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In and Around the Bar

Colorado Commission on Judicial Discipline: 2006 Annual Report

I. Introduction and Overview

The following report details the Colorado Commission on Judicial Discipline's (Commission) background and report of activities for calendar year 2006.

Colorado's first disciplinary commission for judges was created in 1966, when Colorado's voters approved an amendment to the state constitution that replaced the political process of electing judges with a system based on merit selection, appointment, and retention. At the time Colorado's Commission was created, only five other states had disciplinary commissions to supplement impeachment as the traditional method for disciplining or removing judges. Today, all fifty states and the District of Columbia have these types of judicial disciplinary bodies.

Colorado's voters amended the constitutional provisions affecting the Commission in 1982, making changes to the Commission's procedures and membership. The Commission's name was changed from the "Colorado Commission on Judicial Qualifications" to the "Colorado Commission on Judicial Discipline." The Commission's membership also was expanded to include more citizen members.

Today, the Commission consists of ten (10) members. These members include: four (4) citizen members, who cannot be judges or attorneys, appointed by the Governor; two (2) attorneys, each having practiced law for at least ten (10) years in Colorado, appointed by the Governor; and two (2) district court judges and two (2) county court judges appointed by the Colorado Supreme Court. Appointments by the Governor require confirmation by the Colorado State Senate. Commission members serve four-year terms without salary; however, they do receive reimbursement for actual and necessary expenses in their conduct of Commission business.

At the close of 2006, the Commission membership consisted of the following ten (10) individuals:

Member	***Home Town***	***Category of Appointment***
Cindy Hull Bruner	Brighton	County Judge
Wendy Evans	Littleton	Citizen
John M. Holcomb	Denver	Citizen
C. Suzanne Mencer	Littleton	Citizen
Martha Minot	Durango	County Judge
Larry Naves	Denver	District Judge
Michael J. Norton	Englewood	Attorney
Joseph Samuel	Glendale	Citizen
James Spaanstra	Lakewood	Attorney
Doug Vannoy	Fort Morgan	District Judge

The Commission operates independently. Its procedural rules are approved by the Colorado Supreme Court and its operating budget is approved and provided by the Colorado State Legislature.

II. Commission Responsibilities and Powers

The Commission has constitutional jurisdiction to investigate and act on allegations of a judge's:

A. 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;

B. willful or persistent failure to perform judicial duties, including incompetent performance of judicial duties;

C. intemperance, including extreme or immoderate personal conduct, recurring loss of temper or control, abuse of alcohol, or the use of illegal narcotics or dangerous drugs;

D. any conduct that constitutes a violation of the Colorado Code of Judicial Conduct; or

E. disability interfering with the performance of judicial duties, which is, or is likely to become, of a permanent character.

Misconduct involving a violation of criminal laws also may fall within the Commission's jurisdiction, although the Colorado Supreme Court can take action directly to suspend or remove a state judge charged with, or convicted of, a misdemeanor, felony, or offense involving moral turpitude.

The Commission has jurisdiction over the conduct of the 325 justices, judges, senior judges, and appointed judges who serve in the Colorado state court system. It does not have jurisdiction over magistrates, the eighteen (18) county court judges in Denver, or the more than 300 full-time and part-time municipal court judges serving on the Bench in cities and towns throughout the state of Colorado.

Local municipalities approach judicial discipline in different ways. Although complaints about judges in most cities must go directly to the city council or mayor, the City and County of Denver has a separate Denver County Court Commission on Judicial Discipline to handle complaints against its county court judges and magistrates. The city of Lakewood has a Judicial Review Commission to consider complaints against its municipal court judges.

III. Commission Process and Procedures

Any person may file a complaint against a judge by completing forms provided by the Commission or by writing a letter addressed to the Commission. It is the policy of the Commission to accept and review all complaints filed, even if such complaints relate solely to a complainant's disagreement with a decision or order a judge may have entered in that person's court case. The Commission also may commence investigations on its own motion without receipt of a written complaint.

