



COLORADO
Commission on Judicial
Discipline

2022 Annual Report

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Colorado Commission on Judicial Discipline Annual Report for 2022

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.¹ 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

¹ 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).

Code's Canons through disciplinary proceedings. Disputes about a judge's decisions generally 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 review 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.

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 general 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.

Senate Bill (SB) 22-201 Reforms

Previously, the Commission received its funding and support through attorney registration fees. C.R.C.P. 227 (2021). 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 SB 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”), now has its own staff to evaluate, investigate, and prosecute requests for evaluation of judicial conduct.

Starting in Fiscal Year 2022 (July 1, 2022 through June 30, 2023), the Commission receives its operational funding through the Colorado Legislative Assembly’s appropriation of the State General Fund. In addition, § 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 adopted through SB 22-201 is to reinforce the Commission’s independence from other entities, including the Colorado Judicial Department and the Colorado Supreme Court.

Beyond funding changes, Senate Bill 22-201 made additional changes that include:

- a) the authorization of information sharing between the Commission and other judicial discipline oversight entities (§ 13-5.3-105, C.R.S.),
- b) recognition that the Colorado Judicial Department has mandatory reporting obligations and duties to share information with the Commission (§ 13-5.3-106, C.R.S.),

- c) requirements that the Colorado Supreme Court confer with the Commission and follow a public process when proposing rules, guidelines, or procedures related to judicial discipline (§ 13-5.3-107, C.R.S.),
- d) requirements that the Commission track specific data as part of its reporting duties under the “State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act” (§ 13-5.3-108, C.R.S.), and
- e) codification of the Commission’s access to resources through the Colorado Attorney General’s Office (§ 13-5.3-109, C.R.S.).

The 2023 Interim Committee on Judicial Discipline and Pending Legislation

Senate Bill 22-201 also created the bi-partisan legislative Interim Committee on Judicial Discipline, which met through the Summer and early Fall of 2022. Ultimately, the Interim Committee proposed legislation designated as House Concurrent Resolution (HCR) 23-1001 and House Bill (HB) 23-1019. Although a third proposed bill to create a judicial ombudsman’s office was considered by the Interim Committee, it was proposed as a regular bill (HB 23-1205) introduced during the regular 2023 legislative session. If approved by the Colorado Legislature, HCR 23-1001 will be placed on the 2024 general election ballot for consideration by voters as an amendment to the Colorado Constitution. Some of the provisions contained in HB 23-1019 are conditioned upon ratification of the constitutional amendment proposed through HCR 23-1001.

The structural changes to Colorado’s judicial discipline system contemplated through HCR 23-1001, HB 23-1019, HB 23-1205 are significant and, as they exist at the time of this writing, can be summarized as follows:

- HCR 23-1001
 - Reforms the current dispute resolution structure and redefines the role of the Colorado Supreme Court in that system. The Commission will continue to investigate and prosecute judicial misconduct claims. A new adjudicative board will hear the trials of misconduct claims. Cases will be decided by panels from the adjudicative board comprised of one judge, one lawyer, and one citizen. The Colorado Supreme Court will be limited to a traditional appellate role.
 - Defines circumstances where imputed disqualification requires recusal of the entire Colorado Supreme Court and substitution by a Special Tribunal composed of judges drawn from the Colorado Court of Appeals and the Colorado District Courts.
 - Changes Colorado Constitution Article VI, § 23(3)(g) to recognize that records in judicial disciplinary matters generally become public upon the commencement of formal proceedings.

- Creates a multi-perspective rule-making committee to promulgate procedural rules relating to judicial discipline.
- HB 23-1019
 - Requires a public process for rulemaking through the rulemaking committee proposed by HCR 23-1001.
 - Adds more specific data reporting requirements according to § 13-5.3-108, C.R.S. and directs that the Commission’s website include data search functionality and provide for the online submission of request for evaluation forms, including confidential or anonymous requests.
 - Directs the Commission to designate a point of contact to provide requestors with information about the judicial discipline process and the status of a case upon recognition of a complaint.
 - Authorizes the judge member of an adjudicative panel proposed through HCR 23-1001 to use the judge’s staff to provide for the panel’s administrative needs.
 - Repeals §§ 24-72-401 and 24-72-402, C.R.S., which currently make it a misdemeanor offense to disclose the contents of the Commission’s records or recommendations prior to filing with the Colorado Supreme Court.
- HCR 23-1205
 - Creates an independent conflict-free judicial ombudsman’s office to assist judicial personnel address employment or judicial discipline related concerns, including through the facilitation of anonymous or other communications with the Commission and other appropriate entities.

