

COLORADO JUDICIAL DEPARTMENT
FISCAL NOTE RESPONSE
2023 Legislative Session

Bill #		Today's Date:	January 13, 2023
LLS:	23-0150.01	Judicial Contact:	Mike Henthorn
Amendment:		Phone Number:	720-625-5856
Program Analysts: Robert Jones			
Title: Submitting to the Registered Electors of the State of Colorado an Amendment to the Colorado Constitution Concerning Judicial Discipline, and, In Connection Therewith, Establishing an Independent Judicial Discipline Adjudicative Board, Setting Standards for Judicial Review of a Discipline Case, and Clarifying When Discipline Proceedings Become Public.			
Effective Date: Certification of the election occurring November 5, 2024			

Fiscal Impact Summary:	
Expenditure: Minimal	
Revenue: None	
Areas Impacted: Trial Courts	

Bill Summary:

This bill is a concurrent resolution that would put the following question on statewide ballot for Colorado voters on November 5, 2024: "Shall there be an amendment to the Colorado constitution concerning judicial discipline, and, in connection therewith, establishing an independent judicial discipline adjudicative board, setting standards for judicial review of a discipline case, and clarifying when discipline proceedings become public?" The effect of the ballot proposal would be to amend the Colorado Constitution as outlined in the bill text.

In current statute, the Commission on Judicial Discipline gathers information on complaints of judicial misconduct and may order informal remedial action or a formal hearing before itself. It may also request the Supreme Court to appoint justices or judges as special masters to review evidence for the complaint and report on the evidence to the Commission. If the Commission finds cause for formal discipline it makes a recommendation to the Supreme Court, who decides and issues the discipline.

This ballot proposal would create the "Independent Judicial Discipline Adjudicative Board" within the Judicial Department to hear complaints against judges. The Adjudicative Board would be comprised of four judges appointed by the Supreme Court, four attorneys appointed by the Governor, and four citizens appointed by the Governor and confirmed by the Senate.

If the proposal passes, the Commission would still conduct its initial review of complaints, after which it could elect to dismiss the complaint, order informal remedial action, or order a formal discipline hearing before the Adjudicative Board. A judge who is ordered to receive remedial action could also appeal to the Adjudicative Board. If a formal hearing is ordered, the State Court Administrator or designee would empanel one judge, one attorney, and one citizen randomly

chosen from the Adjudicative Board. A panel would hear the complaint and, if warranted, issue discipline. A hearing would initially be structured according to the Colorado Rules of Evidence and Civil Procedure but may be further structured by rules issued by the Supreme Court with input from a rule-making committee. The proposal would strike the option to use special masters.

A decision of a panel would be appealable to the Supreme Court by either the judge facing the complaint or the Commission. The Court would review the complaint de novo (as if the panel had not issued a decision) to decide whether the decision of the panel is “clearly erroneous,” or the discipline issued is an “abuse of discretion.” If the decision is overturned, the complaint would be sent back to the panel with corrective instructions. If the complaint is against a supreme court justice, a justice is a witness, or if a staff or family member of a justice is a complainant or witness, the State Court Administrator will instead select a tribunal of seven random court of appeals judges to hear the appeal. This will also occur if more than two justices recuse themselves from the proceeding.

The proposal would also allow the Commission to inform the victim and complainant of the status of a complaint and share information with the State Court Administrator and judicial oversight entities about any complaint after the start of a formal hearing. This information must remain confidential.

Lastly, the proposal would make complainants and witnesses immune from defamation claims for information provided during the complaint process.

Assumptions/Calculations:

Trial Court:

This ballot proposal would shift workload for some judges starting in November 2024. The proposal would eliminate the need for justices and judges to serve as special masters, decreasing workload. However, that workload may be replaced by the need for judges to serve on Adjudicative Board panels. The overall impact is assumed to be minimal and absorbable within current resources. For context, in 2021 the Commission on Judicial Discipline reported that six requests for evaluation prompted formal proceedings that could have required appointment of special masters. If there is an increase in the number of requests for evaluations this would increase workload for justice and judges and may drive need for additional FTE to manage this workload.

It is assumed that the amount of time spent by judicial personnel responding to complaints and acting as witnesses would not be significantly altered by the proposal.

Probation:

No impact.

Information Technology:

No impact.

Revenue:

No impact.



COLORADO

Governor Jared Polis

2023 Fiscal Note Response: analysis of impact to Boards & Commissions division of the Governor's Office

LLS: R23-0150.01

Bill Title: Judicial Discipline Procedures &

Governor's Office Summary of Bill:

The bill creates the Independent Judicial Discipline Adjudicative Board. The board will consist of 4 judges appointed by the Supreme Court, 4 attorneys appointed by the Governor and confirmed by the Senate, and 4 citizens appointed by the Governor and confirmed by the Senate. The board will conduct formal disciplinary proceedings for the Judicial branch of the government. The board is given the power to require remedial action of, remove, or otherwise discipline a justice or judge against whom a case is brought. The board has the power to dismiss cases at its discretion. The bill also provides procedures for appeals, and provides confidentiality of all documents related to cases currently in process.

Additionally, the bill creates a rule-making committee for the Commission on Judicial Discipline. It consists of 5 members appointed by the supreme court and 5 members appointed by the commission.

Assumptions and calculations

The Boards & Commissions staff tracked the time they spent facilitating the Governor's appointment of new members to boards & commissions in Fiscal Year 2020-21. An analysis showed that, on average, staff spend about **8.54 hours** on the appointment of **one member of a board or commission**. Given that one FTE will work for 2,080 hours per year, **the calculations below represent the FTE the proposed legislation will require**. The FTE would be roughly equivalent to a classified Program Assistant II with a salary of \$60,000 per year.

Avg hrs/member appointment	8.5			
Number of new appointments in bill draft	8			
Required FTE	0.03			
Required salary + benefits	\$2,570			

COLORADO COMMISSION ON JUDICIAL DISCIPLINE



September 19, 2022

Mr. Aaron Carpenter
Legislative Council
200 East Colfax Ave., Ste. 29
Denver, CO 80203

Re: Interim Committee on Judicial Discipline Bill 1

Dear Mr. Carpenter:

The Commission has reviewed draft Bill 1, which proposes amendment of the Colorado Constitution through a concurrent resolution. If passed, Bill 1 will have fiscal impacts through the costs and facilities necessary for adjudicative proceedings. Bill 1 will have additional fiscal impacts through the administrative costs and travel expenses related to the proposed adjudicative and rulemaking boards. Because Bill 1 relates to general constitutional authorization, the Commission reserves the ability to supplement its cost estimates pending implementing legislation and further development of the legislative record. With the information presently available, the Commission estimates the fiscal impacts of Bill 1 as follows:

1. **Compensation for Adjudicatory Panel Members**—Currently, appointed special masters are compensated for their time as active or senior judges. If the proposed adjudicative board and adjudicative panel system is created, it is assumed that the judge members will still receive compensation through their ordinary salaries. While the constitutional amendment does not address compensation for the attorney and citizen members of the adjudicative panels, it is appropriate to contemplate providing compensation like that paid to senior judges (\$612.68 per day). Based upon an estimate of 3-4 weeklong formal adjudicative hearings per year with 2 panel members needing compensation, the Commission estimates a fiscal impact of \$25,000.
2. **Travel Costs for Adjudicative Panels**—Bill 1 proposes changing the current system of supreme court appointment of three-judge special master panels to adjudicative panels composed of one judge, one attorney, and one citizen. These panels will be chosen from a larger adjudicative board composed of four judges, four attorneys, and four citizens who serve set 5-year terms (staggered through initial appointments). The adjudicative panels are selected as needed on a case-by-case basis. Bill 1 is silent as to whether any of the

adjudicative board or adjudicative panel members will receive compensation for their services. Based upon an estimate of 3-4 week-long formal adjudicative hearings per year, the Commission estimates that annual travel and lodging expenses for the adjudicative panels (drawn from persons around Colorado) will cost \$12,000.

