

2011 Annual Report

Background and Jurisdiction

In 1967, an amendment to the Colorado Constitution implemented a merit system for the selection of judges and established the Commission on Judicial Qualifications, which in 1983 was renamed the Colorado Commission on Judicial Discipline (Commission). The Commission is charged with enforcing Colo. Const. art. VI, § 23(3)(d), which provides that a justice or judge of any court of record may be disciplined or removed from office for misconduct or may be retired for a disability that interferes with the performance of his or her duties.

The Colorado Supreme Court has adopted the Colorado Rules of Judicial Discipline (Colo. RJD), as authorized in Colo. Const. art. VI, § 23(3)(h), which are applied in conjunction with the Colorado Code of Judicial Conduct (Code). Colo. Const. art. VI, § 23(3)(e) and Colo. RJD 35 provide for privately administered discipline, such as letters of admonition, reprimand, or censure, and for other measures that the Commission believes will improve the conduct of the judge. The Commission also may commence formal proceedings to address misconduct for which privately administered discipline would be inappropriate or inadequate. In formal proceedings, Colo. RJD 36 authorizes the Supreme Court to apply the sanctions of removal, retirement, public reprimand, or public censure, or to retire a judge based on a permanent disability. A portion of the annual attorney registration fees paid by each Colorado lawyer and judge provides funding for the Commission's operations.

The Code and Colo. RJD are published in *Court Rules, Book 1* of the Colorado Revised Statutes. The Code was revised by the Supreme Court, effective July 1, 2010. A substantial revision of Colo. RJD was approved by the Supreme Court for publication and comment during 2011; the final version was pending with the Supreme Court at year end. The proposed revisions address jurisdiction, confidentiality, and disabilities, and update terminology and format.

For a fuller understanding of the scope of the Commission's disciplinary authority, it is important to note the following:

- The Commission's jurisdiction is limited to disciplinary matters concerning district court judges, county court judges, court of appeals judges, justices of the Supreme Court, and senior judges. Excluded from this jurisdiction are magistrates, municipal judges, and administrative law judges (ALJs).
- County judges in the City and County of Denver exercise dual jurisdiction over Denver municipal laws and state laws. Because the Commission lacks jurisdiction over persons serving as municipal judges, disciplinary matters for these judges are addressed by the Denver County Court Judicial Discipline Commission. Certain other cities have established disciplinary procedures to oversee the conduct of their municipal judges.
- The Office of Attorney Regulation Counsel (Attorney Regulation) is charged with disciplinary oversight of magistrates and ALJs, along with its jurisdiction over the conduct of lawyers generally, under the Colorado Rules of Professional Conduct (Colo. RPC).

In December 2011, the judiciary consisted of 376 trial and appellate court positions, including 174 district court judges, 129 county court judges, 44 senior judges, 22 court of appeals judges, and seven Supreme Court justices. In addition, one district and one county position were temporarily vacant pending the swearing-in of newly appointed judges.

Grounds for Judicial Discipline

Colo. RJD 5(a) describes the grounds for discipline or disability measures:

- 1) 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;
- 2) willful or persistent failure to perform judicial duties, including incompetent performance of judicial duties;
- 3) 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;
- 4) any conduct that constitutes a violation of the Code; or
- 5) a disability interfering with the performance of judicial duties that is, or is likely to become, of a permanent character.

The July 1, 2010 revision of the Code reorganized the nine Canons of the previous Code into four Canons that guide judges and justices in their conduct:

- Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.
- Canon 2. A judge shall perform the duties of judicial office impartially, competently, and diligently.
- Canon 3. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.
- Canon 4. A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Each Canon includes rules in support of the Canon. For example, Rule 2.5(A) requires a judge to perform judicial and administrative duties competently and diligently. There are a total of thirty-eight rules, which are further supplemented by comments and annotations.

Colo. RJD 5(c) provides that a judge's error in ruling on factual or legal matters is not misconduct. Such matters are within the jurisdiction of the trial and appellate courts, under Colo. Const. art. VI, § 1. In other words, the Commission has no authority to reverse a judge's decision. Complaints that challenge a judge's ruling will be dismissed as appellate in nature, absent grounds for misconduct that are distinct from the appellate issues.

The Commission's disciplinary function is contrasted with the responsibilities of the Office of Judicial Performance Evaluation, which collects views from jurors, litigants, and attorneys in each judicial district regarding a judge's performance; provides periodic

reports to the judge; and disseminates public reports of their findings before the judge's retention election.

