

## **Colorado Commission on Judicial Discipline Annual Report for 2013**

### **Background and Jurisdiction**

Formed in 1967 by the amendment to the Colorado Constitution that established a merit system for the appointment of judges, the Colorado Commission on Judicial Discipline (the “Commission”) monitors the judiciary’s compliance with the Canons in the Colorado Code of Judicial Conduct (the “Canons” or “Code”). Originally, the Commission was named the Commission on Judicial Qualifications.

The Commission is responsible for disciplinary proceedings to enforce Colo. Const. Article VI § 23(3)(d), which provides that a justice or judge of any court of record may be disciplined or removed from office for misconduct, or may be retired for a disability that interferes with the performance of his or her duties. Colorado Rules of Judicial Discipline (“Colo. RJD”), as adopted by the Supreme Court, govern the Commission’s disciplinary proceedings. The Code and Colo. RJD are published in Court Rules, Book 1 of Colorado Revised Statutes.

Colo. Const. Article VI § 23(3)(e) and Colo. RJD 35 provide for privately-administered discipline, such as letters of admonition, reprimand, or censure and for diversion programs, including training or docket management reports, that the Commission believes will improve the conduct of the judge. The Commission may commence formal proceedings to address misconduct for which privately-administered discipline would be inappropriate or inadequate. In formal proceedings, 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.

A portion of the annual attorney registration fees paid to the Supreme Court by each Colorado lawyer and judge provides funding for the Commission’s operations.

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 judges of the County Courts (exclusive of Denver County Court), District Courts, Denver Probate Court, Denver Juvenile Court, and Court of Appeals, along with justices of the Supreme Court and senior judges (retired judges who serve during vacations or

illnesses and assist with busy dockets). Excluded from this jurisdiction are magistrates, municipal judges, and administrative law judges (“ALJs”).

- County Court judges in the City and County of Denver are appointed and employed by Denver and 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.
- In addition to its oversight of attorneys under the Colorado Rules of Professional Conduct (“Colo.RPC”), the Office of Attorney Regulation Counsel (“Attorney Regulation”) is responsible for examining Code compliance by attorneys who perform judicial functions as magistrates, municipal judges, and ALJs.

As of December 31, 2013, the Colorado state judiciary was comprised of 337 judges and justices, including 130 in the County Courts (exclusive of Denver County Court); 174 in the District Courts; one in Denver Probate Court; three in Denver Juvenile Court; 22 on the Court of Appeals; and seven on the Supreme Court. Two of these positions were vacant pending appointment of a successor in January 2014. In addition, 43 retired judges served in the senior judge program.

### **Grounds for Judicial Discipline**

Colo. Const. Article VI, Section 23(3)(d) and Colo. RJD 5 provide the grounds for disciplinary proceedings:

- 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 narcotic or dangerous drugs; or
- Any conduct that constitutes a violation of the Code.

Colo. Const. Article VI, Section 23(3)(d) also provides that a judge “may be retired for disability interfering with the performance of his duties which is, or is likely to become, of a permanent character.”

The July 1, 2010 revision of the Code includes four Canons which 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 provides Rules in support of the Canon, e.g., Rule 2.5(A) requires a judge to perform judicial and administrative duties competently and diligently. The Code includes 38 such Rules, which are further supplemented by comments and annotations.

Colo. RJD 5(e) mandates that a judge's error in pre-trial orders, evidentiary or procedural rulings, findings of fact, conclusions of law, sentencing, or other matters are not considered grounds for disciplinary measures. Such issues are to be resolved by the trial and appellate courts in accordance with the powers vested in the courts by Colo. Const. Article VI, Section 1. In other words, the Commission has no authority to revise or reverse a judge's decision. Complaints that challenge a judge's ruling will be dismissed, unless there are grounds for a Canon violation that are distinct from the legal aspects of the judge's ruling.

