

## Denver County Court Commission on Judicial Discipline 2021-2022 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.

The global COVID-19 pandemic has affected the ability of the Commission to meet quarterly. As such this report contains data from both 2021 and 2022. In 2021, Denver County Court consisted of 18 County Court Judges, 3 full-time Magistrates, 13 part-time Magistrates and five full-time Parking Magistrates. In 2021 The Denver County Court bench added an additional seat to the bench to total 19 Judges, with the 19<sup>th</sup> seat going into effect at the beginning of 2022. 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. The Commission is about to embark on rewriting the Denver County Rules of Judicial Discipline under the leadership of Judge Karen Brody and attorney Arron Hyatt.

### 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 service 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. Citizens are now able to file a complaint through electronic mail with instructions available on the

The presiding Judge's Office, administration, and the IT department revisited the process to request and file judicial complaints. This effort created a way to file complaints electronically. Information is available on the Denver County Court website to file a complaint with the Judicial Discipline Commission. The process has been made to reflect the process of the Colorado State Judicial Commission. This has created a more streamlined process that requires less time and efficiently sends complaints to the Presiding Judge's office. Additionally, it reduces the burden on citizens and staff of corresponding through traditional mail.

The instructions contain an explanation of grounds for discipline, etc. After initial screening, it is forwarded to the full Commission for review and follow-up discussion at quarterly meetings. COVID has affected the quarterly meetings and future meetings will be scheduled virtually. 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 2021 and 2022**

Due to the Covid-19 pandemic, much of 2021 remained virtual for Denver County Court, including no jury trials for an extended amount of time. Because of this, there has been significantly less volume of complaints filed against Judicial Officers, which has allowed this report to include both 2021 and 2022. During 2021, the office of the Presiding Judge distributed approximately eight "Denver County Court Judicial Discipline Commission Information and Instructions" forms in response to requests for instructions on how to file a complaint. Three citizens submitted Formal Complaints either using the Formal Complaint Forms mailed out or by submitting it online at Denver County Court's website portal. The number of complaints was lower than prior years. Other than the pandemic, there does not appear to be any specific

reason for the reduction. One inquiry was for Colorado Commission on Judicial Discipline as it was against a district judge, and information was given on how to file with their office.

During 2022, the office of the Presiding Judge distributed approximately six “Denver County Court Judicial Discipline Commission Information and Instructions” forms in response to requests for instructions on how to file a complaint. As of December 2022, five formal complaints have been filed in 2022 with no action taken. In addition, three inquires were referred to the Colorado Commission on Judicial Discipline as they inquired on District Court Judge and Probate Judge complaints.

### **The Commission and Staff**

The 2021-2022 Commission operated under the coordination of Presiding Judge Theresa A Spahn in 2021, and Presiding Judge Nicole M. Rodarte in 2022. Administratively, the day to day activities were organized in 2021 with the highly professional assistance of Presiding Judge Spahn’s Clerk, Jen Archuleta (Judicial Assistant III) and Executive Assistant III, Derek Barnard. Jayro Espino was prior Executive Assistant, and left the Denver County Court in July of 2021.

The Commission’s membership in 2021 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	Attorney
David Johnson	Denver	Attorney
Hon. Jay Grant	Denver	District Judge
Michele Ostrander	Denver	Citizen
Hon. Karen Brody	Denver	District Judge
Hon. Theresa Spahn	Denver	Ex-Officio

The Commission’s membership in 2022 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	Attorney
David Johnson	Denver	Attorney
Hon. Jay Grant	Denver	District Judge
Michele Ostrander	Denver	Citizen
Hon. Karen Brody	Denver	District Judge
Hon. Nicole M. Rodarte	Denver	Ex-Officio

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](http://www.denvercountycourt.org) or [www.denvergov.org](http://www.denvergov.org)

Done and signed this May 5, 2023

A handwritten signature in black ink, appearing to read "N. Rodarte", written in a cursive style.

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Honorable Nicole M. Rodarte  
Presiding Judge, Denver County Court