Feature

Colorado Commission on Judicial Discipline: 1998 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 1998.

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 disciplining or removing judges. Today, all 50 states and the District of Columbia have these types of judicial 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. These members include 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 confirmation 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 1998, the Commission membership included:

Member	*Home Town*	*Category*
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 also 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 misdemeanor, felony, or offense involving moral turpitude.

The Commission has jurisdiction over the conduct of the 284 justices, judges and senior judges who serve the Colorado state court system. It does not have jurisdiction over magistrates, the 17 county court judges in Denver, or 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 magistrates. 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 court 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 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 that may assist the Commission in its investigation of the matter.

Preliminary investigations may include reviewing court transcripts; evaluating the judge's response; obtaining statements from the complainant, attorneys who might be involved, other judges, court 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, such as an educational, court management, or counseling program. The Commission also may 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, § 23 (3) (g) of the Colorado Constitution, and §§ 24-72-401 and 402 of the Colorado Revised Statutes].

While requests for the disqualification of a judge in a matter pending before that judge are not granted automatically, 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 discussions or decisions involving complaints against them.

Judge-member commissioners who sit on the bench in the same judicial district as a judge against whom a complaint is brought are disqualified automatically 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-member 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.

1998 Caseload Description

During 1998, the Commission responded to over 2,050 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 554 complaint forms to individuals requesting those forms.

At the close of 1998, the Commission had received and processed a total of 157 new complaints. When considering the total number of complaints received and processed during 1998, the Commission's caseload in 1998 was up approximately 35 percent when compared to 1997. This numerical increase is attributed to the receipt of several complaints pertaining to appellate matters, over which, as discussed above, the Commission has no jurisdiction.

In actuality, during 1998, the number of substantive matters meriting Commission action was lower than 1997. As explained in greater detail below, this decrease in Commission action can be attributed in part to an intensive judicial ethics training program for all judges continued by the Commission during 1998, as well as the Commission's staff taking a more proactive role in educating the general public on the role and responsibility of the Commission in addressing concerns about the conduct of Colorado's judges.

At the close of 1998, the Commission had processed to completion all of the 157 cases that it had received during the year. It carried over no (0) cases into calendar year 1999. Corrective actions taken against judges in 1998 totaled one (1) of the total 157 complaint/case dispositions. In addition, two (2) judges were retired from office for medical disabilities by order of the Colorado Supreme Court.

1998 Case Attributes

Judges

Of the total 157 cases disposed of during 1998, complaints filed involved 85 of the 284 judges at all levels of the Colorado 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.

Table 1
Type of Judge Named in Complaint (1998)

Type of Judge	*Number*	*Percentage*
District Judge	119	76%
County Judge (full-time)	32	20
County Judge (part-time)	2	1
Senior Judge	2	1
Appellate Judge	1	1
Juvenile Judge	1	1
Probate Judge	0	0
TOTAL	157	100%

Case Type

In 1998, 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 18 percent of all complaints filed involved civil cases. Ten (10) percent, or 15 complaints, related to domestic relations cases.

Table 2
Type of Case Giving Rise to Complaint (1998)

Type of Case	*Number*	*Percentage*
Civil	29	18%
Criminal	110	70
Domestic	15	10
Juvenile	1	1
Off-bench Conduct	2	1
Small Claims	0	0
Probate	0	0
TOTAL	157	100%

Subject Matter of Complaints

During 1998, 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 128 cases, or 81 percent of all complaints filed, dealt with an indi-

vidual'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 could be reviewed only by an appellate court.

Table 3
Subject Matter of Complaints (1998)

Subject Matter	*Number*	*Percentage*
Dissatisfaction with a Legal Ruling	128	81%
Administrative or Procedural Concern	16	10
Partiality or Favoritism	6	4
Injudicious Courtroom Demeanor or Control	1	1
Administrative Inefficiency or Delay in Decision-making	2	1
Personal Misconduct Either On or Off the Bench	1	1
Racial, Ethnic or Gender Bias	1	1
Physical or Mental Disability	2	1
TOTAL	157	100%

Type of Complainant

During 1998, 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 89 percent), were individuals who were directly involved as litigants in cases in which the respondent-judge presided. Approximately five (5) 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 four (4) complaints (or three (3) percent of all complaints) in 1998.

Finally, of note in 1998 was the high number of complaints that came from individuals incarcerated in state correctional facilities. Almost 62 percent (97 of the 157 complainants filing cases with the Commission during 1998) came from individuals incarcerated in state correctional facilities for criminal offenses.

Table 4
Type of Complainant (1998)

Complainant	*Number*	*Percentage*
Litigant in Case	140	89%
Attorney in Case	5	3
People Not Directly Involved	8	5
Judge Self-report	0	0
Commission Motion	4	3
TOTAL	157	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 15 of the 17 judicial districts outside the Denver metropolitan area and a judge from the Colorado Court of Appeals. It should be noted that during 1998, no complaints were filed against judges in the 13th Judicial District (Sterling/Fort Morgan); judges in the 14th Judicial District (Hot Sulphur Springs/ Steamboat Springs); or, justices on the Colorado Supreme Court.

