

2010 Annual Report

Background and Jurisdiction

In 1967, Colorado adopted a merit system to appoint judges and also established the Colorado Commission on Judicial Discipline (Commission). In December 2010, the judiciary consisted of 364 trial and appellate court positions, including 175 district court judges, 113 county court judges, 47 senior judges, 22 court of appeals judges, and 7 Supreme Court justices. Colo. Const. art. VI, § 23(d) provides that a justice or judge of any court of record may be removed or disciplined for misconduct and that a judge may be retired for a disability that interferes with the performance of his or her duties.

The Colorado Supreme Court adopted the Colorado Rules of Judicial Discipline (Colo. RJD), as authorized in Colo. Const. art. VI, § 23(h), which are applied in conjunction with the Colorado Code of Judicial Conduct (Code). Colo. RJD 35, in conjunction with Colo. Const. art. VI, § 23(e), provides for privately administered discipline, such as letters of admonition, reprimand, or censure, and for other measures that the Commission believes will improve the conduct of the judge. If formal proceedings are commenced, Colo. RJD 36 authorizes the Supreme Court to apply the sanctions of removal, retirement, public reprimand, or public censure, or to retire a judge based on a permanent disability.

Colo. RJD and the Code are published in *Court Rules, Book 1* of the Colorado Revised Statutes. The Code was substantially revised by the Supreme Court, effective July 1, 2010.

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, court of appeals judges, justices of the 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 (OARC) 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 (Colo. RPC).
- County judges in the City and County of Denver exercise dual jurisdiction over Denver municipal laws and state laws. Because the Commission lacks jurisdiction over persons serving as municipal judges, disciplinary matters for these judges are addressed by the Denver County Court Judicial Discipline Commission. Certain other cities have established disciplinary procedures to oversee the conduct of their municipal judges.

Grounds for Judicial Discipline

Colo. RJD 5(a) describes the grounds for discipline or disability measures:

- 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 narcotic or dangerous drugs;
- 4) any conduct that constitutes a violation of the Code; or
- 5) a disability interfering with the performance of judicial duties that is, or is likely to become, of a permanent character.

The July 1, 2010 revision of the Code reorganized the nine Canons of the previous Code into four Canons that guide judges and justices in their conduct:

- **Canon 1.** A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- **Canon 2.** A judge shall perform the duties of judicial office impartially, competently, and diligently.
- **Canon 3.** A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.
- **Canon 4.** A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Each Canon includes various rules. For example, Rule 2.5(A) requires a judge to perform judicial and administrative duties competently and diligently. The rules are supplemented by comments and annotations.

A judge's decision on the facts and the law that is disputed by a complainant does not provide grounds for disciplinary proceedings, unless one of the elements of Colo. RJD 5(a) is present (willful misconduct; willful or persistent failure to perform judicial duties; intemperance; a disability; a violation of the Canons; or evidence of fraud, corrupt motive, or bad faith).

Other matters beyond the scope of the Commission's jurisdiction include concerns about a judge's overall performance and fitness for the position. Such issues are more appropriate for evaluation by the Commissions on Judicial Performance, which collect views from jurors, litigants, and attorneys in each judicial district regarding a judge's competence; provide periodic reports to the judge; and disseminate public reports on performance prior to the judge's retention election.

The Commission and its Executive Director

The Commission comprises 10 Colorado citizens who serve without compensation other than reimbursement of expenses, such as travel to attend the Commission's meetings. The composition of the Commission is determined by Colo. Const. art., VI § 23 (3)(a) and (b). It includes 2 district court judges and 2 county court judges who are appointed by the Supreme Court; 2 lawyers who have practiced in Colorado for at least 10 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. The list of Commissioners as of December 2010 appears at the end of this report.

Colo. RJD 3 provides for the organization and administration of the Commission, including the Commission's 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; the preparation and administration of the Commission's operating budget; and the preparation and publication of this annual report.

Complaints and Disciplinary Proceedings

Colo. RJD 12 through 14 provide for the filing, screening, and preliminary investigation of complaints. Any person may file a complaint alleging judicial misconduct or a disability. A complaint form is provided by the Commission that includes instructions and important information regarding the grounds for judicial discipline and guidelines for preparation of the complaint; however, the Commission will consider complaints in any written format. Arrangements can be made with the Executive Director to accommodate disabled persons in preparing and filing complaints. Complaints usually take the form of a letter or summary that describes the alleged misconduct and includes other relevant information such as key dates, case numbers, exhibits, courtroom audio, or excerpts from transcripts.