3. **Training Costs for Adjudicative Board**—Part of the intent behind selecting an adjudicative board is to ensure the familiarity of its members with judicial discipline law and procedures. The adjudicative panels will also be expected to apply rules of civil procedure and rules of evidence in their proceedings. Given that the panels will include judges, attorneys, and citizens with varied backgrounds, training will be necessary to allow each panel member to exercise their authority fully and independently while conducting adjudicative proceedings. The Commission estimates that these training costs will be \$35,000, inclusive of compensation for the non-judge members of the adjudicatory board.
4. **Upgrade / Designation of a Fully Equipped Trial Courtroom for Formal Adjudicative Hearings**—The Commission currently utilizes the Presiding Disciplinary Judge's courtroom when available for formal adjudicatory hearings. When this courtroom is unavailable, the Commission uses an adjacent moot courtroom in the Ralph L. Carr Judicial Center. To ensure that an adequate facility exists for the adjudicative panels' needs, either the existing moot courtroom will need to be upgraded to current A/V and video conferencing technology with prioritized access for the adjudicative panels or a dedicated courtroom will need to be built in the Carr Center. Upgrading the existing moot courtroom is estimated to cost \$35,000. Constructing a new courtroom is difficult to estimate without first identifying suitable space within the Carr Center.
5. **Integration with Judicial Paper on Demand (JPOD) and E-Filing Systems**—The proposed constitutional amendments will make judicial discipline proceedings public with the filing of formal charges. Currently, the Commission is responsible for maintaining the record of formal proceedings. As a separate entity performing judicial/adjudicative functions, the adjudicative board should be able to utilize the Judicial Department's JPOD and e-filing systems to maintain the record of formal/adjudicative proceedings. It is unknown how much it will cost to expand the JPOD and e-filing system to include the adjudicative panels as the equivalent of a trial court. Bill 1 does not define how the adjudicative panels will be administratively supported. Inclusion of the adjudicative panels in the JPOD and e-filing systems would allow for the Supreme Court Clerk's Office or another court (including the staff of the judge member of the adjudicatory panel) to provide the necessary administrative support.
6. **Accommodations for Rule-Making Committee**—Bill 1 proposes the creation of a rule-making committee with the supreme court and the Commission selecting equal numbers of members. It is assumed that administrative staffing for the rule-making committee will

come from existing Commission or Judicial Department staff. The Commission estimates that annual travel and lodging expenses for the committee will be \$5,000.

7. **Review of Existing Rules of Judicial Discipline / Outside Proposal for Revisions**—The Commission believes that it would be beneficial to have an outside national organization, either the National Center for State Courts or the American Bar Association, review the Colorado Rules of Judicial Discipline and to propose revisions. The Commission is in the process of seeking estimates of the potential costs of such a review and recommendations.

Please do not hesitate to contact the Commission if you need clarification and further information regarding these estimates. The Commission reserves the ability to adjust these estimates/budget requests if assumptions change or if Bill 1 is further modified. Thank you for the opportunity to comment on this proposed legislation.

Sincerely,


Christopher S.P. Gregory
Executive Director

**RE: *Confidential: RE: Information Requested for Fiscal Note 23-0150 -
Judicial Discipline Procedures & Confidentiality**

henthorn, mike

to: Aaron Carpenter

09/22/2022 05:20 PM

Cc
: "Fiscal Notes"

Hi Aaron,

The bill does not specify how admin support will be provided. We expect that the cases managed by the adjudicatory panel will be staffed by a CJA (court judicial assistant) for the judge member of the panel. If a courtroom is needed, the judge will find a courtroom. This is minimal/absorbable based on the expected volume of cases each year this would be required. Further support beyond this is not anticipated at this time.

The Department does not anticipate allowing its current systems to be used for this process, therefore, any costs are unknown at this time. Typically, the Department hasn't opened up its internal case management system to anyone outside of Judicial, including independent agencies. In the situations where it has been requested, it usually requires programming/customization to the case management system to meet the specific business need, and perhaps more importantly, strict security controls to keep information separated. This is an issue that currently has not been resolved. In the event the Department does allow this access, our assumptions regarding potential costs will be revised.

Hope this helps.

Thanks.

Mike Henthorn, Budget Analyst II
Office of the State Court Administrator | Financial Services Division
1300 Broadway, Suite 1200 | Denver, CO 80203
Office: 720-625-5856 Fax: 720-625-5933

From: Aaron Carpenter <aaron.carpenter@state.co.us>

Sent: Thursday, September 22, 2022 11:40 AM

To: henthorn, mike <michael.henthorn@judicial.state.co.us>

Cc: Fiscal Notes <fiscalnotes@judicial.state.co.us>

Subject: [External] *Confidential: RE: Information Requested for Fiscal Note 23-0150 - Judicial Discipline Procedures & Confidentiality

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Mike!

I had a question for you. On 0150, the Commission pointed out in their response that by making a

separate entity to oversee these disciplinary decisions, the board should be able to utilize the Judicial Paper on Demand and E-Filing System. I wanted to check in with the department on that to see if 1. the department agrees and 2, if there a cost to giving access to that.

There's also a question on who is administratively supporting the panel. The Commission said that inclusion in those two systems would allow the Supreme Court Clerk's Office or another court (including the staff of the judge member of the adjudicatory panel) to provide the necessary administrative support. I think they were basing this off of the current practice that a judge working with the commission would use their staff in an hearing.. hopefully I'm not over simplifying. But, wanted to see if the department had any thoughts on administrative support for the board.

If it is possible to get answers back tomorrow morning, I'd appreciate it. Sorry for the quick turn around on these questions.



Aaron Carpenter
Senior Fiscal Analyst
Legislative Council Staff
Direct: 303-866-4918 | **LCS Main:**
303-866-3521
Email: aaron.carpenter@state.co.us
200 East Colfax Ave, Suite 029, Denver CO
80203

From: "henthorn, mike" <michael.henthorn@judicial.state.co.us>
To: "Aaron Carpenter" <aaron.carpenter@state.co.us>
Cc: "Fiscal Notes" <fiscalnotes@judicial.state.co.us>
Date: 09/21/2022 11:51 AM
Subject: RE: *Confidential: Information Requested for Fiscal Note 23-0150 - Judicial Discipline Procedures & Confidentiality

Hi Aaron,

Our response is attached and it is minimal. I was waiting for the go ahead so all the Discipline bills could go through additional internal reviews, so thank you for the extension.

Thanks.

Mike Henthorn, Budget Analyst II
Office of the State Court Administrator | Financial Services Division
1300 Broadway, Suite 1200 | Denver, CO 80203
Office: 720-625-5856 Fax: 720-625-5933

From: Aaron Carpenter <aaron.carpenter@state.co.us>

Sent: Monday, September 12, 2022 8:04 AM

To: Fiscal Notes <fiscalnotes@judicial.state.co.us>; jonathon.bray@state.co.us;
pj.johnson@state.co.us; meredith.moon@state.co.us; megan.davisson@state.co.us;
christopher.gregory@judicial.state.co.us

Subject: [External] *Confidential: Information Requested for Fiscal Note 23-0150 - Judicial Discipline Procedures & Confidentiality

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good Morning all,

Please find LLS 23-0150 attached and respond with any impact by the 19th. The bill is referring a measure to the voters about creating an independent judicial discipline adjudicative board.

Please reach out if you have any questions,



Aaron Carpenter

Senior Fiscal Analyst
Legislative Council Staff

Direct: 303-866-4918 | **LCS Main:**
303-866-3521

Email: aaron.carpenter@state.co.us
200 East Colfax Ave, Suite 029, Denver CO
80203

Reminder: bill drafts are confidential. This email is being sent to Judicial - JUDICIAL - CIVIL or ADMINISTRATION, State - GOVERNOR. [attachment "LLS 23-0150 Judicial Discipline Procedures and Confidentiality.docx" deleted by Aaron Carpenter/CLICS]

2024 Ballot Analysis for HCR23-1001

Judicial Discipline

Jim Carpenter and Jeff Walsh from Judicial Discipline Commission

Please be advised that Blue Book work product is subject to the Colorado Open Records Act. We are recording this interview, and after our first draft is made public (scheduled for ____), it could be released if requested.

Interview Questions

1. What do you consider to be the most important points that voters should know about the measure?
 - Essential part of a bigger effort to update the judicial discipline process, which hasn't been updated since it was created in the 1960s
 - Updating process, bringing it in-line with other states, etc.
 - Current system is very arcane
 - Modernizing process, adding transparency, helping insure the independence of the judicial discipline process
 - Transparency
 - Independence
 - Modernization
 - Judicial Discipline Commission supports the measure
 - Biggest points:
 - Increase transparency + increased independence from the judiciary = increased public trust in system
 - Bring up these points, then go into how the measure achieves them
 - Measure:
 - Establishes a board for judicial discipline that replaces the judiciary from cases
 - This really helps with independence
 - Judicial discipline cases become public as soon as formal charges made
 - This helps with transparency
 - Currently, cases only really become public when decision is made on them
 - Development of rule-making committee which will re-write rules on judicial discipline
 - This committee will be made of diverse background of people
 - Public has input at these meetings
 - This measure puts Colorado in category of having one of the most robust/progressive judicial discipline processes in the US

2. What information do you think should be included in the background section of the ballot analysis?
 - Judicial Discipline Commission website has some info that could be helpful
 - Why it's important:
 - Judiciary is a key part of our government system – need to maintain its credibility
 - Case flow included?
 - Might be too much in the weeds
 - Current system is judges judging judges
 - Most people might not know this
3. What are the strongest arguments in favor of the measure?
 - Judiciary is a key part of our government system – need to maintain its credibility
 - Better judicial discipline process is a part of this
 - Want the judges that sit atop the Judiciary branch to be held accountable
 - Especially important since state judges are not elected, selected through nonpartisan method
 - Moves judicial discipline away from the judiciary quite a bit
 - Hard for police to police their own, and also hard for judiciary to discipline itself
 - Don't want judges judging judges
 - Just like you don't want police officers policing police officers
 - This measure allows anyone to bring a referral of issues with a judge
 - Gives public more power and input
 - Someone will always read their complaint
 - This measure's process walks the right line and is a balanced approach
 - Judges should be a part of the process
 - Anybody can make allegation, but there's a review process before those allegations become public – this is the right balance
 - There are tons of complaints against judges just due to the nature of their job – if every claim was public, all claims may lose credibility
 - This would also slow down all judicial discipline processes and the court system in general
 - Transparency, independence, modernization
4. What are the strongest arguments against the measure?
 - Doesn't go far enough
 - Shouldn't have any judges or members of judiciary involved in judicial discipline
 - The commission is a sham
 - Entire process should be open and public
5. Are you aware of organizations supporting or opposing this measure?
 - Freedom of Information Coalition
 - Colorado Womens Bar
6. Are there other individuals we should be including in the review of the ballot analysis?

