



# Colorado Commission on Judicial Discipline: 2000 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 2000.

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 fifty 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 attorneys, 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 in their conduct of Commission business.

At the close of 2000, the Commission membership included:

<i>Member</i>	<i>Home Town</i>	<i>Category of Appointment</i>
Cindy Hull Bruner	Brighton	County Judge
Phillip S. Figa	Greenwood Village	Attorney
John M. Holcomb	Denver	Citizen
C. Suzanne Mencer	Littleton	Citizen

Larry Naves	Denver	District Judge
Michael J. Norton	Englewood	Attorney
Ruth A. Steel	Englewood	Citizen
Doug Tallman	Cheyenne Wells	County Judge
William L. West	Greeley	District Judge
Preston C. White	Colorado Springs	Citizen

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 280 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 directly 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 complaints 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 that person's court case. The Commission also may commence investigations on its own motion without receipt of a written complaint.

Complaints are reviewed by the Commission's staff and, if the complaint falls within the jurisdiction of the Commission, by the Commission itself during its regularly-scheduled meetings. The Commission also holds special meetings, hearings, and telephone conferences, as needed, throughout the year.

Some complaints are dismissed following staff review or following initial review and evaluation by the Commission because the complaints do not fall within the jurisdiction granted to the Commission by the Colorado Constitution. As previously stated, for example, the Commission must dismiss any complaint pertaining to a judge's rulings or orders in a person's court case. These types of issues can be reviewed only through the appellate process.

If a complaint is dismissed following this initial review, the judge is not notified of the complaint. If the Commission determines that further investigation is warranted, the judge is informed of the complaint and told the name of the complainant, or the judge is told that the Commission is proceeding on its own motion. The Commission provides the judge with 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 records and transcripts; obtaining statements from the complainant, attorneys who may have been involved, other judges, court staff, or other persons who may have some knowledge or information relating to the allegations contained in the complaint; or conducting legal research into the substantive areas of the alleged misconduct. The Commission's staff screens all complaints and conducts all preliminary reviews and investigations.

Following the preliminary investigation, the Commission may dismiss the complaint; continue it for further action, investigation, or review; issue a private admonition, reprimand, or censure to the respondent-judge, either in writing or in person; 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 a 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 outside attorney to act as its special counsel in formal proceedings against a judge. The special counsel investigates the

matter further; prepares a written statement of charges; files it with the Commission; and, after the judge has had an opportunity to respond to these 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 all of the evidence and argument, the Commission may dismiss the complaint; take any of the informal actions described above; or recommend to the Colorado Supreme Court that the respondent-judge be removed, retired, censured, reprimanded, or otherwise publicly disciplined.

All matters before the Commission are handled in the strictest of confidence pursuant to constitutional 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 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 filed are automatically disqualified from participating in that case. Judge-member commissioners also are disqualified from participating in a complaint if they are a friend of the respondent-judge or if, for any other reason, their participation in that judge's case may raise an appearance of impropriety.

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.

## 2000 Caseload Description

During the year 2000, the Commission responded to over 2,200 telephone calls or personal visits to its offices, either to answer questions about the Commission's role and responsibilities, or to direct individuals to proper agencies or offices that could address their questions or concerns. The Commission also distributed a total of 560 complaint forms.

At the close of 2000, the Commission had received and processed a total of 209 new complaints. When considering the total number of complaints received and processed during 2000, the Commission's caseload in 2000 was up approximately 46 percent when compared to 1999. 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.

It is important to note that 76 percent of the 209 complaints filed during the year 2000, *i.e.*, 159 complaints, came from individuals incarcerated in state correctional facilities. These complainants generally alleged that they were unhappy with the rulings and decisions made by judges that led to their placement in these facilities. In addition, 70 of the 159 complaints were filed against each of the seven members of the Colorado Supreme Court by ten inmates who were incarcerated in a private correctional facility in Colorado. These ten inmates had been transferred to Colorado from another state. They alleged

that the Colorado Supreme Court had violated their individual rights because these inmates were being held "against their will" in Colorado. They requested that the Commission release them immediately. These complaints were dismissed since they dealt solely with appellate matters that were outside the jurisdiction of the Commission (see Table 5).