Complaints may be mailed, delivered, or faxed to the Commission. Security precautions limit the ability of the Commission to accept complaints by e-mail. The Commission has the authority to initiate a complaint on its own motion.

Disciplinary proceedings may involve one or more of three phases. The three phases are: (1) a screening process under Colo. RJD 13; (2) a preliminary investigation under Colo. RJD 14, for complaints that pass the screening process; and (3) formal proceedings under Colo. RJD 18.

Screening

The Executive Director screens all complaints. Colo. RJD 13 provides that "complaints that are frivolous, unfounded, solely appellate in nature, or outside the jurisdiction of the Commission shall be dismissed" by the Executive Director or the Commission. Dismissals often involve complaints that are driven by appellate issues. It is not uncommon for complainants—particularly those who have appeared in court *pro se*—to allege that a judge's rulings on factual or legal issues are sufficient to establish misconduct under the Code. However, Colo. RJD 5(c) prohibits the Commission from initiating disciplinary action against a judge "for making erroneous findings of fact or legal conclusions which are subject to appellate review."

Typically, the complaints that survive the screening process involve unreasonable delays in rulings, *ex parte* communications, disrespectful treatment of staff or litigants, unauthorized usage of state technology, inappropriate statements in the courtroom or in public, or improper courtroom demeanor.

Preliminary Investigation and Dispositions

At each meeting, the Commission reviews the Executive Director's screening of complaints and examines complaints that have survived screening. If the Commission deems there are suffi-

cient grounds to initiate disciplinary proceedings, it authorizes the Executive Director to undertake a preliminary investigation under Colo. RJD 14, which includes 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). The judge is afforded an opportunity to respond.

The preliminary investigation involves inquiries appropriate in the circumstances, such as an examination of court records and transcripts, the judge's response to the complaint, interviews with potential witnesses, and requests for further information from the complainant or the judge. If the preliminary investigation confirms that there is a reasonable basis for the allegations, further investigation will follow as needed.

The Commission has authorized the Executive Director to notify a judge on receipt of a complaint—prior to its review by the Commission—if it alleges a delay in diligently managing the court's docket. Motions for post-conviction relief under Rule 35 of the Rules of Criminal Procedure (Colo. RCP 35) are a common subject of such complaints. Factors that may cause delay include the need for the judge to review a large volume of trial materials, the passage of several years since the trial, the retirement of the trial judge, or the reassignment of the trial judge from the criminal docket to the civil or domestic relations docket. Some factors may be beyond the judge's control; nonetheless, the judge retains the ultimate responsibility for diligently managing his or her docket. The State Court Administrator's Office provides additional training and guidance for judges in handling Colo. RCP 35 motions.

When a complaint has been fully evaluated, the dispositions available to the Commission include:

- dismissal of an unfounded complaint or formal charge
- private admonishment for behavior that suggests the appearance of impropriety but meets the minimum standards of judicial conduct
- private reprimand or private censure for misconduct that does not merit public sanction by the Supreme Court
- the deferral of disciplinary proceedings while the judge obtains counseling, medical, or other professional support
- measures to improve the conduct of the judge (for example, training or periodic docket management reports)
- a finding of probable cause for formal proceedings.

Formal Proceedings

If the Commission finds probable cause to commence formal proceedings, it appoints special counsel to review the allegations and evidence of misconduct. On special counsel's concurrence that there is probable cause, special counsel will serve a statement of charges on the judge. The Supreme Court then will appoint three special masters to preside over a hearing to consider the charges. Such proceedings are conducted under Colo. RJD 18 through 33 and the Colorado Rules of Civil Procedure.

Findings by the special masters may result in the Commission's dismissal of the complaint or its recommendation to the Supreme Court to:

- 1) remove the judge from office;
- 2) retire the judge for a disability;
- 3) reprimand or censure the judge publicly; or
- 4) apply other sanctions that the Commission or the Supreme Court believes will curtail or eliminate the judge's misconduct.

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. Colo. RJD 6(c) describes circumstances under which the Commission's records are not confidential. For example, the Commission is required to disclose disciplinary action when requested by the Supreme Court with respect to a judge's qualifications to serve in the senior judge program and to notify the OARC of conduct that may be in violation of Colo. RPC.

The Commission generally meets bimonthly and may hold special meetings or convene by conference call, when necessary. In 2010, the Commission's regular meetings were held in February, April, June, August, and October, along with one meeting by conference call.