7. Are there any additional comments that you would like to add that were not addressed by our questions?



2024 Ballot Analysis for HCR23-1001

Judicial Discipline

Please be advised that Blue Book work product is subject to the Colorado Open Records Act. We are recording this interview, and after our first draft is made public (scheduled for ____), it could be released if requested.

Interview Questions

1. What do you consider to be the most important points that voters should know about the measure?
 - Big picture way to describe it: address conflict of interest issues in the system for holding judges accountable to the ethics code
 - Another, more loaded way of saying this: reduces control that judiciary has over what is supposed to be a system of independent accountability
 - Modern merit selection system came in in 1960s – got rid of accountability system from elections that was there prior
 - Accountability was supposed to come from nomination and ethics process
 - Judicial discipline system was part of accountability system
 - But scandal showed that judiciary has substantial control over that judicial discipline process – which is a problem
 - This initiative is part of package by legislature to lessen the conflict of interest issues in judicial discipline
 - Biggest things it addresses:
 - Increases transparency
 - Moves Colorado from being most secretive system to more on par with rest of states
 - Still secretive, but more in line with other places
 - But really doesn't make it a transparent system
 - Deals more directly with conflict of interests at the Supreme Court level
 - Creates system to deal with conflicts at this level
 - Creates a trial court for ethics complaints that is less controlled by the judiciary
 - Indirect control of it still exists, but less control
 - Under old system, SC itself selected judges and tried the cases for ethic complaints
 - Removes the rule-making authority for this process from the SC
 - Rule-making committee instead
 - But SC still involved in choosing committee members
 - *SC = Supreme Court
 - Addresses conflicts of interests that exist in the system for holding judges accountable to ethics rules

2. What information do you think should be included in the background section of the ballot analysis?
 - Challenges presented by recent cases and investigations into allegations illustrated some inherent structural conflicts of interest in the system, so the legislature took action and came up with those proposed fixes for it
 - Have to acknowledge these changes are coming due to real life events, not just due to theoretical problems with the system
 - Even the SC acknowledged there are problems with the system during discussions in past few years
 - Background info on what the commission on judicial discipline even is
 - Maybe background on case law – Judge Prince thinks this wouldn't be helpful though
3. What are the strongest arguments in favor of the measure?
 - Judicial discipline was enacted in the 1960s, hasn't been revisited
 - Based on (recent) experiences, it needs updating
 - Was intended to be independent mechanism that is citizen involved to provide accountability to the ethical rules for judges
 - Mechanism was identified to have inherent issues in the structure of the system
 - Reduce judicial control over a system that was intended to provide independent accountability for the judiciary
4. What are the strongest arguments against the measure?
 - The initiative does not go far enough
 - This measure does not make the system independent – leaves the judiciary with substantial indirect control
 - This initiative just moves from direct control to indirect control
 - This could actually make things worse, reduces transparency and accountability in the way the judiciary would exercise control
5. Are you aware of organizations supporting or opposing this measure?
6. Are there other individuals we should be including in the review of the ballot analysis?
 - Carver (from interim committee)
 - Cicasa
 - Sen Gonzales, Sen Gardner
7. Are there any additional comments that you would like to add that were not addressed by our questions?

2024 Ballot Analysis for [measure number]

[short title]

Please be advised that Blue Book work product is subject to the Colorado Open Records Act. We are recording this interview, and after our first draft is made public (scheduled for ____), it could be released if requested.

Interview Questions

1. What do you consider to be the most important points that voters should know about the measure?
 - Increases transparency, accountability, and independence in the process
 - Judges will be held more accountable when they violate the code of ethics
 - Judges held to very high standard, they can be referred to Commission on Judicial Discipline for things like being inebriated in public
 - This is also because they have a lot of power
 - Cases will become public earlier
2. What information do you think should be included in the background section of the ballot analysis?
 - Commission is essentially a prosecutor
 - Supreme Court's order (after Commission refers a case to them) is when case becomes public
 - Significant spike in complaints and action from Commission in the last 5 years
 - We don't know if it's because of more complaints or Commission just being more active
 - Probably because of increasing awareness of the Commission though
 - The aggregate data this measure requires will bring some transparency to this
 - Missouri Plan is what we have in Colorado
 - Meaning our judges are selected based on merit
 - Merit selection and merit retention
 - This is compared to some states that have Governor appointed, elected, legislature selected, etc.
 - This measure strengthens the merit selection process
 - Bad behavior by judges will be reflected on records when judges are being considered
3. What are the strongest arguments in favor of the measure?
 - Increases public confidence in courts as accountability increases
 - Victims will have more access to the proceedings

4. What are the strongest arguments against the measure?
 - Creates a system that could be used as a weapon against a judge
 - People making false complaints to get retaliation against a judge, or maybe get a judge off a certain case
 - And leads to overall increases in complaints, meaning more work (and cost) for Judicial Discipline Commission
 - This is a product of the increased transparency
 - New system could be weaponized
 - Many people could abuse it for various reasons
5. Are you aware of organizations supporting or opposing this measure?
6. Are there other individuals we should be including in the review of the ballot analysis?
 - Chris Forsyth
 - Argues that the measure doesn't go far enough
7. Are there any additional comments that you would like to add that were not addressed by our questions?

RE: Interview for HCR23-1001

Jeff Walsh to: LCS Judicial Discipline Procedures HCR23-1001,
Jim Carpenter

05/29/2024 06:41 PM

History: This message has been replied to.

Wednesday, June 5 at 10:30 a.m. works well for me too.

Thanks,

Jeffrey M. Walsh
Special Counsel



COLORADO

Office of Judicial Discipline

P: [REDACTED] | F: [REDACTED]
1300 Broadway, Ste. 210, Denver, CO
80203
ccjd.colorado.gov

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From: Juliann Jenson <juliann.jenson@coleg.gov> **On Behalf Of** LCS Judicial Discipline Procedures HCR23-1001

Sent: Wednesday, May 29, 2024 5:15 PM

To: Jim Carpenter <[REDACTED]>

Cc: Jeff Walsh <j.walsh@jd.state.co.us>

Subject: Re: Interview for HCR23-1001

Great - let's plan for the Wednesday, June 5th, at 10:30 am. We will send out a Zoom link closer to the date and time. Thanks again for your willingness to talk about judicial discipline! - Juliann

From: "Jim Carpenter" <[REDACTED]>
To: "LCS Judicial Discipline Procedures HCR23-1001" <judicialdiscipline2024@coleg.gov>
Cc: j.walsh@jd.state.co.us
Date: 05/29/2024 02:25 PM
Subject: Re: Interview for HCR23-1001

Thanks Juliann. The 5th at 10:30 works great. I can do 2 on the 6th as well. I am out of town, so zoom would be great.

Appreciate your reaching out!

Jim

On Wed, May 29, 2024 at 1:16 PM LCS Judicial Discipline Procedures HCR23-1001 <judicialdiscipline2024@coleg.gov> wrote:

Mr. Carpenter and Mr. Walsh,

I'm following-up from a previous email to find a time to chat with you both about [HCR23-1001](#), judicial discipline procedures and confidentiality. Per the email, Jeff said you both have some availability on Wednesday and Thursday of next week (June 5 or 6). Would 10:30 am on either of those days work for you? Otherwise, we could make 2:00 pm work as well.

The interview generally takes less than an hour and can be done over Zoom. Please let me know preferred date and time. Thank you in advance! - Juliann



HCR23-1001, Judicial Discipline, Writing Team

Juliann Jenson - Team Lead
Aaron Carpenter
Adam Alemzada

Office: 303-866-3264 | **LCS Main:** 303-866-3521

Thanks, Juliann. Jim Carpenter (our Vice Chair) and I would be delighted to talk. Wednesday or Thursday next week would be best for us if you want to suggest a few times. I've CCed Jim here. I think doing it virtually would be easiest.

You also might want to reach out to Judge David Prince (the Commission's former Vice Chair). He was very involved in the process of helping to get HCR23-1001 passed, and he's very knowledgeable on the subject. His email address is David.prince@judicial.state.co.us.

Best,

Jeffrey M. Walsh
Special Counsel



COLORADO

Office of Judicial Discipline

P: [REDACTED] | F: [REDACTED]
1300 Broadway, Ste. 210, Denver, CO 80203
ccjd.colorado.gov

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RE: Interview for HCR23-1001, Judicial Discipline
prince, david to: LCS Judicial Discipline Procedures
HCR23-1001

05/30/2024 10:49 AM

That works. Talk to you then.