Colo. RJD 33.5 provides extensive procedures for the evaluation and disposition of complaints involving disabilities. Disability proceedings focus on whether a judge has a physical or mental condition that is adversely affecting the judge's ability to perform judicial functions or to assist with his or her defense in disciplinary proceedings. The emphasis is on diagnosis and treatment and may involve transfer to temporary judicial disability inactive status pending a determination of the nature and degree of disability. A special master may be appointed to evaluate medical evidence and recommend whether the judge can be restored to active status or should be retired because of the disability.

The Commission's disciplinary and disability functions are contrasted with the responsibilities of the Office of Judicial Performance Evaluation ("Judicial Performance") which collects views from jurors, litigants, and attorneys in each judicial district

regarding a judge's competence and overall performance; provides periodic performance reports to the judge; and disseminates public reports of its findings prior to the judge's retention election.

### **The Commission and its Executive Director**

The Commission is comprised of ten Colorado citizens who serve without compensation, except for reimbursement of reasonable expenses incurred in performing their duties. The composition of the Commission is determined by Colo. Const. Article VI, Section 23 (3)(a) and (b). It includes two District Court judges and two County Court judges, who are appointed by the Supreme Court; two lawyers who have practiced in Colorado for at least 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. The list of Commissioners as of December 2013 appears at the end of this report.

Colo. RJD 3 provides for the organization and administration of the Commission, including the appointment of an Executive Director whose duties, subject to the general oversight of members of the Commission, include the operation of a permanent office; the screening and investigation of complaints; the maintenance of records and statistics; the employment of investigators and special counsel; the preparation and administration of the Commission's operating budget; and the publication of this annual report.

### **Complaints and Disciplinary Proceedings**

Any person may file a complaint alleging judicial misconduct or a disability. Colo. RJD 12, 13, and 14 govern the filing, screening, and investigation of complaints. The Commission will consider complaints in any written format which describes the alleged misconduct and provides relevant information, such as the case number of the litigation, the date of the alleged misconduct, audio of court proceedings, or excerpts from transcripts. The Commission provides a complaint form on request and through its website, which includes important information regarding the grounds for judicial discipline and guidelines for preparation of the complaint. However, complaints also may be in the form of a letter or summary that provides the required information.

Complaints may be mailed, delivered, or faxed to the Commission. Security precautions limit the ability of the Commission to accept complaints by e-mail. Arrangements can be made with the Executive Director to accommodate disabled persons in preparing and

filing complaints. The Commission has the authority to initiate a complaint on its own motion.

The Commission generally meets bi-monthly and may hold special meetings or convene by conference call, when necessary. In 2013, the Commission's regular meetings were held in March, April, June, September, and November.

Disciplinary proceedings involve one or more of three phases: the **screening** process under Colo. RJD 13; an **investigation** under Colo. RJD 14, which could result in a privately-administered disposition; or **formal proceedings** under Colo. RJD 18, which could result in a public disciplinary sanction.

### Screening

The Commission or the Executive Director will determine "whether a complaint provides sufficient cause to warrant further investigation and evaluation," pursuant to Colo. RJD 13. Complaints that do not allege sufficient cause are dismissed. The Commission reviews dismissal decisions made by the Executive Director. Dismissals include complaints that:

- Do not allege facts, that, if proven, would constitute grounds for disciplinary action under the Canons or Colo. RJD;
- Are challenging rulings by a trial or appellate court that do not involve grounds for misconduct distinct from the legal issues before the court;
- Are frivolous; or
- Are beyond the jurisdiction of the Commission, e.g., a complaint involving alleged misconduct by a lawyer or a deputy sheriff.

Dismissals often involve complaints that are driven by trial or appellate issues, rather than by judicial ethics. It is not uncommon for complainants - particularly those who have appeared in court *pro se* - to allege that a judge's rulings on evidentiary or procedural issues, findings of fact, or conclusions of law, with which they disagree, are sufficient to establish misconduct under the Code. As noted in **Grounds for Judicial Discipline** above, Colo. RJD 5(e) prohibits the Commission from initiating disciplinary action when the complaint is disputing rulings that are under the jurisdiction of the trial court or are subject to appellate review.

A complaint will be dismissed as groundless if it is filed as a trial tactic to create grounds for the recusal (disqualification) of a judge, when there is no reason to recuse under applicable procedural rules - a practice generally known as "judge-shopping."

