

2014 Annual Report

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 (Commission) monitors the judiciary's compliance with the Canons in the Colorado Code of Judicial Conduct (Canons or Code). Originally, the Commission was named the Commission on Judicial Qualifications.

The Commission is responsible for disciplinary proceedings to enforce Article VI, § 23(3)(d) of the Colorado Constitution, 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) govern the Commission's disciplinary proceedings. The Commission completed a major revision of Colo. RJD, which became effective in December 2014. The Code and Colo. RJD are published in "Court Rules, Book 1" of *Colorado Revised Statutes*.

Colo. Const. art. 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, which 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 Colorado Court of Appeals, as well as the justices of the Colorado 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 and state laws. 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, 2014, the Colorado state judiciary comprised 340 judges and justices, including 131 in the county courts, of

whom 17 served in Denver County Court; 176 in the district courts; one in Denver Probate Court; three in Denver Juvenile Court; 22 on the Colorado Court of Appeals; and 7 on the Supreme Court. In addition, 45 retired judges served in the senior judge program.

Grounds for Judicial Discipline

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

- 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
- 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 use of illegal narcotic or dangerous drugs
- any conduct that constitutes a violation of the Code.

Colo. Const. art. VI, § 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 Code includes 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 provides Rules in support of the Canon; for example, Rule 2.2 requires a judge to serve "fairly and impartially," and Rule 2.5(A) requires a judge to perform judicial and administrative duties competently and diligently. The Code includes thirty-eight such Rules, which are further supplemented by comments and annotations.

The Commission has no authority to revise or reverse a judge's decision. 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. art. VI, § 1. 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 condi-

tion 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.

The Commission's disciplinary and disability functions are contrasted with the responsibilities of the Office of Judicial Performance Evaluation (Judicial Performance). Judicial Performance 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 comprises 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. art. VI, § 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 2014 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 evaluation 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.

Revisions to Colo. RJD in 2014

The Commission proposed extensive revisions to Colo. RJD, which were approved by the Supreme Court effective December 10, 2014. The revisions included clarification of existing provisions, cross-references between related rules, and minor improvements to format and grammar, along with substantial changes as indicated in the following Rules:

- Rule 2 added new definitions and clarified others.
- Rules 13, 14, and 16 updated procedures for review and preliminary evaluation of complaints.
- Rule 18 clarified the procedures for commencing formal proceedings and the role of special counsel in formal proceedings.
- Rule 18.5 clarified that appointment of special masters to preside over formal proceedings is not made until service of the notice and statement of charges on the judge.
- Rule 20 requires hearing in formal proceedings within ninety-one days after the case is at issue.
- Rules 26 and 32 updated hearing procedures and added provisions concerning the issuance of the special masters' report and filing of the report with the Commission.

- Rule 34 provided a time table for a show cause hearing on temporary suspension, and publication of a Supreme Court order for temporary suspension.
- Rule 35 authorized a stipulated private disposition of informal proceedings.
- Rule 36 authorized the Supreme Court, in appropriate cases, to award attorney fees to the Commission for special counsel.
- Rule 37 clarified that the Commission's recommendation to the Supreme Court may include dismissal and/or a stipulated resolution. The stipulated resolution will be a public document and include a summary of material disputed and undisputed evidence, recite the principal findings of the special masters, and describe the history of any previous disciplinary measures involving the judge.

Complaints and Disciplinary Proceedings

Any person may file a complaint alleging judicial misconduct or a disability. Colo. RJD 12, 13, 14, and 16 govern the filing, preliminary evaluation, investigation, and consideration of complaints. The Commission will consider complaints in any written format that 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, e-mailed, or faxed to the Commission. 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 2014, the Commission's regular meetings were held in January, March, May, July, September, and November.

Disciplinary proceedings involve several phases: (1) the preliminary evaluation process under Colo. RJD 13; (2) an investigation under Colo. RJD 14; (3) consideration and decision by members of the Commission under Colo. RJD 16, which could result in a privately administered disposition under Colo. RJD 35; (4) disability proceedings under Colo. RJD 33.5; or (5) formal proceedings under Colo. RJD 18, which could result in a public disciplinary sanction. The Commission may request the Supreme Court to order the temporary suspension of a judge under Colo. RJD 34, with pay, pending the resolution of preliminary or formal proceedings.

Preliminary Evaluation

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
- are beyond the jurisdiction of the Commission—for example, a complaint involving alleged misconduct by a lawyer or a deputy sheriff.