From: Juliann Jenson <juliann.jenson@coleg.gov> **On Behalf Of** LCS Judicial Discipline Procedures HCR23-1001
Sent: Thursday, May 30, 2024 10:48 AM
To: prince, david <david.prince@judicial.state.co.us>
Subject: [External] RE: Interview for HCR23-1001, Judicial Discipline

Judge Prince,

How about Tuesday, June 4th at 10:00 am? I'll send out a calendar invite with a Zoom link early next week. As I wrote before, it's more of a casual conversation about the measure's intent, application, arguments in favor of and against, etc. Let me know if you have any questions in the meantime and thanks again for making time to discuss judicial discipline! - Juliann

From: "prince, david" <david.prince@judicial.state.co.us>
To: "LCS Judicial Discipline Procedures HCR23-1001" <judicialdiscipline2024@coleg.gov>
Date: 05/30/2024 09:40 AM
Subject: RE: Interview for HCR23-1001, Judicial Discipline

Ms. Jenson,

The development anticipated for next week has come to fruition and my schedule is now very flexible next week. Looks like any day next week after 10:00 a.m. would work for me. I suppose that if I have a preference, it would be for a morning and Tuesday or Wednesday at 10 would be good options, but most any day will work. Let me know your preference.

David Prince

From: Juliann Jenson <juliann.jenson@coleg.gov> **On Behalf Of** LCS Judicial Discipline Procedures HCR23-1001
Sent: Wednesday, May 29, 2024 1:55 PM
To: prince, david <david.prince@judicial.state.co.us>
Subject: [External] RE: Interview for HCR23-1001, Judicial Discipline

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you - no problem, just shoot me an email when you have a better idea of your schedule. Look

forward to talking with you. - Juliann

From: "prince, david" <david.prince@judicial.state.co.us>
To: "LCS Judicial Discipline Procedures HCR23-1001" <judicialdiscipline2024@coleg.gov>
Date: 05/29/2024 01:42 PM
Subject: RE: Interview for HCR23-1001, Judicial Discipline

Ms. Jenson,

I'm happy to be of help. I should know more about my schedule after some discussions tomorrow. If you don't mind, I'll wait a day or so before offering you options in the hopes that I'll learn of greater flexibility. If that won't work for you, let me know and I'll provide windows I can identify now.

David Prince

From: Juliann Jenson <juliann.jenson@coleg.gov> **On Behalf Of** LCS Judicial Discipline Procedures HCR23-1001
Sent: Wednesday, May 29, 2024 1:39 PM
To: prince, david <david.prince@judicial.state.co.us>
Subject: [External] Interview for HCR23-1001, Judicial Discipline

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or you recognize the sender and know the content is safe.

Judge Prince,

With the legislative session in the rearview mirror, it's time to start the Blue Book process! As you know, [HCR23-1001](#), judicial discipline procedures and confidentiality, is on the upcoming 2024 Colorado ballot. Legislative Council writes the Blue Book analysis for ballot measures. As part of this process, we aim to interview interested or impacted parties to gain a better understanding of the measure's intent, application, background, pros/cons, etc. I remember you being very involved with the Interim Committee on Judicial Discipline in 2022 and thought you might be a good person to talk about the measure,.

Would you be able to meet with our writing team within the next couple of weeks? The interview generally takes less than an hour and can be done over Zoom or in-person. Please let me know preferred dates and times, and I'm sure we can work something out on our end. Thank you in advance! - Juliann

HCR23-1001, Judicial Discipline, Writing Team

Juliann Jenson - Team Lead
Aaron Carpenter
Adam Alemzada



Office: 303-866-3264 | **LCS Main:** 303-866-3521

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Re: HCR23-1001 Judicial Discipline Procedures & Confidentiality - 1st Draft

Cory Gaines to Colorado Legislative Council Staff

06/25/2024 03:31 PM

History: This message has been replied to.

Good afternoon,

I had some feedback about the section near the end, the arguments for and against.

I will screenshot the section I mean (see below).

I'm not quite sure I have a specific bit of language to share, but I'm wondering if some historical context here would help voters be better informed. The impetus for a lot of this work has been recent scandals and an admitted (even by the judiciary themselves) lack of public trust. There has been some difficulty in doing this in a way that respects separation of powers, but I think voters should be made aware of and/or reminded of this background. It would have, I think, bearing on their decisions to know that this is in response to the judiciary being not entirely able to manage their own shop.

C

1 **Arguments For HCR23-1001**

- 2 1) Colorado judges should not have direct influence and oversight over their own discipline.
3 HCR23-1001 aims to enhance the autonomy, transparency, and independence of the
4 judicial discipline process. Historically, judicial discipline has largely been self-regulated,
5 facing challenges in oversight and self-protection. This amendment serves to enhance
6 public confidence and trust in the courts.

On Tue, Jun 25, 2024 at 2:59 PM Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov> wrote:

Draft Ballot Analysis from Legislative Council Staff

**HCR23-1001 Judicial
Discipline
Procedures &
Confidentiality - 1st**

Draft

Each year the Legislative Council Staff prepares a voter information booklet that includes an analysis of measure that will appear on the statewide ballot. We distribute drafts of each analysis to people who are interested in commenting on the draft. The attached document is the second draft of the Legislative Council Staff analysis of **HCR23-1001 Judicial Discipline Procedures & Confidentiality**. The second attachment describes the process for writing each analysis.

You can reply to this email to send your comments via e-mail. Comments are due by **7/02/2024**. If you are having problems accessing the documents, please click [here](#). The website contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your assistance.

Draft of Analysis

Analysis Process

Re: HCR23-1001 Judicial Discipline Procedures & Confidentiality - 1st Draft

Bennett Rutledge

to: Colorado Legislative Council Staff

06/26/2024 10:31 AM

This one sets up a Independent Judicial Discipline Adjudicative Board separate from the Commission on Judicial Discipline and the Colorado Supreme Court, to decide judicial discipline cases. The board consists of four district court judges, four attorneys, and four citizens. The new board's decisions are considered final, and the Colorado Supreme Court's role is limited to appeals. The big difference I see is

that a Yes: would have four citizens involved in holding judges accountable, rather than solely shysters and black-robed-ex-shysters.

Thanks,

Bennett Rutledge

Centennial, Colo.

[REDACTED] (m)

[REDACTED] (h)

[REDACTED]

-----Original Message-----

From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Sent: Jun 25, 2024 2:59 PM

To: Bennett Rutledge <

Subject: HCR23-1001 Judicial Discipline Procedures & Confidentiality - 1st Draft

Draft Ballot Analysis from Legislative Council Staff



Ballot Analysis

Legislative Council Staff

HCR23-1001 Judicial Discipline Procedures & Confidentiality - 1st Draft

Each year the Legislative Council Staff prepares a voter information booklet that includes an analysis of measure that will appear on the statewide ballot. We distribute drafts of each analysis to people who are interested in commenting on the draft. The attached document is the second draft of the Legislative Council Staff analysis of **HCR23-1001 Judicial Discipline Procedures & Confidentiality**. The second attachment describes the process for writing each analysis.

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Thank you for your assistance.

Draft of Analysis

Analysis Process

Legislative Council Staff
200 East Colfax Ave., Room 029
Denver, CO 80203
303-866-3521

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Re: HCR23-1001 Judicial Discipline Procedures & Confidentiality - 1st Draft

Bennett Rutledge

to: Colorado Legislative Council Staff

06/26/2024 11:10 AM

Cc : "Adam McDaniel (LPAC Comm)", "Joe DiBiasio"

History: This message has been replied to.

Gentlefolk,

Please disregard my message, which was inadvertently REPLYed to you. I am not on the board of the Libertarian Party Affiliate of Arapahoe County. Only Mr. DiBiasio, the Chair or Mr. McDainiel, the Communications Director, should be considered as speaking for the Affiliate.

Thank you,

Bennett Rutledge

Centennial, Colo.

[REDACTED] (m)

[REDACTED] (h)

[REDACTED]

-----Original Message-----

From: Bennett Rutledge <[REDACTED]>

Sent: Jun 26, 2024 10:31 AM

To: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Subject: Re: HCR23-1001 Judicial Discipline Procedures & Confidentiality - 1st Draft

This one sets up a Independent Judicial Discipline Adjudicative Board separate from the Commission on Judicial Discipline and the Colorado Supreme Court, to decide judicial discipline cases. The board consists of four district court judges, four attorneys, and four citizens. The new board's decisions are considered final, and the Colorado Supreme Court's role

is limited to appeals. The big difference I see is

that a Yes: would have four citizens involved in holding judges accountable, rather than solely shysters and black-robed-ex-shysters.

Thanks,

Bennett Rutledge

Centennial, Colo.