For examples of complaints that survive screening, see **Review of Complaints in 2013**, below.

### Investigation

At each meeting, the Commission examines complaints that have survived screening. If the Commission deems that there are sufficient grounds to initiate disciplinary proceedings, it authorizes the Executive Director to undertake an 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.

It is the Commission's practice for the Executive Director to begin an investigation promptly on receipt of credible allegations of unreasonable delays in any litigation, so that a delay that may have occurred is not aggravated by awaiting the Commission's consideration at its next meeting.

The investigation involves steps that are appropriate in the circumstances, such as an examination of court records; a review of transcripts or audio of proceedings; interviews of witnesses; an evaluation of the judge's response; and requests for further information from the complainant or the judge. The complaint is assigned to one of the members of the Commission to evaluate and present to the other members for their consideration; the presenting Commissioner does not vote on its disposition.

When a complaint has been fully evaluated, the dispositions available to the Commission, under Colo. RJD 16 and 35, include:

- Dismissal of an unfounded complaint(while a dismissal is not considered disciplinary action, it may be accompanied by the Commission's expression of concern about the circumstances);
- Private admonishment for an appearance of impropriety;
- Private reprimand or private censure for misconduct that does not merit public sanction by the Supreme Court;
- The deferral of disciplinary proceedings under a diversion plan in which the judge obtains training, counseling, or medical treatment or provides periodic docket management reports to the Commission;
- The commencement of disability proceedings under Colo. RJD 33.5; or
- A finding of probable cause to commence formal proceedings.

## Formal Proceedings

Formal proceedings involve a hearing conducted under Colorado Rules of Civil Procedure to address misconduct for which private discipline would not be sufficient. 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 prepare and serve a statement of charges on the judge. The Commission then requests the Supreme Court to appoint three special masters, under Colo.RJD 18.5, to preside over the proceedings.

Findings by the special masters may result in the Commission's dismissal of the complaint or its recommendation to the Supreme Court for sanctions or other action, under Colo. RJD 36, which may include:

- Suspension without pay for a specified period;
- Removal from office;
- Public reprimand or censure;
- A stipulated resolution of the charges;
- Measures reasonably necessary to curtail or eliminate the judge's misconduct, such as a diversion plan or deferred discipline plan; or
- A remand of the complaint to the Commission for disability proceedings, under Colo. RJD 33.5.

## Confidentiality

As provided in Colo. Const. Article VI, Section 23(3)(g), "all papers filed with and proceedings before the Commission" are **confidential**, unless and until such time as the Commission files a recommendation for sanctions with the Colorado Supreme Court. However, Colo. RJD 6.5 clarifies that this confidentiality requirement does not prohibit the Commission from interviewing witnesses, cooperating with Attorney Regulation or law enforcement, or responding to requests from the Supreme Court or judicial nominating commissions concerning the disciplinary record, if any, of a judge who is under consideration for another judicial position. It is important to note that the Commission's proceedings, including its consideration of potential disciplinary measures, remain confidential, as required by the Constitution.

However, Colo. RJD 6.5(f) authorizes the Commission to request the Supreme Court to authorize the release of information about a disciplinary proceeding if the allegations of

misconduct “have become generally known to the public and that, in the interests of justice, the nature of the disciplinary proceedings should be disclosed.”

If information is requested by Judicial Performance and the Commission determines, in its discretion, that such disclosure is consistent with the Commission’s constitutional mandate, it may provide information about a judge’s conduct on the condition that Judicial Performance may not publicly disclose such information without independent verification.

## **Review of Complaints in 2013**

### Types of Complaints

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

During 2013, the Commission received 189 written complaints. The Commission received 211 complaints in 2007, 217 in 2008, 190 in 2009, 170 in 2010, 181 in 2011, and 169 in 2012. In 2013, the Commission received approximately 370 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, 560 in 2010, 400 in 2011, and 393 in 2012.

