuals incarcerated in state correctional facilities. Almost 63 percent (73 of the 116 complainants filing cases with the Commission during 1997) came from individuals incarcerated for criminal offenses.

Table 4
Type of Complainant (1997)

<i>Complainant</i>	<i>Number</i>	<i>Percentage</i>
Litigant in Case	101	87%
Attorney in Case	3	3
People Not Directly Involved	5	4
Judge Self-report	1	1
Commission Motion	6	5
TOTAL	116	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 five (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 43 percent of all complaints filed. The remaining 57 percent of the complaints were distributed among judges from 16 of 17 judicial districts in the state and judges from the Colorado Supreme Court. It should be noted that during 1997, no complaints were filed against judges in the 13th Judicial District (Fort Morgan) or in the Colorado Court of Appeals.

Table 5
Complaints Filed By Judicial District (1997)

<i>Judicial District (Number of Judges)</i>	<i>Number</i>	<i>Percentage</i>
1 (16)	12	10%
2 (24)	12	10
3 (4)	4	3
4 (21)	15	13
5 (7)	2	2
6 (5)	1	1
7 (10)	3	3
8 (8)	9	8
9 (8)	2	2
10 (9)	1	1
11 (7)	8	7
12 (8)	2	2
13 (11)	0	0
14 (5)	1	1
15 (6)	4	3
16 (5)	1	1
17 (13)	2	2
18 (22)	15	13
19 (7)	4	3
20 (9)	9	8
21 (6)	1	1
22 (3)	1	1
Court of Appeals (16)	0	0
Supreme Court (7)	7	5
TOTAL	116	100%

Commission Action

During Commission meetings held to discuss the 114 new cases filed during 1997 and the two (2) carry-over cases from 1996, the Commission resolved all 116 of the outstanding complaints.

As Table 6 indicates, the Commission requested responses from judges in 15 of the cases. Furthermore, as indicated by Table 7, the Commission requested its staff to investigate 15 complaints.

Table 6

Commission Request for Judge Response (1997)

Request	Number	Percentage
Yes	15	13%
No	101	87
TOTAL	116	100%

Table 7

Investigation by Commission or Special Counsel (1997)

Investigation	Number	Percentage
Staff	15	13%
Special Counsel	0	0
No Investigation	101	87%
TOTAL	116	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 116 cases processed to completion by the Commission during 1997, 109 cases were dismissed following review by the Commission. Of these dismissals, approximately 10 percent (11 of the 109 cases) were dismissed based on a finding of "no misconduct" after Commission review. More significantly, 97 of the 109 cases, or 89 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 being taken against judges. In those cases, the Commission determined that there was judicial misconduct and issued private letters of admonition, reprimand, or censure to the respondent-judge.

In three cases, the respondent-judges chose to resign or retire rather than continue with the proceedings that were pending against them.

Table 8

Caseload Disposition for Calendar Years 1995, 1996 and 1997

Calendar Year	1995	1996	1997
Cases pending at beginning of year	4	1	2
Complaints received during year	135	136	114
TOTAL CASELOAD	139	137	116

Complaints Dismissed:

Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	0	0	1
Appellate in nature	103**	102**	97**
Lack of jurisdiction or unfounded	0	0	0
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	31	27	11
TOTAL COMPLAINTS DISMISSED BY COMMISSION	134	129	109

Table 8 (cont.)

Other Actions:

Retirement or resignation during or following investigation, while case still pending	0	1	3
Dismissed following Supreme Court review	0	0	0
RETIREMENTS OR DISMISSALS BY SUPREME COURT	0	1	3

Corrective Actions:

Admonition, reprimand or censure, either by private letter or personal appearance	4	4	4
Retirement for medical disabilities	0	1	0
Public reprimand by Supreme Court	0	0	0
TOTAL CORRECTIVE ACTIONS	4	5	4
TOTAL CASES TERMINATED	138	135	116
CASES PENDING AT YEAR END	1	2	0

***In 1995, 1996 and 1997, 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 types of appellate matters.*

Cumulative Overview

As a result of the Commission's activity during the last 31 years, 19 judges have been ordered retired for a disability, and the Commission has issued 157 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, 42 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 disciplinary action. Some examples of judicial misconduct that have required action by the Commission during the past few years are highlighted below. As used here, admonitions are private, informal letters of discipline issued to a judge providing a warning that his or her conduct or behavior suggests an appearance of impropriety falling outside expected minimum standards of judicial conduct.

Letters of reprimand or censure are also private. However, these letters inform the judge that the Commission has determined that there has been a direct violation of the canons of the Colorado Code of Judicial Conduct and, further, that such conduct is unacceptable. In reaching these types of disciplinary findings, the Commission determines that the misconduct, while serious, does not merit a formal hearing or recom-

mentation to the Colorado Supreme Court that the judge be publicly disciplined or removed from office.

As examples, during the past few years, the Commission has issued private admonitions, reprimands, or censures to judges who:

- Engaged in *ex parte* contacts with litigants and attorneys in 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 pending before the judge, a violation of Canons 1; 2 A. and B.; and, 3 A. (3), Colorado Code of Judicial Conduct;
- Engaged in *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 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 the judge's ability was impaired by alcohol, a violation of Canons 1 and 2 A., Colorado Code of Judicial Conduct.

Beginning in 1992 and continuing through 1997, the Commission undertook a proactive educational program to inform new and continuing judges of their duties and responsibilities under the eight (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 complements 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 1997, the Commission's overall caseload was slightly lower when compared with 1996. When considering total corrective actions taken against judges during 1997 as a percentage of total complaint/case dispositions, there was a comparable number of corrective actions taken against state judges in 1997 compared with 1996.

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's interest while safeguarding individual rights and reputations from unfounded accusations of misconduct. The Commission's performance during the last thirty-one (31) years suggests that it has succeeded in improving and strengthening Colorado's 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.

Annual Rocky Mountain Mineral Law Institute To be Held in July

The Rocky Mountain Mineral Law Foundation ("RMMLF") will sponsor the forty-fourth annual Rocky Mountain Mineral Law Institute in Snowmass Village on July 23-25. The Institute offers the combined expertise of more than thirty outstanding and experienced natural resources law professionals. Presentations will address a variety of practical legal and land problems associated with the exploration for and development of oil and gas, hard minerals, and water on both public and private lands.

Several general sessions, as well as split sections on mining, oil and gas, landmen's issues, and water topics, will be presented. Two hours of ethics and four hours of international resources issues are included in the program. Attorneys, landmen, corporate management, government representatives, university faculty, and consultants will benefit from knowledge gained at this year's Institute. For more information, call the RMMLF in Denver at (303) 321-8100.