Table 5
Complaints Filed by Judicial District (1998)

Judicial District (Number of Judges)	*Number*	*Percentage*
1 (16)	18	11%
2 (24)	20	13
3 (4)	1	1
4 (21)	20	13
5 (7)	4	3
6 (5)	2	1
7 (10)	9	6
8 (8)	14	9
9 (8)	7	4
10 (9)	7	4
11 (7)	2	1
12 (8)	1	1
13 (11)	0	0
14 (5)	0	0
15 (6)	7	4
16 (5)	4	3
17 (13)	6	4
18 (22)	15	9
19 (7)	1	1
20 (9)	9	6
21 (6)	7	4
22 (3)	2	1
Court of Appeals (16)	1	1
Supreme Court (7)	0	0
TOTAL	157	100%

Commission Action

During Commission meetings held to discuss the 157 new cases filed during 1998, the Commission resolved all 157 of the outstanding complaints.

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

Table 6
Commission Request for Judge Response (1998)

Request	*Number*	*Percentage*
Yes	7	4%
No	150	96
TOTAL	157	100%

Table 7
Investigation by Commission or Special Counsel (1998)

Investigation	*Number*	*Percentage*
Staff	7	4%
Special Counsel	0	0
No Investigation	150	96%
TOTAL	157	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 157 cases processed to completion by the Commission during 1998, 154 cases were dismissed following review by the Commission. Of these dismissals, approximately 10 percent (16 of the 154 cases) were dismissed based on a finding of "no misconduct" after Commission review. More significant, 138 of the 154 cases, or 90 percent, were found to be "appellate in nature" and, therefore, outside the legal jurisdiction of the Commission.

A total of one (1) case resulted in corrective action being taken against a judge. In that case, the Commission determined that there was judicial misconduct and issued a private letter of reprimand against the respondent-judge.

In two (2) cases, the respondent-judges were retired for medical disabilities by order of the Colorado Supreme Court.

Table 8
Caseload Disposition for Calendar Years 1996, 1997 and 1998

Calendar Year	*1996*	*1997*	*1998*
Cases pending at beginning of year	1	2	0
Complaints received during year	136	114	157
TOTAL CASELOAD	137	116	157
Complaints Dismissed:			
Requests withdrawn, additional information not submitted, matter became moot, or was resolved administratively, dismissed by staff	0	1	0
Appellate in nature	102**	97**	138**
Lack of jurisdiction or unfounded	0	0	0
No evidence of misconduct or any other ground for judicial discipline (allegations unsubstantiated)	27	11	16
TOTAL COMPLAINTS DISMISSED BY COMMISSION	129	109	154
Other Actions:			
Retirement or resignation during or following investigation, while case still pending	1	3	0
Dismissed following Supreme Court review	0	0	0
RETIREMENTS OR DISMISSALS BY SUPREME COURT	1	3	0
Corrective Actions:			
Admonition, reprimand or censure, either by private letter or personal appearance	4	4	1
Retirement for medical disabilities	1	0	2
Public reprimand by Supreme Court	0	0	0
TOTAL CORRECTIVE ACTIONS	5	4	3
TOTAL CASES TERMINATED	135	116	157
CASES PENDING AT YEAR END	2	0	0

***In 1996, 1997 and 1998, 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 32 years, 21 judges have been ordered retired for a disability, and the Commission has issued 158 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 also are 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-

mendation 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 litigants in cases pending before the judges, violations 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 1998, 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 and chief ethics advisor.

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 1998, the Commission's overall caseload was higher than that of 1997. However, when considering total corrective actions taken against judges during 1998 as a percentage of total complaint/case dispositions, there was a significantly lower number of corrective actions taken against Colorado state judges in 1998 compared with 1997.

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-two (32) 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, 899 Logan Street, Suite 307, Denver, Colorado 80203, or call him at (303) 894-2110.

VACANCY NOTICE
ABA House of Delegates Representative

The CBA will have a vacancy in its delegation to the American Bar Association ("ABA") House of Delegates. The term of appointment is two years, beginning in mid-August 1999. Subsequent terms (two maximum) are for two-year periods. Duties include:

- attendance at ABA Annual Meeting in August (two-day meeting);
- attendance at ABA Mid-Year Meeting in February (two-day meeting);
- attendance at the CBA Board of Governors meetings (January, May, September).

Expenses for travel and a *per diem* allowance are paid by the CBA for the ABA meetings; expenses are not reimbursed for the Board of Governors meetings. Submit a resume and a brief letter expressing interest by June 15 to: ABA Delegate, Colorado Bar Association, c/o Charles C. Turner, 1900 Grant St., Ninth Floor, Denver, CO 80203.