Review of Complaints Received in 2010

The Executive Director and the Commission's administrative assistant manage the intake of complaints and requests for information. When appropriate, callers are redirected to the Commissions on Judicial Performance; to the OARC; or, if a municipal judge is involved, to the city or town where the judge presides. The Commission also responds to inquiries from the judiciary regarding the application of the Code.

During 2010, the Commission received 170 written complaints. The Commission received 211 complaints in 2007, 217 complaints in 2008, and 190 complaints in 2009. In 2010, the Commission also received approximately 560 telephone inquiries and written requests from potential complainants who were seeking information or who requested a copy of the complaint form. This compares with 675 inquiries in 2009. The Commission attributes the decline in inquiries to the launching of its website in March 2010. The website provides essential information to the public, including an explanation of the Commission's procedures; a downloadable complaint form; frequently asked questions; recent annual reports; and links to the Constitution, the Code, and the Colo. RJD. At year end, the website was registering approximately 100 hits per month.

The complaints received in 2010 addressed the conduct of judges of the district court, probate court, juvenile court, or county court in all but one of the state's 22 judicial districts. Three complaints were lodged against judges in the court of appeals, and one complaint was lodged against a justice of the Supreme Court.

Of the 170 complaints, 76 arose in the criminal law docket, of which 53 were filed by inmates in Colorado correctional facilities. A total of 57 complaints involved litigation in the general civil docket, 20 in domestic relations cases, 3 in juvenile court matters, 7 in probate matters, 5 were referred by the Office of the State Court Administrator, and 2 focused on documents required to be filed by judges with the Secretary of State. In addition to complaints from litigants, many of whom had appeared in court *pro se*, the Commission received complaints from parolees; attorneys who alleged delay in docket management or judicial demeanor issues; a district attorney; people who were not parties (such as friends, witnesses, family members, or courtroom observers); and a judge who reported another judge's conduct. No complaints were initiated by the Commission on its own motion.

The frequency of various grounds alleged in the 170 complaints is summarized below. Some complaints alleged multiple grounds.

| | |
|--|----|
| ➤ administrative issues with colleagues and staff | 11 |
| ➤ bias or prejudice | 16 |
| ➤ courtroom demeanor | 6 |
| ➤ disputed rulings | 89 |
| ➤ docket management | 2 |
| ➤ <i>ex parte</i> communications | 2 |
| ➤ extrajudicial activities | 2 |
| ➤ financial, personal, or family interests | 3 |
| ➤ improper public or cyber statements | 2 |
| ➤ impropriety | 6 |
| ➤ inappropriate personal relationships with staff | 1 |
| ➤ incompetence | 1 |
| ➤ personal use of court resources | 1 |
| ➤ prejudicial relationships with attorneys or litigants | 3 |
| ➤ delay in Colo. RCP 35 motions | 11 |
| ➤ allegations directed at the conduct of officials other than state judges | |
| • magistrates | 9 |
| • attorneys, district attorneys, or public defenders | 13 |
| • court records/clerk errors/transcripts | 4 |
| • police, sheriff, jail | 5 |
| • probation, parole, department of corrections | 11 |
| • municipal judges | 11 |
| • federal judiciary | 4 |
| • other state agencies | 4 |
| • no judge or official named | 3 |

Most incidents of misconduct are addressed by private disciplinary letters that include the dispositions described in "Complaints and Disciplinary Proceedings" above.

After the Executive Director's screening, 155 of the 170 complaints were dismissed. Through its October meeting, the Commission had considered 21 complaints that had survived screening, including 6 carried over from 2009 and 15 received in 2010.

Following its preliminary investigation, the Commission dismissed 9 of the 21 complaints as unfounded or appellate. It carried over 5 matters into 2011 for further evaluation. In November and December, following the Commission's last meeting of the year, the Executive Director referred 5 additional complaints to the Commission, which also were carried over to 2011.

The Commission applied the dispositions authorized by Colo. RJD 35 to address allegations of judicial misconduct against 7 judges. Disciplinary action included a situation in which the Commission found insufficient evidence of misconduct, but cautioned the judge regarding demeanor; a private letter of admonition conditioned on training and counseling to augment the judge's experience in handling difficult courtroom situations; and 4 private letters of reprimand concerning violations of the Canons. One of the 7 dispositions was a finding of probable cause that resulted in the commencement of formal proceedings. The Commission also monitored periodic reports from judges in which disciplinary action from prior years required continuing docket management measures and additional legal education.

