

2008 Annual Report

Background and Jurisdiction

The framework for the Colorado Commission on Judicial Discipline (Commission) is found in Colo. Const. art. VI, § 23. Under § 23(d), a justice or judge of any court of record may be removed or disciplined for willful misconduct in office, willful or persistent failure to perform his or her duties, intemperance, or a violation of the Colorado Code of Judicial Conduct (Code). A judge also may be retired for a disability that interferes with the performance of his or her duties, if the disability is likely to become permanent. Colo. Const. art. VI, § 23(e) provides for certain sanctions short of removal or retirement, where appropriate, including suspension, censure, reprimand, remedial action, or other discipline.

Colo. Const. art. VI, § 23(h) grants authority to the Colorado Supreme Court to provide by rule for the procedures to be followed by the Commission. Accordingly, the Supreme Court has established guidelines for the administration and activities of the Commission in the Colorado Rules of Judicial Discipline (Rules), which are applied in conjunction with the Code. The full text of the Rules and Code are published in *Court Rules*, Book 1, of the Colorado Revised Statutes.

For a fuller understanding of the scope of the Commission's disciplinary authority, it is important to note the following:

- The Commission's jurisdiction is limited to disciplinary matters concerning district judges, county judges, Colorado Court of Appeals judges, justices of the Colorado Supreme Court, senior judges, and appointed judges. Excluded from this jurisdiction are magistrates, municipal judges, and administrative law judges (ALJs).
- The Office of Attorney Regulation Counsel (ARC) is charged with disciplinary oversight of magistrates and ALJs, along with its jurisdiction over the conduct of lawyers generally, under the Colorado Rules of Professional Conduct.
- County Judges in the City and County of Denver are considered municipal judges; disciplinary matters for those judges are addressed by the Denver County Court Commission on Judicial Discipline. Certain other cities—for example, Lakewood—have established similar disciplinary bodies to oversee the conduct of their municipal judges.

Frequently, the Commission receives calls from individuals who (1) confuse the judicial disciplinary process with the appellate process; and (2) misconstrue a disappointing factual or legal ruling to be judicial misconduct and want to have the decision reversed on that basis. However, appeals of findings of fact and legal conclusions are reserved to courts of record under Colo. Const. art. VI, §§ 1 and 2, and by provisions of Colorado Revised Statutes.

Other matters beyond the scope of the Commission's jurisdiction include concerns about a judge's overall performance and fitness for the position, rather than an incident or series of incidents of misconduct. Although there may be some overlap with the Commission's disciplinary role, such concerns may be more appropriate for consideration by the Colorado Commission on Judicial Performance, which disseminates information regarding a judge's

performance prior to the judge's retention election. The Colorado Commission on Judicial Performance is accessible online at www.cojudicialperformance.com/index.cfm.

Grounds for Judicial Discipline

The grounds for judicial discipline that may trigger the sanctions provided in Colo. Const. art. VI, § 23(d) are described in Rule 5(a). They include:

- 1) willful misconduct in office, including misconduct that, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice;
- 2) willful or persistent failure to perform judicial duties, including incompetent performance of judicial duties;
- 3) 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;
- 4) any conduct that constitutes a violation of the Code; or
- 5) disability interfering with the performance of judicial duties that is, or is likely to become, of a permanent character.

Because Rule 5(a)(4) incorporates the Code into the Rules, complaints filed with the Commission may involve allegations that a judge has not fulfilled his or her obligations under the nine Canons that are included in the Code. The Canons address the integrity and independence of the judiciary; impropriety or the appearance of impropriety; failure to perform duties promptly, impartially, and courteously; conduct off the Bench that is outside the boundaries of permitted quasi-judicial or extra-judicial activities; and inappropriate political activities. The Code is accessible online at www.deontologie-judiciaire.umontreal.ca/fr/codes%20nonces%20deonto/documents/Colorado_Code_of_Judicial_Conduct.pdf.

The Commission and Its Executive Director

The Commission is comprised of ten Colorado citizens who serve without compensation other than reimbursement for expenses reasonably incurred in the performance of their duties, such as travel to attend Commission meetings. The composition of the Commission is determined by Colo. Const. art. VI, § 23(3)(a) and (b). It includes two judges of district courts and two judges of county courts who are selected by the Supreme Court; two lawyers who have practiced in Colorado for ten years, neither of whom may be a justice or judge, and who are appointed by the Governor with the consent of the Senate; and four citizens who are not and have not been judges, who are not licensed to practice law in Colorado, and who are appointed by the Governor with the consent of the Senate.

