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Departments Judges' Corner

The New Commission on Judicial Discipline
by Roxanne Bailin

Judges' Corner is published quarterly to provide information Colorado judges would like to disseminate to attorneys. If you would like to suggest topics or write an article for this Department, please send an e-mail to Coordinating Editor Hon. Alan Loeb, Colorado Court of Appeals Judge, at alan.loeb@judicial.state.co.us.



About the Author

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I would like to introduce myself as the new Chair of the Commission on Judicial Discipline (Commission). I consider this position to be a great honor and responsibility. In addition to installing a new chair, the Commission has selected a new Interim Executive Director (Director), William Campbell, formerly a partner at Faegre & Benson, LLP. Commission members look forward to reviewing and updating many aspects of the Commission's operations, including its internal operations and its relationship with the judges, the public, and the Bar.

History and Purpose of the Commission

The Colorado Constitution established the Commission in 1966, the same year the merit selection process began in Colorado. The Commission comprises ten members: four citizens, two attorneys, two district court judges, and two county court judges. The citizen and attorney members are appointed by the Governor and must be confirmed by the Colorado Senate. The judge members are appointed by the Colorado Supreme Court. Commission members serve staggered four-year terms.

The Commission does not have jurisdiction over Denver County Court or municipal court judges. Complaints against Denver County Court judges go to the Denver County Court's Judicial Discipline Commission; complaints against municipal court judges go to the mayors of the respective cities. The Commission has no jurisdiction over magistrates; complaints against magistrates go to the Chief Judge of the respective district and/or to the Office of Attorney Regulation Counsel (OARC).

The purposes of the Commission are to:

- 1) protect the public from any judicial misconduct;
- 2) preserve the integrity of the judicial process;
- 3) maintain public awareness of proper judicial behavior on the part of the judiciary and the public; and
- 4) provide for the expeditious and fair disposition of complaints of judicial misconduct.¹

Specifically, the Commission investigates any conduct on the part of a judge that could constitute a violation of the Colorado Code of Judicial Conduct, including but not limited to:

- willful misconduct (including misconduct that does not specifically relate to judicial duties) that brings the judicial office into disrepute or is prejudicial to the administration of justice
- the willful or persistent failure of a judge to perform judicial duties, including incompetence
- intemperance, including extreme or immoderate personal conduct, recurring loss of temper or control, abuse of alcohol, or use of illegal drugs
- a disability that is or is likely to become permanent and that interferes with the performance of judicial duties.

The Complaint Process

Complaints begin with an initial screening by the Commission Director. Many complaints do not go beyond this initial screening because the complaint was sent to the wrong agency or the matter in the complaint is an appellate matter. Complaints that survive the initial screening by the Director are reviewed further by the full Commission. If the Commission finds there is sufficient cause to proceed on the complaint, it undertakes a preliminary investigation and informs the judge named in the complaint of the investigation. The judge is informed of the nature of the charge and the name of the complainant (or that the Commission commenced the investigation on its own motion), and is provided an opportunity to respond or appear.

The investigation includes inquiries appropriate to the circumstances, such as an examination of court records and transcripts, interviews with potential witnesses, and requests for further information from the complainant. However, as provided in Colo. Const. art. VI, § 23(3)(g), "all papers filed with and proceedings before the Commission" are confidential, unless and until the Commission recommends formal action to the Supreme Court. Such investigations often can take several months.

The Commission has a wide range of available responses to a judge's conduct. These may include meeting with the judge, sending a letter, issuing a private reprimand, and perhaps even recommending to the Supreme Court that the judge receive a public sanction, be removed from office, or be retired for a disability.

What's New

The Commission has had a new Interim Director since February 2009. William Campbell's office is located in a high-quality, secure, and professional office space with the OARC in the Civic Center Plaza building in Denver. The Commission has contracted for staff support for the Director so that he can spend more time on his substantive duties of the position. Director Campbell will be able to contract with independent investigators to perform professional investigations and provide reports to the Commission.

Instituting Changes to Rules and Procedures

The Commission plans to revise certain portions of its rules. Three consultants from the American Bar Association came to Denver in June 2009 and met with Commission members individually and as a group over a period of several days to offer us advice concerning procedures currently in place. We received many helpful suggestions regarding changes in our rules and procedures.