In actuality, during 2000, the number of substantive complaints meriting Commission review and action was lower in 2000 compared to 1999. As explained in greater detail below, this decrease in Commission action can be attributed in part to an intensive judicial ethics training and advising program for all judges continued by the Commission during 2000. It also reflects the Commission's 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 2000, the Commission had processed to completion 207 of the 209 cases that it had received during the year. It carried over two cases into the year 2001. In 2000, corrective action was taken against one judge out of the total 207 complaint/case dispositions. In addition, two judges were retired from office for medical disabilities by order of the Colorado Supreme Court.

## 2000 Case Attributes

### Type of Judge

Of the total 207 cases disposed of during 2000, complaints filed involved 82 of the 280 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 280 judges include: 120 district court judges; 101 county court judges; 36 senior judges; and 23 appellate court judges.

As indicated in Table 1, slightly less than half, or 46 percent, of all complaints filed were against district court judges. Approximately one-third, or 35 percent, of all complaints filed were against members of the Colorado Supreme Court or the Colorado Court of Appeals. The complaints against the members of the Colorado Supreme Court are explained above.

**Table 1**

*Type of Judge Named in Complaint (2000)*

<i>Type of Judge</i>	<i>Number</i>	<i>Percentage</i>
District Court Judge	95	46%
County Court Judge (full-time)	31	15
County Court Judge (part-time)	7	3
Senior Judge	3	1
Appellate Judge	73	35
Juvenile Judge	0	0
Probate Judge	0	0
<i>TOTAL</i>	<u>209</u>	<u>100%</u>

### Case Type

In 2000, types of cases giving rise to complaints were weighted toward criminal matters. As indicated in Table 2, 85 percent of all complaints filed involved criminal proceedings.

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**Table 2***Type of Case Giving Rise to Complaint (2000)*

<i>Type of Case</i>	<i>Number</i>	<i>Percentage</i>
Civil	10	4%
Criminal	177	85
Domestic Relations	18	8
Juvenile	0	0
Off-the-Bench Conduct (medical disability)	2	1
Small Claims	1	1
Probate	1	1
<b>TOTAL</b>	<b>209</b>	<b>100%</b>

**Subject Matter of Complaints**

During 2000, the subject matter of complaints dealt primarily with a complainant's dissatisfaction with a judge's legal rulings in his or her court case. As Table 3 indicates, a total of 204, or 97 percent, of all complaints filed, came from individuals who expressed dissatisfaction with the judge's legal rulings. As explained above, the Commission is not an appellate court and does not have the authority to review the substantive legal or factual issues involved in a judge's rulings. Therefore, these cases were dismissed.

**Table 3***Subject Matter of Complaint (2000)*

<i>Subject Matter</i>	<i>Number</i>	<i>Percentage</i>
Dissatisfaction with Ruling	204	97%
Administrative/ Procedural Concern	2	1
Partiality or Favoritism	0	0
Injudicious Courtroom Demeanor	0	0
Delay in Decision-making	0	0
Personal Misconduct, On- or Off-the-Bench	1	1
Racial, Ethnic, or Gender Bias	0	0
Physical or Mental Disability	2	1
<b>TOTAL</b>	<b>209</b>	<b>100%</b>

**Type of Complainant**

During 2000, there were several categories of complainants. Table 4 details the categories of these complainants. The vast majority of complainants, 95 percent, were individuals who were directly involved as litigants in cases in which the respondent-judge presided. As noted above, during 2000, a very large number, 159 of the 209 complaints filed, came from individuals incarcerated in state correctional facilities.

**Table 4***Type of Complainant (2000)*

<i>Complainant</i>	<i>Number</i>	<i>Percentage</i>
Litigant in Case	198	95%
Attorney in Case	4	2
People Not Directly Involved	5	2
Judge Self-Report	0	0
Commission Motion	2	1
<b>TOTAL</b>	<b>209</b>	<b>100%</b>

**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 judicial districts encompassing the Denver metropolitan area (1st, 2nd, 17th, 18th, and 20th Judicial Districts) accounted for approximately 26 percent of all complaints filed. Thirty-four percent of all complaints were filed against members of the Colorado Supreme Court. During 2000, no complaints were filed against judges in the 14th, 19th, and 22nd Judicial Districts.

