Colorado Commission on Judicial Discipline
Annual Report for 2018

Background and Jurisdiction

The jurisdiction and authority of the Colorado Commission on Judicial Discipline (the "Commission") is set forth in Article VI § 23(3) 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.

The Colorado Code of Judicial Conduct (the "Code") includes four Canons that provide the basic principles of judicial ethics. The Commission monitors the judiciary's compliance with these Canons through disciplinary proceedings. However, disputes about a judge's decisions are reserved for the trial and appellate courts to resolve. The Commission is not authorized to change a judge's ruling.

Formed in 1967 by the amendment to the Colorado Constitution that established the merit system for the appointment of judges, the Commission originally was designated the Commission on Judicial Qualifications.

Colorado Rules of Judicial Discipline ("Colo. RJD"), issued by the Colorado Supreme Court, govern the Commission's disciplinary and disability proceedings. The Code and Colo. RJD are published in "Court Rules, Book 1" of *Colorado Revised Statutes*. Substantial revisions to Colo. RJD became effective July 1, 2017.

Colo. Const. Article VI § 23(3)(e) and Colo. RJD 35 provide for remedial action which may result in a confidential disposition such as an admonition, reprimand, or censure regarding the judge's conduct; or a diversion program, including training or docket management reports that are designed to improve the conduct of the judge. In addition, 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 full understanding of the scope of the Commission's disciplinary authority, it is important to note the following:

- The Commission's jurisdiction includes disciplinary matters involving judges of the county courts and district courts, together with judges of the Denver Probate Court, Denver Juvenile Court, and Colorado Court of Appeals; the justices of the Colorado Supreme Court; judges and justices in the senior judge program who serve during vacations or illnesses and assist with busy dockets; and retired judges and justices who are appointed by the Supreme Court to preside in specific cases.
- Excluded from the Commission's jurisdiction are magistrates, municipal judges, and administrative law judges ("ALJs"). Also excluded are federal court judges.
- Because county court judges in the City and County of Denver handle cases involving municipal ordinances as well as state law, their conduct is not monitored by the Commission. Instead, disciplinary matters involving 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 court judges, and ALJs.
- The Office of the State Court Administrator ("SCAO") oversees the performance and conduct of employees of the judicial branch other than judges, but the Commission's responsibilities overlap with SCAO in situations involving the conduct of both judges and employees.

At year-end 2018, the Colorado state judiciary was comprised of 340 judges and justices, including 131 in the County Courts;176 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. In addition, 41 retired judges were serving 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 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 the use of illegal narcotic or dangerous drugs.
- Any conduct that constitutes a violation of the Canons.

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 Canons provide guidance for a judge's conduct in the courthouse and in the community:

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., Canon Rule 2.2 requires a judge to serve "fairly and impartially;" Canon Rule 2.5(A) requires a judge to "perform judicial and administrative duties competently and diligently;" Canon Rue 2.6 requires a judge to accord a litigant the right to be heard; and Canon Rule 3.1 provides guidance for judges in their community activities. The Code includes 38 Canon 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 disputes about a judge's rulings on motions, evidence, procedure, findings of fact, conclusions of law, sentencing, or other aspects of litigation are not considered grounds for disciplinary measures. Such disputes are to be resolved by the trial and appellate courts in accordance with the powers vested in the judiciary by Colo. Const. Article Vl, Section 1. Allegations that focus on these matters will not provide a reasonable basis for consideration as a complaint, unless the dispute involves grounds for a Canon violation in addition to the issues that are under the jurisdiction of the courts.

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.

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, attorneys, other judges, law enforcement, court staff, and others involved in judicial proceedings 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 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 selected 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. Members serve four year terms and may be reappointed. Members of the Commission as of December 2018 are listed 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 preliminary evaluation and investigation of misconduct allegations; 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.

In 2018, the Commission met in February, April, June, August, October, and December. In addition to the regular meetings, the Commission may hold special meetings or convene by conference call.