[REDACTED] (m)

[REDACTED] (h)

[REDACTED]

-----Original Message-----

From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Sent: Jun 25, 2024 2:59 PM

To: Bennett Rutledge <[REDACTED]>

Subject: HCR23-1001 Judicial Discipline Procedures & Confidentiality - 1st Draft

Draft Ballot Analysis from Legislative Council Staff

Ballot Analysis

Legislative Council Staff

HCR23-1001 Judicial Discipline Procedures & Confidentiality - 1st Draft

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You can reply to this email to send your comments via e-mail. Comments are due by **7/02/2024**. If you are having problems accessing the documents, please click [here](#). The website contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your assistance.

Draft of Analysis

Analysis Process

Legislative Council Staff
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Comments of HCR23-1001 Blue Book Statement--Version 1

Christopher Gregory

to: judicialdiscipline2024@coleg.gov

06/28/2024 09:55 PM

History:

This message has been replied to.

Good Evening,

Attached, please find requested red-lined changes as to this first version of the Blue Book statement on HCR23-1001. I have also attached a revised flow chart in MS Visio format so that you can modify it as you see fit.

I submit these comments individually and not on behalf of any agency or organization. I was, however, personally involved in the drafting and legislative process that resulted in the Legislature's final approval of HCR23-1001.

Please do not hesitate to contact me if you have any questions about my comments or editing suggestions.

Warmest regards,

Christopher Gregory



The Gregory Law Firm, LLC

Christopher S.P. Gregory
Attorney at Law

201 Coffman St., #1822, Longmont, CO 80502

• Phone: [REDACTED] • Fax: 970.648.0643 •

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HCR23_1001v1 (w revisions).docx HCR23-1001 Flow Chart.vsd

Christopher Gregory
former Ex. Dir.
Commission on
Judicial Discipline

1st Draft

HCR23-1001: Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature • Passes with 55 percent of the vote

- 1 **HCR23-1001 proposes amending the Colorado Constitution to:**
- 2 • reduce the Colorado Supreme Court's role in ethical misconduct cases involving
- 3 judges; and
- 4 • allow for increased public access to information about judicial discipline
- 2 proceedings. Modify the Colorado Supreme Court's authority to appoint judge members to the
- Colorado Commission on Judicial Discipline by allowing further definition of the appointment process
- by the Colorado Legislature;
- 3 • Separate adjudicative functions from the Colorado Commission on Judicial Discipline's continuing
- authority to evaluate, investigate, and prosecute suspected judicial misconduct under the Colorado
- Constitution and the Code of Judicial Conduct;
- 4 • Create an adjudicative board and adjudicative panels with equal representation of judges, attorneys,
- and citizens to perform the separated adjudicative functions;
- 5 • Constitutionally recognize rights to appeal and define appellate standards of review in judicial
- discipline and disability proceedings;
- 6 • Define constitutional standards for the disqualification of the entire Colorado Supreme Court and
- the composition of replacement special tribunals in judicial discipline and disability proceedings;
- 7 • Change confidentiality in judicial discipline proceedings so that the records of such proceedings
- become public upon the filing of formal disciplinary charges / the initiation of formal disciplinary
- proceedings; and
- 58 • Remove the Colorado Supreme Court's current exclusive rulemaking authority and create a
- rulemaking committee with the Colorado Legislature having additional authority to further define
- confidential reporting and complainant rights in judicial discipline and disability proceedings.

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69 What Your Vote Means

<u>YES</u>	<u>NO</u>
A "yes" vote on HCR23-1001 changes how <u>judicial disability and disciplinary proceedings are handled by:</u> 1) separating adjudicative (trial) functions, 2) providing a structure for disqualification of the entire Colorado Supreme Court, 3) limiting the	A "no" on HCR23-1001 means that the status quo will be maintained whereby: 1) adjudicative (trial) functions are part of the Colorado Commission on Judicial Discipline's role, 2) there is no constitutional structure for situations that otherwise require disqualification

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Supreme Court's authority to appoint judge members to the Colorado Commission on Judicial Discipline, 4) constitutionalizing appellate rights and appellate standards in judicial disability and disciplinary proceedings, 5) removing the Supreme Court's exclusive rulemaking authority and replacing it with a rulemaking committee, and 6) making judicial discipline proceedings public when the Commission initiates formal judicial disciplinary proceedings (i.e. the adjudication (trial) and appellate phases of a judicial discipline case will now become public).

of the entire Supreme Court, 3) the Supreme Court has plenary powers to appoint the judge members to the Colorado Commission on Judicial Discipline, 4) appellate rights and appellate standards in judicial disability and disciplinary proceedings are defined by Colorado Supreme Court's rules and caselaw, 5) the Colorado Supreme Court has exclusive authority under the Colorado Constitution to adopt rules for judicial disability and discipline proceedings, and 6) judicial discipline proceedings will remain confidential until (in any case before it) the Commission files a final disciplinary recommendation with the Supreme Court.

7- YES

- 0 A "yes" vote on HCR23-1001 changes how
- 0 judicial misconduct cases are handled by
- 0 reducing the Colorado Supreme Court's
- 0 involvement in the disciplinary process
- 0 and allowing for more information to be
- 0 shared with the public and other judicial
- 0 oversight agencies.

45- NO

- 25 A "no" vote on HCR23-1001 means that
- 26 the Colorado Supreme Court will continue
- 27 to have a direct role in disciplining judges
- 28 for misconduct and will keep judicial
- 29 discipline cases confidential until the final
- 30 stages of the proceeding.

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3416 Summary and Analysis of HCR23-1001

3217 What is judicial misconduct and discipline? Why is Judicial Discipline Important?

- 18 In 1966, and with a 53% majority, Colorado voters adopted a constitutionally enforceable system of judicial discipline built around an independently functioning Colorado Commission on Judicial Discipline (then called the Colorado Commission on Judicial Qualifications). According to Colo. Const. Art. VI, § 23(3)(d), the authority to remove or discipline a judge or justice exists, as follows:

A justice or judge of any court of record of this state, in accordance with the procedure set forth in this subsection (3), may be removed or disciplined for willful misconduct in office, willful or persistent failure to perform his duties, intemperance, or violation of any canon of the Colorado code of judicial conduct, or he may be retired for disability interfering with the performance of his duties which is, or is likely to become, of a permanent character.

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19 In turn, the Colorado Code of Judicial Conduct (the Code), which is patterned from the ABA Model Code of Conduct, recognizes basic expectations that judges must reinforce public confidence in a fair, impartial, independent, and competent judiciary. The ethical obligations of judges are more specifically defined through the Code's four Canons and 38 Canon Rules. The preamble to the Code states, in part:

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[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

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[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

Colo. Const. VI, § 23(3)(i) further recognizes that Colorado's judicial discipline system does not impair or limit additional judicial oversight that the Colorado Legislature may apply through exercise of its impeachment powers. The Colorado Commissions of Judicial Performance also have parallel statutory duties to evaluate the integrity, legal knowledge, communication skills, temperament, administrative performance, and community engagement of judges as part of those Commissions' regular and interim judicial evaluations. § 13-5.5-107, C.R.S.

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33 Judicial misconduct occurs when a judge acts unethically or in ways that discredit the courts.
34 Common misconduct complaints include improper demeanor, alcohol and drug use,
35 conflicts of interest, and inappropriate communication, among others. Any person may file a
36 complaint, and judges found to have violated judicial ethics may be disciplined publicly or
3720 privately, depending upon the seriousness of the misconduct.

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3821 **How are judicial discipline cases currently handled?**

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3922 The Commission on Judicial Discipline (the cCommission) is an independent state agency charged

40 with evaluating, investigating, prosecuting, and administratively adjudicating allegations of judicial misconduct against judges, screens and investigates

23 complaints. The Commission is made up of 4 judges (2 District Court and 2 County Court), 2 attorneys, and 4 non-attorney/non-judge citizens. The Commission receives its administrative and litigation support through its Executive Director, its Office Manager/Legal Assistant, and its internal Special Counsel.

41 At the evaluation stage, the Commission reviews requests for evaluation or other reliable sources of information to determine whether reasonable grounds exist for judicial disability or disciplinary proceedings. If such a reasonable basis exists, the Commission is required to notify the subject judge or justice and to open an investigation. With the subject judge or justice's written response (or

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1st Draft

appearance before the Commission) and the results of its investigation, the Commission determines whether sufficient evidence exists (applying a preponderance of evidence standard) to dismiss the complaint (as to one or more of the allegations and with or without an expression of caution), to offer diversion, to impose informal disciplinary dispositions, and/or to proceed with the filing of formal charges. With the filing of formal charges, the Commission determines whether it will hear the case directly or if it will request that the Colorado Supreme Court appoint three judges to act as Special Masters. Once formal charges are filed, the subject judge has an opportunity to file an answer, and absent extenuating circumstances, a formal hearing is scheduled within 91 days of the case becoming at issue. The formal disciplinary hearing functions similar to an ordinary trial with opportunities for the parties to present testimony and evidence. The Special Masters (or the Commission) then make findings of fact and determine the appropriateness of sanctions based upon a clear and convincing evidence standard. If the hearing occurs before Special Masters, they provide the Commission with a written report that describes the Special Masters' factual findings, conclusions of law, and recommendations for sanctions. With deference to the factual findings, the Commission makes its own ultimate determinations of law and recommendations for sanctions. The Commission, then submits its Recommendation to the Supreme Court. Alternatively, the Commission and the subject judge or justice can agree to dispense with formal proceedings and allow the Commission to file its Recommendation through a stipulation. With the filing of the Commission's Recommendation, the Recommendation, the record of proceedings, and the proceedings before the Supreme Court become public. The subject judge or justice then has an opportunity to file exceptions and to have the equivalent of an appeal. The Colorado Supreme Court (or a special tribunal now available through Colo. RJD 41), after review of the briefings, then, issues a final disciplinary opinion that rejects, accepts, or modifies the Commission's Recommendation for sanctions. As the Colorado Supreme Court has itself stated, under the current constitutional structure "this court and only this court, is the ultimate decisionmaker in judicial disciplinary proceedings." *Matter of Kiesnowski*, 2024 CO 12, ¶ 15. The screening process eliminates complaints that ask to review a judge's ruling

or order a new trial. Complaints found to have merit are investigated. Thereafter, the commission either issues a private reprimand, dismisses the complaint, or forwards findings about the more serious cases to the Colorado Supreme Court. The forwarded cases are reviewed further and tried by independent judges appointed by the Colorado Supreme Court. After the trial, the Colorado Supreme Court receives disciplinary recommendations and agrees on a final ruling.