**Table 5***Complaints Filed by Judicial District (2000)*

<i>Judicial District (Number of Judges in District)</i>	<i>Number</i>	<i>Percentage</i>
1 (17)	22	11%
2 (24)	3	1
3 (4)	6	3
4 (23)	27	13
5 (7)	6	3
6 (5)	3	1
7 (10)	1	1
8 (9)	7	3
9 (8)	5	2
10 (9)	3	1
11 (7)	8	4
12 (8)	2	1
13 (11)	1	1
14 (5)	0	0
15 (6)	3	1
16 (5)	2	1
17 (13)	6	3
18 (24)	18	9
19 (7)	0	0
20 (10)	4	2
21 (6)	9	4
22 (3)	0	0
Court of Appeals (16)	3	1
Supreme Court (7)	70	34
<b>TOTAL</b>	<b>209</b>	<b>100%</b>

## Commission Action

During Commission review of the 209 new cases received during 2000, the Commission resolved 207 of the 209 complaints filed.

As Table 6 indicates, the Commission requested responses from judges in five of the cases. Further, in addition to reviewing and screening all 209 cases, the Commission requested that its staff investigate five complaints in greater detail (see Table 7).

**Table 6**

*Commission Request for Judge's Response (2000)*

Request	Number	Percentage
Yes	5	2%
No	204	98
<b>TOTAL</b>	<b>209</b>	<b>100%</b>

**Table 7**

*Investigation by Commission Staff (2000)*

Investigation	Number	Percentage
Staff Investigation	5	2%
Staff Screening	204	98
<b>TOTAL</b>	<b>209</b>	<b>100%</b>

## Commission Complaint Disposition

The disposition of complaints and the Commission's cumulative workload for the last three years are shown in Table 8. Of the 207 cases processed to completion during 2000, 204 cases were dismissed following Commission review. Of these dismissals, approximately 12 percent (24 of 204 cases) were dismissed based on a finding of "no misconduct" after Commission review. More significantly, 180 of the 204 cases, or 88 percent, were found to be "appellate in nature" and, therefore, outside the legal jurisdiction of the Commission.

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

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

**Table 8**

*Commission Complaint Disposition for Calendar Years 1998, 1999, and 2000*

Calendar Year	1998	1999	2000
Cases pending at beginning of year	0	0	0
Complaints received during year	157	143	209
<b>TOTAL CASELOAD</b>	<b>157</b>	<b>143</b>	<b>209</b>
<i>Complaints Dismissed Based on a Finding of:</i>			
No Misconduct	16	7	24
Appellate in nature	138*	135*	180*
<b>TOTAL COMPLAINTS DISMISSED</b>	<b>154</b>	<b>142</b>	<b>204</b>

## Corrections Actions:

Admonishment, Reprimand, or Censure	1	1	1
Retirement for Medical Disabilities	2	0	2
<b>TOTAL CORRECTIVE ACTIONS</b>	<b>3</b>	<b>1</b>	<b>3</b>
<b>TOTAL CASES TERMINATED</b>	<b>157</b>	<b>143</b>	<b>207</b>
<b>CASES PENDING AT YEAR END</b>	<b>0</b>	<b>0</b>	<b>2</b>

*\*During 1998, 1999, and 2000, the Commission dismissed a significant number of complaints following initial review because the complaints dealt solely with a complainant's concerns about judicial decisions. Under the Colorado Constitution, such complaints about legal issues can be reviewed only by an appellate court. The Commission does not have jurisdiction over appellate issues.*

## Cumulative Overview

As a result of the Commission's work over the past 34 years, 23 judges have been ordered retired for a disability, and the Commission has issued 160 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, 43 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 to be serious enough to merit disciplinary action. Some examples of judicial misconduct that have required action by the Commission over the past few years are highlighted below. As used here, an admonition is a private letter of discipline issued to a respondent-judge providing a warning that his or her conduct suggests an appearance of impropriety falling outside the expected minimum standards of judicial conduct.

Letters of reprimand or censure also are private. These letters inform the respondent-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 recommendation to the Colorado Supreme Court that the respondent-judge be publicly disciplined or removed from office.

