

## Colorado Commission on Judicial Discipline Annual Report for 2021

### Background and Jurisdiction

Originally, Colorado's Judiciary developed as a "frontier" system of decentralized courts with the Colorado Supreme Court, a limited number of District Courts, and a larger number of justices of the peace. This system relied upon partisan elections to select judges. Through this politicized system, there were frequent problems with incompetent, corrupt, and biased judges. In 1962, the Colorado Legislature referred a constitutional amendment to reform the structure of the Judiciary to voters. The amendment passed with an overwhelming majority. Implemented in 1965, the amendment abolished justices of the peace, defined higher qualifications for judges, and provided the Colorado Supreme Court with authority to define uniform standards, rules, and procedures for all lower courts.

In 1966, the League of Women Voters with the support of the Colorado Bar Association used Colorado's initiative process to present a second amendment directly to the voters. Through this amendment (Amendment 3), Colorado adopted the Missouri Plan for judicial selection. Amendment 3 passed with a 53% majority. According to Amendment 3, Colorado's current process for judicial selection requires nominating commissions to select up to 3 nominees for a judicial vacancy. In turn, the nominees are considered for appointment by the Governor. Following appointment, all judges serve a provisional 2-year term. Then, if retained by voters, judges serve regular terms with retention elections at the end of each term.<sup>1</sup> Supreme Court Justices serve 10-year terms, Court of Appeals Judges serve 8-year terms, District Court Judges serve 6-year terms, and County Court Judges serve 4-year terms. The Colorado Commission on Judicial Discipline ("the Commission") was created through Amendment 3 in conjunction with Colorado's evolution to an appointive system of judicial selection. The overriding purpose of Colorado's merit-based system of judicial selection, retention, and oversight is to reinforce judicial independence through an ongoing and reliable verification of judicial qualifications. The Commission's unique function is to protect the public interest in circumstances where, due to disability or violation of ethical standards, a judge is unable to perform the duties of his or her office. The jurisdiction and authority of the Commission is set forth in Article VI § 23(3) of the Colorado Constitution, which originally became effective in 1967.

The Colorado Code of Judicial Conduct (the "Code") includes four Canons that provide the basic principles of judicial ethics. The Code is patterned upon the American Bar Association's 2007 Model Code of Judicial Conduct. The Commission monitors the Judiciary's compliance with the Code's Canons through disciplinary proceedings. Disputes about a judge's decisions generally

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<sup>1</sup> A system of Commissions on Judicial Performance was statutorily created in 1988 to provide voters with relevant information and recommendations in retention elections. § 13-5.5-101, et. seq., C.R.S.; H.B. 1079 (1988).

remain matters for the trial and appellate courts to resolve as part of their inherent functions. The Commission is not authorized to change a judge's ruling.

The 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 as Chapter 24 of the Colorado Rules of Civil Procedure (C.R.C.P.). Colo. RJD 13 provides a process through which the Executive Director and/or individual Commissioners evaluate requests for evaluation of judicial conduct to determine whether reasonable grounds exist to recognize a complaint against a judge and to take further action. Such further actions may include notifying the subject judge of the complaint, conducting further investigation, and making a determination to dismiss the complaint, to impose private discipline, or to commence formal proceedings for public discipline.

More specifically, Colo. Const. Art. VI § 23(3)(e) and Colo. RJD 35 provide for remedial action which may result in:

1. A confidential private disposition such as an admonition, reprimand, or censure; or
2. 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 Colorado Supreme Court, on the recommendation of the Commission, to order the sanctions of removal, retirement, public reprimand, or public censure. Likewise, following disability proceedings, Colo. RJD 33.5 recognizes the Colorado Supreme Court's authority to order a judge's retirement upon finding that the judge is permanently disabled or likely to become permanently disabled.

In 2021, the Commission received its funding and support through attorney registration fees. C.R.C.P. 227. More specifically, the Colorado Supreme Court's Office of Attorney Regulation Counsel ("Attorney Regulation") supported the Commission with attorneys acting as special counsel and with investigation support. With the enactment of Senate Bill 22-201 (§§ 13-5.3-101, et seq., C.R.S.), the Commission, through the creation of a new Office of Judicial Discipline ("the Office"), will have its own staff to evaluate, investigate, and prosecute requests for evaluation of judicial conduct. Starting in 2022, the Commission will receive its operational funding through the Colorado Legislative Assembly's appropriation of the State General Fund. Moreover, § 13-5.3-104, C.R.S. creates a special revolving cash fund to allow the Commission to fund outside services necessary to perform its constitutional mandate. The purpose of these funding changes is to reinforce the Commission's independence from other entities, including the Colorado Judicial Department and the Colorado Supreme Court. The longer-term funding structure and funding source(s) for the

Commission and the Office are topics that the legislative Interim Committee on Judicial Discipline will consider according to its authorization under § 13-5.3-110(7)(n), C.R.S.