Requests for Evaluation of Judicial Conduct

Any person may report allegations of judicial misconduct or a judicial disability to the Commission. Through June 30, 2017, such allegations could be filed on the Commission's

complaint form or in the form of a letter or email that the Commission processed as a complaint. However, the Commission's experience had been that many persons filing "complaints" viewed the Commission's authority more broadly than the jurisdiction granted to it under the Colorado Constitution. Complaints often focused on disputed legal issues that were reserved for the courts or on the conduct of persons other than judges, such as district attorneys, defense attorneys, court staff, probation officers, law enforcement, or the staff of the Department of Corrections. The Commission was concerned that the complaint terminology led to unrealistic expectations by the complainants about the authority of the Commission.

The Commission concluded that its procedural rules should be clarified. Colo. RJD 12, as of July 1, 2017, provides for a complainant to file a Request for Evaluation of Judicial Conduct (an "RFE") to report circumstances that may warrant the commencement of disciplinary or disability proceedings. The Commission anticipated that the emphasis on judicial conduct in the information to be provided in the RFE would promote public understanding about the Commission's role and encourage complainants to focus on judicial ethics rather than disputed decisions or the conduct of persons who are not judges.

Preliminary Proceedings

The Commission will conduct preliminary proceedings to evaluate, under Colo. RJD 13, whether the situation described in the RFE falls within the Commission's jurisdiction. Upon a finding of a reasonable basis on which to commence disciplinary or disability proceedings, the Commission, in accordance with Colo. RJD 13(b), will consider the RFE as a complaint.

In the absence of a reasonable basis for disciplinary proceedings, the Commission will close the file and take no further action other than to advise the complainant of its decision. The judge will not be notified of the RFE or the Commission's decision.

Although the Commission will provide RFE forms for guidance in requesting an evaluation of judicial conduct, it will consider an RFE in the form of a letter or other format which describes the alleged misconduct or disability and provides relevant information, such as the case number of the litigation, the date of the incident or incidents involved, pleadings, orders, or excerpts from transcripts.

The RFE may be mailed, delivered, emailed, or faxed to the Commission. Arrangements can be made with the Commission’s staff to accommodate disabled persons in preparing and filing an RFE. The Commission also is authorized to determine that there is a reasonable basis for a complaint and commence further proceedings on its own motion, without receiving an RFE.

Investigation and Further Action

The Commission's proceedings, after a finding of a reasonable basis for a complaint, may involve several phases, including: (1) an **investigation and notice to the judge,** under Colo. RJD 14; (2) **a determination that remedial disciplinary measures, disability proceedings, or formal proceedings are warranted,** under Colo. RJD 16; (3) and/or directions to the judge to undergo an **independent medical examination**, as authorized by Colo. RJD 15. If necessary, 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 pending proceedings.

Investigation and Notice to the Judge

Under the provisions of Colo. RJD, the members of the Commission, at each of their meetings, will consider the Executive Director's evaluation of RFEs and authorize an investigation of those RFEs it deems sufficient to warrant consideration as a complaint.

Investigations are performed by the Executive Director and, if necessary, by an investigator whose services are available to the Commission through Attorney Regulation. The Executive Director will notify the judge of the investigation and the nature of the allegations. The judge is afforded an opportunity to respond. Under Colo. RJD 14(c), the Executive Director is authorized to begin an investigation on receipt of credible allegations of a judge's failure to preside diligently or other circumstances which may require prompt attention before the next meeting of the Commission.

