

2022 CO 39

**In the MATTER OF: Judge  
Mark D. THOMPSON**

**Supreme Court Case No. 22SA268**

Supreme Court of Colorado.

August 29, 2022

**Background:** Judicial disciplinary proceedings were commenced.

**Holdings:** The Supreme Court, en banc, held that public censure and 30-day suspension of judicial duties without pay was appropriate discipline for judge convicted of disorderly conduct in recklessly displaying a deadly weapon in a public place. Discipline imposed.

**Judges** ⇄11(4)

Public censure and a 30-day suspension of judicial duties without pay was appropriate discipline for judge who violated rules of judicial conduct requiring judges' compliance with the law and acting in a manner that promoted public confidence in the judiciary, based on his conviction of Class 2 Misdemeanor of disorderly conduct in recklessly displaying a deadly weapon in a public place, which occurred during dispute outside his home with stepson; judge admitted his conduct was improper, he expressed regret as to harm his actions caused his stepson and the public's perception of the judiciary, he complied with all requirements of the unsupervised probation ordered upon his conviction, including receiving anger management treatment, and took responsibility for his actions that occurred in the larger context of events that included emotional strain caused by threats to his life that were related to his work as a judge. Colo. Rev. Stat. Ann. § 18-9-106(1)(f); Colo. Code of Judicial Conduct, Rules 1.1, 1.2.

---

*Original Proceeding in Judicial Discipline, Colorado Commission on Judicial Discipline Case No. 22CJD19*

Appearing for the Colorado Commission on Judicial Discipline: Christopher S.P. Gregory, Executive Director, Denver, Colorado

Attorney for Judge Mark D. Thompson:  
Abraham V. Hutt, Denver, Colorado

En Banc

CHIEF JUSTICE BOATRIGHT does not participate.

**Order re: Recommendation of the  
Colorado Commission on Judicial  
Discipline and Public Censure**

PER CURIAM

¶1 Judge Mark D. Thompson, you appear before this court for imposition of discipline based upon violation of the duties of your office as a District Court Judge for the 5th Judicial District. The Colorado Commission on Judicial Discipline (“the Commission”) recommends approval of the Stipulation for Public Censure and Suspension (“the Stipulation”), which you and the Commission executed pursuant to Rules 36(c), 36(e), and 37(e) of the Colorado Rules of Judicial Discipline (“RJD”). Consistent with the Stipulation, the Commission recommends that this court issue a public censure and a thirty-day suspension of your judicial duties without pay. This court adopts the Commission’s recommendation.

¶2 In the Stipulation, you and the Commission agreed to the following summary and facts:

1. Judge Thompson is a 5th Judicial District Court Judge, having previously served as the District’s Chief Judge from December 1, 2013 to October 17, 2021. Judge Thompson is subject to the jurisdiction of the Commission and of the [Colorado] Supreme Court.
2. On July 25, 2021, Judge Thompson got into a heated verbal confrontation with his 22-year-old adult stepson. The confrontation began in the street in front of Judge Thompson’s home in Summit County and continued inside the home. After the confrontation moved inside the home, Judge Thompson is alleged to have pointed an AR-15 style rifle at his stepson’s chest. Judge Thompson retrieved the rifle from a gun safe in the home before allegedly pointing it at his stepson. The stepson left the house and

called 911. The Summit County Sheriff's Department began an investigation. Once the Summit County Sheriff's Department recognized that Judge Thompson was the Chief Judge for their judicial district, it recused itself and transferred the case to the Colorado Bureau of Investigation. The 5th Judicial District Attorney's Office and the other Judges in the 5th Judicial District similarly recused themselves. A special prosecutor from the 1st Judicial District and a judge from the 17th Judicial District were appointed.