Number of Judges Subject to the Commission’s Jurisdictional Authority in 2022

In December 2022, subject to pending retirements and appointments, the Colorado state judiciary was comprised of approximately 331 judges and justices, including 106 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 47 senior judges active at year-end 2022.

The Commission and the Office of Judicial Discipline

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 2022 are listed at the end of this report.

The organization and administration of the Commission and the Office are addressed in § 13-5.3-102, C.R.S., § 13-5.3-103, C.R.S., and Colo. RJD 3. 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 and supervision 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 2022, the Commission met in February, April, June, August, October, and December. These meetings occurred in-person, virtually, or through a combination of both formats. In addition to its regular meetings, the Commission may hold special meetings.

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 provide the data search functions and to include an online portal for the submission of requests for evaluation of judicial conduct, as contemplated through HB 23-1019.

Scope of the Commission's Jurisdictional 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).

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.”

Notably, the grounds for discipline recognized through Colo. Const. Art. VI, § 23(3)(d) predate changes in the American Bar Association’s (ABA) Model Code of Judicial Conduct adopted in 1972. The 1972 version of the Model Code moved the original Model Code (adopted by the ABA in 1924) from aspirational recommendations to an enforceable system of written ethical standards. By adopting its merit-based systems of judicial selection, retention, and discipline during the 1960s, Colorado became a model for other judicial discipline systems nationally. Colorado’s current Code of Judicial Conduct adopts the ABA’s 2007 Model Code with minor variations.

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 afford 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 Judicial Discipline Process in Colorado

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. Consequently, the Colorado Rules of Judicial Discipline were clarified to allow for the filing of a request for evaluation of judicial conduct (an "RFE") to report circumstances that may warrant the commencement of disciplinary or disability proceedings. Disciplinary proceedings can begin either with consideration of an RFE or by the Commission making its own determination that public or otherwise known circumstances present a reasonable basis for such disciplinary proceedings. Colo. RJD 13(f).

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. Consistent with the expectations of § 13-5.3-108(1)(g), C.R.S., the Commission is updating its RFE form to add a voluntary demographic survey. While the Commission will review anonymous RFEs, the practical result of an anonymous RFE along with the confidentiality requirements of Colo. Const. Art. VI, § 23(3)(e) prevent 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. Beyond RFEs submitted directly to the Commission, SB 22-201 directed additional reporting from the Colorado Judicial Department, which has been further defined through Chief Justice Directive 22-01. The Commission will either treat the documents forwarded by the Department as an RFE or will contact the submitter (assuming sufficient contact information exists) to provide a copy of the Commission's RFE form and instructions.

Arrangements can be made with the Commission's staff to accommodate disabled persons in preparing and filing an RFE.

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 reasonable basis standard in Colo. RJD 13(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 became 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.

Volume and Nature of Requests for Evaluation Received in 2022

During 2022, the Commission received a total of 249 RFEs, including complaints in other formats that the Commission considered as RFEs. This compares with 200 received in 2021, 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. The volume of RFEs received in 2022 reflects an approximately 25% increase from prior averages.

Of the 249 RFEs received by the Commission in 2022, 235 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. The remaining 14 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 3 of these RFEs. 2 other RFEs were dismissed with the Commission providing educational information to the subject judge. 11 of the RFEs were recognized as complaints under Colo. RJD 13(b) with additional proceedings occurring according to Colo. RJD 16(b). Between 2022 and 2023, the Commission authorized the filing of formal proceedings in five separate cases. This number exceeds the total number of formal proceedings authorized in the preceding 12 years and reflects an over ten-fold increase in the number of serious cases addressed within an approximately 1-year period.