Dismissals under Colo. RJD 13 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 or a judge’s findings of fact or conclusions of law, with which they disagree, are sufficient to establish misconduct under the Code. However, Colo. RJD 5(e) prohibits the Commission from initiating disciplinary action when the complaint is based on 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 disqualification (recusal) of a judge, when there is no reason for disqualification under applicable procedural rules.

Investigation

At each meeting, the Commission examines complaints that have survived preliminary evaluation and reviews the Executive Director’s dismissal of complaints that do not present grounds for disciplinary proceedings. (See “Review of Complaints in 2014” below.) If the Commission deems that a complaint has alleged sufficient grounds to initiate disciplinary proceedings, it authorizes the Executive Director to undertake an investigation under Colo. RJD 14. The Executive Director notifies the judge of the investigation, the nature of the allegations, 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.

Under Colo. RJD 14(c), the Executive Director may 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 written transcripts or audio recordings of proceedings; interviews of witnesses; an evaluation of the judge’s response; and requests for further information from the complainant or the judge.

Consideration and Decision

The complaint is assigned to one of the members of the Commission to evaluate and present to the other members for their consideration. Colo. RJD 16(c) requires that allegations must be established by a preponderance of the evidence. A decision is made by majority vote of the members participating in the meeting, exclusive of the presenting member.

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

- dismissal of an unfounded complaint (although 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
- a stipulated private disposition that could include the judge’s resignation or retirement
- the commencement of disability proceedings under Colo. RJD 33.5
- a finding of probable cause to commence formal proceedings.

Disability Proceedings

Colo. RJD 33.5 provides extensive procedures and requirements for conducting proceedings in which the Commission can evaluate and consider whether a “judge suffers from a physical or mental condition that effects the judge’s ability to perform judicial functions or to assist with his or her defense in disciplinary proceedings.” The Supreme Court may enter orders appropriate to the nature and anticipated duration of the disability, including transfer of the judge to temporary judicial disability status; retirement for a permanent disability; and/or transfer of the judge to lawyer disability status, if the disability also prevents the judge from practicing law.

Formal Proceedings

Formal proceedings involve a trial conducted under the Colorado Rules of Civil Procedure to address allegations of 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 and 37. Recommendations may include:

- suspension without pay for a specified period
- removal from office or retirement
- public reprimand or censure
- privately admonished discipline under Colo. RJD 35
- 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
- a remand of the complaint to the Commission for disability proceedings.

Confidentiality

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 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, coop-

erating 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.

In addition, Colo. RJD 6.5(f) authorizes the Commission or a judge 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 interest of justice should be disclosed." Colo. RJD 6.5(i) authorizes the publication in this annual report of a summary of proceedings that result in a private disposition or a public sanction. 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 2014

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 2014, the Commission received 172 written complaints. This is fewer than the average of 189 complaints received annually in the preceding seven years. Beginning in September 2014, the Commission began receiving complaints by e-mail; 11 of the 172 complaints were filed by e-mail.

The Commission launched its website in 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 Colorado Constitution, Code, and Colo. RJD. The website has significantly increased the transparency of the Commission's authority and proceedings. The public's contact with the Commission in 2014 included approximately 1,700 Web hits and 425 phone inquiries, compared with approximately 700 to 800 phone inquiries in the years prior to establishing the website.

Complaints were lodged against judges in twenty of the state's twenty-two judicial districts. Four complaints were filed against judges of the Court of Appeals and one against a justice of the Supreme Court. Of the 172 complaints received in 2014, 87 arose in the criminal law docket, of which 63 were filed by inmates in Colorado correctional facilities. A total of 42 complaints involved litigation in the general civil docket, of which 5 were in small claims court and 3 were filed by inmates as *habeas corpus* petitions or claims against Department of Corrections personnel. Other complaints included 3 in traffic cases, 46 in domestic relations cases, 3 in juvenile court matters, and 8 in probate matters. Several complaints concerned issues involving more than one category of litigation.

In addition to complaints from litigants, many of whom had appeared in court *pro se*, one complaint was filed by the Office of the State Court Administrator (SCAO) based on reports from court staff; 6 by attorneys; one by a district attorney; and 8 by relatives, friends, or court observers.

The frequency of various grounds alleged in the 172 complaints is summarized below. Some complaints alleged multiple grounds.

