

Denver County Court Commission on Judicial Discipline 2018 Annual Report

Background and Jurisdiction

In 1967, Colorado State Courts adopted a merit system to appoint judges and to establish the Colorado Commission on Judicial Discipline. Prior to 1967, Denver's Charter provided a process for Judicial Discipline. Following several amendments, the current provision 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 2017, Denver County Court consisted of 17 County Court Judges, 3 full-time Magistrates, 12 part-time Magistrates and five full-time Parking Magistrates. In 2015, the Commission started to rewrite the Denver County Rules of Judicial Discipline so that they would mirror the Colorado Rules of Judicial Discipline. However, this project was temporarily paused in 2016 as the State advised the Commission that they were re-writing their rules. Therefore, the Commission is currently still working to rewrite the Denver County Rules of Judicial Discipline and plans to finish rewriting the rules in 2019.

Grounds for Judicial 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 (the "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 in 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 an 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 independent, integrity, or impartiality of the 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 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 members 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 serves as a member. Any members 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 2018

During 2018, the office of the Presiding Judge distributed approximately thirteen "Denver County Court Judicial Discipline Commission Information and Instructions" forms in response to requests for instructions on how to file a complaint. Thirteen citizens submitted Formal Complaints either using the Formal Complaint Forms mailed out or by creating their own complaint form. The number of complaints was lower than prior years. There does not appear to be any specific reason for the reduction. Only one matter from 2017 carried over to 2018. The complainant filed a complaint against an employee. The Commission sent an explanatory letter and closed the file. The remainder of 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 2018 Commission operated under the coordination of Presiding Judge Theresa A. Spahn. Administratively, the day to day activities were organized with the highly professional assistance of Presiding Judge Spahn's Law Clerk, Morgan Cali and Executive Assistant, Angela Johnson. The Commission's membership was comprised of the following:

<i>Member</i>	<i>City</i>	<i>Category of Appointment</i>
Nolbert Chavez	Denver	Citizen
Christena Estes Faraci	Denver	Citizen
Aaron Hyatt	Denver	Citizen
David Johnson	Denver	Attorney
Hon. Michael Vallejos	Denver	District Judge
Michelle Ostrander	Denver	Citizen
Hon. Sheila Rappaport (retired July 2018)	Denver	District Judge
Hon. Karen Brody (appointed July 2018)	Denver	District Judge
Hon. Theresa Spahn	Denver	Ex-Officio

The Honorable Judge Sheila Rappaport retired in July 2018. Mayor Michael Hancock appointed Honorable Judge Karen Brody to fill the vacancy.

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

Office of the Presiding Judge
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

Done and signed this April 29, 2019

Honorable Theresa A. Spahn
Presiding Judge, Denver County Court