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 cases 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 representing themselves, RFEs were also filed by attorneys; by relatives, friends, or court observers; or by court staff.

In 2022, RFEs were filed against judges in 22 of the state's 22 judicial districts. Nine RFEs were filed against judges of the Court of Appeals and one jurisdictionally sufficient RFE was received as to justices of the Colorado Supreme Court. Some RFEs were expressed as to multiple jurisdictions. More specifically, these statistics break down with the RFEs received as follows:

Judicial District / Court	RFEs Received	Percentage of Total RFEs	Number of RFEs considered according to Colo. RJD 16(a)
1 st Judicial District	20	7.97%	0
2 nd Judicial District	23	9.16%	0
3 rd Judicial District	2	0.80%	0
4 th Judicial District	50	19.92%	0
5 th Judicial District	5	1.99%	2
6 th Judicial District	3	1.20%	0
7 th Judicial District	6	2.39%	0
8 th Judicial District	4	1.59%	0
9 th Judicial District	9	3.59%	0
10 th Judicial District	4	1.59%	0
11 th Judicial District	9	3.59%	1
12 th Judicial District	4	1.59%	1
13 th Judicial District	7	2.79%	0
14 th Judicial District	3	1.20%	0
15 th Judicial District	2	0.80%	1
16 th Judicial District	1	0.40%	0
17 th Judicial District	6	2.39%	0
18 th Judicial District	48	19.12%	3
19 th Judicial District	9	3.59%	0
20 th Judicial District	12	4.78%	0
21 st Judicial District	12	4.78%	2
22 nd Judicial District	2	0.80%	0
Colorado Court of Appeals	9	3.59%	0
Colorado Supreme Court	1	0.40%	1

The general nature of misconduct allegations received in 2022 can be summarized as follows:

Accommodation of Disability / Medical Needs	3	1.20%
Bias / Discrimination / Corruption	9	3.61%
Competency Proceedings	22	8.84%
Conduct re: Judicial Applications / Retention Elections	2	0.80%
Conflict of Interest	9	3.61%
Courtroom / Courthouse Management	4	1.61%
Criminal Conduct	1	0.40%
Demeanor and Decorum	9	3.61%
Diligence / Delay / Competence	11	4.42%
Disputed Rulings--Legal / Factfinding Error	110	44.18%
Disputed Rulings--Legal / Factfinding Error (Crim. P. 35)	21	8.43%
Financial Irregularities	0	0.00%
General Impropriety or Appearance of Impropriety	1	0.40%
Harassment / Inappropriate Behavior	3	1.20%

Judicial Disability	1	0.40%
Opportunity to be Heard	11	4.42%
Personal / Extra-Judicial Conduct	1	0.40%
Prohibited Expression / Breach of Confidentiality	7	2.81%
Qualifications for Office	2	0.80%
Sovereign Citizen / Generalized Conspiracy	7	2.81%
Supervisory Duties	5	2.01%
Other/Miscellaneous	10	4.02%

The number of RFEs (including those relating to multiple judges) received further break down by the type of judge involved, as follows:

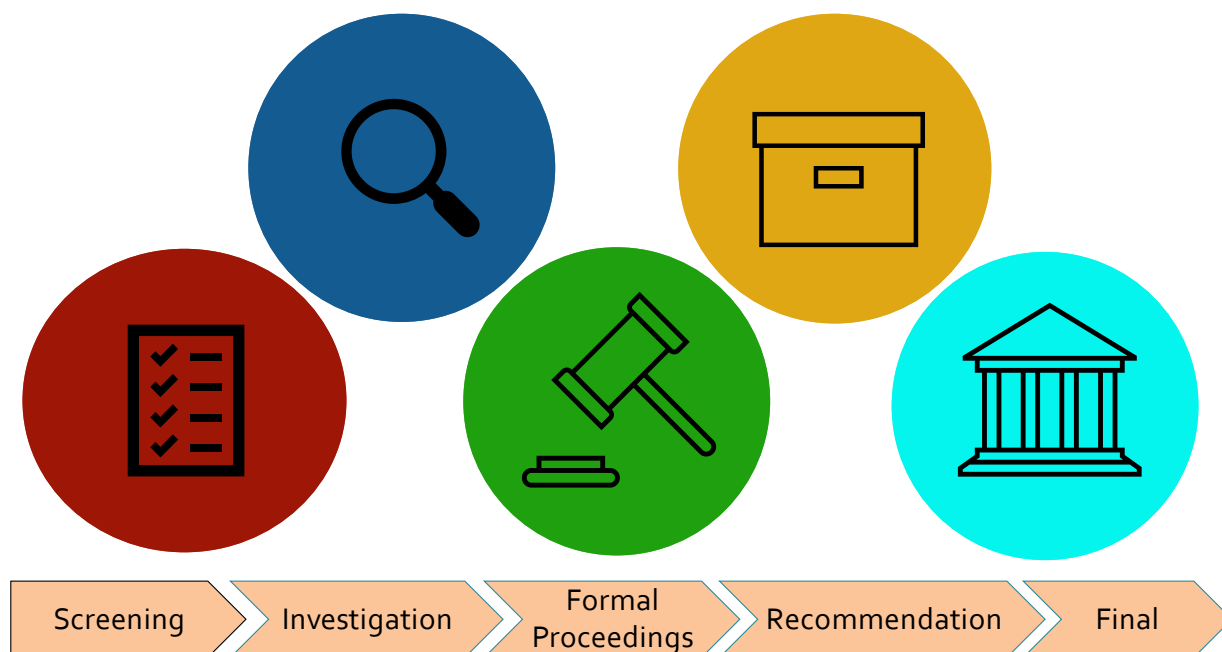
County Court	50	19.46%
District Court	195	75.88%
Court of Appeals	9	3.50%
Colorado Supreme Court	1	0.39%
Senior Judge	2	0.78%

During 2022, known demographic information relating to judges under discipline or investigation and those directly affected² by the potential misconduct can be summarized as follows:

Male:	10 Judges	4 impacted witnesses
Female:	2 Judges	8 impacted witnesses
White:	9 Judges	10 impacted witnesses
Black:	1 Judge	1 impacted witness
Latino:	2 Judges	1 impacted witness
LGBTQ+	1 Judge	1 impacted witness

² Some allegations include impacts on categories of people or actions taken by multiple judges. These figures do not attempt to capture such groups. These figures are limited to judges and persons individually identified regarding a specific incident.

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 Court³ 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 2022, investigations were performed by the Executive Director and, if necessary, by investigators on the staff of the Office of Attorney Regulation Counsel or the Office of the Attorney General. In future years, the Commission will primarily perform these investigations internally through its staff

and/or contractors. 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; 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:

³ 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.

- 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 the 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. With changes created through Senate Bill 22-201, the Commission now employs its own internal special counsel. Senate Bill 22-201 also provided the Commission with resources to arrange for special counsel and investigation support through the Colorado Attorney General's Office or 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.

The Commission is further authorized to seek an assessment of attorney's fees and costs in both informal and formal disciplinary proceedings. Colo. Const. Art. VI, § 23(3)(e); Colo. RJD 35(g); Colo. RJD 36(g).

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 Judicial Performance, 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.”

Disciplinary Actions Taken in 2022

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.

Through its December 2022 meeting, the members of the Commission evaluated 14 RFEs that were referred to them by the Executive Director for consideration as complaints. After further examination, the members of the Commission dismissed 11 of these 14 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 2 complaints with an expression of concern rather than ordering private disciplinary measures. The Commission ordered private disciplinary measures in one case. The Colorado Supreme Court adopted the Commission's recommendation to order public censure in 2022 through a case that began in 2021. Inclusive of the 2022 case that resulted in public censure and matters carried over from prior years, the Commission authorized formal proceedings in 4 cases during 2022. Six ongoing cases opened in 2022 carried over into 2023.

Public Discipline

In 2022, the Commission resolved a case that partially carried over from 2021. Former Summit County District Court Chief Judge Mark D. Thompson stipulated to a public censure, and a 30-day unpaid suspension. *Matter of Thompson*, 2022 CO 39.