• Administrative issues with colleagues and staff.....	1
• Appearance of impropriety.....	1
• Bias or prejudice.....	47
• Courtroom demeanor/intemperance.....	14
• Disputed rulings/apellate issues	
▪ Appointment or inadequacy of counsel.....	10
▪ Bonds, sentencing, restitution, probation, unlawful detainer.....	9
▪ Civil protection orders.....	5
▪ Collections.....	3
▪ Competency/mental health.....	9
▪ Contempt proceedings.....	4
▪ Foreclosures.....	1
▪ Habeas corpus petitions.....	3
▪ Jurors—selection/service/misconduct.....	2
▪ Juvenile—dependency and neglect, child placement.....	3
▪ Landlord/tenant.....	3
▪ Parenting plans.....	14
▪ Permanent orders.....	3
▪ Probate—estates, guardians, conservators.....	8
▪ Procedural or constitutional rules.....	21
▪ Relevance/admissibility of evidence.....	6
▪ Statutory or case law issues.....	4
• Disability/ADA.....	3
• Docket management/speedy trial.....	24
• <i>Ex parte</i> communications.....	6
• 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.....	3
▪ Medical or mental health witnesses.....	11

Most incidents of misconduct are addressed by private disciplinary letters. (See examples in the dispositions described in "Consideration and Decision" above.)

In 2014, the Executive Director dismissed 159 of the 172 complaints during the preliminary evaluation phase. Through its November 2014 meeting, the Commission had considered 15 complaints, including 5 carried over from 2013. After further investigation, the Commission dismissed 9 of these 15 complaints as unfounded or involving issues under the jurisdiction of the appellate courts. The Commission applied private disciplinary measures concerning two complaints and completed formal proceedings concerning a complaint continued from 2013. Two 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 requiring quarterly docket reports to improve a judge's diligence in case management. Another pending complaint was addressed by

conducting an independent medical examination, which resulted in an order for counseling. Both of these complaints remained under examination in 2015. Three complaints received in December were carried over to 2015.

The disciplinary measures applied by the Commission in 2014 contrasted with corrective action taken in one case in 2007, 4 in 2008, 3 in 2009, 7 in 2010, 10 in 2011, 4 in 2012, and 3 in 2013. There were no judges who declined to stand for retention after complaints were filed in 2014, compared with none in 2007, 7 in 2008, 3 in 2009, 3 in 2010, and none in 2011, 2012, or 2013. There was one retirement for medical disability in 2006 and another in 2007. In both 2012 and 2013, 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 competently perform judicial duties.

Disciplinary Measures Applied in 2014

Colo. RJD 6.5(i) authorizes the publication in this annual report of summaries of proceedings that have resulted in disciplinary dispositions or sanctions, without disclosing the date or location of the misconduct or the identity of the judge. In 2014, these disciplinary measures addressed allegations of misconduct in three situations.

In one instance, a judge's intemperate conduct prompted complaints from court staff. The judge sent e-mails to colleagues alleging the exclusion of certain judges from meetings and social events. The judge created unnecessary tension and a poor relationship with court security staff by making unprofessional comments to sheriff deputies. Despite reminders from the chief judge and administrative staff, the judge kept irregular hours and, on occasion, was not available during normal working hours. A staff member alleged "bullying" by the judge.

These incidents, taken together, presented a pattern of discourtesy, improper demeanor, and unnecessary difficulty in working with colleagues and staff. The Commission issued a reprimand for conduct that was contrary to the requirements of Canon 2 regarding courtesy, demeanor, and cooperation with staff.

Another complaint addressed a judge's obligation under Rule 2.5(A) of Canon 2 to resolve pending matters diligently and competently. Competing motions for attorney fees had been pending on the judge's docket for twelve months without a decision. In 2013, the Commission had issued a private admonishment to the same judge for an unreasonable delay in approving an arbitration award. The Commission determined that the appropriate disposition was to order a diversion plan under Colo. RJD 35(b) that would improve the judge's diligence in disposing of pending cases. Accordingly, the Commission ordered the judge to provide the Commission quarterly reports regarding any cases that had remained open longer than the applicable docket management benchmarks in Chief Justice Directive 08-05. This constructive measure resulted in a significant improvement in the judge's docket management.

The third instance involved a judge's failure to comply with the requirements for conducting and entering findings in a contempt proceeding. Although compliance with appellate law and procedural rules involves appellate issues, "judicial conduct creating the need for discipline may . . . arise from the same source as judicial conduct that is within the scope of appellate review." [*In re Lichtenstein*, 685 P.2d 204 (Colo. 1984).]

