



March 18, 2022

Governor Jared Polis  
136 State Capitol  
Denver, CO 80203

Re: A referendum for a new judicial discipline system

Dear Governor Polis,

You used your power to help one out-of-state truck driver who faced problems in the judicial system. Would you please use your power to help all Coloradans who face problems with the judicial system?

Our judicial discipline system is an unmitigated failure. Fifty-six years ago, the commission was created via a referendum from the legislature. The commission has zero transparency and provides little accountability for our judges. A change in the system is long overdue. A look at recent events verifies the need for a new discipline commission.

A “judicial scandal” made a lot of headlines over the past year. A former state court administrator rattled out some improprieties in the administrator’s office and in the judiciary. Although documents reveal that it was more than a sexual harassment issue, the chief justice expertly took charge and narrowed the focus of investigations to sexual harassment.

That’s what judges do. They manage cases. And they do it well. So a situation that involved multiple court employees hiding information from a judicial nominating commission regarding a judge – and also hiding the judicial misconduct of other judges – became solely a sexual harassment situation thanks to the efforts of the chief justice. The legislature didn’t blink an eye as the chief justice took control of the situation and limited the scope of much publicized investigations.

In the process, the chief justice reminded all judicial branch employees that sexual harassment complaints against judges are to be filed with the judicial discipline commission. He issued a policy that requires such complaints to be filed with the commission. For 28 years straight, the discipline commission failed to publicly discipline a judge. And all proceedings before the commission are confidential. The state constitution says so. So what’s the best way to make sure sexual harassment accusations never see the light of day? Require that such complaints be filed with the Colorado Commission on Judicial Discipline.

Earlier this year, in a Joint Judiciary Committee hearing, Chief Justice Brian Boatright said: "We want to get out of the business of investigating judges." But he did so knowing that the discipline commission would request a million dollars in funding from the general fund. He also knew the commission would request an alleged "independent" office for investigating judges. The chief justice knew, however, that under such a scenario the Supreme Court would continue to have complete control over the discipline of judges.

Why? Only the Supreme Court can forcefully remove a judge from office. The state constitution says so. Only the Supreme Court can write the rules for the discipline commission. The state constitution says so. The chief justice knew there could not be an "independent" office for investigating judges. He knew that without amending the state constitution, the Supreme Court would continue to control the discipline commission.

We should, however, give the chief justice what he requested. We should get the Supreme Court out of the business of investigating judges. Colorado's system for judicial discipline should be improved. The only way to do that is to edit or amend the state constitution.

You're familiar with the initiative process. You used the process on some proposals regarding the oil industry. You ended up withdrawing your initiatives when Governor Hickenlooper came up with a compromise. Not long after your use of the initiative process, the oil industry proposed Amendment 71 which made it much more difficult to get an initiative on the ballot. We organized our group with the thought that we would attempt to get nonpartisan issues to improve the justice system on the ballot. But after Amendment 71 passed, we realized we could not get on the ballot.

People will pay to put partisan issues on the ballot. But because we simply want a fair and responsible justice system (something people believe should be provided by the government for free) it's difficult to find funding. The legislature should put a referendum on the ballot to improve the discipline commission. That's exactly what happened in 1966 when the legislature put a referendum on the ballot to create the current Colorado Commission on Judicial Discipline. The referendum passed and the commission opened up shop in 1967.

In the early years, the discipline commission and the Supreme Court actually disciplined judges. But in the 1980s the Supreme Court decided it had had enough. It used its rulemaking power over the commission to create an executive director who reports to the commission and to the Supreme Court. Then the Supreme Court wrote a rule requiring the executive director to dismiss complaints. It wasn't long before the dismissal of complaints filed by the public shot up to 97%. And it has continued to be 97% for almost 30 years.

And all those dismissals are confidential. The state constitution says so. Have you realized that we wouldn't have our current judicial scandal if complaints against judges were public? If complaints against judges were public, there wouldn't have been anything with which to blackmail the chief justice.

Do other states have different systems for disciplining judges? Absolutely. At present, California has the best system for disciplining judges. Colorado should follow the framework of California's system. In California, 1) the proceedings are public like they are in the vast majority of states, 2) the commission makes its own rules, 3) the citizens outnumber the legal professionals on the commission, 4) the commission actually can remove a judge from the bench but the judge can appeal to the Supreme Court, 5) the budget for the commission is public and separate from any other agency, 6) the commission does not have an executive director and 7) discipline opinions are published in a searchable database on the commission's website.

Attorney discipline proceedings in Colorado are public. And there's a good reason why. A published case regarding lawyer discipline, whether the lawyer is punished or not, provides guidance to other lawyers on what to do in a similar situation. Lawyers are constantly learning.

Colorado judges, on the other hand, are not learning anything because judicial discipline cases are confidential and are not published. Judges do not get the benefit of published opinions advising them of how to behave in certain situations. Judges are not learning how to be better judges. Judges have little fear regarding committing misconduct because they know if they behave badly it will most likely be kept under wraps.

Judges are public servants. Yet judicial discipline proceedings are private. Most lawyers work in the private sector. Yet lawyer discipline proceedings are public. The disparate treatment makes no sense. The discipline proceedings of public servants should be public. Judicial misconduct in Colorado, or even allegations of judicial misconduct, should not be kept from public view.

A vigorous system that enforces judicial ethics protects the public. It does more than discipline the individual at issue. It teaches other judges how to act in a similar situation. But when discipline decisions are not published or shared, the knowledge is lost. Colorado's dark judicial discipline system benefits no one except bad judges. The lack of transparency undermines the judiciary's credibility. Judicial discipline proceedings need to be public in Colorado.

The chief justice's attempt to narrow the focus of the investigations into the judicial branch is unfortunate. Colorado needs systemic change. Please use your power not just to help one individual, but to help us all achieve a better justice system. Please work with legislators to put a referendum on the ballot for a new judicial discipline system.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Forsyth', with a large, stylized flourish extending to the right.

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