The Commission and its Executive Director

The Commission comprises ten Colorado citizens who serve without compensation other than reimbursement of expenses, such as travel to attend the Commission's meetings. The composition of the Commission is determined by Colo. Const. art. VI, § 23 (3)(a) and (b). It includes two district court judges and two county court judges, who are appointed by the Supreme Court; two lawyers who have practiced in Colorado for at least ten years, neither of whom may be a justice or judge, and who are appointed by the Governor with the consent of the Senate; and four citizens, who are not and have not been judges, who are not licensed to practice law in Colorado, and who are appointed by the Governor with the consent of the Senate. The list of Commissioners as of December 2011 appears at the end of this report.

Colo. RJD 3 provides for the organization and administration of the Commission, including the Commission's appointment of an Executive Director whose duties include the operation of a permanent office; the screening and investigation of complaints; the maintenance of records and statistics; the employment of investigators, special counsel, and masters; the preparation and administration of the Commission's operating budget; and the preparation and publication of this annual report.

Complaints and Disciplinary Proceedings

Colo. RJD 12 through 14 provide for the filing, screening, and preliminary investigation of complaints. Any person may file a complaint alleging judicial misconduct or a disability. The Commission will consider complaints in any written format that describes the alleged misconduct and provides relevant information, such as the case number and the date of the alleged misconduct, and relevant documents, such as exhibits or excerpts from transcripts (if available). The Commission provides a complaint form on request and through its website; it includes important information regarding the grounds for judicial discipline and guidelines for preparation of the complaint. However, complaints also may be in the form of a letter or summary that provides the required information.

Complaints may be mailed, delivered, or faxed to the Commission. Security precautions limit the ability of the Commission to accept complaints by e-mail. Arrangements can be made with the Executive Director to accommodate disabled persons in preparing and filing complaints. The Commission has the authority to initiate a complaint on its own motion.

Disciplinary proceedings involve one or more of three phases: (1) the screening process under Colo. RJD 13; (2) a preliminary investigation under Colo. RJD 14, which could result in a privately administered disposition; and (3) formal proceedings under Colo. RJD 18.

Screening

The Executive Director screens all complaints. Colo. RJD 13 provides that "complaints that are frivolous, unfounded, solely appellate in nature, or outside the jurisdiction of the Commission shall be dismissed" by the Executive Director or the Commission. Dismissals often involve complaints that are driven by appellate

issues. It is not uncommon for complainants—particularly those who have appeared in court *pro se*—to allege that a judge's rulings on factual or legal issues, with which they disagree, are sufficient to establish misconduct under the Code. As noted above in "Grounds for Judicial Discipline," Colo. RJD 5(c) prohibits the Commission from initiating disciplinary action against a judge "for making erroneous findings of fact or legal conclusions which are subject to appellate review." Also, complaints that appear to be filed primarily to create grounds for recusal, where no other grounds for recusal exist, may be dismissed as "judge-shopping."

Complaints that survive the screening process typically involve a lack of diligence or competence in managing the docket and courtroom, demeanor, *ex parte* communications, disrespectful treatment of staff, unauthorized usage of the state's facilities or technology, or inappropriate public statements.

Preliminary Investigation

At each meeting, the Commission reviews the Executive Director's screening of complaints and examines complaints that have survived screening. If the Commission deems that there are sufficient grounds to initiate disciplinary proceedings, it authorizes the Executive Director to undertake a preliminary investigation under Colo. RJD 14, which includes notice to the judge of the investigation, the nature of the charge, and the name of the complainant (or that the Commission commenced the investigation on its own motion). The judge is afforded an opportunity to respond.

The preliminary investigation involves inquiries appropriate in the circumstances, such as an examination of court records and transcripts, the judge's response to the complaint, interviews with potential witnesses, and requests for further information from the complainant or the judge. If the preliminary investigation confirms that there is a reasonable basis for the allegations, further investigation will follow as needed.

The Commission has authorized the Executive Director to notify a judge on receipt of a complaint—before its review by the Commission—if it alleges a delay in diligently managing the court's docket. Motions for Post-Conviction Relief under Rule 35 of the Rules of Criminal Procedure (Colo. RCP 35) are a common subject of such complaints. Factors that typically cause delay in addressing Colo. RCP 35 motions are the need for the judge to whom the case is currently assigned to review a large volume of materials from a trial the current judge did not handle; the passage of several years since the trial; the reassignment of the trial judge from the criminal docket to the civil or domestic relations docket; or the retirement of the trial judge. Some factors may be beyond the judge's control; nonetheless, the judge retains the ultimate responsibility for diligently managing his or her docket. The State Court Administrator's Office provides additional training and guidance for judges in handling Colo. RCP 35 motions.

When a complaint has been fully evaluated, the dispositions available to the Commission include:

- dismissal of an unfounded complaint or formal charge
- private admonishment for behavior that suggests the appearance of impropriety, although it meets the minimum standards of judicial conduct
- private reprimand or private censure for misconduct that does not merit public sanction by the Supreme Court
- the deferral of disciplinary proceedings while the judge obtains counseling, medical, or other professional support

- measures to improve the conduct of the judge (for example, training or periodic docket management reports)
- a finding of probable cause to commence formal proceedings.

