Colorado Commission on Judicial Discipline
Annual Report for 2020

Background and Jurisdiction

The jurisdiction and authority of the Colorado Commission on Judicial Discipline (the "Commission") is set forth in Article VI § 23(3) of the Colorado Constitution, 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 Code of Judicial Conduct (the "Code") includes four Canons that provide the basic principles of judicial ethics. The Commission monitors the judiciary's compliance with these Canons through disciplinary proceedings. However, disputes about a judge's decisions are reserved for the trial and appellate courts to resolve. The Commission is not authorized to change a judge's ruling.

Formed in 1967 by the amendment to the Colorado Constitution that established the merit system for the appointment of judges, the Commission originally was designated the Commission on Judicial Qualifications.

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 in "Court Rules, Book 1" of *Colorado Revised Statutes*.

Colo. Const. Article VI § 23(3)(e) and Colo. RJD 35 provide for remedial action which may result in a confidential private disposition such as an admonition, reprimand, or censure regarding the judge's conduct; or 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 Supreme Court, on the recommendation of the Commission, to order 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 to the Supreme Court by each Colorado lawyer and judge provides funding for the Commission's operations.

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"), the Office of Attorney Regulation Counsel ("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 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.

In December 2020, subject to pending retirements and appointments, the Colorado state judiciary was comprised of approximately 350 judges and justices, including 130 in the County Courts; 193 in the District Courts, which included one in Denver Probate Court and three in Denver Juvenile Court; 22 on the Court of Appeals; and seven on the Supreme Court. In addition, the Senior Judge Program included 43 senior judge positions of which 33 were active at year end 2020.

Grounds for Judicial Discipline

Colo. Const. Article VI, Section 23(3)(d) and Colo. RJD 5 provide the grounds for disciplinary proceedings to address allegations of Canon violations 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. Article 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."

The Canons 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 provides 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 accord 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 Commission and its Executive Director

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. Article VI, Section 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; generally, persons appointed to the Commission by the Governor will be limited to two four year terms. Members of the Commission as of December 2020 are listed at the end of this report.

Colo. RJD 3 provides for the organization and administration of the Commission, including the appointment of an Executive Director whose duties, subject to the general oversight of members

of the Commission, include the operation of a permanent office; the preliminary evaluation and investigation of misconduct allegations; the maintenance of records and statistics; the employment 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 Commission's administrative 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 the provisions of the Code.

In 2020, the Commission met in February, June, August, October, and December. In addition to its regular meetings, the Commission may hold special meetings or convene by conference call. Due to the COVID-19 pandemic, the Commission's regular April meeting was cancelled and the remaining meetings in 2020 were held remotely by Webex.

The Commission adopted a Code of Conduct, set forth in Colo. RJD 3.5, to guide its members in their duties. For example, it provides for a member to recuse in certain situations. Approval of the Code as an amendment to Colo. RJD is pending review by the Supreme Court.

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 public's contacts with the Commission currently include approximately 1,800 web hits and 400 to 500 phone inquiries annually, compared with 700 to 800 contacts solely by phone prior to establishing the website.

Scope of the Commission's 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. Article VI, Section 1.

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.

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.

The Commission concluded that its procedural rules should be clarified. Colo. RJD 12, as of July 1, 2017, provides for a complainant to file a Request for Evaluation of Judicial Conduct (an "RFE") to report circumstances that may warrant the commencement of disciplinary or disability proceedings. The Commission anticipated that the emphasis on judicial conduct in the information requested in the RFE would promote public understanding about the Commission's role and encourage complainants to focus on judicial ethics rather than disputed decisions or the conduct of persons who are not judges.

The Commission provides RFE forms on its website and in response to requests by complainants. The RFE form guides the complainant in providing the name of the judge, the date of the incident or incidents involved, pleadings, orders, or excerpts from transcripts. However, the 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 complainant’s concerns.

The RFE may be mailed, delivered, emailed, or faxed to the Commission. Arrangements can be made with the Commission’s staff to accommodate disabled persons in preparing and filing an RFE. The Commission also is authorized to determine that there is a reasonable basis for a complaint and commence further proceedings on its own motion, without receiving an RFE.