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 are appointed by the Mayor rather than the Governor and 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"), 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 conduct between judges and employees.
- 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 next retention election.

In December 2021, subject to pending retirements and appointments, the Colorado state judiciary was comprised of approximately 334 (313.95 FTE) judges and justices, including 109 judges in the County Courts; 196 judges in the District Courts (with one judge in Denver Probate Court and three judges in Denver Juvenile Court); 22 Court of Appeals judges; and seven Colorado Supreme Court justices. In addition, the Senior Judge Program included 44 senior judges active at year end 2021.

### **Grounds for Judicial Discipline**

Colo. Const. Art. VI, § 23(3)(d) and Colo. RJD 5 provide the grounds for disciplinary proceedings to address alleged violations of the Code as well as:

- 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.

Colo. Const. Art. 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 four Canons of the Code 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 includes subsidiary 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 Rule 2.6 requires a judge to accord a litigant the right to be heard; Canon Rule 2.8 requires a judge to be patient and courteous to litigants and court staff; 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.

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 and its Executive Director**

The Commission is comprised of Colorado citizens who serve without compensation, except for reimbursement of travel and other 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 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 2021 are listed at the end of this report.

§ 13-5.3-102, C.R.S., § 13-5.2-103, C.R.S., and Colo. RJD 3 provide for the organization and administration of the Commission and the Office, including the appointment of an Executive Director. The Executive Director's duties, subject to the general oversight of members of the Commission, include the operation of the 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.

The Executive Director and the Office's legal assistant manage the intake of RFEs. When appropriate, potential complainants 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 application of the Code.

In 2021, the Commission met in February, April, June, August, October, and December. In addition to its regular meetings, the Commission may hold special meetings or convene by conference call. Due to the COVID-19 pandemic, the Commission's meetings throughout 2021 were held remotely by WebEx.

The Commission launched its website in 2010. The website provides essential information to the public, including an explanation of the Commission's procedures; 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 Commission is currently in the process of re-developing its website to include an online portal for the submission of requests for evaluation of judicial conduct.

## **Scope of the Commission's Authority**

Article VI, Section 23 of the Colorado Constitution establishes the jurisdiction of the Commission. The focus, under provisions of the Constitution, is on a judge's conduct, rather than a judge's rulings.

It is important for litigants to understand that the Commission has no authority to change a judge's orders on matters that come before the courts. 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. Art. VI, § 1.

Requestors/complainants often are disappointed to learn that the Commission lacks authority to become involved in situations that do not involve the conduct of a judge. This can present especially difficult situations for self-represented (*pro se*) litigants who do not understand appellate procedures. 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.

Nor does the Commission have jurisdiction to consider allegations of misconduct by attorneys in their capacity as magistrates, municipal judges, administrative law judges, prosecuting attorneys, court-appointed defense counsel, or attorneys in private practice. Allegations of misconduct by attorneys are considered by Attorney Regulation. In addition, the Commission has no authority to consider allegations of misconduct by sheriff deputies, police officers, jail staff, staff of facilities operated by the Colorado Department of Corrections, or federal judicial officers.

The Commission does not act upon or respond to repetitive communications that do not comply with the instructions provided on the Commission's website, meet the standards for evaluation provided through Colo. RJD 13(c), or otherwise satisfy the jurisdictional requirements of Colo. Const. Art. VI, § 23(d).

## **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. 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 requestor 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 requested in the RFE would promote public understanding about the Commission's role and encourage requestors to focus on judicial ethics rather than disputed decisions or the conduct of persons who are not judges.

The Commission provides its RFE form on its website and in response to requests. The RFE form guides the requestor in providing the name of the judge, the date of the incident or incidents involved, pleadings, orders, or excerpts from transcripts. According to Colo. RJD 12, however, Commission will consider an RFE in the form of a letter or other format which describes the alleged misconduct or disability and provides relevant information about the requestor's concerns. While the Commission will review anonymous RFEs, the confidentiality requirements of Colo. Const. Art. VI, § 23(3)(e) prevents the Commission from notifying an anonymous requestor/complainant of the progress and disposition of an evaluation or investigation, as otherwise permitted under Colo. RJD 6.5(d), 13(d) and 14(b).