Formal Proceedings

Formal proceedings involve a trial to address misconduct for which private discipline would not be sufficient. If the Commission finds probable cause to commence formal proceedings, it appoints special counsel to review the allegations and evidence of misconduct. On special counsel's concurrence that there is probable cause, special counsel will serve a statement of charges on the judge. The Supreme Court then will appoint three special masters to preside over a hearing to consider the charges. Such proceedings are conducted under Colo. RJD 18 through 33 and Colorado Rules of Civil Procedure.

Findings by the special masters may result in the Commission's dismissal of the complaint or its recommendation to the Supreme Court for sanctions, which may include:

- removal of the judge from office
- retirement of the judge for a disability
- public reprimand or censure
- other measures necessary to curtail or eliminate the judge's misconduct.

As provided in Colo. Const. art. VI § 23(3)(g), "all papers filed with and proceedings before the Commission" are confidential, unless and until such time as the Commission files a recommendation for sanctions with the Colorado Supreme Court. Colo. RJD 6(c) provides exceptions to the confidentiality requirement. For example, the Commission is required to notify Attorney Regulation of conduct that may be in violation of Colo. RPC and to disclose disciplinary action to the Supreme Court, on request of the Court, with respect to its consideration of the appointment or re-appointment of a judge to the senior judge program.

The Commission generally meets bi-monthly and may hold special meetings or convene by conference call, when necessary. In 2011, the Commission's regular meetings were held in January, March, June, August, October, and December.

Review of Complaints Received in 2011

The Executive Director and the Commission's administrative assistant manage the intake of complaints and requests for information. When appropriate, callers are redirected to the Office of Judicial Performance Evaluation, to Attorney Regulation, or, if a municipal judge is involved, to the city or town where the judge presides. The Commission also responds to inquiries from the judiciary regarding the provisions of the Code.

During 2011, the Commission received 181 written complaints. The Commission received 211 complaints in 2007, 217 complaints in 2008, 190 complaints in 2009, and 170 complaints in 2010. In 2011, the Commission also received approximately 410 telephone inquiries and written requests from potential complainants who were seeking information or who requested a copy of the complaint form. This compares with 675 inquiries in 2009, and 560 inquiries in 2010. The Commission attributes the decline in inquiries to the launching of its website in March 2010, which provides essential information to the public, including an explanation of the Commission's procedures; a downloadable complaint form; frequently asked questions; recent annual reports; and links to the

Constitution, Code, and Colo. RJD. In 2010, the website registered approximately 100 hits per month. For 2011, the website experienced 2,008 page views—approximately 160 to 170 per month—by 1,430 visitors.

The complaints received in 2011 addressed the conduct of judges of the district court, probate court, juvenile court, or county court in each of the state's twenty-two judicial districts. Three complaints were logged against judges on the court of appeals and one against a justice of the Supreme Court.

Of the 181 complaints, 69 arose in the criminal law docket, of which 64 were filed by inmates in Colorado correctional facilities. A total of 38 complaints involved litigation in the general civil docket, 42 in domestic relations cases, 6 in juvenile court matters, 8 in probate matters, and 10 in mental health matters. In addition to complaints from litigants, many of whom had appeared in court *pro se*, the Commission received complaints from individuals on probation; attorneys who alleged delay in docket management or judicial demeanor issues; and persons who were not parties to litigation (for example, friends, witnesses, family members, the media, or courtroom observers). No complaints were initiated by the Commission on its own motion.

The frequency of various grounds alleged in the 181 complaints is summarized below. Some complaints alleged multiple grounds.

➤ administrative issues with colleagues and staff.....	1
➤ bias or prejudice	21
➤ courtroom demeanor	5
➤ disputed rulings	154
➤ docket management.....	16
➤ <i>ex parte</i> communications	2
➤ extrajudicial activities	0
➤ financial, personal or family interests.....	1
➤ improper public or cyber statements	1
➤ impropriety.....	4
➤ inappropriate personal relationships with staff	0
➤ incompetence	0
➤ personal use of court resources.....	0
➤ prejudicial relationships with attorneys or litigants	1
➤ delay in Colo. RCP 35 motions	17
➤ allegations directed at the conduct of officials other than state judges:	
• magistrates	14
• attorneys, district attorneys, or public defenders	17
• court records/clerk errors/transcripts	2
• police, sheriff, jail	5
• probation, parole, department of corrections	1
• municipal judges	12
• federal judiciary	5
• other state agencies	2
• no judge or official named	10
• other (e.g., requests for legal advice)	5

Most incidents of misconduct are addressed by private disciplinary letters that include the dispositions described above in "Complaints and Disciplinary Proceedings."