As examples, over the past few years, the Commission has issued private letters of discipline to judges who:

- Engaged in *ex parte* contacts with litigants or attorneys in cases pending before the judges, violations of Canons 1, 2A. and B., and 3 A. (4), Colorado Code of Judicial Conduct.
- Delayed issuing decisions in cases pending before the judges, violations of Canon 3 A. (5), Colorado Code of Judicial Conduct.
- Experienced losses of temper or control with litigants or attorneys in cases pending before the judges, violations of

Canons 1, 2A. and B., and 3 A. (3), Colorado Code of Judicial Conduct.

- Made inappropriate remarks about the conduct of an attorney to the media, a violation of Canons 1 and 3 A. (6), Colorado Code of Judicial Conduct.
- Heard a case involving an individual who was a client of 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.
- Became intemperate and verbally abusive toward an employee and customer of a business establishment, a violation of Canons 1 and 2 A. and B., Colorado Code of Judicial Conduct.
- 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.
- Was found to have sexually harassed an employee of the judge, a violation of Canons 1 and 3 A. (3), Colorado Code of Judicial Conduct.

In several of the cases cited above, the level of discipline imposed by the Commission was related to the respondent-judge's decision to retire or resign prior to the Commission's initiation or conclusion of formal proceedings against that judge.

Beginning in 1992 and continuing through 2000, the Commission undertook a proactive educational program to inform new and continuing judges of their ethical duties and responsibilities under the eight Canons of the Colorado Code of Judicial Conduct. The Commission concluded that this type of proactive educational program demonstrated positive results, particularly by contributing to a smaller number of substantive complaints being filed against judges, and a smaller number of corrective actions having to be taken against judges, since 1992, as compared with earlier years.

In addition, in July 1994, based on the recommendation of the Commission, the Colorado Supreme Court, through Chief Justice Directive 94-01 (amended in 2000), announced the creation of, and promulgated procedural rules for, the Colorado Judicial Ethics Advisory Board.

This board provides ethical advice and guidance to Colorado's state judges and magistrates and complements the educational programs undertaken by the Commission. The board is comprised of five members, with the Commission's executive director and general counsel serving as the board's reporter

and chief ethics advisor. During 2000, this board provided informal ethical advice to 88 judges seeking the board's guidance.

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 of the Colorado Code of Judicial Conduct; made suggestions to judges concerning the overall management of their dockets; referred matters to other agencies or departments for resolution of problems outside of the jurisdiction of the Commission; and aided in the administrative resolution of several matters.

## Conclusion

During the year 2000, the Commission's overall workload increased approximately 46 percent when compared with that of 1999. However, this increase was based on 70 complaints filed by ten inmates incarcerated in a private correctional facility against each of the seven members of the Colorado Supreme Court. If these 70 complaints were not counted, the workload for 2000 would have been comparable to that of 1999.

When considering total corrective actions taken against respondent-judges during 2000, as a percentage of total complaint/case dispositions, the number of corrective actions taken against Colorado state judges in 2000 was the same as 1999.

Although much of the Commission's work is not completely open 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 allegations of misconduct. The Commission's performance over the past 34 years suggests that it has succeeded in improving and strengthening Colorado's judicial system while carrying out its public responsibilities.

The Commission performs a vital role in maintaining a fair and impartial judiciary. Since the judicial selection, retention, 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 additional information about the Commission, its role and responsibilities, please write to: Rick Wehmhoefer, Executive Director and General Counsel, Colorado Commission on Judicial Discipline, 899 Logan Street, Suite 307, Denver, Colorado 80203; or call him in Denver at (303) 894-2110. ■

## World Jurist Association Presents 20th Biennial Conference On the Law of the World Dublin/Belfast, Ireland, September 30-October 5, 2001

The World Jurist Association ("WJA") is a nonprofit, nonpolitical, § 501(c)(3) organization dedicated to promoting peace through the Rule of Law. Since its inception in 1963, the WJA has played a leading role in bringing together professionals from around the world to exchange ideas on justice, law, democracy, and peace. WJA is presenting the 20th Biennial Conference on the Law of the World from September 30 to October 5, 2001, in Dublin and Belfast, Ireland. Some the topics of this conference are human rights, international law, technology, alternative dispute resolution, aging and law, women's rights, and labor law. For complete details and for registration information, contact: The World Jurist Association, 1000 Connecticut Ave. NW, Suite 202, Washington, DC 20036; phone: (202) 466-5428; fax: (202) 452-8540; [wja@worldjurist.org](mailto:wja@worldjurist.org).