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 to commence further proceedings on its own motion, without receiving an RFE.

During 2021, the Commission received a total of 200 RFEs, including complaints in other formats that the Commission considered as RFEs. This compares with 199 received in 2020, 221 received in 2019, 200 in 2018, 154 in 2017, 152 in 2016, 175 in 2015, and an average of 180 RFEs and complaints received in prior years.

In 2021, RFEs were filed against judges in 21 of the state's 22 judicial districts. One RFE was filed against judges of the Court of Appeals and two related RFEs (counted as one) were received as to justices of the Colorado Supreme Court. More specifically, these statistics break down with the RFEs received as follows:

- 1<sup>st</sup> Judicial District (19; 1 considered according to Colo. RJD 16(a))
- 2<sup>nd</sup> Judicial District (30; 3 considered according to Colo. RJD 16(a))
- 3<sup>rd</sup> Judicial District (4)
- 4<sup>th</sup> Judicial District (34; 1 considered according to Colo. RJD 16(a))
- 5<sup>th</sup> Judicial District (4; 1 considered according to Colo. RJD 16(a))

- 6<sup>th</sup> Judicial District (2)
- 7<sup>th</sup> Judicial District (3; 1 considered according to Colo. RJD 16(a))
- 8<sup>th</sup> Judicial District (2)
- 9<sup>th</sup> Judicial District (5)
- 10<sup>th</sup> Judicial District (12; 1 considered according to Colo. RJD 16(a))
- 11<sup>th</sup> Judicial District (7; 1 considered according to Colo. RJD 16(a))
- 12<sup>th</sup> Judicial District (5)
- 13<sup>th</sup> Judicial District (4)
- 14<sup>th</sup> Judicial District (3; 1 considered according to Colo. RJD 16(a))
- 15<sup>th</sup> Judicial District (2)
- 16<sup>th</sup> Judicial District (1)
- 17<sup>th</sup> Judicial District (11; 1 considered according to Colo. RJD 16(a))
- 18<sup>th</sup> Judicial District (24; 1 considered according to Colo. RJD 16(a))
- 19<sup>th</sup> Judicial District (12; 2 considered according to Colo. RJD 16(a))
- 20<sup>th</sup> Judicial District (6; 1 considered according to Colo. RJD 16(a))
- 21<sup>st</sup> Judicial District (8)
- 22<sup>nd</sup> Judicial District (0)
- Colorado Court of Appeals (1)
- Colorado Supreme Court (1; 1 considered according to Colo. RJD 16(a))

Upon receipt of each RFE, the Executive Director reviews the allegations to determine whether it involves a judge and whether the allegations and the court's records provide sufficient evidence regarding the judge's conduct to warrant commencement of disciplinary proceedings. Allegations that involve disputes about a judge's decisions or that, based on the Executive Director's review, do not provide sufficient evidence of misconduct to satisfy the preponderance of evidence standard in Colo. RJD 16(c) for establishing a violation of the Canons, will not be referred to the members of the Commission for consideration. At each regular meeting of the Commission, the members review each of the Executive Director's decisions and may, after their consideration, reopen a case for further proceedings. Through this process, the entire Commission verifies the screening of RFEs.

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 requestor of the reasons for its decision. The minimum thresholds for the Commission to recognize an RFE as a complaint are stated in Colo. RJD 13(c). By rule, the Commission may not act upon an RFE where:

- (1) The request does not allege sufficient grounds for disciplinary or disability proceedings;
- (2) The request disputes a Judge's rulings on motions, evidence, procedure, or sentencing; a Judge's findings of fact and conclusions of law; or other matters that are within the jurisdiction



of the trial or appellate courts to resolve, without providing grounds for disciplinary or disability proceedings;

(3) The allegations are frivolous; or

(4) The allegations involve subject matter that is not within the jurisdiction of the Commission.

Colo. RJD 13(c).

Colo. RJD 14(a) recognizes that the Commission does not normally notify the judge of the allegations if the allegations do not warrant disciplinary proceedings.