Technology Upgrades

The Commission has joined the computer age. Commission members can now communicate through encrypted e-mails, and the Director will be able to create

confidential digital files. Also, the Commission is evaluating software options that will allow the Director to track complaints and all subsequent actions on cases, as well as develop statistics for annual report purposes.

The Commission will be developing its own website, which will allow the Commission to provide important information to the Bar and the public and will streamline the Commission's procedures. For example, members of the Bar and the public cannot easily determine who is serving on the Commission. Also, an Internet search for "Colorado Judicial Discipline" produces simply a page developed by the Judicial Branch that advises the public about the purpose of the Commission and how it works and who it comprises. A mailing address and telephone number for contacting the Commission appear on the page. Beyond that, the search result provides no other information or guidance. The new website will list the names and contact information of current Commission members.

The website also will have detailed information about the complaint process. Currently, the Director spends time redirecting members of the public who mistakenly file complaints with the Commission. For example, members of the public often mistakenly file complaints with the Commission against magistrates because they believe it to be the appropriate forum. Additionally, members of the public often file complaints criticizing decisions made by judges; they confuse a complaint with an appeal of the decision. By the time they understand the distinction and recognize the error, the time for appeal may have elapsed.

Not all issues related to a decision are necessarily appellate-related. The Director and Commission are careful not to consider any complaint about a judge's decision as appellate-related if it truly relates to misconduct. The new website should help people determine the appropriate forum for their complaints.

The Commission's new website also will allow users to download a packet of information related to filing a complaint. The packet will include a complaint form developed by the Commission. This process will edify the public about what must be submitted and ensure that the Commission receives complaints in a format that is clear and understandable. Of course, the Commission will continue to accept complaints in any form, including verbal complaints.

The website also will provide a link to the Code of Judicial Conduct, as well as to the rules that govern the Commission. There will be a simple explanation of the process by which complaints are handled. The complaint process may seem long and frustrating to members of the public; understanding the process may reduce the frustration.

New Programs and Materials for the Judiciary

In addition to joining the 21st century in terms of the use of technology, the Commission also wants to develop some changes in its approach to discipline by providing education and advice to judges. The Commission plans to develop and provide educational programs for new and sitting judges, to reinforce the standards of conduct expected of them.

As themes emerge in the content of complaints, the Commission will work to develop corresponding materials for use by the Bench. For example, the subject of a large percentage of complaints is delay, and a large percentage of those complaints relate to *pro se* Rule 35(c) motions filed by inmates. Rather than simply react to these complaints when they come in, the Commission plans to make suggestions to the judiciary regarding the handling of Rule 35(c) complaints.

In addition, the Commission has voted to give the Director the authority to contact a judge when a delay complaint has been filed, rather than waiting for the Commission's preliminary review of the complaint at its next meeting. This procedure may expedite a ruling for the litigant and prevent additional delay. Although such action by the Director would not foreclose disciplinary action, if appropriate, Commission members agreed that authorizing the Director to initiate a preliminary inquiry would expedite matters to everyone's benefit.

Rather than dealing with delay or other issues on a complaint-by-complaint basis, the Commission will strive to identify chronic problems among judges that may need to be addressed in a global way. An example of this would be suggesting case management plans or support.

Addressing Mental Health Issues in the Judiciary

Finally, the OARC has a process and a program for assisting lawyers with drug and alcohol abuse or dependency problems. Members of the profession can receive treatment to help them return to being well-functioning lawyers. Mental

health issues can also be addressed through assistance from the OARC. The Commission has no such process or program in place for handling mental health issues or drug and alcohol abuse or dependency problems among the judiciary. Such a process is long overdue. The Commission intends to develop a process whereby members of the judiciary can obtain assistance, so that treatment support will be available for those who need it.

Conclusion

It is the hope of the Commission that this new vitality will provide a greater service to the general public and the Bar. I welcome any ideas for improving our system.

Note

1. See Rule 1(b) of the Colorado Rules of Judicial Discipline.

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