3. On January 14, 2022, Judge Thompson pled guilty in Summit County District Court case number 2021CR264 to disorderly conduct in violation of [section] 18-9-106(1)(f), C.R.S. [(2020)] ("recklessly . . . display[s] . . . a deadly weapon . . . [or] any article used or fashioned in a manner to cause a person to reasonably believe [it was] a deadly weapon . . . in a public place, in a manner calculated to alarm"), a Class 2 Misdemeanor. The court sentenced him to one year of unsupervised probation with a requirement of continued anger management treatment. Judge Thompson paid the costs and fees assessed in case number 2021CR264 and represents that he has otherwise complied with the requirements of his unsupervised probation.
  4. Upon being charged in case 2021CR264, Judge Thompson notified the Commission on Judicial Discipline. Judge Thompson has continued to cooperate with the Commission to resolve this matter.
  5. Effective October 16, 2021, Chief Justice Brian Boatright appointed 5th Judicial District Court Judge Paul Dunkelman to serve as interim Chief Judge pending resolution of case 21CR264. Following Judge Thompson's formal resignation as Chief Judge, Judge Dunkelman was appointed as the succeeding Chief Judge on February 4, 2022.
  6. At the time the criminal case was filed against Judge Thompson in October of 2021, he was in the middle of a long planned five-week sabbatical as part of a program applicable to all judges in the 5th District. Prior to Judge Thompson returning to work, Interim Chief Judge Dunkelman placed Judge Thompson on paid administrative leave pending the outcome of case 21CR264. Judge Thompson was removed from his docket assignment, with pay, from November 8, 2021 through January 14, 2022. He resumed his duties as a District Court Judge on January 17, 2022. Judge Thompson, however, will not be assigned to a criminal docket until he completes his probationary sentence.
- ¶3 In the Stipulation, you also made the following acknowledgments:
- Colorado Code of Judicial Conduct  
Canon Rule 1.1**
7. Canon Rule 1.1 provides, in relevant parts:
    - (A) A judge shall comply with the law, including the Code of Judicial Conduct.
    - (B) Conduct by a judge that violates a criminal law may, unless the violation is minor, constitute a violation of the requirement that a judge must comply with the law[.]
  8. Judge Thompson admitted guilt in case 21CR264, specifically pleading to the amended charge of Disorderly Conduct under [section] 18-9-106(1)(f), C.R.S. [(2020)], a Class 2 Misdemeanor. Judge Thompson acknowledges that his conviction in case 21CR264 and his non-compliance with Canon Rule 1.2 (described below) further establishes that he has violated Canon Rule 1.1.
 

**Colorado Code of Judicial Conduct  
Canon Rule 1.2**
  9. Canon Rule 1.2 provides:
 

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
  10. Judge Thompson acknowledges that his admitted conduct was improper and created an appearance of impropriety, in violation of Canon Rule 1.2.

¶4 Finally, the Commission considered and included in the Stipulation, the following Response from Judge Thompson:

1. The confrontation with his stepson was part of a larger context of events that caused a significant emotional strain on Judge Thompson. These contextual events included grief caused by death and illness in Judge Thompson's family. They also included threats to Judge Thompson's life that were related to his work as a judge. In response to these threats, the Summit County Sheriff's Office had provided enhanced security patrols around Judge Thompson's home. Judge Thompson has actively sought help and treatment to address the impacts of his circumstances upon his emotional and mental state.
2. During the confrontation in the driveway, Judge Thompson allegedly stated that if his stepson's friend who was driving "too fast" did so again, Judge Thompson would "put a .45 through his head." Judge Thompson denies making this statement. Judge Thompson maintains the car drove toward him at a high rate of speed while he was walking his dog shortly after dark. Based on the threats he had received, Judge Thompson asserts that he was fearful for his safety and, then, reacted angrily upon seeing that his stepson was a passenger in the car. Judge Thompson further responds that on exiting the vehicle his stepson appeared to be intoxicated, was confrontational, and insisted on entering the home over his objection. Judge Thompson also asserts that the rifle was, in fact, not loaded during the confrontation, including the moment that he displayed the weapon to his stepson. Judge Thompson acknowledges that his stepson alleged that, during their confrontation, Judge Thompson stated that the rifle was loaded.
3. Judge Thompson contends that he and his stepson have made extraordinary progress reconciling their differences and presently have a much healthier relationship. Both have acknowledged the difficulties in their long stepparent/stepchild relationship leading to the

July 25, 2021 confrontation. Judge Thompson has actively engaged in anger and stress management therapy since July 2021.