Each investigation involves action that is 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 Dispositions

After the investigation, the Commission considers the complaint in informal proceedings. The complaint is assigned to one of the members of the Commission who examines the allegations, the judge’s response, and the results of the investigation. The member then presents the complaint and the evidence to the other members for their consideration. Colo. RJD 16 requires that allegations of misconduct 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 considered by the Commission in informal proceedings, the dispositions available, under Colo. RJD 16 and 35, include:

- dismissal of a complaint in which misconduct cannot be established by a preponderance of the evidence. However, a dismissal may be accompanied by the Commission's expression of concern about the circumstances.
- private admonishment for an appearance of impropriety, even though the judge's conduct in other respects meets minimum standards.
- 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 under Colo. RJD 18.

Independent Medical Examination

In situations where the Commission deems it necessary, it may order the judge to undergo an examination by a qualified provider to evaluate the judge's physical and mental health. This may lead to a diversion program involving medical treatment, counseling, and/or training, rather than disciplinary measures. It could also result in commencement of disability 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 Colorado Rules of Civil Procedure to address allegations of misconduct which the Commission determines cannot be adequately addressed by informal proceedings and private remedial measures. If the Commission finds probable cause to commence formal proceedings, it appoints special counsel to review the allegations and evidence of misconduct. Attorneys from Attorney Regulation, who litigate ethics issues involving attorneys, serve as special counsel for the Commission to litigate ethics issues involving judges. 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 – from among retired justices or active or retired judges who have no conflicts of interest and are able to serve diligently and impartially – to preside over the trial.

Based on findings made by the special masters or a stipulated resolution of the charges, the Commission will file a recommendation for action by the Supreme Court, under Colo. RJD 36 and 37, which may involve dismissal of the charges; a remand of the complaint to the Commission for disability proceedings; or one or more of the following sanctions:

- Suspension without pay for a specified period
- Removal from office or retirement
- Public reprimand or censure
- Privately administered discipline under Colo. RJD 35
- Measures reasonably necessary to curtail or eliminate the judge's misconduct, such as a diversion plan or deferred discipline plan.

Confidentiality

Informal disciplinary proceedings are confidential. Colo. Const. Article VI, Section 23(3)(g), provides that "all papers filed with and proceedings before the Commission" are confidential, unless and until such time as the Commission files a recommendation with the Colorado Supreme Court at the conclusion of formal proceedings. However, Colo. RJD 6.5 clarifies that this confidentiality requirement does not prohibit the Commission from interviewing witnesses; cooperating with Attorney Regulation, SCAO, 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. The Commission's proceedings, including its consideration of potential disciplinary measures, remain confidential, as required by the Constitution.

In addition, Colo. RJD 6.5 authorizes the publication in this annual report of a summary of proceedings that resulted in a private disposition – without disclosing the date, location, the judge, or other parties – or a public sanction; and authorizes the Commission or a judge to request that the Supreme Court approve the release of information about a disciplinary proceeding if the allegations of misconduct "have become generally known to the public and, in the interest of justice, should be publicly disclosed."

Review of Requests for Evaluation Received in 2018

Types of Misconduct Allegations

The Executive Director and the Commission's administrative assistant manage the intake of RFEs. When appropriate, callers are redirected to Judicial Performance, Attorney Regulation, the Denver County Court Judicial Discipline Commission, 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 2018, the Commission received a total 200 RFEs. This compares with 154 complaints and RFEs received in 2017, 152 complaints received in 2016, 175 in 2015, and the average of 180 complaints received in prior years. Beginning in September 2014, the Commission began accepting complaints by email; 48 of the 200 RFEs in 2018 were filed by email.

The Commission launched its website in 2010. The website provides essential information to the public, including an explanation of the Commission's procedures; downloadable forms; 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 contacts with the Commission currently include approximately 1,700 web hits and 400 to 500 phone inquiries annually, compared with 700 to 800 contacts solely by phone prior to establishing the website.

In 2018, RFEs were filed against judges in each of the state's 22 judicial districts; two were filed against judges of the Court of Appeals; and none concerned the justices of the Supreme Court.