If the Commission members determine that the matter referred to them by the Executive Director provides a reasonable basis on which to commence disciplinary or disability proceedings, the Commission will, in accordance with Colo. RJD 13(b), consider the RFE as a complaint. The Executive Director then will notify the judge of the allegations and request the judge's response according to Colo. RJD 14(a). The Commission will examine the allegations in more detail and may conduct interviews of witnesses. Investigative support was historically provided to the Commission by Attorney Regulation, but will become part of the Commission's internal functions in 2022.

In situations where there are allegations of an unusual delay in a judge's issuance of a decision or urgent situations in which awaiting the next bi-monthly meeting of the Commission would aggravate the situation, the Executive Director is authorized by Colo. RJD 14(c) to notify the judge and commence proceedings without the approval of the Commission members.

## **RFEs in 2021**

Of the 200 RFEs received by the Commission in 2021, 183 were dismissed upon an initial assessment through Colo. RJD 13(c). This level of dismissals is consistent with the experience of judicial discipline entities across the United States. These RFEs either did not involve allegations that a judge had violated the ethics principles in the Canons or did not present circumstances from which the Commission could reasonably infer that a Canon violation may have occurred. In addition to disputes about a judge's rulings and allegations of misconduct made against persons other than judges, situations not within the Commission's jurisdiction included disputes about parenting plans, child support, maintenance, division of marital property, dependent and neglected children, termination of parental rights, foster parents, adoptions, protection orders, receiverships, real estate rights, condemnation, wills and estates, conservatorships, replevin, garnishment, habeas corpus petitions, postconviction motions, sentencing, revocation of probation, juror selection, and claims by persons claiming to be sovereign citizens who contend that Colorado courts lack jurisdiction over them. To the extent that the Executive Director or the Commission needed to review the case records relating to particular RFEs, such records did not further establish a reasonable basis for disciplinary proceedings. For example, while a generalized allegation of bias or prejudice may have

been included in the RFE, an examination of the court records may indicate that the judge found the evidence presented by the opposing party to be more credible and relevant in resolving disputed issues, which would be a matter for an appellate court to evaluate. Or in a complex parenting or dependency and neglect case, there may be a dispute about which of several options provided in the statutes is most appropriate in the circumstances, which raises questions about the law as applied to the evidence, rather than Canon issues.

The remaining 17 RFEs required the Commission to complete some level of investigation based upon colorable allegations that a judge's conduct may have violated the Code. The Commission ultimately dismissed 5 of these RFEs. Six other RFEs were dismissed with the Commission providing educational information to the subject judge. Six of the RFEs were recognized as complaints under Colo. RJD 13(b) with additional proceedings occurring according to Colo. RJD 16(b).

### Phases and Types of Proceedings



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) **consideration and disposition** through informal proceedings in which the members decide whether, after further consideration, the complaint should be dismissed or that one or more of several disciplinary dispositions under Colo. RJD 35, should be ordered; (3) directions to the judge to undergo an **independent medical examination**, as authorized by Colo. RJD 15; 4) **disability proceedings**, under Colo. RJD 33.5; (5) **formal proceedings**, pursuant to Colo. RJD 18, involving a

trial before three special masters appointed by the Supreme Court<sup>2</sup> which could result in a recommendation to the Supreme Court for the retirement of the judge or a public disciplinary order; (6) and/or, 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 disciplinary proceedings.

#### Investigation and Notice to the Judge

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

In 2021, investigations were performed by the Executive Director and, if necessary, by investigators on the staff of the Office of Attorney Regulation Counsel. According to Colo. RJD 14(a), the Executive Director notifies the subject judge of the investigation and the nature of the allegations after the Commission has recognized a RFE as a complaint according to Colo. RJD 13(b). The judge is afforded an opportunity to respond either in writing or by appearing before the Commission. Colo. RJD 14(d).

Each investigation involves action that is appropriate under the circumstances, such as an examination of court records; a review of written transcripts or audio recordings of proceedings;

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<sup>2</sup> Colorado Constitution Article VI, § 23(3)(e) recognizes that the Commission can either: 1.) “order a formal hearing to be held before it concerning the removal, retirement, suspension, censure, reprimand, or other discipline of a justice or a judge”; or 2. Request that the Supreme Court appoint three special masters. Previous versions of the Colo. RJD defined procedures for hearings before the Commission, itself.

- (a) **In General.** At the time and place set for hearing, the commission or the masters shall proceed with the formal hearing whether or not the judge has filed a response or appears at the hearing. Special counsel shall present the case in support of the formal charges. The chairperson or presiding master shall rule on all motions and objections made during the hearing, subject to the right of any member who disagrees with the ruling to appeal to all of the members of the commission or the masters who are present. The vote of the majority present shall prevail on all findings of fact and conclusions of law.