Complaints are reviewed by the Commission's staff and, if the complaint falls within the jurisdiction of the Commission, by the Commission itself, during its regularly scheduled meetings. The Commission also holds special meetings, hearings, and telephone conferences, as needed, throughout the year.

Some complaints are dismissed following staff review or following initial review and evaluation by the Commission because the complaints do not fall within the jurisdiction granted to the Commission by the Colorado Constitution. For example, the Commission must dismiss any complaint pertaining to a judge's rulings or orders in a person's court case. These types of issues can be reviewed only through the appellate process.

If a complaint against a judge is dismissed following this initial review, that judge is not notified of the complaint. If the Commission determines that further investigation is warranted, the judge is informed of the complaint and told the name of the complainant or informed that the Commission is proceeding on its own motion. The Commission provides the judge with an opportunity to respond to the complaint and to present additional information that may assist the Commission in its investigation into the matter.

A preliminary investigation may include: reviewing court records and transcripts; obtaining statements from the complainant, attorneys who may have been involved, other judges, court staff, or other persons who may have some knowledge or information relating to the allegations contained in the complaint; or conducting legal research into the substantive areas of the alleged misconduct. As noted, the Commission's staff screens all complaints and conducts all preliminary reviews and investigations.

Following the preliminary investigation, the Commission may: dismiss the complaint; continue it for further action, investigation, or review; issue a private admonition, reprimand, or censure to the respondent-judge, either in writing or in person; order a physical or mental examination of the judge; or order the judge to undergo a specific remedial program, such as an educational, court management, or counseling program. The Commission also may begin a formal action against a judge. In each case, the complainant is fully informed, in writing, about each stage of the Commission's decision-making process.

A formal action is commenced when the Commission hires an outside attorney to act as its special counsel in formal proceedings against a respondent-judge. The special counsel investigates the matter further; prepares a written statement of charges; and files it with the Commission. After the judge has had an opportunity to respond to these charges, a formal hearing is scheduled. The special counsel and the judge, together with the judge's attorney, if the judge has retained one, are present at all formal hearings before the Commission.

After hearing all of the evidence and arguments, the Commission may: dismiss the complaint; take any of the informal actions described above; or recommend to the Colorado Supreme Court that the respondent-judge be removed, retired, censured, reprimanded, or otherwise publicly disciplined.

All matters before the Commission are handled in the strictest confidence pursuant to constitutional requirements (Article VI, Section 23(3)(g), Colorado Constitution, and Sections 24-72-401 and 402, Colorado Revised Statutes).

Requests for the disqualification of a judge in a matter pending before that judge are not granted automatically; however, the Commission does have the authority to order the disqualification of a judge under certain circumstances.

Complaints against judges who are members of the Commission are automatically disclosed to

them, and they must respond to all such complaints, whether frivolous or not. Judge-member commissioners do not participate in any discussions or decisions involving complaints filed against them.

Judge-member commissioners who sit on the Bench in the same judicial district as a judge against whom a complaint is filed are automatically disqualified from participating in that case. Judge-member commissioners also are disqualified from participating in a complaint if they are a friend of the respondent-judge or, if for any other reason, their participation in that judge's case may raise an appearance of impropriety.

Citizen-member and attorney-member commissioners also are disqualified if they live in the same judicial district as the respondent-judge; if they are friends of that judge; or, if for any other reason, their participation in that judge's case may raise an appearance of impropriety.

IV. 2006 Caseload Description

During 2006, the Commission responded to approximately 2,650 telephone calls or personal visits to its offices, either to answer questions about the Commission's role and responsibilities, or to direct individuals to proper agencies or offices that could address their questions or concerns. The Commission also distributed a total of 812 complaint forms to individuals during 2006.

During 2006, the Commission received 179 complaints. When comparing the total number of complaints received during 2006 to the number received in 2005, the Commission's caseload remained constant—*i.e.*, the same number of complaints were received in both years.

It is important to note that 81 percent of the 179 complaints received during 2006— *i.e.*, 145 complaints—came from individuals incarcerated in state correctional facilities. These complainants generally alleged that they were unhappy with the rulings and decisions made by judges that led to their placement in these facilities.