As described in the Colorado Supreme Court’s disciplinary opinion, Judge Thompson was censured following a plea bargain that resulted in his conviction for Disorderly Conduct under § 18-9-106(1)(f), C.R.S. (reckless display of a deadly weapon), a Class 2 Misdemeanor. Judge Thompson pled guilty to Disorderly Conduct in exchange for the District Attorney dismissing a separate charge of Felony Menacing under § 18-3-206(1)(a),(b), C.R.S., a Class 5 Felony.⁴

The underlying criminal charges stemmed from allegations that then-Chief Judge Thompson had gotten into a confrontation with his stepson and his stepson’s friend that began with Judge Thompson accusing the stepson’s friend of driving too fast on Judge Thompson’s driveway and Judge Thompson threatening to “put a .45 through his head.” The confrontation moved into Judge Thompson’s home where Judge Thompson retrieved an AR-15 style rifle from his gun safe and allegedly pointed it at his stepson’s chest. Judge Thompson denied that he made the threatening statement towards his stepson’s friend, that he further stated that the AR-15 rifle was loaded when he pointed at his stepson’s chest, or that the rifle was, in fact, loaded. Judge Thompson further contended that he acted as he did because his “stepson appeared to be intoxicated, was confrontational, and insisted on entering the home over [Judge Thompson’s] objection.” *Matter of Thompson*, ¶ 4. Nevertheless, Judge Thompson plead guilty in his criminal case and admitted that his conduct violated Canon Rules 1.1 and 1.2 of the Code. As mitigation, Judge Thompson represented that he was suffering from significant external emotional strain at the time of the incident, which included the loss of a family member and receiving a death threat in connection with his work. Judge Thompson also represented that he had made progress reconciling with his stepson and that he had actively engaged in “anger and stress management therapy” following the incident.

Prior to his stipulation with the Commission, Judge Thompson resolved a parallel attorney discipline proceeding by stipulating to a 6-month suspension from the practice of law stayed upon the condition that he successfully complete 1-year of probation, commencing on July 26, 2022. The terms of Judge Thompson’s disciplinary probation include: 1. Continued participation in anger management treatment as recommended by his providers during the period of his disciplinary probation, and 2. That Judge Thompson not engage in any further violations of the Colorado Rules of Professional Conduct (which include expectations that attorneys serving in judicial capacities comply with the Code). *People v. Thompson*, 22PDJ045.

Under these circumstances, the Colorado Supreme Court approved Judge Thompson’s stipulation with the Commission and issued an opinion publicly censuring Judge Thompson and imposing the agreed 30-day unpaid suspension (effective October 14th through November 13, 2022). *Matter of Thompson*, ¶¶ 7-8.

Judge Thompson retired as a District Court judge on January 14, 2023.

⁴ According to Colo. Const. Art. VI, § 23(2), a felony conviction requires a judge’s removal from office.

Private Discipline

A private censure, recognizing a substantial breach of the standards of judicial conduct including a violation of Canon Rule 2.5(A), was issued to a judge for an approximately one year and four-month delay in addressing a relatively straight forward motion to strike parts of an answer and for a more definite statement of affirmative defenses in a civil case. The judge continued to delay ruling on the motion for approximately two months after one of the parties notified the court of the pending motion and requested a ruling. The Commission previously issued private reprimand to the judge for a similar delay. While disciplinary proceedings were pending, the judge announced his retirement.

Dismissals with Concerns

The Commission received a RFE alleging that a county court judge in a rural jurisdiction did not meet the residency requirement defined through Colorado Constitution, Article VI, § 16 (requiring county court judges be “qualified electors” in their counties). The subject judge had established residency in the jurisdictional county but had been delinquent in changing his/her voter registration. By the time the Commission received the RFE, the subject judge had registered to vote in the jurisdictional county. In considering the RFE, the Commission recognized ambiguity between Article VI, § 16 using the term “qualified electors” and the definition of a “registered voter” through §§ 1-2-101 and 1-2-102, C.R.S. (defining qualifications to become “registered voter”). Although the Commission dismissed the RFE, it advised the subject judge to be mindful that Canon Rule 1.2 requires more than technical compliance with the law. Canon Rule 1.2 requires that a judge avoid even the appearance of impropriety. The Commission cautioned the subject judge to use greater diligence in ensuring compliance with all reasonably perceived qualifications for office.