Rule 3 provides for the organization and administration of the Commission, including the appointment of an Executive Director, whose duties include the operation of a permanent office; the screening and investigation of complaints; the maintenance of records and statistics; the employment of investigators, special counsel, and masters when necessary; the preparation and administration of the Commission's operating budget; and the preparation of an annual report.

Complaints

Rules 12 through 14 provide for the filing, screening, and preliminary investigation of complaints. Any person may file a complaint alleging judicial misconduct or disability. A complaint form is provided by the Commission, which includes a brief summary of the grounds for judicial discipline under Rule 5(a) as a guide for the preparation of the complaint. However, complaints also may be made by a letter that describes the alleged misconduct and includes or references other information that may be relevant, such as key dates, case numbers, copies of exhibits and other documents, or transcripts of proceedings. The Commission will consider complaints in any format. Finally, the Commission, on its own motion, also may initiate a complaint.

The Executive Director screens all complaints. An example of a complaint that usually survives the initial screening would involve an inexplicable or unreasonable delay by the court in issuing a decision on an important motion or in rendering a final judgment.

However, Rule 13 provides that "complaints that are frivolous, unfounded, solely appellate in nature, or outside the jurisdiction of the Commission shall be dismissed." The most common example of a complaint that would be dismissed is a claim that a judge's erroneous ruling should be equated with judicial misconduct. Even if such a ruling can be shown to be in error—for example, failure to adequately consider newly discovered evidence that might result in a new trial, an incorrect credit for time served, a miscalculation of overdue child support, an abuse of discretion in establishing child parenting arrangements, a misapplication of a statute, or an incorrect reading of established precedent—such a determination by the Commission would infringe on the jurisdiction of the appellate courts.

It can be difficult for a complainant, particularly a *pro se* litigant, to understand the respective functions of trial and appellate courts in the adjudicative process, and to distinguish potentially erroneous rulings from questions of judicial misconduct under the Rules and the Code.

Complaints that survive the initial screening by the Executive Director are reviewed further by the Commission. If the Commission deems there is sufficient cause to proceed on the complaint, it undertakes a preliminary investigation and, under Rule 14, gives notice to the judge of the investigation, the nature of the charge, and the name of the complainant (or that the Commission commenced the investigation on its own motion); and provides the judge an opportunity to respond or appear.

The investigation would include inquiries appropriate in the circumstances, such as an examination of court records and transcripts, interviews with potential witnesses, and requests for further information from the complainant. However, as provided in Colo. Const. art. VI, § 23(3)(g), "all papers filed with and proceedings before the Commission" are confidential, unless and until such time as the Commission recommends formal action to the Supreme Court.

The Commission schedules six meetings each year and holds special meetings when necessary. If circumstances warrant, meetings are held by conference call.

Review of Complaints Received in 2008

In addition to written complaints, the Commission receives telephone inquiries from potential complainants who are seeking information or who are requesting copies of the complaint form or

the Rules. When appropriate, callers are redirected to the Commission on Judicial Performance, to ARC, or to municipal court judicial disciplinary commissions. The Commission also receives occasional questions from the judiciary regarding the application of the Rules and the Code. The Executive Director manages the intake of complaints and the interaction with callers.

Through December 31, 2008, the Commission received 217 written complaints. These 217 complaints concerned the conduct of judges and justices sitting in each of the twenty-two judicial districts, the Colorado Court of Appeals, and the Colorado Supreme Court. The 217 complaints represented an increase over the 179 complaints received in 2006 and the 211 complaints received in 2007.

Currently, the judiciary comprises 234 trial court judges (district, juvenile, probate, and county court); twenty-three appellate judges; and seventy senior judges. Of the 217 complaints:

- 163 were based on situations that arose in the criminal law docket
 - 147 of which were filed by inmates in Colorado correctional facilities
 - 30 involved litigation in the general civil docket
 - 14 involved domestic relations cases
 - 3 involved juvenile court matters
 - 4 involved probate matters
 - 3 involved off-the-Bench conduct.
- In addition to inmates, the complainants included:
- 52 litigants, many of whom appeared in court *pro se*
 - 7 attorneys, who alleged delay in docket management or judicial demeanor issues
 - 9 people who were not parties
 - family members or courtroom observers
 - 1 judge who self-reported personal misconduct to the Commission
 - 1 case initiated by the Commission on its own motion.

