



DENVER
THE MILE HIGH CITY

Denver County Court

City and County Building
1437 Bannock St., #108
Denver, CO 80202

Hon. John M. Marcucci
Presiding Judge

March 29, 2013

The Honorable Michael B. Hancock

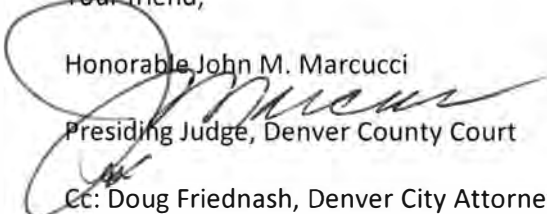
RE: Annual Report - Commission on Judicial Discipline

Dear Mayor Hancock:

Once again I want to thank you for re-appointing me as the Presiding Judge of the Denver County Court for the 2013 year. I believe I have grown into the position with a firm grasp of the Court's many complexities and nuances that were difficult to see from the Bench even over my 21 years of commitment to the citizens of Denver and the Court. I hope you find my performance satisfactory but I do want to let you know that I greatly value your judgment and perception developed over your years of service to our community, and especially now, as Mayor. As such, please feel free to continue to speak openly to me if there are issues with my performance that concern you. Whatever I can do within the structure of my authority, without violating my Judicial Oath, will be fully considered by me, presented to the Bench and hopefully come to fruition. I know I appear reserved at times but please be assured that I am working diligently to make Denver a better city.

Enclosed herein please find the Annual Report of the Denver County Court Commission on Judicial Discipline. By Rule and Charter, the Presiding Judge is required to prepare the report and present it to you as Mayor. Should you wish that I supplement it in any way or improve it for this year please let me know? It has been a pleasure to get to know you and your appointees. I look forward to this year with high expectations.

Your friend,

Honorable John M. Marcucci

Presiding Judge, Denver County Court

Cc: Doug Friednash, Denver City Attorney & Matthew McConville, Clerk of the Denver County Court



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www.denvercountycourt.org

Denver County Court Commission on Judicial Discipline

2012 Annual Report

Background and Jurisdiction

In 1967, Colorado State Courts adopted a merit system to appoint judges and also established the Colorado Commission on Judicial Discipline. Prior to 1967, Denver's Charter provided a process for Judicial Discipline. Following several amendments, the current provisions of the Denver County Court Commission on Judicial Discipline can be found in the Denver Charter at Article IV, Part 4 Sections 1-5.

In 2012, Denver County Court consisted of 17 County Court Judges, 4 full time Magistrates, 5 full time parking Magistrates and 10 part time Magistrates. Denver County Rules of Judicial Discipline substantially mirrors the Colorado Rules of Judicial Discipline (Colo. RJD). Both are applied in conjunction with the Colorado Code of Judicial Conduct (Code). Additionally, pursuant to Charter § 4.4.2(D), the Commission has passed procedural rules. These rules provide for "informal" remedial action including direction of counseling or assistance, private admonishment or suggestion, private reprimand or censure and, of course, Formal Recommendations to the Mayor. Formal Recommendations to the Mayor include censure, reprimand or other discipline of Judges of the County Court of the City and County of Denver, and recommending to the Mayor the suspension, removal or retirement from office of any Judge of the County Court of the City and County of Denver. The Commission may also recommend to the Presiding Judge of the County Court the discipline or removal of any Magistrate of the County Court of the City and County of Denver.

Grounds for discipline of County Court Judge

- A. *General grounds.* The grounds for discipline of a County Court Judge shall include:
 - (i) Willful misconduct in office, including misconduct which, although not related to Judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice.
 - (ii) Willful or persistent failure to perform judicial duties, including incompetent performance of judicial duties
 - (iii) Habitual 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; and
 - (iv) Any conduct that constitutes a violation of any canon of the Colorado Code of Judicial Conduct (Code).
- B. *Removal for disability.* The grounds for removal or retirement of a County Court Judge shall include disability interfering with the performance of judicial duties which is, or is likely to become, of a permanent character.
- C. *Failure to cooperate with investigation.* Failure or refusal of a County Court Judge to Cooperate, or the intentional misrepresentation of a material fact during any stage of a disciplinary proceeding, may constitute willful misconduct in office.
- D. Whenever a County Judge has been convicted in any court of record of this state or of the United States or of any state of a felony or other offense involving moral turpitude, the

Mayor shall enter an order suspending said Judge from office, and the payment of salary of said Judge shall also be suspended from the date of such order. If said conviction becomes final, the Mayor shall enter an order removing said Judge from office and declaring the office vacant with salary of the Judge to cease from the date of the order of suspension. If said conviction is reversed with directions to enter a judgment of acquittal, or if reversed for a new trial which subsequently results in a judgment of dismissal or acquittal, the Mayor shall enter an order terminating the suspension of said Judge, and said Judge shall be entitled to full compensation for the period of suspension. A plea of guilty or nolo contendere to such a charge shall be equivalent to a final conviction for the purpose of this section.

The July 1, 2010 revision of the Code reorganized the nine Canons of the previous Code into four Canons which 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 judiciary.

Each Canon includes various rules. For example, Rule 2.5(A) requires a judge to perform judicial and administrative duties competently and diligently. The rules are supplemented by comments and annotations.

