



Denver County Court

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

Hon. John M. Marcucci
Presiding Judge

March 9, 2015

The Honorable Michael B. Hancock, Mayor of Denver.

RE: Annual Report for 2014 - Commission on Judicial Discipline

Dear Mayor Hancock:

Once again I want to formally thank you for re-appointing me as the Presiding Judge of the Denver County Court for the 2015 year. I believe I have a firm grasp of the Court's many complexities and nuances that were difficult to see from the Bench even over my 20 years of hearing cases. I hope you find my performance satisfactory but I do want to let you know that I greatly value your judgment 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 may concern you. I also want to thank you for the fine work of your staff in dealing with Court related issues including our new Recovery Court, the creation of the Municipal Office of the Public Defender, budget expansion to include several new probation officers, expanding pre-trial release options, the new method of handling the VALE fund, as well as your dedication to assist as our Court goes through this great period of change including 4 new Judges just last year and one currently pending. The fact that there are always potential conflicts between the Branches of Government has not limited either of us in making sure that the voices of the other Branch and our citizenry are always heard. Your leadership has made sure of this!

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 the Mayor on an annual basis. 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 continuing to serve the citizens of Denver with high expectations.

Sincerely,


John M. Marcucci

Presiding Judge, Denver County Court

Cc Scott Martinez, Denver City Attorney & Terrie Langham, Clerk of the Denver County Court

Mayor's Office

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City and County of Denver

Denver County Court Commission on Judicial Discipline

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2014 Annual Report

Mayor's Office

City and County of Denver

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 2014, Denver County Court consisted of 17 County Court Judges, 3.6 full time Magistrates, 5 full time parking Magistrates and 10 part time Magistrates. In the past Denver County Rules of Judicial Discipline substantially mirrored the Colorado Rules of Judicial Discipline (Colo. RJD). The State Rules have been modified and, as such, it is time to revisit the Denver Rules. In that regard, in 2013 I asked new Commissioner Hyatt to assist and he accepted. Unfortunately more work needs to be done and my hope is to have a policy intern assist this year. I have now enlisted the help of Retire Judge Ray Satter to review the work of Commissioner Hyatt and write a formal draft for presentation to the Commission for amendment and finalization. The current 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 and recommending to the Mayor the suspension, removal or retirement from office of any Judge. 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. Once their term expires they remain on the Commission until replaced. 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 2014

During 2013, the office of the Presiding Judge handed out approximately fifty requests for instructions on how to file a complaint. Thereafter only 6 of those citizens contacted the Commission to request Formal Complaint Forms. Of those, only 5 citizens submitted Formal Complaints with the Commission albeit one through the Colorado Commission. Three of the Complaints were against Magistrates and were handled by the Presiding Judge pursuant to Rule and all led to corrective measures being put in place.

One of the Formal Complaints was against a retiring Judge. The Presiding Judge's office opened communication with the party, advised the party that the Judge was leaving but that the Complaint could continue. Thereafter the party took no further action and the complaint was therefore not processed further.

One "filed" complaint came to the attention of the Presiding Judge as a result of a complaint letter forwarded by the Colorado Commission on Judicial Discipline. That Commission advised the party to contact the Denver Commission. The party did not do so. Regardless the Presiding Judge Investigated the matter, determined a bench warrant had issued in error but that it fortunately did not hold the defendant as he was serving time on another matter. Subsequent to learning of the error the Presiding Judge ordered the warrant vacated thus eliminating any harm. Thereafter the Complaint was closed as the party did not follow through with a formal Complaint filed directly with the Denver Commission. As a result of the above the Commission did not take any action during 2014. Currently only recent 2015, and no 2014, matters are pending before the Commission.

The Commission and Staff

The 2014 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) and recently hired, Amber Spencer.

The Commissions membership was comprised of the following members:

<i>Member</i>	<i>City</i>	<i>Category of Appointment</i>
Aaron Hyatt	Denver	Attorney
David M. Johnson	Denver	Attorney
Hon. Michael Martinez	Denver	District Judge
Natalie Meyer	Denver	Citizen
Christena Estes Faraci	Denver	Citizen
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 9, 2015
Presiding Judges Office, Room 108, City and County Building
Denver, Colorado

Honorable John M. Marcucci
Presiding Judge