During 2020, the Commission received a total of 199 RFEs, including complaints in other formats that the Commission considered as RFEs. This compares with 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. Beginning in September 2014, the Commission began accepting complaints by email; 71 of the 199 RFEs in 2020 were filed by email.

In 2020, RFEs were filed against judges in 21 of the state's 22 judicial districts and four were filed against judges of the Court of Appeals. None alleged misconduct by the justices of the Supreme Court.

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 preponderance of evidence standard in Colo. RJD 16(c) for establishing a violation of the Canons, will not be referred to the members of the Commission for consideration.

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 complainant of the reasons for its decision. Colo. RJD 14(a) provides that it is not necessary for the Commission to notify the judge of the allegations if the allegations do not warrant disciplinary proceedings.

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.

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. The Commission will examine the allegations in more detail and may conduct interviews of witnesses. Investigative support is provided to the Commission by staff off Attorney Regulation.

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.

RFEs in 2020

Of the 199 RFEs received by the Commission in 2020, 126 did not involve allegations that a judge had violated the ethics principles in the Canons or circumstances from which the Commission could reasonably infer that a Canon violation had occurred. In addition to disputes about a judge's rulings and allegations of misconduct by persons other than judges, situations not within the Commission's jurisdiction included disputes about parenting plans, child support, maintenance, division of marital property, dependent and neglected children, termination of parental rights,

foster parents, adoptions, protection orders, receiverships, real estate rights, condemnation, wills and estates, conservatorships, replevin, garnishment, habeas corpus petitions, postconviction motions, sentencing, revocation of probation, juror selection, and claims by persons claiming to be sovereign citizens who contend that Colorado courts lack jurisdiction over them.

The remaining 73 RFEs at least alleged a Canon violation, but in 64 of these RFEs the record of court proceedings, including pleadings, audio transcripts, and orders indicated that a Canon violation could not be established by the preponderance of the evidence standard provided in Colo. RJD 16(c). For example, while an allegation of bias or prejudice may have been included in the RFE, an examination of the court records may indicate that the judge found the evidence presented by the opposing party to be more credible and relevant in resolving disputed issues, which would be a matter for an appellate court to evaluate. Or in a complex parenting or dependency and neglect case, there may be a dispute about which of several options provided in the statutes is most appropriate in the circumstances, which raises questions about the law as applied to the evidence, rather than Canon issues.

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 Court 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.

<u>Investigation and Notice to the Judge</u>

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.

Investigations are performed by the Executive Director and, if necessary, by an investigator on the staff of Attorney Regulation. The Executive Director will notify the judge of the investigation and the nature of the allegations. The judge is afforded an opportunity to respond.

Each investigation involves action that is appropriate in 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 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 requires that allegations of misconduct must be established by a preponderance of the evidence. A decision is made by majority vote of the members participating in the meeting, exclusive of the presenting member.

When a complaint has been considered by the Commission in informal proceedings, the dispositions available, under Colo. RJD 16 and 35, include:

- 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.
- private admonishment for an appearance of impropriety, even though the judge's conduct in other respects meets minimum standards.
- private reprimand or private censure for misconduct that does not merit public sanction by the Supreme Court.
- 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.
- a stipulated private disposition that could include the judge's resignation or retirement.
- the commencement of disability proceedings under Colo. RJD 33.5.
- 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. 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 disability status, if the disability also prevents the Judge from practicing law.

Formal Proceedings

Formal proceedings involve a trial conducted under 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. Staff of Attorney Regulation, who litigate ethics issues involving attorneys, serve as special counsel for the Commission to litigate ethics issues involving judges. In the event Attorney Regulation has a conflict, the Commission has arranged for the Attorney General's office to serve as special counsel.

On special counsel's concurrence that there is probable cause, special counsel will prepare and serve 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
- Privately administered discipline under Colo. RJD 35
- Measures reasonably necessary to curtail or eliminate the judge's misconduct, such as a diversion plan or deferred discipline plan.

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 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.

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; and 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."