Colo. RJD 26 (1987).

The current version of the Colo. RJD omits such procedures.

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 disposition of 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(a). Allegations of misconduct must be established by a preponderance of the evidence. Colo. RJD 16(c). A decision is made by majority vote of the members participating in the meeting, exclusive of the presenting member. Colo. RJD 16(b).

When a complaint has been considered by the Commission in informal proceedings, the dispositions available (either singly or in combination), 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.
- "Admonish[ing] the subject judge privately for an appearance of impropriety, even though the Judge's behavior otherwise meets the minimum standards of judicial conduct." Colo. RJD 35(d);
- privately reprimanding the subject judge "for conduct that does not meet the minimum standards of judicial conduct." Colo. RJD 35(e);
- privately censuring the subject judge for misconduct that "which involves a substantial breach of the standards of judicial conduct." Colo. RJD 35(f);
- requiring a diversion plan in which the judge obtains training, counseling, or medical treatment or provides periodic docket management reports to the Commission, which can be combined with a private admonishment, reprimand, or censure. Colo. RJD 35(c); and
- entering a stipulated private disposition that could include the judge's resignation or retirement. Colo. RJD 35(h).

Beyond private dispositions, the Commission can also initiate disability proceedings under Colo. RJD 33.5 or make 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. Colo. RJD 15. 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 affects 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 and judicial disability inactive status.

### 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. Staff of Attorney Regulation, who litigate ethics issues involving attorneys, historically served as special counsel for the Commission to litigate ethics issues involving judges. When Attorney Regulation has had conflicts or has otherwise refused to provide support, the Commission has arranged for the Attorney General’s office to serve as special counsel. With changes created through Senate Bill 22-201, the Commission is expected to employ its own special counsel starting later in 2022. Senate Bill 22-201 also provided the Commission with resources to arrange for legal and investigation support through outside special counsel in the private sector, as needed.

Special counsel prepares and serves 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;
- Private dispositions under Colo. RJD 35; and/or
- Measures reasonably necessary to curtail or eliminate the judge’s misconduct, such as a diversion plan or deferred discipline plan.

## Confidentiality

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. Informal disciplinary proceedings remain confidential. 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, judicial nominating commissions, or the Senior Judge Program concerning the disciplinary record, if any, of a judge who is under consideration for another judicial position. However, the details of the Commission’s consideration of disciplinary measures continue to be confidential.

Under Colo. RJD 33.5(i), orders issued by the appointed special master(s) in disability proceedings as well as orders issued by the Colorado Supreme Court in such proceedings are public. Other case filings and records, however, remain confidential. Likewise, under Colo. RJD 34(f), a temporary suspension order in disciplinary proceedings is public upon issuance by the Colorado Supreme Court with other records remaining confidential pending the filing of recommendations under Colo. RJD 37.

In addition, Colo. RJD 6(h) 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. Colo. RJD 6.5(g) also 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 2021**

### Types of Misconduct Allegations

Of the 200 RFEs received in 2021, 101 arose in the context of criminal law (or related proceedings), many of which were filed by inmates in county jails or in detention facilities operated by the Colorado Department of Corrections. Seven of the RFEs related to traffic citations or DUI offenses. A total of 30 RFEs involved litigation in the general civil docket, including evictions, small claims, and protective order proceedings. Other RFEs included 43 in domestic relations cases, predominately involving parenting plan disputes; 8 in juvenile court matters, usually involving the potential termination of parental rights; and 6 in probate matters. One case involved water law proceedings.

Numerous cases included issues involving more than one category of litigation or more than one type of court. Many of these cases involved appeals to the Court of Appeals or the Supreme Court, in addition to the trial courts. And several involved issues raised by persons who contended that they were sovereign citizens not subject to Colorado law.

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.

The dispositions authorized by Colo. RJD 16 and 35 are described above in 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 in 2021 that did not provide a reasonable basis for a Canon violation. As noted, the full Commission reviewed each of these dismissal decisions. Additionally, the Executive Director dismissed approximately 33 requests/inquiries due to lack of jurisdiction (including requests for the evaluation of conduct as to attorneys, magistrates, department of human services employees, and non-Article VI judges).<sup>3</sup> The Commission also received various requests for reconsideration of dismissals from requestors/complainants.