The corrective action taken in these 7 cases compared with corrective action taken in one case in 2007, 4 such cases in 2008, and 3 in 2009. Three judges declined to stand for retention after complaints were filed in 2010, compared with none in 2007, 7 in 2008, and 3 in 2009. There was one retirement for medical disability in each of 2006 and 2007, but none in 2008, 2009, or 2010. There were 2 resignations in 2010 while complaints were pending.

Of the 155 complaints that were dismissed, 11 involved alleged delays in addressing Colo. RCP 35 motions. However, the Commission's notice to the judge about these delays drew attention to staff errors, delays by the prosecution or defense, the effects of retirement or reassignment of the original trial judge, and other factors not requiring judicial discipline. Several of these complaints involved repeated or "successive" motions by inmates on issues that the court previously had decided.

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

- engaging in *ex parte* contact with litigants or attorneys regarding proceedings
- docket management, including delays in issuing decisions
- loss of temper or control of the courtroom
- disrespectful remarks to the media or through e-mails regarding the conduct of a litigant, an attorney, or another judge
- hearing a case, as a part-time judge, involving a client of the judge's law firm
- intemperance and verbal abuse toward an employee, persons dealing with court staff, or a customer of a business establishment
- driving while impaired or under the influence of alcohol
- sexual harassment or other inappropriate personal conduct involving a court employee or litigant
- irrelevant, misleading, or incoherent statements during arraignments and sentencing
- appearing on behalf of a spouse in a magistrate's hearing
- disregard of court-imposed gag orders
- lack of cooperation with judicial colleagues
- inappropriate remarks to litigants and lawyers during trials.

Proactive Measures

The Commission participates in judicial education programs to inform new and continuing judges of their ethical duties and responsibilities under the Canons and to explain the Commission's responsibilities for oversight and discipline. In 2010, the Executive Director began periodic visits to each judicial district to update the judiciary on current developments and the Commission's procedures. The Commission's website has enhanced the public's understanding of the disciplinary process.

The Commission is undertaking a comprehensive review of the Colo. RJD, as well as the Commission's policies and procedures, to

facilitate the timely and equitable handling of complaints; improve transparency; provide more public information about the Commission's jurisdiction and operations; address disabilities; and develop judicial education, counseling, and rehabilitation options.

The Commission and Staff

The Commission operates independently from, but with the support of, the Supreme Court, the judicial department, and the OARC. It is essential that the Commission operate effectively and with the public's confidence in monitoring the judiciary's conduct under the Canons.

The Commission greatly appreciates the distinguished service of County Judge Charles T. Hoppin and Stewart Bliss, who retired from the Commission in 2010 after three and seven years of service, respectively. As of December 31, 2010, the Commission's membership comprised the following members:

| <i>Member</i> | <i>City</i> | <i>Category of Appointment</i> |
|----------------------------|-----------------|--------------------------------|
| Federico C. Alvarez | Denver | Attorney |
| Norma V. Anderson | Lakewood | Citizen |
| Hon. Roxanne Bailin, Chair | Boulder | District Judge |
| Richard O. Campbell | Denver | Attorney |
| Kathleen Kelley | Meeker | Citizen |
| David Kenney | Denver | Citizen |
| Hon. Leroy Kirby | Brighton | County Judge |
| Hon. Martha T. Minot | Durango | County Judge |
| Joseph Samuel | Highlands Ranch | Citizen |
| Hon. Douglas R. Vannoy | Ft. Morgan | District Judge |

William J. Campbell is the Executive Director of the Commission, appointed on July 1, 2010. He previously served as Interim Executive Director, to which he was appointed on February 11, 2009. Campbell's appointment followed a thirty-seven-year career as a practicing attorney. He is not related to Commission member Richard O. Campbell. Jennifer Clay serves as the Commission's administrative assistant.

To obtain information, request a copy of the complaint form, or file a complaint, please contact: Colorado Commission on Judicial Discipline, 1560 Broadway, Ste. 1925, Denver, CO 80202; telephone: (303) 866-6434; fax: (303) 861-6822; website: www.coloradojudicialdiscipline.com. Correspondence to the Commission or its members should be addressed to the attention of the Executive Director. ■

National Employment Law Institute Upcoming Programs—Denver

June 16, 2011

**Family and Medical
Leave Act Workshop**

September 21, 2011

**Americans with
Disabilities Act Workshop**

For more information or to register for these programs, visit www.neli.org.