After the Executive Director's screening, 155 of the 181 complaints were dismissed. Through its December meeting, the Commission had considered 37 complaints that survived screening, including 11 carried over from 2010 and 26 received in 2011.

Following its preliminary investigation, the Commission dismissed 25 of the 37 complaints as unfounded or appellate. It car-

ried over 2 matters into 2012 for further evaluation. Following the Commission's final meeting of the year, the Executive Director referred one additional complaint to the Commission, which was carried over to 2012.

The Commission applied the dispositions authorized by Colo. RJD 35 to address the misconduct of 10 judges. Disciplinary action included a private letter of admonition; 6 private letters of reprimand; and 3 private letters of censure. In addition, there were several situations in which the Commission found insufficient evidence of misconduct, but cautioned the judges regarding demeanor. The Commission also monitored periodic reports from judges in which disciplinary action from previous years required continuing docket management measures, counseling, or additional training.

The corrective action taken in these 10 cases compared with corrective action taken in one case in 2007, 4 such cases in 2008, 3 cases in 2009, and 7 in 2010. No judges declined to stand for retention after complaints were filed in 2011, compared with none in 2007, 7 in 2008, 3 in 2009, and 3 in 2010. There was one retirement for medical disability in each of 2006 and 2007, but none in 2008, 2009, 2010, or 2011. There were no resignations in 2011 while complaints were pending.

Of the 155 complaints that were dismissed, 17 involved alleged delays in addressing Colo. RCP 35 motions. However, the Commission's notice to the judge about these delays had a constructive impact by drawing attention to staff errors, delays by the prosecution or defense, the effects of retirement or reassignment of the original trial judge, and other factors not involving ethics issues or requiring disciplinary measures. Several of these complaints involved repeated or "successive" motions by inmates that did not require a ruling, because they involved issues that previously had been addressed.

Private letters of discipline in recent years have 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 the other parties or attorneys
- docket management, including delays in issuing decisions
- loss of temper or control of the courtroom
- disrespectful remarks to the media or through e-mails regarding the conduct of a litigant, an attorney, or another judge
- hearing a case, as a part-time judge, involving a client of the judge's law firm
- intemperance or verbal abuse toward an employee, persons dealing with court staff, or a customer of a business establishment
- driving while impaired or under the influence of alcohol
- sexual harassment or other inappropriate personal conduct involving a court employee or litigant
- irrelevant, misleading, or incoherent statements during arraignments and sentencing
- failure to comply with rules applicable to retention elections
- appearing on behalf of a spouse in a magistrate's hearing

- disregard of court-imposed gag orders
- lack of cooperation with judicial colleagues
- inappropriate remarks to litigants and lawyers during trials.

Proactive Measures

The Commission participates in judicial education programs to inform new and continuing judges of their ethical duties and responsibilities under the Canons and to explain the Commission's responsibilities for oversight and discipline. In 2010, the Executive Director began periodic visits to each judicial district to update the judiciary on current developments and the Commission's procedures. In 2010 and 2011, the Executive Director held meetings with the judiciary in thirteen of the twenty-two judicial districts. The Commission's website has enhanced the public's understanding of the disciplinary process.

The Commission and Staff

The Commission operates independently from the Supreme Court, the Judicial Department, and Attorney Regulation, but with their support. It is essential that the Commission operate effectively and with the public's confidence in monitoring the judiciary's conduct under the Canons.

As of December 31, 2011, the Commission's membership included:

<i>Member</i>	<i>City</i>	<i>Category of Appointment</i>
Federico C. Alvarez	Denver	Attorney
Hon. Roxanne Bailin, Chair	Boulder	District Judge
Albus Brooks	Denver	Citizen
Richard O. Campbell	Denver	Attorney
David Dill	Pueblo	Citizen
Kathleen Kelley	Meeker	Citizen
David Kenney	Denver	Citizen
Hon. Leroy Kirby	Brighton	County Judge
Hon. Martha T. Minot	Durango	County Judge
Hon. Douglas R. Vannoy	Ft. Morgan	District Judge

The Commission greatly appreciates the distinguished service of Norma Anderson and Joseph Samuel, who retired from the Commission in 2011 after one-and-a-half and two years of service, respectively.

William J. Campbell is the Executive Director of the Commission. He was appointed on February 11, 2009 as Interim Executive Director and appointed Executive Director on July 1, 2010. Campbell's appointment followed a thirty-seven-year career as a practicing attorney. He is not related to Commission member Richard O. Campbell. Jennifer M. Clay serves as the Commission's administrative assistant.

To obtain further information, request a copy of the complaint form, or file a complaint, please contact: Colorado Commission on Judicial Discipline, 1560 Broadway, Ste. 1925, Denver, CO 80202; telephone: (303) 866-6434; fax: (303) 861-6822. Visit the Commission's website at www.coloradojudicialdiscipline.com. ■