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<sup>3</sup> In 2021, the Commission encountered a RFE that demonstrated a significant deficiency in how the Colo. RJD define the Commission's jurisdiction over retired judges participating in the Senior Judge Program. Colo. RJD 4(a)(1) defines a statute of limitations whereby the Commission's jurisdiction is limited to considering RFEs received "(A) during the Judge's term of office or within one year following the end of the judge's term of office or the effective date of the Judge's retirement or resignation, with respect to alleged misconduct or disability occurring during the Judge's term of office; or (B) during the Judge's service in the senior judge program or within one year following the end of the Judge's service in the senior judge program, with respect to alleged misconduct or disability occurring during the Judge's service in the senior judge program." Colo. RJD 4(a)(1) effectively prevents the Commission from considering allegations of misconduct committed by a senior judge during their prior service as an active judge once he or she has been retired for over one year. Based upon facts raised in an appeal over one year after a judge had retired, there were concerns that the judge interfered with a defendant's right to a fair trial by openly demeaning his attorney. Following the trial that resulted in the defendant's conviction, the judge began serving as a senior judge. On review, the Colorado Court of Appeals reversed the defendant's conviction due to the judge's conduct towards defense counsel. The Commission, however, could not act due to expiration of the one-year limitations period under Colo. RJD 4(a)(1). Nevertheless, the Chief Justice contemporaneously removed the subject judge from the senior judge program for unrelated reasons.

Through its December 2021 meeting, the members of the Commission had evaluated 17 RFEs that were referred to them by the Executive Director for consideration as complaints. After further examination, the members of the Commission dismissed 5 of these 17 complaints because the allegations did not satisfy the preponderance of the evidence standard for establishing misconduct under Colo. RJD 16(c). In addition, the Commission dismissed 5 complaints with an expression of concern rather than ordering private disciplinary measures. The Commission ordered private disciplinary measures in one case. Two matters from 2020 carried over with private dispositions imposed in 2021. In addition, the Colorado Supreme Court adopted the Commission's recommendation to order public censure in 2021 through a case that began in 2020. Six ongoing cases opened in 2021 carried over into 2022.

### **Disciplinary Actions Taken in 2021**

Colo. RJD 6.5(h) 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.

#### Public Discipline

In 2021, the Commission resolved a case that carried over from 2020. Former Arapahoe District Court Judge Natalie Chase stipulated to a public censure, and the judge resigned. As described in the Colorado Supreme Court's disciplinary order, Judge Chase was censured for using racial slurs in the captive presence of court staff (including repeated use of the N-word) and for providing opinions about current events involving race relations while on the bench. Judge Chase was further censured for using court staff for personal business, for bringing personal/family matters into her workplace conversations, and for using derogatory terms when referring to another judge, who Judge Chase described as a "f\*-ing b\*\*\*." The stipulation and the Supreme Court's order recognized that Judge Chase violated Canon Rule 1.2 (Promoting Confidence in the Judiciary), Canon Rule 2.3 (Bias, Prejudice, and Harassment), and Canon Rule 2.8 (Decorum, Demeanor, and Communication with Jurors). As part of her stipulation, Judge Chase agreed that her resignation would take effect 45-days from issuance of the Supreme Court's order, which entered April 16, 2021. Consequently, Judge Chase's resignation became effective on May 31, 2021. *Matter of Chase*, 2021 CO 23.

#### Private Discipline

A private admonishment was issued to a judge for an approximately one-and-a-half-year delay in issuing a decision in a complex civil case. In imposing this disposition, the Commission recognized that the judge faced complicating circumstances due to the impacts of the COVID-19 pandemic and a relatively busy docket. The Commission further noted that the Judge ultimately issued a comprehensive order that included an apology to the parties for the inconvenience caused. The Commission also confirmed that the judge was generally meeting benchmarks in his handling of



other cases under Colo. RJD 08-05 and had apparently taken remedial actions to prevent similar delays from recurring in the future.

A private reprimand was issued to a District Court Judge for an approximately five-month delay in issuing a termination order in a dependency and neglect case. In issuing this private reprimand, the Commission emphasized that the underlying case involved expedited permanency planning because of the involved child's age and that § 19-3-602(1), C.R.S. requires the setting of a hearing within 120-days of the filing of a motion to terminate parent-child relationships. Because of these circumstances, the Commission concluded that the judge failed to perform his duties diligently, as required by Canon Rule 2.5.