Again, during 2006, the number of substantive complaints meriting Commission review and action was comparable to that of 2005. As explained in greater detail below, this comparability in Commission action can be attributed in part to an intensive judicial ethics training and advising program for all judges continued by the Commission during 2006. It also reflects the Commission's proactive role in educating the general public on the role and responsibility of the Commission in addressing concerns about the conduct of Colorado's judges.

At the close of 2006, the Commission processed to completion 178 cases during the year and carried one (1) case over to the year 2007. In 2006, two (2) private corrective actions were taken against judges; one (1) judge was retired for a medical disability; and two (2) judges retired while complaints were pending against them.

V. 2006 Case Attributes

A. Type of Judge

Of the 178 cases disposed of during 2006, complaints filed involved 164 of the 325 judges, at all levels of the Colorado state judicial system. In other words, some judges had more than one (1) complaint filed against them during the course of 2006.

These 325 judges include: 138 district court judges; 101 county court judges; 63 senior and appointed judges; and 23 appellate court judges.

As indicated in Table 1, approximately 91 percent of all complaints filed were against district court judges. Six (6) percent of all complaints filed were against full-time county court judges.

Table 1
Type of Judge Named in Complaint (2006)

Type of Judge	*Number*	*Percentage*
District Court Judge	163	91%
County Court Judge (full-time)	11	6
County Court Judge (part-time)	0	0
Senior Judge	3	2
Appellate Judge	1	1
Juvenile Judge	0	0
TOTAL	178	100%

B. Case Type

In 2006, types of cases giving rise to complaints were weighted toward criminal matters. As indicated in Table 2, 87 percent of all complaints filed involved criminal proceedings.

Table 2
Type of Case Giving Rise to Complaint (2006)

Type of Case	*Number*	*Percentage*
Civil	10	6%
Criminal	155	87
Domestic Relations	9	5
Juvenile	0	0
Off-the-Bench Conduct (includes disability)	4	2
Small Claims	0	0
Probate	0	0
TOTAL	178	100%

C. Subject Matter of Complaints

During 2006, the subject matter of complaints dealt primarily with complainants' dissatisfaction with the judges' legal rulings in their court cases. As Table 3 indicates, a total of 169, or 95 percent of all complaints filed, came from individuals who expressed dissatisfaction with the judges' legal rulings. As explained above, the Commission is not an appellate court and does not have the authority to review the substantive legal or factual issues involved in judges' rulings. Therefore, these cases were dismissed.

Table 3
Subject Matter of Complaint (2006)

Subject Matter	*Number*	*Percentage*
Dissatisfaction with Ruling	169	95%
Administrative/Procedural Concern	0	0
Partiality or Favoritism	0	0
Injudicious Courtroom Demeanor	2	1
Delay in Decision-Making	2	1
Personal Misconduct, On or Off the Bench	4	2
Racial, Ethnic, or Gender Bias	0	0
Physical or Mental Disability	1	1
TOTAL	178	100%

D. Type of Complainant

During 2006, there were several categories of complainants. Table 4 details the categories of these complainants. The vast majority of complainants, 93 percent, were individuals who were directly involved as litigants in cases in which the respondent-judges presided. As noted above, during 2006, a very large number, 145 of the 178 complaints processed, came from individuals incarcerated in state correctional facilities.

Table 4
Type of Complainant (2006)

Type of Complainant	*Number*	*Percentage*
Litigant in Case	166	93%
Attorney in Case	4	2
People Not Directly Involved	7	4
Judge Self-Report	0	0
Commission Motion	1	1
TOTAL	178	100%

E. Complaints Filed by Judicial District

Complaints filed by judicial district are reported in Table 6. After each judicial district, the number of regular judges serving in that district is listed in parenthesis. As might be expected, the larger the district (in terms of number of judges and caseload), the greater the number of complaints filed. For example, the five judicial districts encompassing the Denver metropolitan area (1st, 2nd, 17th, 18th, and 20th Judicial Districts) accounted for approximately 40 percent of all complaints filed. One (1) complaint was filed against a member of the Colorado Court of Appeals

Table 5
Complaints Filed by Judicial District (2006)