4. Judge Thompson regrets the harms that he has caused to his stepson and to the public's perception of the Judiciary. Judge Thompson recognizes the significance of his conduct and will continue to seek ways to rebuild his relationship with his stepson and his reputation in his community.
5. Judge Thompson acknowledges that his conduct represents a substantial breach of the standards of judicial conduct and merits a public censure according to Colo. RJD 36(e).
6. Judge Thompson took responsibility for his conduct through his plea in case 21CR264 and through his cooperation with the Commission, as otherwise required through Canon Rule 2.16.

¶5 Based on these facts, the Commission agreed in the Stipulation to recommend that you be publicly censured and suspended from your judicial duties without pay for thirty days. You also agreed in the Stipulation to waive your right to a hearing in formal proceedings and to be publicly censured and then suspended from your judicial duties without pay for thirty days.

¶6 RJD 37(e), titled "Stipulated Resolution of Formal Proceedings," allows the Commission to file with this court a "stipulated resolution" as the Commission's recommendation in a disciplinary proceeding. RJD 36 provides the sanctions the Commission may recommend and gives the Commission the authority to recommend "one or more" of the sanctions listed. As relevant here, RJD 36(e) provides that this Court may "[s]uspend the Judge without pay for a specified period," and RJD 36(e) permits this Court to "[r]eprimand or censure the Judge publicly . . . by written order." *Accord* Colo. Const. art. VI, § 23(3)(f) ("Following receipt of a recommendation from the commission, the supreme court . . . shall order removal, retirement, suspension, censure, reprimand, or discipline, as it finds just and proper . . ."). Under RJD 40, after considering the evidence and

the law, this court must “issue a decision.” Although generally this court may adopt, reject, or modify the Commission’s recommendation, “if the Commission has recommended a stipulated resolution, the Court shall order it to become effective and issue any sanction provided in the stipulated resolution, unless the Court determines that its terms do not comply with Rule 37(e) or are not supported by the record of proceedings.” RJD 40.

¶7 Having considered the law, the evidence, the record of the proceedings, the Stipulation, and the Commission’s recommendation, this court concludes that the terms of the Stipulation comply with RJD 37(e) and are supported by the record of the proceedings. Therefore, this court orders the Stipulation to become effective and issues the agreed-upon sanctions.

¶8 This court hereby publicly censures you, Judge Mark D. Thompson, for failing to maintain the high standards of judicial conduct required of a judge; for violating Canon Rule 1.1, which requires a judge to comply with the law; and for violating Canon Rule 1.2, which requires that a judge at all times shall act in a manner that promotes public confidence in the judiciary and avoids impropriety and the appearance of impropriety. The Stipulation, the Commission’s recommendation, and the record of proceedings became public when the Commission filed its recommendation with this court. RJD 6.5(a), 37(e). And this court hereby suspends you, Judge Mark D. Thompson, from your judicial duties without pay for thirty days, such suspension to be served from October 15, 2022, through November 13, 2022.



2022 COA 49

**Beverly HUGHES, Plaintiff-Appellant,**

v.

**ESSENTIA INSURANCE COMPANY,  
Defendant-Appellee.**

**Court of Appeals No. 20CA1356**

Colorado Court of Appeals,  
Div. V.

Announced May 5, 2022

**Background:** Insured driver brought action against insurer seeking uninsured/underinsured motorist (UM/UIM) benefits under her classic car insurance policy for injuries sustained in accident while driving vehicle owned by her employer but provided to her for her regular use. The District Court, Boulder County, Thomas F. Mulvahill, J., granted insurer’s motion for summary judgment. Insured appealed.

**Holdings:** As matters of first impression, the Court of Appeals, Welling, J., held that:

- (1) “regular use vehicle exclusion” in policy violated UM/UIM statute, and thus was void, and
- (2) public policy encouraging freedom of contract did not require enforcement of “regular use vehicle exclusion.”

Reversed and remanded.

**1. Insurance ⇐2772**

Uninsured/underinsured motorist (UM/UIM) coverage fills the gap between a tortfeasor’s insurance liability limit and the amount of damages sustained by the insured, up to the amount of the UM/UIM coverage purchased. Colo. Rev. Stat. Ann. § 10-4-609(1)(c).

**2. Insurance ⇐2772**

By enacting the uninsured/underinsured motorist (UM/UIM) statute, the General Assembly’s purpose was to guarantee the widespread availability to the insuring public of insurance protection against financial loss caused by motorists who are financially irresponsible by failing to carry adequate liability