A judge's decision on the facts and the law being disputed by a complainant does not provide grounds for disciplinary proceedings unless one of the elements of Colo. RJD 5(a) is present, (willful misconduct; willful or persistent failure to perform judicial duties; intemperance; a disability; a violation of the Canons; or evidence of fraud, corrupt motive or bad faith).

Other matters beyond the scope of the Commission's jurisdiction include concerns about a judge's overall performance and fitness for the position. Such issues are more appropriate for evaluation by the Commissions on Judicial Performance, which collects views from jurors, litigants, and attorneys in each judicial district regarding a judge's competence; provide periodic reports to the judge; and disseminate public reports on performance prior to the judge's retention election.

The Commission Composition

The Judicial Discipline commission is composed of seven voting members, plus the Presiding Judge of the County Court of the City and County of Denver as an ex-officio member in a non-voting advisory capacity. The membership of the Commission is made up as follows:

- (i) Three of the members shall be registered electors of the City and County of Denver who are not acting or retired Judges or Justices and are not licensed attorneys; two of the members shall be Judges of the Bench of the District Court in and for the City and County of Denver; and two of the members shall be registered electors who are licensed attorneys engaged in the practice of law, none of whom shall be an acting or retired Judge or Justice.

- (ii) No more than four members shall be affiliated with the same political party.
- (iii) No member shall hold any official position in any partisan political organization.
- (iv) No member shall be related by blood or marriage to any other member.
- (v) No member shall have previously been or at the time of appointment be a member of the Judicial Nominating Commission established by this Article.

Members serve four year terms which are staggered as a result of 3 two year terms at the inception of the Commission. The members of the Commission shall not receive any salary or compensation for their services as a member. Any member who is related by blood or marriage within the third degree to a judge shall be disqualified from considering any matter concerning the judge.

Similar to Colo. RJD 13, the Commission has, under Rule of Procedure 3, required the Presiding Judge to screen complaints that are frivolous, unfounded, solely appellate in nature, or outside the jurisdiction of the Commission, unless the complaint involves the Presiding Judge. Screened complaints are summarized at the quarterly meetings. Currently the Commission has a two step process. Upon contact from a citizen indicating a wish to file a complaint he/she is given instructions on how to request a complaint form. The instructions contain an explanation of grounds for discipline etc. If completed and returned the citizen is sent a formal complaint form. If a formal complaint is filed, after initial screening, it is forwarded to the full Commission for review and follow-up discussion at quarterly meetings. At the discretion of the Presiding Judge, complaints against Magistrates may be referred to the Commission. Since Magistrates are employed at the will of the Presiding Judge, such matters are rarely referred.

Review of 2012

During 2012, the office of the Presiding Judge handed out approximately forty six requests for instructions on how to file a complaint. Of those, only six citizens submitted Formal Complaint with the Commission. Two citizens filed "informal" paperwork that the Presiding Judge deemed sufficient to open a file and forward to the Commission for consideration. Therefore eight new matters were considered in 2012 along with two matters that were carried over from 2011.

Three of the 2012 complaints were screened by the Presiding Judge and therefore not forwarded to the Commission. These were matters that did not claim an appropriate basis for action under the law as they were matters for appellate review only or against a District Court Judge. The Presiding Judge did advise the Commission verbally of his actions in screening the Complaints.

One of the Complaints was against a Magistrate. It was handled by the Presiding Judge pursuant to Rule and led to corrective measures being put in place

Four of the Formal Complaints were against Judges. All were investigated, addressed by the commission and dismissed as non-actionable. The two complaints pending action from 2011 were dismissed in 2012: in one, after interviewing the Judge, the Commission made verbal recommendations to the Judge without finding grounds for other action; the other was dismissed as non-actionable. Currently nothing is pending before the Commission.

The Commission and Staff

The 2012 Commission operated under the coordination of Presiding Judge John Michael Marcucci. Administratively, the day to day activities were organized with the highly professional assistance of Beverly Champion (Judicial Assistant III).

As of December 31, 2012, the Commissions membership remained the same from the previous year and was comprised of the following members:

<i>Member</i>	<i>City</i>	<i>Category of Appointment</i>
Sherry L. Jackson	Denver	Citizen
David M. Johnson	Denver	Attorney
Hon. Michael Martinez	Denver	District Judge
Natalie Meyer	Denver	Citizen
Anthony Navarro	Denver	Attorney (<u>Resigned Effective January, 2013</u>)
Hon. Sheila Rappaport	Denver	District Judge
Bill Waters	Denver	Citizen
Hon. John M. Marcucci	Denver	Ex-Officio

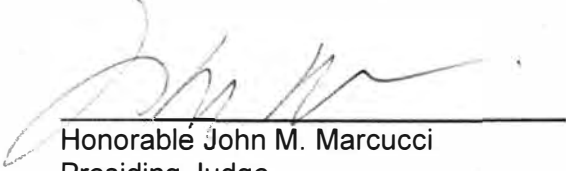
To obtain information, request a copy of the complaint form, or file a complaint please contact:

Denver County Court Judicial Discipline Commission
1437 Bannock St., Room 108
Denver, CO 80202
Telephone: (720)865-7870
Fax: (720)865-8262
www.denvercountycourt.org OR www.denvergov.org

Correspondence to the Commission or its members should be addressed to the:

"Attention of the Presiding Judge of Denver County Court, John M Marcucci".

Done and signed this March 28, 2013
Presiding Judges Office, Room 108, City and County Building
Denver, Colorado



Honorable John M. Marcucci
Presiding Judge