Of the 200 RFEs received in 2018, 119 arose in the criminal law docket, many of which were filed by inmates in county jails or in detention facilities operated by the Colorado Department of Corrections. A total of 48 RFEs involved litigation in the general civil docket, including actions in small claims courts. Other RFEs included 39 in domestic relations cases, predominately in parenting plan disputes; 12 in juvenile court matters, usually involving the potential termination

of parental rights; and six in probate matters. Several involved issues involving more than one category of litigation or more than one type of court. Five involved issues raised by persons who contended that they were sovereign citizens not subject to Colorado law, and six involved orders for competency evaluations.

While most of the misconduct allegations were filed by litigants, many of whom had appeared in court *pro se*, RFEs were also filed by attorneys; by relatives, friends, or court observers; or by court staff. One involved a self-report by judge.

The frequency of the types of allegations in 2018 is summarized below. Some RFEs involved multiple allegations. Most of the RFEs involved situations that were not within the jurisdiction of the Commission, e.g., issues about evidence, procedure, or applicable law rather than misconduct by the judge.

- Administrative issues with colleagues or staff: 2
- Allegations directed at the conduct of officials other than state judges:
  - Attorneys, DAs, public defenders, court staff, probation officers, law enforcement officers, ALJs, or magistrates: 7
- Bias, prejudice, or lack of impartially: 50
- Courtroom demeanor/intemperance: 21
- Disputed rulings/appellate issues:
  - Appointment, inadequacy, or misconduct of counsel: 17
  - Arbitration orders: 1
  - Civil protection orders: 10
  - Constitutional principles, due process, speedy trial, jurisdiction: 11
  - Contempt proceedings: 1
  - Disabled litigants/ADA issues: 2
  - Disputed court records: 4
  - Dissolution of marriage, temporary orders, permanent orders, domestic violence, parenting plans, grandparent visitation, post decree motions: 27
  - Dog ownership/abuse: 2
  - Evidence, discovery, relevance, witnesses, credibility, tampering: 11
  - Federal law claims: 1
  - Foreclosures: 2
  - Homeowners association disputes: 3
  - Juror selection/service/misconduct: 2
  - Juvenile – paternity, dependency & neglect, child placement: 6
  - Landlord/tenant: 6

    - Mental health/competency evaluations: 13
    - Plea agreements: 6
    - Probate – estates, guardians, conservators: 7
    - Procedural rules: 1
    - Replevin of personal property: 3
    - Service of Process: 2
    - Sequestration of witnesses: 1
    - Sovereign Citizen claims: 5
    - Warrants, criminal charges, bonds, habitual criminal allegations, sentencing, restitution, probation, unlawful detainer, habeas corpus: 31
    - Zoning, easements, public lands: 1
- *Ex parte* communications: 3
- Failure to manage the docket diligently, including delays in issuing rulings: 29
- Judge's oaths: 1
- Part-time judges or their law partners appearing as counsel in their district: 2
- Postconviction issues, including Rule 35 motions: 6
- Pro se parties, right to be heard: 5
- Racial or gender discrimination: 2
- Recusal Procedures: 8
- Victim's Rights: 1

The dispositions authorized by Colo. RJD 16 and 35 are described above in **Investigation and Further Action** – Consideration and Dispositions. Most incidents of misconduct are addressed through remedial action, including private disciplinary letters or diversion plans, e.g., docket management reports to promote timely decisions.

The Executive Director, in accordance with Colo. RJD 13(c), dismissed 183 RFEs that did not provide a reasonable basis for the commencement of disciplinary proceedings. While the Commission reviews the Executive Director's dismissal letters at its next meeting, it also receives requests for reconsideration of dismissals from complainants. In 2018, four such requests were evaluated and the dismissals affirmed.

