

Denver County Court Commission on Judicial Discipline

2016 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 2016, Denver County Court consisted of 17 County Court Judges, 3 full time Magistrates, 5 full time Parking Magistrates and 9 part-time Court 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. In 2015 I also asked retired Judge Satter to review drafts completed by Mr. Hyatt. This led to a nearly final draft by mid-year 2015. Unfortunately, just as we were nearing final approval on the amended rules, a matter filed with the Commission put everything on hold. We were still under the old rules when the Commission undertook a substantial investigation. As such, the timing for adopting new rules was delayed to avoid any appearance of manipulation that might have occurred as a result of amending the Rules while actively reviewing a matter substantially impacted by the rules themselves. In light of what was learned in the recent past, more work needs to be done. An expert in this field, attorney Sybil Kiskin, has volunteered to finalize the Commission Rules at no charge to the City.

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, other discipline of Judges, or 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. These options will be maintained in the updated Rules with the appropriate modifications as recommended by Ms. Kiskin. Although the Commission vowed to finish this work by the end of 2016, it remains a work in progress today because the State advised that they were once again re-writing their rules. It seemed senseless to finish our re-write only to be once again out of sync with the State.

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 concerning findings of fact and conclusions of 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 2016

During 2016, the office of the Presiding Judge handed out approximately 31 requests for instructions on how to file a complaint. Thereafter approximately nine of those citizens contacted the Commission to request mailing of Formal Complaint Forms. Seven citizens submitted Formal Complaints either using the Formal Complaint Forms mailed out or by creating their own complaint form. The number of complaints was significantly lower than prior years. There does not appear to be any specific reason for the reduction. In 2016 there were some matters carried over from the year before including one which gave rise to an informal investigation of possible

misconduct in 2015. Outside Counsel was retained by the Commission to advise same on the handling of the matter. Eventually it was, in effect, converted to an issue of disability. The matter remained open and unresolved as of the end of 2015. The matter was concluded in 2016 with the Judge being voluntarily retired because of disability as provided by the Colorado Constitution, Colorado State Law and the Charter and Ordinances of the City and County of Denver.

The remainder of the Complaints were dismissed with no action taken or remained open as of the end of the year. The results of pending matters will be reported in next year's report.

The Commission and Staff

The 2016 Commission operated under the coordination of Presiding Judge John M. Marcucci. Administratively, the day to day activities were organized with the highly professional assistance of Beverly Champion (Judicial Assistant III) and Administrative Assistant, Angela Caton. The Commissions membership was comprised of the following:


<i>Member</i>	<i>City</i>	<i>Category of Appointment</i>
Aaron Hyatt	Denver	Attorney
David M. Johnson	Denver	Attorney
Hon. Michael Vallejos	Denver	District Judge
Natalie Meyer	Denver	Citizen
Christena Estes Faraci	Denver	Citizen
Hon. Sheila Rappaport	Denver	District Judge
Nolbert Chavez	Denver	Citizen
Hon. John M. Marcucci*	Denver	Ex-Officio

*As of January 1, 2017, the Presiding Judge, the Hon. John M. Marcucci was replaced by Judge Theresa Spahn

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

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Fax: (720)865-8262
www.denvercountycourt.org OR www.denvergov.org

Done and signed this April 11, 2017



Honorable John M. Marcucci
Former Presiding Judge, Denver County Court