Judicial District (Number of Judges in District)	*Number*	*Percentage*
1 (18)	13	7%
2 (24)	17	9
3 (4)	2	1
4 (24)	29	16
5 (8)	3	2
6 (6)	4	2
7 (11)	1	1
8 (10)	4	2
9 (8)	10	5
10 (9)	3	2
11 (7)	12	7
12 (8)	5	3
13 (11)	2	1
14 (5)	3	2
15 (6)	1	1
16 (5)	9	5
17 (14)	5	3
18 (26)	30	17
19 (9)	9	5
20 (12)	8	4
21 (6)	7	4
22 (3)	0	0
Court of Appeals (16)	1	1
Supreme Court (7)	0	0
TOTAL	178	100%

F. Commission Action

During Commission review of the 178 cases processed to completion during 2006, each of these complaints was resolved. As Table 6 indicates, the Commission requested a response from judges in six (6) of the cases. Further, in addition to reviewing and screening the 178 cases, the Commission requested that its staff review six (6) of those complaints in greater detail (see Table 7).

Table 6
Commission Request for Judge's Response (2006)

Request	*Number*	*Percentage*
Yes	6	3%
No	172	97
TOTAL	178	100%

Table 7
In-Depth Investigation by Commission Staff (2006)

Investigation	*Number*	*Percentage*

Staff Investigation		6	3%
Staff Screening		172	97
	TOTAL	178	100%

VI. Commission Complaint Disposition

The disposition of complaints and the Commission's cumulative workload for the last three (3) years are shown in Table 8. Of the 179 cases received during 2006, 178 cases were closed following Commission review, with one (1) case being carried forward into the year 2007. Of the 178 case closures, approximately 4 percent (7 of 178 cases) were dismissed based on a finding of "no misconduct" after Commission review. More significant, 166 of the 178 cases, or 93 percent, were found to be "appellate in nature" and, therefore, outside the legal jurisdiction of the Commission. In two (2) cases, the respondent-judges retired while cases were pending against them.

As noted, two (2) cases resulted in corrective actions being taken against respondent-judges in 2006. In those cases, the judges were privately disciplined for conduct that placed them in violation of the Canons of the Colorado Code of Judicial Conduct.

Table 8
Commission Complaint Disposition for Calendar Years 2004, 2005, and 2006

Calendar Year	*2004*	*2005*	*2006*
Cases Pending at Beginning of Year	1	1	0
Complaints Received During Year	200	178	179
TOTAL CASELOAD	172	201	179
Complaints Dismissed Based on a Finding of			
No Misconduct	7	7	7
Appellate in Nature	190*	166*	166*
TOTAL COMPLAINTS DISMISSED	197	173	173
Corrective Actions			
Admonishment, Reprimand, or Censure	3	3	2
Retirement While Case Pending	0	3	2
Retirement for Medical Disabilities	0	0	1
TOTAL CORRECTIVE ACTIONS	3	6	5
TOTAL CASES TERMINATED	200	179	178
CASES PENDING AT YEAR END	1	0	1

**During 2004, 2005, and 2006, the Commission dismissed a significant number of complaints following initial review, because the complaints dealt solely with a complainant's concerns about a judge's rulings, orders, or decisions. Under the Colorado Constitution, complaints about legal issues can be reviewed only by an appellate court. The Commission does not have jurisdiction over appellate issues.*

VII. Cumulative Overview

As a result of the Commission's work over the past forty years, twenty-five (25) judges have been ordered retired for a disability, and the Commission has issued 168 private letters of admonition, reprimand, or censure against judges. The Colorado Supreme Court has issued one public reprimand against a judge.

Although not necessarily reflected in the statistics, forty-nine (49) judges have resigned or retired during, or following, Commission investigations. The Commission emphasizes, however, that many judges resign or retire from the Colorado judicial system each year for reasons completely unrelated to the disciplinary activities of the Commission.

VIII. Sample Cases

At times, the Commission is asked to describe types of misconduct that it considers to be serious enough to merit disciplinary action. Some examples of judicial misconduct that have required action by the Commission over the past several years are highlighted below. As used here, an admonition is a private letter of discipline issued to a respondent-judge providing a warning that his or her conduct suggests an appearance of impropriety falling outside the expected minimum standards of judicial conduct.