Through its December 2018 meeting, the members of the Commission had evaluated 17 RFEs that were referred to them by the Executive Director for consideration as complaints, including two matters carried over from 2017. After further investigation, the members of the Commission dismissed 12 of these 17 complaints because the allegations did not satisfy the preponderance of the evidence standard for establishing misconduct under Colo. RJD 16(c); involved issues under the jurisdiction of the appellate courts; or were directed at the conduct of persons other than

judges. Two new matters initially considered at the December meeting were carried over for further review in 2019. Nineteen RFEs that were received after the Commission's December meeting and dismissed by the Executive Director also were carried over for review in 2019.

Disciplinary Actions Taken in 2018

Colo. RJD 6.5 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 or other parties.

In 2018, the members of the Commission issued one private admonishment, one private reprimand, and two private censures; and commenced two formal proceedings.

Private Discipline

The private admonishment involved an 18 month delay in ruling on a postconviction motion under Rule 35.

The private reprimand concerned a three year delay in ruling on the appeal of a controversial administrative agency hearing.

One private censure addressed a relatively new judge's mismanagement of the docket and calendar, resulting in burdensome caseloads on magistrates and other judges; the judge's excessive absenteeism for extra-judicial activities; and the judge's inappropriate demeanor with staff and judicial colleagues. The disciplinary process proved to be a constructive measure that resulted in the improvement of the judge's docket management and demeanor.

The Commission filed formal proceedings against a part-time judge which were resolved by a private censure and the judge's resignation. The judge was alleged to have displayed improper judicial demeanor with court staff, law enforcement, attorneys, and litigants. After the Commission obtained an order of temporary suspension with pay, under Colo. RJD 34, while the allegations were investigated, the Commission and the judge were unable to successfully resolve the allegations through mediation. However, the judge agreed to resign and accept a private censure, and the formal proceedings were dismissed.

Public Discipline

The Commission received allegations that Court of Appeals Judge Laurie A. Booras had disclosed confidential information about a pending case to a third party and had used inappropriate racial references in communicating with that party.

On a motion by the Commission on March 31st, the Supreme Court suspended the judge, pending the outcome of disciplinary proceedings. Mediation was unsuccessful, formal proceedings were commenced, and a two day hearing to consider the allegations of misconduct was convened on December 4th by three Special Masters – two currently active judges and one retired Supreme Court justice – appointed by the Supreme Court pursuant to Colo. RJD 18.5(a).

Based on the findings and conclusions in the Special Masters Report of December 12th, the Commission, on December 17th, recommended to the Supreme Court that Judge Booras be removed from office. Upon the filing of the recommendation, the details of the disciplinary proceedings became public, as required by Article VI, Section 23 (3)(g) of the Colorado Constitution. In the meantime, Judge Booras announced her resignation from the Court of Appeals, to become effective on January 31, 2019.

In its Order of March 11, 2019, in response to the Commission's recommendation, the Supreme Court reviewed the findings of the Special Masters. The Court noted that in 2007, Judge Booras began what would become a ten-year relationship with a man whom she met online ("J.S"). Although the two did not see each other frequently they communicated often, and Judge Booras described their relationship as an intimate one that she had believed would one day result in marriage.

On February 21, 2017, a three judge division of the court of appeals, including Judge Booras, heard oral argument in *Martinez v. Colorado Oil & Gas Conservation Commission,* a case that had generated significant public interest. It concerned the extent to which the Colorado Oil & Gas Conservation Commission was required to consider public health and the environment in deciding whether to grant permits for oil and gas development, including fracking.

The next morning, Judge Booras, in an email to J.S., said:

> We had an oral argument yesterday re: fracking ban where there was standing room only and a hundred people in our overflow video room. The little Mexican is going to write in favor of the Plaintiffs and it looks like I am dissenting in favor of the Oil and Gas Commission.

The reference to the "little Mexican" was to one of Judge Booras's colleagues, a Latina, who would be writing the majority opinion with Judge Booras dissenting. The Special Masters

observed that Judge Booras, within the past year, also had sent an email to J.S. in which she referred to her ex-husband's new wife, a woman of Navajo descent, as "the squaw."