Review of Requests for Evaluation Received in 2020

Types of Misconduct Allegations

Of the 199 RFEs received in 2020, 71 arose in the criminal law docket, many of which were filed by inmates in county jails or in detention facilities operated by the Colorado Department of Corrections. A total of 42 RFEs involved litigation in the general civil docket, including evictions; and five in small claims courts. Other RFEs included 43 in domestic relations cases, predominately involving parenting plan disputes; 14 in juvenile court matters, usually involving the potential termination of parental rights; and nine in probate matters. Protection orders, usually involving domestic violence, involved 16 cases. Six involved competency evaluations or other mental health issues, and six involved traffic cases.

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 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 *pro se*, RFEs were also filed by attorneys; by relatives, friends, or court observers; or by court staff.

The frequency of the types of allegations received by the Commission in 2020 is summarized below. Some RFEs involved multiple allegations. Most of the RFEs involved situations that were not within the jurisdiction of the Commission, e.g., issues about evidence, procedure, Colorado law, attorneys, or law enforcement, rather than a violation of the Canons by the judge.

- Administrative issues and harassment involving colleagues or staff: 5
- Allegations directed at the conduct of officials other than state judges:
  - Attorneys, DAs, public defenders, court staff, probation officers, law enforcement officers, caseworkers, ALJs, or magistrates: 21
- Bias, prejudice, or lack of impartially: 37
- Courtroom demeanor/intemperance/discrimination: 9
- Disputed rulings/appellate issues:
  - Appointment, inadequacy, or misconduct of counsel: 11
  - Civil protection orders: 5

  - Constitutional principles, due process, double jeopardy, speedy trial, jurisdiction: 16
  - Contempt proceedings: 1
  - COVID issues: 2
  - Default Judgments: 1
  - Disabled litigants/ADA issues: 1
  - Disputed court records: 2
  - Dissolution of marriage, temporary orders, permanent orders, child support, domestic violence, parenting plans, grandparent visitation, post decree motions: 43
  - Evidence, discovery, relevance, witnesses, credibility, tampering: 11
  - Federal law claims, referrals to federal courts: 3
  - Foreclosures: 1
  - Garnishments and Replevin: 2
  - Homeowners association disputes: 1
  - Integrity, independence of judiciary, abuse of prestige of office: 1
  - Juror selection, service, or misconduct: 1
  - Juvenile – paternity, dependency & neglect, adoption: 14
  - Landlord/tenant and eviction: 2
  - Mandamus denied: 1
  - Medical issues in jail: 1
  - Mental health/competency evaluations/insanity pleas: 10
  - Plea agreements: 1
  - Probate – estates, guardians, conservators: 7
  - Probation or Revocation of probation: 1
  - Real Estate, quiet title: 4
  - Receivership: 1
  - Remands from the Court of Appeals or Supreme Court: 4
  - Service of Process: 1
  - Small Claims Court: 2
  - Sovereign Citizen claims: 6
  - Warrants, criminal charges, bonds, DUIs, traffic, habitual criminal allegations, sentencing, preliminary hearings, restitution, probation, unlawful detainer, habeas corpus, DOC rules: 33
- *Ex parte* communications: 2
- Failure to manage the docket competently and diligently, including delays in issuing rulings on trials and motions: 12
- Judge's DUI: 1
- Judge's mental or medical condition: 1
- Judge's oath: 1
- Postconviction issues, including Rule 35 motions: 14
- Pro se parties, right to be heard, in forma pauperis: 1
- Racial, gender, transgender, or religious discrimination: 3
- Recusal procedures, conflict of interest: 8

The dispositions authorized by Colo. RJD 16 and 35 are described above in Consideration and Dispositions. Most incidents of misconduct are addressed through remedial action, including private disciplinary letters or diversion plans, e.g., docket management reports to promote timely decisions.

The Executive Director, in accordance with Colo. RJD 13(c), dismissed 190 RFEs in 2020 that involved the conduct of persons other than judges or did not provide a reasonable basis for a Canon violation. Although the Commission reviews the Executive Director's dismissal letters at its next meeting and may decide to reopen the case for further evaluation, it also receives requests for reconsideration of dismissals from complainants; in 2020, three such requests were evaluated and the dismissals affirmed. The Commission's experience has been that such requests usually repeat the initial allegations and express disappointment that the Commission cannot change the outcome of litigation.