Through a Judicial District, the Commission received an RFE alleging that a judge had failed to properly manage when proceedings occurred on or off the record. As part of the presentation of draft jury instructions, the subject judge left the For the Record (FTR) recording device running while having an informal conversation with the attorneys and court staff. Topics that arose during this conversation included the general scheduling of jury trials and the average age of jury pools, the promotion of deputy district attorneys to District Court positions, one of the attorney’s history and family connections with used car businesses, a general statement that unnamed car dealers, law enforcement officers, and other judges had “played fast and loose,” general preferences for reading, pop culture, and entertainment, and commonality with counsel in different stages of raising children. The subject judge was cautioned about having such an informal conversation on the record, which created unnecessary transcription expenses and raised the possibility of poor public perceptions of the judicial process and the subject judge’s ability to maintain proper decorum while on the record. The subject judge took steps to verify his and his staff’s protocols for using the FTR system.

Additionally, the subject judge agreed to voluntarily enroll in continuing legal education focused upon bench skills, mindfulness, and general demeanor.

History of Recent and Cumulative Disciplinary Measures

In 2022, the Commission’s dispositions included one public censure, one private disciplinary order, and two 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, six in 2020, and ten in 2021. Two judges declined to stand for retention after complaints were filed in 2022, compared with none in 2007, seven in 2008, three in 2009, three in 2010, and none in 2011 through 2021. There was one retirement for medical disability in 2006, one in 2007, and another in 2019. In 2022, two judges resigned while disciplinary proceedings were pending.

The following are cumulative statistics of historic disciplinary actions:

	Number of Judges Relinquishing Office (Resignation or Decision Not to Stand for Retention)	Corrective Actions Taken
Prior 35 years	43	160
2001	0	0
2002	1	0
2003	4	0
2004	0	3
2005	3	3
2006	2	2
2007	0	1
2008	8	4
2009	6	3
2010	5	7
2011	0	10
2012	1	4
2013	1	3
2014	0	2
2015	0	3
2016	0	6
2017	0	2
2018	1	11

2019	2	6
2020	2	6
2021	2	10
2022	4	4
Since 2001	42	90
Annual Average	1	4
Totals	85	250

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, 11 in 2021, and 21 in 2022. The increase in 2020 and 2021 was caused, in part, by the disruption in docket management resulting from the COVID-19 pandemic. The increase in 2022 is reflective of an overall (approximately 25%) increase in the Commission's volume of RFEs.

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.

Commissioner Recusals Reported According to Colo. RJD 3.5(g)(2)

During 2022, the following Commissioners disqualified themselves from pending or impending judicial discipline matters:

Hon. Rachel Olguin-Fresquez (January 1, 2022, February 7, 2022);

Hon. Bonnie McLean (August 26, 2022);

Hon. Mariana Vielma (December 9, 2022); and

Hon. David Prince (October 29, 2022).

Proactive Measures

The Commission 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.

Commission Members 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.

As of December 31, 2022, 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 Court Judge
Mary (Mindy) V. Sooter, Secretary	Boulder	Attorney
Jim Carpenter	Englewood	Citizen
Bruce A. Casias	Lakewood	Citizen
Yolanda Lyons	Monument	Citizen
Hon. Bonnie McLean	Centennial	District Court Judge
Drucilla Pugh	Pueblo	Citizen
Hon. Sara Garrido	Golden	County Court Judge
Hon. Mariana Vielma	Brighton	County Court Judge

As of December 31, 2022, the Commission received its administrative and operational support through the Office of Judicial Discipline's staff:

Christopher S.P. Gregory, Executive Director
Jeffrey M. Walsh, Special Counsel
Sherri Hammerly, Office Manager / Executive 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 - ccjd.colorado.gov - or contact the Commission directly at:

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