In this case, an attorney, who was representing a client in both civil and criminal proceedings arising from the same incident, obtained certain employment records through discovery in the civil proceeding that the judge ordered to be surrendered to the court in the criminal proceeding. The attorney delivered printed copies to the court under seal, but later acknowledged in open court that he had retained copies on the hard drive of his computer. Contempt was not discussed. Four days later, the judge recused from the criminal trial, which was to be held a week later. A one-day trial in the criminal matter was conducted by another judge; immediately following the trial, while the attorney was preparing to leave the courthouse, the judge who had recused summoned the attorney into court and found the attorney to have been in direct contempt by retaining the copies on a computer. The judge sentenced the attorney to one night in the county jail for direct contempt, and had alerted the sheriff, before the contempt hearing, to be prepared to incarcerate an attorney.

Generally, direct contempt is only that which "the court has seen or heard and is so extreme that no warning is necessary or that has been repeated despite the court's warning to desist" [CRCP 107(a) (2)]. The Colorado Supreme Court has held that "direct contempt" arises from only extreme or persistent in-court conduct that disrupts court proceedings and which requires a judge to impose order." [*In re the Marriage of Nussbeck*, 974 P.2d 493 (Colo. 1999).]

The Commission was not persuaded that the attorney's conduct constituted direct contempt, but deferred to an appellate court to resolve that issue. However, the Commission concluded, by the preponderance of the evidence standard in Colo. RJD 16(c), that finding the attorney in direct contempt and immediately sending the attorney to jail violated the attorney's fundamental rights, constituting egregious judicial misconduct, in violation of Canon Rule 2.5 (failing to perform judicial functions competently). The Commission also concluded that it was more likely than not that the judge had already made a decision about direct contempt before holding a hearing, in violation of Canon Rule 2.2 (failing to perform judicial duties impartially). At a minimum, the judge's conduct created an appearance of impropriety, in violation of Canon Rule 1.2. Accordingly, the Commission issued a private reprimand to the judge for violations of these Canon Rules.

In addition to these private dispositions, the Commission finalized formal proceedings that commenced in 2013, based on a stipulated resolution for the public censure and resignation of the judge. In formal proceedings the Commission had alleged the following:

- 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—for example, advising an underage defendant about how to fake drinking at parties.
- The judge had used 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, as well as marital issues involving the man and his wife.

- When the Commission filed its recommendation to the Supreme Court for the Court's approval of a stipulated resolution of the charges, the record of proceedings became public, as required by Colo. Const. art. VI, § 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 Court's opinion in 13SA172 is available online at www.courts.state.co.us/Courts/Supreme_Court/Case_Announcements/Index.cfm. The court file is available at www.courts.state.co.us/SCANN.
- 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.
- The public censure focused on:
 - the uncomfortable working environment for staff and female attorneys
 - *ex parte* communications
 - the judge's failure to promote confidence in the judiciary by engaging in informal conversations with litigants.

Motions for Postconviction Relief

The number of complaints involving a lack of diligence in ruling on motions for postconviction relief has declined significantly, following several steps taken by SCAO in training and in a pilot program to expedite the consideration of such motions. There were 21 such complaints in 2012, 6 in 2013, and 0 in 2014.

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—for example, 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 another judge's case
- arbitrary rulings in contempt proceedings that resulted in incarceration 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
- inappropriate remarks to litigants and lawyers during trials or recesses
- discourtesy toward judicial colleagues, administrative staff, and sheriff deputies.

Proactive Measures

The Commission participates in new judge orientation programs and the annual judicial conference 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 addition, the Executive Director began periodic visits in 2010 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 meetings in each of the twenty-two judicial districts. Additional meetings were held in 2014 and in early 2015. 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, 2014, the Commission's membership included:

<i>Member</i>	<i>City</i>	<i>Category of Appointment</i>
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 L. Dill	Pueblo	Citizen
David W. Kenney, Jr.	Denver	Citizen
Hon. Leroy D. Kirby	Brighton	County Judge
Yolanda R. Lyons	Monument	Citizen
Hon. William D. Robbins	Denver	District Judge
Hon. Ted C. Tow	Brighton	District Judge

William J. Campbell is the Executive Director of the Commission. He was appointed Interim Executive Director on February 11, 2009 and Executive Director on July 1, 2010. Campbell's appoint-

ment followed a thirty-seven 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,

www.coloradojudicialdiscipline.com, or contact the Commission in the Ralph L. Carr Colorado Judicial Center: Colorado Commission on Judicial Discipline, 1300 Broadway, Ste. 210, Denver, CO 80203; (303) 457-5131; (303) 501-1143, fax. Complaints may be filed by e-mail at complaints@jd.state.co.us. ■