Subject Matter of Complaints

The subject matter of the complaints in 2008 included 207 instances where the complainant was dissatisfied with a judge's factual or legal rulings. Because these were appellate matters, they were dismissed.

- 10 of the 217 complaints proceeded beyond the preliminary investigation to formal action by the Commission
 - 4 involved allegations of unreasonable delays in issuing rulings
 - 2 involved courtroom demeanor
 - 1 concerned allegations of sexual harassment of staff
 - 1 concerned a traffic violation involving alcohol
 - 1 involved participation in extra-judicial activities
 - 1 concerned a judge's obligation to report an attorney's misconduct.

Corrective Action

Corrective action was taken to address judicial misconduct in four instances. The corrective action taken in four cases compared with corrective action taken in two such cases in 2006 and one in 2007. There were two retirements while complaints were pending in 2006 and none in 2007. There was one retirement for medical disability in each of 2006 and 2007, but none in 2008.

The sanctions included:

- 3 private letters concerning violations of the Code
 - 1 letter of admonition
 - 1 letter of reprimand
 - 1 letter of censure.

One judge was directed to seek professional training in judicial demeanor and temperament; one judge voluntarily retired; two complaints were dismissed after further investigation indicated that there was no misconduct; and three complaints were carried over for the Commission's consideration in 2009.

Private Disciplinary Letters

There are three types of private disciplinary letters: (1) a letter of admonition; (2) a letter of reprimand; and (3) a letter of censure.

Admonition. A letter of admonition warns a respondent-judge that his or her conduct suggests an appearance of impropriety falling outside the expected minimum standards of judicial conduct.

Reprimand and censure. Letters of reprimand or censure address violations of a more serious nature. These letters express the Commission's determination that there has been a direct violation of the Code and that such conduct is unacceptable, but that the conduct does not merit a formal hearing or recommendation to the Supreme Court for public discipline or removal from office.

Private letters of discipline in recent years have been directed at the following misconduct:

- engaging in *ex parte* contact with litigants or attorneys
- delays in issuing decisions
- loss of temper or control of the courtroom
- inappropriate remarks to the media regarding the conduct of an attorney
- hearing a case, as a part-time judge, involving a client of the judge's law firm
- intemperance and verbal abuse toward an employee and a customer of a business establishment
- driving while impaired or under the influence of alcohol
- sexual harassment of a court employee.

Proactive Measures

The Commission participates in judicial education programs to inform new and continuing judges of their ethical duties and responsibilities under the nine Canons of the Code and to explain the Commission's responsibilities for oversight and discipline under the Rules. The Commission also takes steps to remind judges of their docket management obligations.

The Commission is undertaking a comprehensive review of its Rules, policies, and procedures, with a view to becoming more transparent in its operations, providing more public information about the Commission's responsibilities, facilitating the complaint filing process, and providing more judicial education and rehabilitation options. Any changes will continue to respect the principles of confidentiality set forth in the Constitution and in CRS §§ 24-72-401 and -402.

Conclusion

As of December 31, 2008, the Commission's membership comprised the following persons:

<i>Member</i>	<i>City</i>	<i>Category of Appointment</i>
Federico C. Alvarez	Denver	Attorney
Stewart Bliss	Denver	Citizen
James H. Hiatt	Ft. Collins	District Judge
John M. Holcomb	Denver	Citizen
Charles T. Hoppin	Golden	County Judge
Kathleen Kelley	Meeker	Citizen
David Kenney	Denver	Citizen
Martha T. Minot	Durango	County Judge
James Spaanstra	Lakewood	Attorney
Douglas R. Vannoy	Ft. Morgan	District Judge

The Commission operates independently from the Supreme Court and other divisions of the Judicial Branch, but with their cooperation and support. The Commission performs a vital role in maintaining a fair and impartial judiciary. Because the judicial selection and retention system in Colorado is based on merit selection rather than on partisan judicial politics, it is important that the Commission operate effectively and with the public's confidence.

The Commission recognizes the services of its longtime Executive Director, Rick Wehmhoefer, who retired on December 31, 2008. The Human Resources Division of the State Court Administrator's Office assumed temporary responsibility for the operation of the Commission's office until February 11, 2009, when William J. Campbell accepted the Commission's appointment to serve as Interim Executive Director, following a thirty-seven-year career as a practicing attorney.

Correspondence with the Commission should be addressed to: William J. Campbell, 899 Logan St., Ste. 307, Denver, CO 80203. The Commission's telephone number is (303) 894-2110. ■

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