Through its December 2020 meeting, the members of the Commission had evaluated 13 RFEs that were referred to them by the Executive Director for consideration as complaints, including one matter carried over from 2018 and three carried over from 2019. After further consideration, the members of the Commission dismissed three of these 13 complaints because the allegations did not satisfy the preponderance of the evidence standard for establishing misconduct under Colo. RJD 16(c); or involved issues under the jurisdiction of the appellate courts. In addition, the Commission dismissed two complaints with an expression of concern rather than ordering private disciplinary measures. The Commission ordered private disciplinary measures in three cases. In addition, a public censure resulted from a case carried over from 2019. One matter from 2018 and three from 2019 with new developments in 2020 were carried over to 2021. Nine RFEs that were received after the Commission's December meeting were dismissed by the Executive Director.

By comparison, in 2019 the members of the Commission issued one private censure; one recommendation for a disability retirement; and one public censure after a formal proceedings trial in late December 2018. Two cases involved the preliminary stages for commencement of formal proceedings – one of which resulted in a stipulated public censure, and the other was carried over to 2020.

Disciplinary Actions Taken in 2020

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.

Public Discipline

The case that was carried over from 2019 involved allegations that Weld County District Judge Ryan Kamada had disclosed confidential information about pending cases to third parties while serving as a judge and previously serving as a magistrate. While serving as a judge, he alerted a friend to stay away from the target of an arrest warrant, who, in turn, alerted the target and

disrupted an investigation by the Weld County Drug Task Force. Ultimately, the investigation led to the arrest and guilty pleas of his friend and the target.

Judge Kamada self-reported his misconduct to the Commission. He agreed to a Stipulation with the Commission for violations of the Canons and the issuance of a public censure, while facing federal charges for impeding an investigation.

On December 7, 2020, the Supreme Court publicly censured Judge Kamada for violations of Canon Rule 1.1, which requires a judge to comply with the law; Rule 1.2 for conduct that did not promote public confidence in the judiciary; Rule 1.3, abusing the prestige of judicial office; Rule 2.9, prohibiting ex parte communications about pending matters; Rule 2.10, prohibiting non-public judicial statements that might interfere with a fair trial; and Rule 3.5, sharing non-public judicial information.

In December 2020, the Commission commenced formal proceedings against part-time County Judge Debra Gunkel in Baca County, alleging that she violated the Canons in being arrested and convicted for driving under the influence of alcohol in Colorado and Kansas and in asking for the arresting officers in Colorado to just take her home and asking the officers in Kansas to call her husband to come and get her. The arrest in Colorado occurred in 2018 and resulted in a plea agreement in which she entered a guilty plea to driving while impaired. The court issued a deferred sentence and ordered that she comply with terms of probation, which included a prohibition on the consumption of alcohol.

However, Judge Gunkel violated the terms of the deferred sentence and probation by being convicted in 2020 for the same offense in Kansas. This had the effect of converting her deferred sentence in Colorado to a conviction for an alcohol related driving offense. After an initial stipulation to resolve the case was rejected by the Supreme Court, the judge agreed in March 2021 to resign and accept a public censure for violations of Canon Rule 1.1, being convicted of violating the law; Rule 1.2, failing to promote confidence in the judiciary; and Rule 1.3, abuse of the prestige of judicial office. The Court approved the Stipulation and on May 12, 2021, issued a public censure, and accepted her retirement.

Private Discipline

A private reprimand was issued to a judge whose pattern of personal conduct with staff in the close quarters of the courthouse adversely affected the work environment in violation of Canon Rules 1.2 (promoting confidence in the judiciary), 2.3 (promoting a positive work environment), and 2.8 (patience and courtesy with staff). The Commission combined the reprimand with a diversion program for counseling to improve the Judge's conduct. The judge successfully completed the diversion program.

A private reprimand also was issued to a judge for a delay of nearly three years in issuing a decision following a 19 day trial in a complex and highly contentious matter involving allegations by the Attorney General about the defendants' business practices. The trial involved 46 witnesses

and several hundred exhibits. The judge faced significant challenges in resolving the financial and legal issues, as reflected in the 160 page final judgment. The Commission determined that the intensity and complexity of the litigation were the primary cause of the delay, but that the judge, nonetheless, should have resolved it more promptly.