The Court was concerned that the judge's use of a racially derogatory reference to a judicial colleague had negatively impacted the Latina judge who would be writing the opinion as well as the morale and collegiality among other members of the court; and her reference to the judge and to her ex-husband's wife may have created a perception among racial or ethnic minorities – particularly those of Latino and Native American ancestry – that the judge would be prejudiced against them in other cases. The Court noted that the judicial system cannot function properly if public confidence in a court is eroded in this way.

In addition, there was some concern that a person learning of a pending opinion might make investment decisions in the oil and gas industry based on nonpublic information. Testimony before the Special Masters also described the additional workload on several retired senior judges who filled in for Judge Booras during her ten month suspension, and the resultant impact on the Court of Appeals' operating budget.

Judge Booras contended that her comments to J.S. were made in private and were protected by the First Amendment. The view of the Special Masters and the Court was that free speech about matters of public interest warrant First Amendment protection, but discussions of protected information, such as a case pending but not yet publicly announced by an appellate court, are not protected.

Accordingly, the Court publicly censured Judge Booras for her violations of Canon Rule 1.2, requiring a judge at all times to promote public confidence in the impartiality and integrity of the judiciary and to avoid the appearance of impropriety; Canon Rule 3.1(C), prohibiting a judge from engaging in any activity that would undermine the independence, integrity, or impartiality of the judiciary; and Canon Rule 3.5, which prohibits a judge from disclosing nonpublic information for any non-judicial purpose.

Given the judge's resignation, which became effective after the Commission made its recommendation, the Court concluded that it did not need to decide whether the judge's removal from office was an appropriate sanction. Instead, the Court ordered that the appropriate sanction was the acceptance of the judge's resignation, the imposition of a public censure, and an order requiring the judge to pay the Commission's costs in this matter.

Dismissals with Concerns

In addition, the Commission evaluated several situations in which the judge's conduct did not satisfy the preponderance of the evidence test for disciplinary measures, but did warrant an expression of concern about the circumstances, as authorized by Colo. RJD 35(a). These complaints were dismissed but with comments intended to provide constructive guidance in the event similar situations occurred.

In one such instance, a part-time judge duly recused from a criminal law case, upon recognizing that the defendant had been a client of the judge in the judge's law practice outside of the judge's judicial duties. However, the defendant later changed her name and the judge failed to recognize her in a subsequent criminal case. When brought to the judge's attention, the judge promptly recused.

Another part-time judge self-reported that a partner in the judge's law practice had taken a criminal case that was filed in the same judicial district where the judge presided. The Code of Judicial Conduct as applied to part-time judges prohibits a judge or the judge's partners or associates from appearing in litigation that potentially could be on the judge's trial or appellate docket. The judge corrected the situation upon realizing the partner's error.

Two situations involved new judges who were adjusting to their responsibilities. One was a young judge who faced challenges in meeting all the deadlines applicable to his cases. In a similar situation, another judge struggled to meet the relatively short procedural deadlines in several dependency and neglect cases while also adjusting to the responsibilities involved in a combined civil and domestic docket. A review of court records led the Commission to conclude that these were unfortunate but understandable situations that the judges were addressing competently and diligently, and did not warrant disciplinary measures.

In another case, a miscommunication between staff and the judge, while the judge was absent from the bench assisting with the care of an elderly relative, led to a delay in issuing a decision. The judge had otherwise been diligent in managing the case.

The disciplinary measures applied by the Commission in 2018 compared with corrective action taken in one case in 2007, four cases in 2008, three in 2009, seven in 2010, ten in 2011, four in 2012, three in 2013, two in 2014, three in 2015, seven in 2016, and two in 2017. There were no judges who declined to stand for retention after complaints were filed in 2017, compared with none in 2007, seven in 2008, three in 2009, three in 2010, and none in 2011 through 2018. There was one retirement for medical disability in 2006 and another in 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; and in 2013, another judge resigned because of declining health.