A private reprimand was issued to a judge who delayed ruling on a motion to dismiss a civil action for approximately seven months. As with other cases, the Commission acknowledged how the COVID-19 pandemic and staffing issues complicated the judge's work. The order that the judge ultimately issued reflected competence and thoroughness. Nevertheless, given the relatively routine nature of the motion involved, the Commission found that the delay was unreasonable and in violation of the judge's obligations under Canon Rule 2.5.

#### Dismissals with Concerns

The Commission received a RFE relating to a judge's approximately 4-5 month delay in issuing permanent orders following completion of a hearing in a domestic relations case. The delay was explained based upon the complexity of specific assets and liabilities involved as well as how complications of the Covid-19 pandemic and a crowded caseload reduced the time available for judges to draft extensive orders without prior levels of staff assistance. The subject judge issued a 39-page permanent orders ruling within 7-days of receiving notice from the Commission under Colo. RJD 14(a). In a footnote at the beginning of the order, the subject judge apologized to the parties and explained the circumstances that caused the delay. Because the permanent orders impacted the best interests of the parties' children with consequences further arising from the timeliness of asset/debt allocation, however, the Commission dismissed the matter with its expressed concerns.

In a probate case, the Commission received an RFE reporting that a Petition for Final Settlement had been fully briefed in early March 2020. The court had not issued a ruling by February 2021 (an 11-month delay). The need for a prompt ruling was heightened in the case because it involved an elderly beneficiary. The issues involved, however, were complicated by the situs of real property in the estate encompassing land in two states. The subject judge was in the process of completing an order when the Commission provided notice of a complaint under Colo. RJD 14(a). The order issued within 14-days of the Commission sending its notice letter. The subject judge explained that the delay had occurred because of the court's system of providing legal research assistance and the scheduling of such support. Given the totality of circumstances, the Commission dismissed the

complaint with an explanation that the subject judge should take steps to prevent similar extended delays from recurring in the future.

In a domestic relations case, a hearing was held on a contempt citation in February 2020. In August of 2020, one of the parties filed a status report offering to provide further evidence or argument, if needed to resolve the pending contempt issue. An order on the citation and hearing still had not issued by March 2021 (over 1-year delay). Upon the Commission providing notice of a complaint under Colo. RJD 14(a), the subject judge issued an order within 7-days. The subject judge also explained that the court's usual practice of making an oral ruling, providing a written order, or setting a return date following a contempt hearing had not been followed. Moreover, because of the subject judge hearing cases in multiple counties, a breakdown in communication with court staff prevented him from receiving the status report filed in August 2020. The subject judge took responsibility for these problems and apologized to the parties in his order. The subject judge's open case report further showed that he was within benchmarks under CJD 08-05 in the handling of his general docket. The Commission dismissed the complaint with a concern and expectation that the subject judge would make administrative changes to ensure that other unrecognized delays do not recur in the future.

In a domestic relations case, the subject judge had initially recused himself because he had filed a grievance with Attorney Regulation as to one of the parties' attorneys. The grieved attorney later withdrew from the case. After consultation with the Chief Judge and the judge who initially received the reassigned case, a determination was made to return the case to the subject judge in the interests of judicial economy and efficiency. When this decision was made, however, the Chief Judge did not issue an order of reassignment. Subsequently, the subject judge and the Chief Judge issued orders in the case providing grounds for the reassignment of the case back to the subject judge. As discussed in *Zoline v. Telluride Lodge Assoc.*, 732 P.2d 635 (Colo. 1987), while it is possible to reassign a case back to a judge who previously recused due to a later addressed conflict, the reassignment of the case should address all grounds for disqualification that may have been raised by the part(y/ies) involved. Because notice was not provided to the parties prior to or concurrent with the reassignment of the case back to the subject judge, the Commission dismissed the complaint with concerns over the absence of a contemporaneous order of reassignment. Following the Commission's dismissal letter, the Chief Judge issued an additional corrective order taking responsibility for not having correctly described the grounds for reassignment and for not having issued his original order contemporaneously with the reassignment.

During sentencing in a criminal case involving a defendant's conviction for three counts of retaliation against a (separate) judge, the subject judge made comments to the effect that he did not have authority to put the defendant in a boxing ring with the affected judge so that that judge could "pound" the defendant. When taken in context, the Commission determined that the statements did not support finding a violation of Canon Rules 1.2 (Promoting Confidence in the Judiciary) and 2.8 (Decorum, Demeanor, and Communication with Jurors) through a preponderance of evidence.