Letters of reprimand or censure also are private. These letters inform the respondent-judge that the Commission has determined that there has been a direct violation of the Canons of the Colorado Code of Judicial Conduct and, further, that such conduct is unacceptable. In reaching these types of disciplinary findings, the Commission determines that the misconduct, although serious, does not merit a formal hearing or recommendation to the Colorado Supreme Court that the respondent-judge be publicly disciplined or removed from office.

As examples, the Commission has issued private letters of discipline to judges who:

A. engaged in *ex parte* contacts with litigants or attorneys in cases pending before the judges, violations of Canons 1, 2A. and B., and 3A.(4), Colorado Code of Judicial Conduct;

B. delayed issuing decisions in cases pending before the judges, violations of Canon 3A.(5), Colorado Code of Judicial Conduct;

C. experienced losses of temper or control with litigants or attorneys in cases pending before the judges, violations of Canons 1, 2A. and B., and 3A.(3), Colorado Code of Judicial Conduct;

D. made inappropriate remarks about the conduct of an attorney to the media, a violation of Canons 1 and 3A.(6), Colorado Code of Judicial Conduct;

E. heard a case involving an individual who was a client of the part-time judge's law firm, a violation of Canons 1, 2 A. and B., 3C.(1)(a), (b), and (c), 8 B.(7), and 8C.(1) and (3), Colorado Code of Judicial Conduct;

F. became intemperate and verbally abusive toward an employee and customer of a business establishment, a violation of Canons 1 and 2A. and B., Colorado Code of Judicial Conduct;

G. pled guilty to driving while the judge's ability was impaired by alcohol, a violation of Canons 1 and 2A., Colorado Code of Judicial Conduct; or

H. were found to have sexually harassed an employee of the judge, a violation of Canons 1 and 3A.(3), Colorado Code of Judicial Conduct.

In several of the cases cited above, the level of discipline imposed by the Commission was related to the respondent-judge's decision to retire or resign prior to the Commission's initiation or conclusion of formal proceedings against that judge.

Beginning in 1992, and continuing through 2006, the Commission undertook a proactive educational program to inform new and continuing judges of their ethical duties and responsibilities under the nine (9) Canons of the Colorado Code of Judicial Conduct. The Commission concluded that this type of proactive educational program demonstrated positive results, particularly by contributing to a smaller number of substantive complaints being filed against judges, and a smaller number of corrective actions having to be taken against judges, since 1992, as compared with earlier years.

In addition to its oversight and educational activities, the Commission also provided: reminders to judges concerning their conduct and activities that appeared to place them in danger of violating the Canons of the Colorado Code of Judicial Conduct; made suggestions to judges concerning the overall management of their dockets; referred matters to other agencies or departments for resolution of problems outside of the jurisdiction of the Commission; and aided in the administrative resolution of several matters.

IX. Conclusion

During 2006, the Commission's overall workload remained comparable with that of 2005. When considering total corrective actions taken against respondent-judges during 2006, as a percentage of total complaint/case dispositions, the number of corrective actions taken against Colorado state judges in 2006 remained comparable with that of 2005.

Although much of the Commission's work is not completely open to the public because of constitutional confidentiality limitations, every effort is made to act in the public's interest while safeguarding individual rights and reputations from unfounded allegations of misconduct. The Commission's performance over the past forty years suggests that it has succeeded in improving and strengthening Colorado's judicial system while carrying out its constitutional responsibilities.

The Commission performs a vital role in maintaining a fair and impartial judiciary. Because the judicial selection, retention, and tenure system is based on merit selection rather than political election, the Commission serves to maintain the balance between independence and accountability in the judiciary.

For additional information about the Commission, its role, and its responsibilities, please write to: Rick Wehmhoefer, Executive Director and General Counsel, Colorado Commission on Judicial Discipline, 899 Logan Street, Suite 307, Denver, Colorado 80203; or call him in Denver at (303) 894-2110.

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