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1—MThe records in judicial disciplineisconduct cases are made public only in the final stage of
proceedings when, after formal proceedings or by stipulation, the Commission publicly
recommends that the Colorado Supreme Court impose judicial disciplinary sanctions. judges
are

21 publicly punished. Otherwise, complaints and informal punishments-dispositions are not
shared with the

3—public. Exceptions provided through statutes and rules, however, allow the limited disclosure
of information to complainants, outside agencies (including the judicial department, judicial
oversight entities, and law enforcement), and as part of generalized statistical information
provided through the Commission's Annual Reports and through reporting under the SMART
Act. the person who filed a complaint, and other judicial oversight agencies, such as

42 nominating and judicial performance commissions that evaluate judges.

53 What changes does HCR23-1001 make to the judicial discipline process?

64 HCR 23-1001 will establishes the Independent Judicial Discipline Adjudicative Board (Bboard),
75 separate from the Ccommission and the Colorado Supreme Court, to decide judicial discipline
8—cases. The Bboard will consists of four district court judges, four attorneys, and four non-
attorney/non-judge citizens. The

96 new board's decisions-On any particular case, the Board will appoint an adjudicative panel
composed of one judge, one attorney, and one citizen to conduct the formal disciplinary hearing
and pre-hearing proceedings. Decisions made by the adjudicative panels are-will be considered
final judgments, and the Colorado Supreme Court's role will beis limited

107 to hearing appeals through application of constitutionally defined standards of review. The
Commission will no longer make disciplinary
recommendations directly to the Colorado Supreme Court,
but instead will have the right to appeal any adverse
decisions made by the appointed adjudicative panels.
Under the structure proposed through HCR23-1001, the
adjudicative panels would become the ultimate decision
makers in judicial discipline and disability cases with the
Colorado Supreme Court limited to performing an appellate
role. If a case involves a Colorado Supreme Court justice or other recognized grounds for
disqualification of the entire Supreme Court exist, the appeal is heard by aSupreme Court will
be replaced by a special

118 tribunal made up of randomly selected appellate and district court judges, none of whom
serve on the same court or in the same judicial district. The flow chart

129 below summarizes this new process.

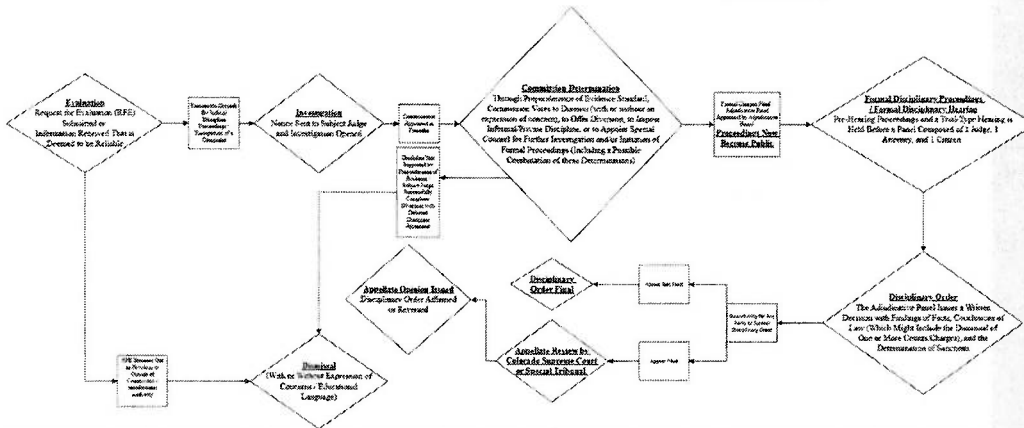
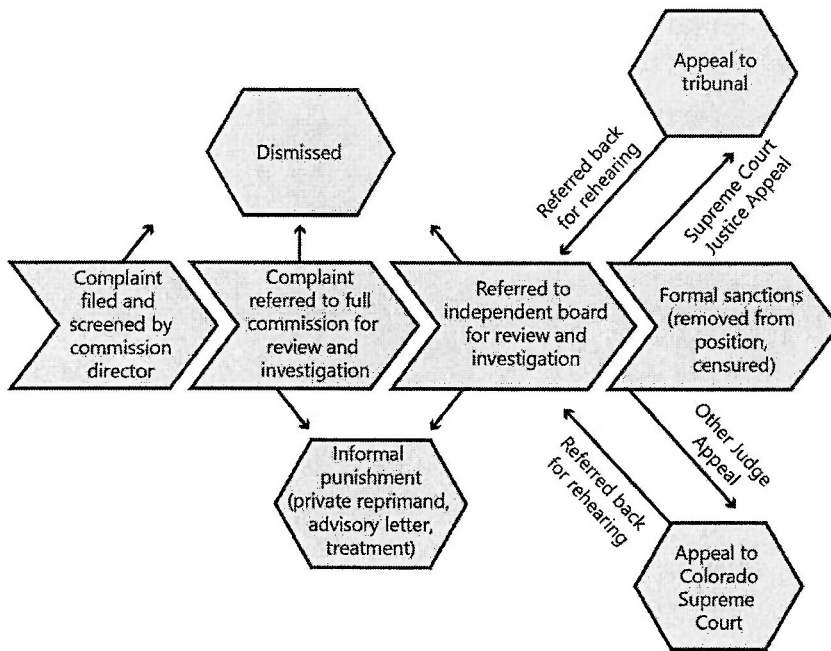
1310 **Figure 1**

1411 **Judicial Discipline Proceedings Under HCR23-1001**

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1st Draft



14—In addition to this new hearing the new structure process for adjudication and appellate review, judicial disciplinary proceedings (including the formal judicial disciplinary hearing and pre-hearing proceedings) will be open to the public and records of the proceedings will become public upon the filing of formal charges (as opposed to the current trigger of the Commission filing its Recommendation following the conclusion of formal proceedings). complaints are made public

1st Draft

earlier. The commission

16 may provide status updates to the person who filed the complaint, share information with

19 judicial oversight agencies about public and informal disciplinary actions, and report

20 aggregate information about trends or patterns in complaints.

21 17 A summary of the major changes proposed in HCR23-1001 can be found in Table 1 below.

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Table 1

Current Judicial Discipline Proceedings Under Current Law Compared to HCR23-1001

Current Judicial Discipline	Judicial Discipline Under HCR23-1001
Formal Disciplinary Hearings	
<u>In recent years and upon request of the Commission on Judicial Discipline, the Colorado Supreme Court appoints judges as special masters to hear cases, and make disciplinary recommendations. The fact-finding panels will be subject to appellate review for clear error. The panels' legal conclusions will be subject to de novo review on appeal. The appropriateness of the panels' determinations on sanctions will be reviewed for an abuse of discretion. HCR 23-1001 will remove the Commission from its existing role in the adjudication of judicial disciplinary proceedings. The Commission's roles moving forward will focus on the evaluation, investigation, and prosecution of allegations of judicial misconduct.</u>	<u>The Independent Judicial Discipline Adjudicative Board, made up of an equal number of attorneys, judges, and citizens, will conduct judicial discipline hearings and determines appropriate sanctions. The factual findings of the adjudicative panels will be subject to appellate review for clear error. The panels' legal conclusions will be subject to de novo review on appeal. The appropriateness of the panels' determinations on sanctions will be reviewed for an abuse of discretion. HCR 23-1001 will remove the Commission from its existing role in the adjudication of judicial disciplinary proceedings. The Commission's roles moving forward will focus on the evaluation, investigation, and prosecution of allegations of judicial misconduct.</u>
Discipline Cases Involving State Colorado Supreme Court Justices	
<u>The Colorado Supreme Court justices may discipline their own members. Colo. Const. Art. VI, § 23(3)(h) presently requires recusal of the individual justice subject to discipline but does not require the recusal of the other justices.</u>	<u>Circumstances defining when the entire Colorado Supreme Court must disqualify itself from judicial disability and disciplinary proceedings will be constitutionally defined. Seven randomly selected Colorado Court of Appeals and District Court judges review any appeal made by a Colorado Supreme Court justice who has been disciplined will serve as a special tribunal with authority to exercise the Supreme Court's otherwise existing appellate role in judicial disability or disciplinary proceedings. To avoid further conflicts of interest inherent in collegial courts, no more than one judge from a single court or judicial district may serve on the same special tribunal.</u>
State Colorado Supreme Court Role	
<u>The Colorado Supreme Court is the final arbiter of cases after receiving final disciplinary recommendations from the Commission and makes rules about the process. The Supreme Court also currently has exclusive rulemaking authority as to judicial disability and disciplinary proceedings. By rule, the Supreme Court defines when parties have rights to appeal in judicial discipline proceedings. Through caselaw, the Supreme Court now defines its own standards of review on appeal.</u>	<u>Colorado Supreme Court role will be limited to appellate reviews. Rules for the process are established by an independent body. A rulemaking committee composed of 4 appointees of the Court, 4 appointees of the Commission, 4 appointees of the new adjudicative board, and 1 victims' rights advocate appointed by the Governor will replace the Court's exclusive rulemaking authority. The Supreme Court's standards of review on appeal will now be defined by the</u>

Colorado Constitution.