The Commission attributes the decline in telephone inquiries to the launching of its website in March 2010, which 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 Colorado Constitution, Code, and Colo. RJD. In 2010, the website registered approximately 100 hits per month, 165 per month in 2011, 180 per month in 2012, and 190 per month in 2013.

The complaints received in 2013 addressed the conduct of judges of the District Court, Probate Court, Juvenile Court, or County Court in 21 of the state’s 22 judicial districts. Six complaints were lodged against judges of the Court of Appeals and one against the Supreme Court.



Of the 189 complaints in 2013, 79 arose in the criminal law docket, of which 49 were filed by inmates in Colorado correctional facilities. A total of 55 complaints involved litigation in the general civil docket, of which six were in small claims court and eight were filed by inmates as *habeas corpus* petitions or claims against Department of Corrections personnel. Other complaints included three in traffic cases, 35 in domestic relations cases, seven in juvenile court matters, and four in probate matters. Several complaints involved issues involving more than one category of litigation.

In addition to complaints from litigants, many of whom had appeared in court *pro se*, three complaints were filed by the Office of the State Court Administrator (“SCAO”) based on reports from court staff; one by an attorney; two by district attorneys; and one by parents of a litigant. One complaint was initiated by the Commission on its own motion and one was filed by a judge regarding the judge’s own conduct. Other complaints were filed by family, friends, the media, or courtroom observers.

The frequency of various grounds alleged in the 189 complaints is summarized below. Some complaints alleged multiple grounds.

- Administrative issues with colleagues and staff: 2
- Appearance of impropriety: 1
- Bias or prejudice: 34
- Courtroom demeanor/intemperance: 3
- Disputed rulings/appellate issues
  - Appointment or inadequacy of counsel: 13
  - Bonds, sentencing, restitution, probation: 32
  - Civil protection orders: 6
  - Collections: 7
  - Competency evaluations: 2
  - Foreclosures: 3
  - *Habeas corpus* petitions: 5
  - Juror selection/misconduct: 1
  - Juvenile – dependency & neglect, child placement: 7
  - Landlord/tenant: 6
  - Parenting plans: 21
  - Permanent orders: 4
  - Plea agreements: 3
  - Probate – estates, guardians, conservators: 4
  - Procedural rules: 26
  - Relevance/admissibility of evidence: 39
  - Statutory or case law issues: 2

- Docket management/delays in disposition: 18
- *Ex parte* communications: 4
- Extrajudicial activities: 1
- Financial, personal or family interests: 2
- Improper public or cyber statements: 1
- Inappropriate personal relationships with staff: 1
- Incompetence: 3
- Personal use of court resources: 1
- Prejudicial relationships with attorneys or litigants: 1
- Recusal : 8
- Allegations directed at the conduct of officials other than state judges:
  - Attorneys, DAs, public defenders, ALJs, or magistrates: 3
  - Court staff: 2
  - Police, sheriff, jail: 1
  - Staff of Department of Corrections: 3

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

In 2013, the Executive Director dismissed 170 of the 189 complaints during the screening process. Through its November 2013 meeting, the Commission had considered 22 complaints, including three carried over from 2012.

After further investigation, the Commission dismissed 12 of these 22 complaints as unfounded or involving issues under the jurisdiction of the appellate courts. Three of the dismissals were accompanied by expressions of concern, under Colo. RJD 35(a), to improve the judge's future compliance with the Canons.

In addition, the Commission ordered a diversion program to improve a judge's docket management. Another complaint was terminated by the judge's retirement, while subject to a docket management diversion program, because of a chronic medical condition that had adversely affected the judge's ability to perform judicial duties.

The Commission applied private disciplinary measures concerning two complaints and commenced formal proceedings regarding one complaint. Five complaints were carried over to 2014 for further evaluation.

The disciplinary measures applied by the Commission in 2013 contrasted with corrective action taken in one case in 2007, four in 2008, three in 2009, seven in 2010, ten in 2011, and four in 2012. There were no judges who declined to stand for retention

after complaints were filed in 2013, compared with none in 2007, seven in 2008, three in 2009, three in 2010, and none in 2011 or 2012. There was one retirement for medical disability in each of 2006 and 2007. In 2012, while disciplinary proceedings were pending, a judge resigned after receiving a diagnosis of a medical condition that had been affecting the judge's ability to perform judicial duties competently.