Nevertheless, the Commission dismissed the complaint with an expression of concern that observers of the subject judge's statements could have reasonably misinterpreted the statements as evidence of intemperance. The Commission further acknowledged that the subject judge's cooperation in its investigation also supported dismissal.

At a dispositional hearing involving five co-defendants represented by a single defense attorney, the subject judge responded that a plea proposal with terms for a deferred sentence and dismissal upon completion of community service was "incredible" and emphasized that the defendants' records would be sealed upon completion. The charges in the cases included burglary, trespass, and child abuse. When the subject judge responded to the proposed plea offer, the defendants' attorney expressed her opinion that the subject judge "wanted [her clients] to enter a plea for something they didn't do." The subject judge clarified that this was not the case and proceeded to schedule a jury trial, as requested by defense counsel. Based upon these circumstances, the Commission found that there was not sufficient evidence to establish a violation of the Code. The Commission dismissed the complaint with an expression of caution to the subject judge about how future commentary as to the merits of plea offers might be perceived as coercive.

### History of Recent Disciplinary Measures

In 2021, the Commission's dispositions included one public censure, three private disciplinary orders, and six dismissals with concerns. These dispositions followed 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, two in 2017, eleven in 2018, six in 2019, and six in 2020. No judges declined to stand for retention after complaints were filed in 2021, compared with none in 2007, seven in 2008, three in 2009, three in 2010, and none in 2011 through 2020. There was one retirement for medical disability in 2006, one in 2007, and another in 2019. 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, five in 2019, 12 in 2020, and 11 in 2021. The increase in 2020 and 2021 was caused, in part, by the disruption in docket management resulting from the COVID-19 pandemic.

## 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
- 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 involving improper demeanor toward an attorney or incarceration of a defendant without due process
- use of computers, staff, and other court resources for personal or financial matters, except for incidental usage that did not significantly interfere with judicial responsibilities
- disclosing non-public information in non-judicial activities
- 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
- delays in docket management or other 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.

The disruption of the judicial branch's management of hearings and trials during the COVID-19 pandemic prompted several complaints about delays and the occasional difficulties in connecting with remote hearings by video and in managing the proceedings. These situations were unavoidable and did not involve judicial misconduct.

### **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 hypothetical situations, 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 remains current on issues of judicial discipline by regularly attending annual meetings of the Association of Judicial Disciplinary Counsel and the National Center for Judicial Ethics' bi-annual National College on Judicial Conduct and Ethics.

### **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. Members of the Commission reflect the geographic, ethnic, and racial diversity of the Colorado community. The Commission's decisions in 2021 were made independently from Attorney Regulation and SCAO but with their logistical support. When requested, Attorney Regulation generally provided investigative resources and special counsel to the

Commission. In at least one case in 2021, the Commission requested and received investigative resources and special counsel through the Attorney General's Office. According to § 13-5.3-106, C.R.S., CJD 08-06, and a 2010, SCAO is required to notify the Commission of potential judicial misconduct reported by court staff and, in certain circumstances, the public.

As of December 31, 2021, the Commission's membership included:

<u>Member</u>	<u>City</u>	<u>Category of Appointment</u>
Elizabeth Espinosa Krupa, Chair	Denver	Attorney
Hon. David Prince, Vice-Chair	Colorado Springs	District Judge
Hon. Rachel Fresquez, Secretary	Eagle	County Judge
Jim Carpenter	Englewood	Citizen
Bruce A. Casias	Lakewood	Citizen
Mary (Mindy) V. Sooter	Boulder	Attorney
Yolanda Lyons	Monument	Citizen
Hon. Bonnie McLean	Centennial	District Judge
Drucilla Pugh	Pueblo	Citizen
Sara Garrido	Golden	County Judge

During 2021, William J. Campbell completed his service as 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. On January 3, 2022, Christopher S.P. Gregory (who served as the Commission's Chair until June 30, 2021) succeeded Mr. Campbell as Executive Director of the Commission. Mr. Gregory's appointment followed an 18-year career as a practicing attorney. During 2021, Lauren Solomon served as the Commission's Legal Assistant. On August 15, 2022, Sherri Hammerly succeeded Ms. Solomon as the Commission's Legal Assistant / Office Manager.

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](http://www.coloradojudicialdiscipline.com) - or contact the Commission directly at:

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