Open Proceedings and Public Access to Information

Formal judicial disciplinary hearings are held privately until the announcement of public sanctions, and reporting requirements and communication with the person who filed the complaint is limited. With limited exceptions for statistical reporting, reporting to outside agencies, and communications with complainants, proceedings before the Commission remain generally confidential. Currently, judicial discipline proceedings become public only after formal proceedings (or a stipulated resolution) and the Commission filing its recommendation for public sanctions.

Upon the start/initiation of formal judicial disciplinary proceedings by the Commission (i.e. the filing of charges), the proceedings and records of proceedings (subject to limitations defined by rule) will become public. Commission may share case information with complainants, judicial oversight agencies, and the general public. Case information may also be included in aggregate data used for required reports on complaints against judges.

Appointments

Colorado Supreme Court directly appoints judge nominates members offer the Commission on Judicial Discipline and appoints judges to hear discipline cases as Special Masters.

The Colorado Supreme Court's process for appointing judge members to the Commission will be further defined by the Colorado Legislature. members and Members of the new adjudicative board will be appointed by the Supreme Court and the Governor and confirmed by the Senate. The State Court Administrator will randomly select judges for the special tribunals in cases requiring disqualification of the entire Supreme Court.

3 Why is HCR23-1001 on the ballot?

3—In 2021, public allegations were raised that the Justices of the Colorado Supreme Court had engaged in significant judicial misconduct through their involvement in the approval of a 5-year, \$2.66-\$2.75 million sole-source personal services contract with the State Court Administrator's Office's former Chief of Staff Mindy Masias, who was being fired due to suspected financial misconduct relevant to integrity of the State of Colorado's 2019 Annual Comprehensive Financial Report (ACFR). The ACFR is required as part of the State's eligibility for federal grants and to allow the State to issue bonds. The Justices considered and approved the Masias Contract without notifying the State Court Administrator's Office's own Financial Services Division or the Colorado Office of the State Auditor. Former Chief Justice Nathan B. Coats was publicly censured for violation of Canon Rule 2.5 of the Colorado Code of Judicial Conduct through his role in approving the Masias Contract without notice to the Financial Services Division or the State Auditor. *Matter of Coats*, 2023 CO 44, ¶¶ (4)(10)-(11), (6). The Coats decision marks the first time that a justice or former justice of the Colorado Supreme Court has been disciplined according to Colo. Const. Art. VI, § 23(3). The Coats case introduced novel problems that had not been contemplated when Colorado's constitutional judicial discipline system was first adopted in 1966 and later amended in 1982. Most significantly, Colorado's current constitutional structure does not meaningfully address the

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Colorado Supreme Court's unitary disqualification and unavoidable appearances of impropriety when a member or former member of the Court is the subject of judicial disciplinary proceedings ultimately overseen by the other justices. Obstacles that the Colorado Commission on Judicial Discipline encountered in its evaluation, investigation, and prosecution of the *Coats* case were partially addressed through the statutory reforms contained in enacted Senate Bill (SB) 22-201. Among other changes, SB 22-201 authorized the formation of the 2022 bi-partisan Legislative Interim Committee on Judicial Discipline (ICJD) to examine deficiencies in Colorado's judicial discipline system and to propose further constitutional and statutory reforms. Based upon the recommendations and votes of the ICJD, HCR 23-1001 (the constitutional amendment discussed here), House Bill (HB) 23-1019 (which contains further statutory changes and provisions to implement HCR 23-1001, if approved by voters), and HB 23-1205 (which creates the Office of the Judicial Discipline Ombudsman) were passed with near unanimity of the Colorado Legislature. HCR 23-1001 is now referred to the voters after unanimously passing in the Colorado House of Representatives on third reading with a vote of 63-0 and unanimously passing in the Colorado Senate on third reading with a vote of 35-0. 32 Representatives and 19 Senators designated themselves as co-sponsors of HCR 23-1001. In 2023, the Colorado legislature passed three-bipartisan bills about judicial discipline

- 4—procedures and workplace culture, including HCR23-1001. The other two bills address
- confidentiality, complaint filing and reporting, and data collection, as well as created a new
- 6—office to assist judicial employees with workplace and other complaints.

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For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2024, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/InitiativesHome.html>

1 Arguments For HCR23-1001

2

23 1) Colorado judges should not have direct influence and oversight over their own discipline.

34 HCR23-1001 aims to enhance the autonomy, transparency, integrity, and independence of the

45 judicial discipline process. Historically, judicial discipline has largely been self-regulated,

5 facing which has created structural challenges in oversight and has encouraged self-protection. This amendment serves to enhance

6 public confidence and trust in the courts as well as Colorado's three systems of judicial oversight (selection, discipline, and retention).

7 Arguments Against HCR23-1001

8 1) Judges understand how to review cases, hold hearings, and make impartial and hard

9 decisions. As a result, they are well-suited to hear judicial discipline cases. The

10 amendment transfers this authority to attorneys and citizens, who cannot fully

11 understand judicial ethics and the unique challenges of being a judge. The judiciary's

12 existing system of checks and balances, such as nomination and retention elections,

8 ensures only the best become and remain judges,

139 Colorado's existing constitutional structure for judicial disability and disciplinary proceedings is adequate.

1410 Fiscal Impact of HCR23-1001

1511 The fiscal impact will be included in the second draft.

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CJI comments on 1st draft of HCR23-1001 ballot analysis

Jeff Rupp to: judicialdiscipline2024

07/02/2024 09:31 AM

History:

This message has been replied to.

Hello. I'm writing to submit comments from the Colorado Judicial Institute about the first draft ballot analysis for HCR23-1001 - Judicial Discipline Procedures and Confidentiality. See the attached document with our redline edits and comments. The submitters are Marilyn Chappell, emeritus board member, Colorado Judicial Institute; and Jeff Rupp, Executive Director, Colorado Judicial Institute. Thank you and we look forward to reviewing the second draft later this month.

Best regards,

--Jeff

Jeffrey (Jeff) A. Rupp, MA (he/him/his)

Executive Director

Colorado Judicial Institute

Email: [REDACTED]

Mobile: [REDACTED]

CJI office: [REDACTED]



CJI's mission: To promote excellence, equity, impartiality, and public trust in Colorado's courts through outreach, education, and engagement.



CJI-comments-re-HCR23-1001-ballot-analysis-draft1.docx

1st Draft

HCR23-1001: Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature • Passes with 55 percent of the vote

- 1 **HCR23-1001 proposes amending the Colorado Constitution to:**
- 2 • reduce the Colorado Supreme Court's role in ethical misconduct cases involving
- 3 judges create an independent board made up of of citizens, lawyers, and judges to
- 4 hear cases involving potential discipline of judges; and
- 5 • allow for increased public access to information about judicial discipline
- 6 proceedings.

6 What Your Vote Means

7 YES

8 A "yes" vote on HCR23-1001 changes how

9 judicial misconduct cases are handled by

10 reducing the Colorado Supreme Court's

11 involvement in the disciplinary

12 process creating an independent board made

13 up of citizens, lawyers, and judges to hear

14 judicial discipline cases,

15 and allowing for more information to be

16 shared with the public and other judicial

17 oversight agencies.

15 NO

16 A "no" vote on HCR23-1001 means that

17 the Colorado Supreme Court will continue

18 to have a direct role in disciplining

19 judges current system of disciplining judges

20 for misconduct through judicial

21 proceedings will stay in place, and will keep

22 judicial

23 discipline cases will remain confidential

24 until the final

25 stages of the proceeding.

22 Summary and Analysis of HCR23-1001

23 What is judicial misconduct and discipline?

24 Judicial misconduct occurs when a judge acts unethically or in ways that discredit the courts.

25 Common misconduct complaints include improper demeanor, alcohol and drug use,

26 conflicts of interest, and inappropriate communication, among others. Any person may file a

27 complaint, and judges found to have violated judicial ethics may be disciplined publicly or

28 privately, depending upon the seriousness of the misconduct.