### **Disciplinary Measures Applied in 2013**

Colo. RJD 6.5(i), as revised in 2012, authorizes the publication in this annual report of summaries of proceedings which have resulted in disciplinary dispositions or sanctions, without disclosing the date or location of the misconduct or the identity of the judge. In 2013, these disciplinary measures addressed allegations of misconduct in three situations.

In one instance, the Commission initiated a complaint on its own motion to evaluate media reports that a judge had not recused from three cases in which his brother was an officer of the principal defendant.

- The cases had been pending while the pre-2010 version of the Code was in effect. While the current recusal requirement, in Rule 2.11 of Canon 2, provides that a judge "shall" disqualify himself or herself if a person in the third degree of relationship – which would include a sibling – is an officer of a litigant, Canon 3(C)(1) of the pre-2010 version provided that a judge "should" disqualify himself or herself in such circumstances. The brother's position came to light when the judge did recuse in a recent case under the 2010 version of the Code.
- Former Canon 3(D) allowed a judge to remain on the case if disclosure of the relationship was made on the record; all parties and attorneys agreed in writing that the relationship was immaterial; and they filed their agreement in the record of proceedings. There was no signed agreement in the court's files in these three cases as required by Canon 3(D); and plaintiffs' counsel and defendants' counsel could not all agree, several years after these cases were pending, whether the judge had made disclosure to them.
- The Commission found that significant consequences resulted from a failure to comply with this Canon. Attorneys who were likely to appear again before the judge were in the awkward position of having to provide information on whether the judge had disclosed the relationship. An attorney for one of the plaintiffs had died after the cases were concluded; the deceased attorney's law partner insisted that there had been no disclosure by the judge, arguing that his colleague would have shared it with him and would have objected to the judge remaining on the case. Had an agreement been reached, signed, and filed, as required by Canon 3(D), this predicament would have been avoided.

- The media coverage that triggered the Commission's investigation created a negative impression of the judiciary and an appearance of impropriety, contrary to former Canon 2(A) which required a judge to act in a manner that promoted public confidence in the integrity and impartiality of the judiciary.
- The judge had no prior disciplinary record and believed that these situations had been addressed in a manner similar to what judicial colleagues would have done in similar circumstances. However, the Commission concluded that the procedure established by the Canons should have been followed. Accordingly, it issued a private reprimand to the judge under Colo. RJD 35(e).

Another complaint involved a plaintiff who filed a motion to approve an arbitration award. In the normal rotation of judicial assignments, the case was reassigned the next month to a judge who had an unusually heavy trial docket.

- Despite several calls to court staff by counsel inquiring of the status, the judge did not rule on the motion until a year later. The judge denied the motion, ruling that the arbitration was conducted in a manner prejudicial to the defendant.
- The Commission found that the judge's failure to dispose of the motion in a timely manner violated Rule 2.5(A) of Canon 2, particularly Comment 4 which cites the right of a party to have matters resolved without unnecessary cost or delay. The judge was very cooperative with the Commission, citing the extensive trial docket as a mitigating factor but not an excuse for the delay. The Commission issued a private admonition under Colo. RJD 35(d).

In the third situation, the Commission filed a Motion for Temporary Suspension of a judge, based on reports from SCAO and the Commission's preliminary investigation.

- The motion was granted by the Supreme Court, which suspended the judge with pay under Colo. RJD 34 pending the outcome of disciplinary proceedings. The motion alleged that:
  - The judge had engaged in undignified conduct with staff and female attorneys, leading to the district attorney no longer assigning female attorneys to the judge's courtroom.
  - The judge had conducted *ex parte* communications with the prosecution, and then separately with defense counsel, regarding plea negotiations.
  - The judge had initiated off-the-record conversations with litigants, in which the judge intended to put parties at ease but instead created concerns and confusion about a judge's role, e.g., advising an underage defendant about how to fake drinking at parties.
  - The judge had utilized staff and other court resources in the judge's personal business transactions.