In another situation, two disciplinary orders were issued to address a judge's insensitivity in using racial and ethnic terms and in handling administrative matters. The Commission issued the judge a private reprimand for bias and prejudice, in violation of Canon Rule 2.3(b); and a private admonishment for an appearance of impropriety under Canon Rule 1.2, concerning the manner in which the judge had handled administrative duties and for declining an opportunity to develop a diversion program with other judges and staff to address administrative issues.

Dismissals with Concerns

In a parenting plan dispute, motions to address compliance issues had resulted in only two orders from July 2019 to March 2021. Upon examining the file and obtaining the Judge's response, the Commission concluded that frequent motions by the parents combined with changes in court staff and the disruption in scheduling and conducting court proceedings during the COVID-19 pandemic caused the delays. The Commission determined that it could not, by the preponderance of the evidence standard, establish a violation of the competence and diligence requirements in Canon Rule 2.5, but encouraged the judge to request a senior judge to help with the docket in such extreme situations.

In another parenting case, one of the attorneys called a District Court magistrate as a witness on behalf of the mother, not as to any prior court proceedings, but to testify as to the mother's parenting skills. The magistrate was the mother of one of the child's friends and had observed the mother's role as a parent. There was no objection to her testimony. Later, the father alleged that there were ex parte communications between the judge and magistrate, but it appeared to the Commission that the communications only involved scheduling the testimony which, as an administrative matter, is an exception to Canon Rule 2.9 prohibiting ex parte communications. In dismissing the complaint, the Commission encouraged the judge, in similar situations, to make full disclosure about any potential relationship with a magistrate and to explain any communications involved in scheduling the magistrate's testimony.

History of Recent Disciplinary Measures

In 2020, the Commission's dispositions included one public censure, three private disciplinary orders, 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, and six in 2019. No judges declined to stand for retention after complaints were filed in 2020, compared with none in 2007, seven in 2008, three in 2009, three in 2010, and none in 2011 through 2019. There was one retirement for medical disability in 2006, one in 2007, and another in 2019. In 2012, while disciplinary proceedings were pending, a judge resigned after receiving a diagnosis of a medical

condition that had been affecting the judge's ability to perform judicial duties competently; and in 2013, another judge resigned because of declining health.

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, and 12 in 2020. The increase in 2020 was caused, in part, by the disruption in docket management resulting from the COVID-19 pandemic.

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.

Proactive Measures

The Executive Director 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 a given situation, 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 attends the annual conference of judicial disciplinary commissions sponsored by the Association of Judicial Disciplinary Counsel and the biannual College of Judicial Ethics presented by the National Commission on State Courts. He has been a participant and speaker at national conferences on recusal procedures and judicial discipline conducted by the University of Denver's Institute for the Advancement of the American Legal System. He also has made presentations in training programs held in Colorado for groups of lawyers, judges, and court staff who have traveled to Colorado from other countries to examine the Colorado judicial system.

The Commission 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 ethnic and racial diversity of the Colorado community. The Commission's decisions are made independently from Attorney Regulation and SCAO but with their logistical support. When requested, Attorney Regulation provides investigative resources and special counsel to the Commission. SCAO notifies the Commission of potential judicial misconduct reported by court staff.

As of December 31, 2020, the Commission's membership included:

Member	City	Category of Appointment
Christopher Gregory, Chair	Fort Collins	Attorney
Hon. David Prince, Vice-Chair	Colorado Springs	District Judge
Hon. Rachel Fresquez, Secretary	Eagle	County Judge
Jim Carpenter	Englewood	Citizen
Bruce A. Casias	Lakewood	Citizen
Elizabeth Espinosa Krupa	Denver	Attorney
Yolanda Lyons	Monument	Citizen
Hon. Bonnie McLean	Centennial	District Judge
Drucilla Pugh	Pueblo	Citizen
One Vacancy		County Judge

County Judge Jean Woodford retired from the Commission for health reasons in 2020. She was succeeded by Jefferson County Judge Sara Garrido in 2021.

William J. Campbell is the Executive Director of the Commission, having been appointed on February 11, 2009 as Interim Executive Director and as Executive Director on July 1, 2010. Mr. Campbell's appointment followed a 37 year career as a practicing attorney. Lauren Solomon is the Commission's administrative 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 – www.coloradojudicialdiscipline.com – or contact the Commission directly at:

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