Motions for Postconviction Relief

The number of complaints involving a lack of diligence in ruling on motions for postconviction relief under Rule 35 of Colorado Rules of Criminal Procedure declined significantly after SCAO, on the recommendation of the Commission, implemented measures to expedite the consideration of such motions. There were 21 such complaints in 2012, six in 2013, none in 2014, five in 2015, four in 2016, and nine in 2017. The Commission received five RFEs in 2018 alleging such delays, but only one of those provided sufficient grounds for disciplinary measures.

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 or a pattern of being late in opening court
- delays in docket management caused by medical conditions requiring diversion programs for treatment
- unprofessional demeanor, including 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 a court 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 indicated 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 or financial 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
- prohibiting a process server from subsequent cases without affording the process server an opportunity to be heard
- inappropriate remarks to litigants and lawyers during trials or recesses
- discourtesy toward judicial colleagues, administrative staff, and sheriff deputies
- prejudice displayed by a judge's disparagement of a defendant's reputation and position in the community during a meeting with prosecution and defense counsel
- failure to follow applicable procedural rules and Canon rules in considering whether the judge should disqualify (recuse) from presiding
- behavior that the judge may not recognize as a symptom of a medical condition that affects judicial performance
- advocating for a self-represented party by providing legal advice or failing to treat all self-represented parties to a case impartially.

Proactive Measures

The Executive Director participates in an annual new judge orientation program to inform newly-appointed Colorado judges of their ethical duties and responsibilities under the Canons and to explain the Commission's rules and procedures. The Executive Director also meets periodically with judges and staff in their respective judicial districts, or through an online session, to update them on developments in judicial ethics.

Based on the inquiries and complaints it receives, the Commission notifies SCAO of the type of judicial conduct that may benefit from judicial education programs or changes in administrative procedures.

Judges are encouraged to contact the Executive Director to discuss the potential application of the Canons in a given situation, but the Commission is not authorized to issue advisory opinions. Such opinions may be requested from the Colorado Judicial Ethics Advisory Board.

The Executive Director attends the annual conference of judicial disciplinary commissions sponsored by the Association of Judicial Disciplinary Counsel and the biannual College of Judicial Ethics presented by the National Commission on State Courts. He has been a participant and speaker at national conferences on recusal procedures and judicial discipline conducted by the University of Denver's Institute for the Advancement of the American Legal System. He also has

made presentations in training programs held in Colorado for groups of lawyers, judges, and court staff who have traveled to Colorado from other countries to examine the Colorado judicial system.

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. When requested, Attorney Regulation provides investigative resources and special counsel to the Commission. SCAO notifies the Commission of potential judicial misconduct reported by court staff.

As of December 31, 2018, the Commission's membership included:

Member	City	Category of Appointment
Hon. Leroy D. Kirby, Chair	Brighton	County Judge
Hon. William D. Robbins, Vice-Chair	Denver	District Judge
Yolanda Lyons, Secretary	Monument	Citizen
Leslie Grayson Bolling	Centennial	Citizen
Bruce A. Casias	Lakewood	Citizen
Hon. Rachel Fresquez	Eagle	County Judge
Christopher Gregory	Fort Collins	Attorney
Elizabeth Espinosa Krupa	Denver	Attorney
Hon. David Prince	Colorado Springs	District Judge
Drucilla Pugh	Pueblo	Citizen

Judge Robbins retired from the bench and the Commission as of December 31, 2018. He was succeeded by District Judge Bonnie McLean of the Arapahoe County District who was appointed to the Commission by the Supreme Court in 2019.

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. Lauren Solomon is the Commission's administrative assistant.

To obtain a copy of the Request for Evaluation of Judicial Conduct form, or for further information, please refer to the Commission's website – www.coloradojudicialdiscipline.com – or contact the Commission directly at:

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