- The judge had met in his office with a woman who was the sister of a man who, along with his spouse, was facing charges in the judge's court. The woman had been the judge's paralegal in private practice. Staff overheard the judge and the former paralegal discussing the pending case and marital issues involving the man and his wife.
- The motion addressed the judge's conduct under the following Canon Rules: Rule 1.2 (the integrity and impartiality of the judiciary and avoiding the appearance of impropriety); Rule 1.3 (abuse of public office for a judge's personal or economic interests); Rule 2.3 (bias, prejudice, or harassment); Rule 2.6(B) (coercing a party to settle); Rule 2.8(B) (treating litigants, attorneys, and staff with courtesy and dignity); Rule 2.9 (*ex parte* communications); and Rule 3.1 (use of court resources for matters not concerning the law).
- Following additional investigation, a notice and statement of charges were prepared by Attorney Regulation, as special counsel to the Commission. Formal proceedings were commenced by serving the notice and statement of charges on the judge. The Commission requested the Supreme Court to appoint three special masters to conduct a hearing on the allegations, as required by Colo. RJD 18.5.
- While formal proceedings were pending, the special masters denied the judge's request for mediation. In addition, the Supreme Court denied a Petition for a Writ of Mandamus in which the judge contended that the Commission had prejudged the complaint and was denying the judge due process. The special masters set a date for a hearing on the charges. In early 2014, while they were preparing for the hearing, special counsel and the judge's counsel agreed to a stipulated resolution of the charges.
- When the Commission filed its recommendation to the Supreme Court for the Court's approval of the stipulated resolution, the record of proceedings became public, as required by Colo. Const. Article VI, Section 23(3)(g) and Colo. RJD 37. As provided in the stipulation, the Court issued a public censure to the judge and accepted the judge's resignation.
- The stipulated resolution did not address all of the allegations by the Commission nor did it recite the defenses asserted by the judge. These can be inspected in the record of proceedings, which is now a public record. The public censure focused on:
  - The uncomfortable working environment for staff and female attorneys.
  - *Ex parte* communications.
  - Failing to promote confidence in the judiciary, by engaging in informal conversations with litigants.
- The judge's absence from the bench, from July until the issuance of the public censure, led to speculation by the public, government officials, and the media about what had occurred and the cost to the state of a suspension with pay. However, Colo. Const. Article VI, Section 23(3)(g) and Colo. RJD 6.5(a) require that the

Commission's proceedings are to remain confidential unless and until a recommendation for sanctions is filed by the Commission, based on the findings and conclusions issued by the special masters or a stipulated resolution.

- Accordingly, the Commission, special counsel, the judge, judge's counsel, and court staff could not comment publicly on the pending charges or acknowledge that formal proceedings were underway. The Commission is considering changes in Colo. RJD to expedite formal proceedings while maintaining the constitutional mandate of confidentiality.

### Motions for Postconviction Relief

Of the 189 complaints filed in 2013, six involved allegations of unreasonable delays in disposing of motions for postconviction relief under Crim.P. 35. These are motions filed by inmates; examples of theories advanced in these motions include sentencing errors, ineffective counsel, newly-discovered evidence, prosecutorial misconduct, and witness misconduct.

Delays in addressing these motions may be driven by several factors, other than inattention by the judge. For example, the judge who receives the motion may not be the judge who presided over the trial, because of several years having elapsed following its conclusion and the periodic reassignment of judges among the criminal, civil, and domestic dockets or the retirement of the trial judge. The transcripts and exhibits tend to be voluminous and may require extensive review in order to evaluate the postconviction motion. Such motions may include repeated or "successive" contentions by inmates that have been previously addressed. Or delays may result from a lack of attention by prosecution or defense counsel to such motions.

While there may be factors not fully within the judge's control, the judge retains the ultimate responsibility for diligently managing his or her docket under Rule 2.5 of Canon 2, and the Commission carefully examines every allegation of delay in Crim.P. 35 cases as well as delays in other types of cases. However, the circumstances involved in delayed rulings on postconviction motions generally do not involve willful or persistent judicial misconduct that warrants disciplinary action. The Commission's notice to the judge about these delays usually has a constructive effect.

Recent steps taken by SCAO to improve the handling of such motions have significantly reduced incidents of judicial misconduct in these cases. The filing of six such complaints in 2013 is contrasted with 21 similar complaints in the previous year.

## Examples of Disciplinary Proceedings

Private disciplinary action in recent years has been directed at the following misconduct:

- Failure to respond to Commission letters and disciplinary measures;
- *Ex parte* communications about a pending matter outside the presence of other parties or attorneys;
- Lack of diligence in docket management, e.g., a substantial delay in issuing a decision;
- Impatience, loss of temper, or inability to control the courtroom;
- Disrespectful remarks to the media or through e-mails regarding the conduct of a litigant, a witness, an attorney, or another judge;
- Intemperance or verbal abuse toward an employee, a person dealing with court staff, or a customer of a business establishment;
- Undue reliance on staff for matters in which the judge should be fully competent;
- Driving while impaired or under the influence of alcohol;
- Sexual harassment or other inappropriate personal conduct involving a court employee, witness, attorney, or litigant;
- Irrelevant, misleading, or incoherent statements during arraignments and sentencing;
- Rulings from the bench involving unprofessional terminology, including expressions that are viewed as offensive in civilized discourse;
- A pattern of errors in handling trials or issuing rulings that indicate a lack of competence;
- Making public statements about a pending matter;
- Arbitrary rulings issued without due process;
- Use of computers, staff, and other court resources for personal matters, except for incidental usage that does not significantly interfere with judicial responsibilities;
- Involvement in partisan politics;
- Failure to comply with rules applicable to retention elections;
- Disregard of court-imposed gag orders;
- Lack of cooperation with judicial colleagues; and
- Inappropriate remarks to litigants and lawyers during trials or recesses.

## **Proactive Measures**

The Commission participates in judicial education programs to inform new and experienced 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. At the close of 2013, the Executive Director had conducted such meetings in each of the 22 judicial districts. Additional meetings are being scheduled for 2014. In addition, the Commission's website has enhanced the public's understanding of the disciplinary process.

## **The Commission and Staff**

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's decisions are made independently from Attorney Regulation and SCAO but with their logistical support. For example, Attorney Regulation provides investigative resources and special counsel to the Commission and SCAO may notify the Commission of potential misconduct reported by court staff.

As of December 31, 2013, the Commission's membership included:

<u>Member</u>	<u>City</u>	<u>Category of Appointment</u>
Hon. Martha T. Minor, Chair	Durango	County Judge
Federico C. Alvarez, Vice-Chair	Denver	Attorney
Kathleen Kelley, Secretary	Meeker	Citizen
Richard O. Campbell	Denver	Attorney
David Dill	Pueblo	Citizen
David Kenney	Denver	Citizen
Hon. Leroy Kirby	Brighton	County Judge
Yolanda Lyons	Monument	Citizen
Hon. William Robbins	Denver	District Judge
Hon. Ted Tow	Brighton	District Judge

The Commission expresses its appreciation to District Judge Roxanne Bailin who served as Chair of the Commission from 2009 until her retirement from the bench on August 31, 2013; to District Judge Douglas Vannoy who retired from the Commission on June 30, 2013 after two terms of service; and to Albus Brooks who resigned from the Commission in 2013 to focus on his responsibilities as a member of the Denver City Council.

William J. Campbell is the Executive Director of the Commission, having been appointed on February 11, 2009 as Interim Executive Director and as Executive Director on July 1, 2010. Mr. Campbell's appointment followed a 37 year career as a practicing



attorney. He is not related to Commission member Richard O. Campbell. Lauren Eisenbach is the Commission's administrative assistant.

To obtain further information, request a copy of the complaint form, or file a complaint, please refer to the Commission's website or contact the Commission in the Ralph L. Carr Colorado Judicial Center:

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1300 Broadway, Suite 210  
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Telephone: 303.457.5131  
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[www.coloradojudicialdiscipline.com](http://www.coloradojudicialdiscipline.com)