29 How are judicial discipline cases currently handled?

30 Based on provisions in the Colorado Constitution, The Commission on Judicial Discipline

31 (commission), an independent state agency charged

32 with investigating allegations of misconduct against judges, screens and investigates

33 complaints. The screening process eliminates complaints that ask to review a judge's ruling

34 or order a new trial. Complaints found to have merit are investigated. Thereafter, the

35 commission either issues a private reprimand, dismisses the complaint, or forwards findings

about the more serious cases to the Colorado Supreme Court. The forwarded cases are

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Commented [MC1]: In CJI's view the two major points of the resolution are first, the creation of an independent judicial discipline board that includes citizens as well as attorneys and judges, and second, increased transparency in the judicial discipline process. The current draft, CJI submits, does not clearly address the first point in simply referencing the Colorado Supreme Court.

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36 reviewed further and tried by independent judges appointed by the Colorado Supreme
37 Court. After the trial, the Colorado Supreme Court receives disciplinary recommendations
38 and agrees on a final ruling.

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1 Misconduct cases are made public only in the final stage of proceedings when judges are
 2 publicly punished. Otherwise, complaints and informal punishments are not shared with the
 3 public, the person who filed a complaint, and other judicial oversight agencies, such as
 4 nominating and judicial performance commissions that evaluate judges.

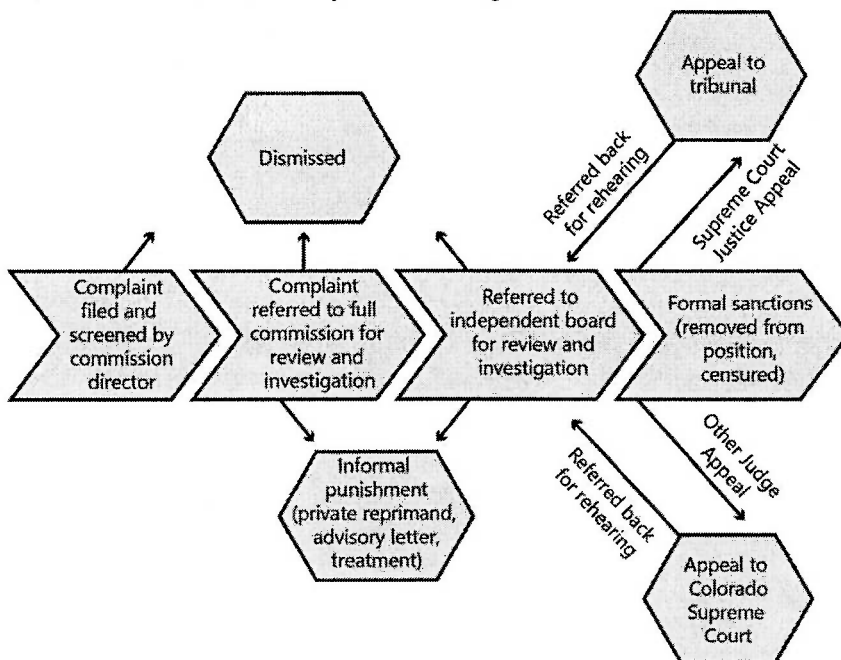
5 **What changes does HCR23-1001 make to the judicial discipline process?**

6 HCR 23-1001 is the result of extensive hearings conducted by a legislative committee to
determine whether changes should be made to Colorado's system for disciplining judges. HCR
23-1001 was adopted by a near-unanimous, bipartisan legislative vote. Because it would change
Colorado's constitutional provisions on judicial discipline, it has been submitted to voters for their
consideration.

HCR 23-1001 establishes the Independent Judicial Discipline Adjudicative Board (board),
 7 separate from the commission and the Colorado Supreme Court, to decide judicial discipline
 8 cases. The board consists of four district court judges, four attorneys, and four citizens. The
 9 new board's decisions are considered final, and the Colorado Supreme Court's role is limited
 10 to appeals. If a case involves a Colorado Supreme Court justice, the appeal is heard by a
 11 tribunal made up of randomly selected appellate and district court judges. The flow chart
 12 below summarizes this new process.

13 **Figure 1**

14 **Judicial Discipline Proceedings Under HCR23-1001**



Commented [MC2]: In CJI's view, the process by which the resolution was adopted for presentation to voters is important because of the notable bipartisan, near-unanimous support for the resolution.

Commented [MC3]: CJI is not suggesting changes to this chart but respectfully notes some may find it difficult to follow.

15 In addition to this new hearings process, complaints are made public earlier. The commission
 16 may provide status updates to the person who filed the complaint, share information with
 17 judicial oversight agencies about public and informal disciplinary actions, and report
 18 aggregate information about trends or patterns in complaints.

19 A summary of the major changes proposed in HCR23-1001 can be found in Table 1 below.

Table 1

Current Judicial Discipline Proceedings Under Current Law Compared to HCR23-1001

Current Judicial Discipline	Judicial Discipline Under HCR23-1001
Formal Disciplinary Hearings	
The Colorado Supreme Court appoints judges to hear cases and make disciplinary recommendations, and determines sanctions against judges.	The Independent Judicial Discipline Adjudicative Board, made up of an equal number of attorneys, judges, and citizens, conducts judicial discipline hearings and determines sanctions.
Discipline Cases Involving State Colorado Supreme Court Justices	
The Colorado Supreme Court justices may discipline their own members.	Seven randomly selected Colorado Court of Appeals and District Court judges review any appeal made by a Colorado Supreme Court justice who has been disciplined.
State Colorado Supreme Court Role	
The Colorado Supreme Court is the final arbiter of cases after receiving disciplinary recommendations and makes rules about the process.	Colorado Supreme Court role is limited to appeals. Rules for the process are established by an independent body.
Public Access to Information	
Formal judicial disciplinary hearings are held privately until the announcement of public sanctions, and reporting requirements and communication with the person who filed the complaint is limited.	Upon the start of proceedings, the commission may share case information with complainants, judicial oversight agencies, and the general public. Case information may also be included in aggregate data used for required reports on complaints against judges.
Appointments	
Colorado Supreme Court nominates members for the Commission on Judicial Discipline and appoints judges to hear discipline cases.	Commission members and the new adjudicative board are appointed by the Supreme Court and the Governor and confirmed by the Senate. The State Court Administrator randomly selects judges for the tribunal.

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Why is HCR23-1001 on the ballot?

In 2023, the Colorado legislature passed three bipartisan bills about judicial discipline procedures and workplace culture, including HCR23-1001. The other two bills address confidentiality, complaint filing and reporting, and data collection, as well as created a new office to assist judicial employees with workplace and other complaints.

For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2024, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/InitiativesHome.html>

1 Arguments For HCR23-1001

2 1) Colorado judges should not have direct influence and oversight over their own discipline.
3 HCR23-1001 aims to enhance the autonomy, transparency, and independence of the
4 judicial discipline process by creating an independent judicial discipline board and
5 increasing information available to the public about judicial discipline proceedings. Historically,
6 judicial discipline has largely been self-regulated,
7 facing challenges in oversight and self-protection. This amendment serves to enhance
8 public confidence and trust in the courts.

7 Arguments Against HCR23-1001

8 1) Judges understand how to review cases, hold hearings, and make impartial and hard
9 decisions. As a result, they are well-suited to hear judicial discipline cases. The
10 amendment transfers this authority to attorneys and citizens, who cannot fully
11 understand judicial ethics and the unique challenges of being a judge. The judiciary's
12 existing system of checks and balances, such as nomination and retention elections,
13 ensures only the best become and remain judges. The current system of disciplining judges is
14 based on Colorado's Constitution. Changing Colorado's Constitution is a complex process and
15 cannot easily be undone if changes are later determined not to have been a good idea.

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14 Fiscal Impact of HCR23-1001

15 The fiscal impact will be included in the second draft.

Commission on Judicial Discipline: Comments on HCR 23-1001 Voter Information Booklet

Jeff Walsh

to: Colorado Legislative Council Staff

07/02/2024 03:14 PM

Cc
: "Juliann Jenson"

History: This message has been replied to.

To Whom It May Concern:

My name is Jeff Walsh, and I am the Interim Executive Director for the Colorado Commission on Judicial Discipline. Please find attached to this email my comments/feedback (on behalf of the Commission) on the first draft of the Voter Information Booklet on HCR 23-1001. As you will see, I converted the PDF document provided into a Microsoft Word document and then made suggested edits with redlines. If you don't mind, can you please confirm receipt of this email? Thank you.

Sincerely,

Jeffrey M. Walsh
Special Counsel



COLORADO

Office of Judicial Discipline

P: [REDACTED] | F: 303-457-5195
1300 Broadway, Ste. 210, Denver, CO
80203
ccjd.colorado.gov

This e-mail transmission contains information from the Colorado Commission on Judicial Discipline which may be confidential or otherwise protected by Colo. Const. Art. VI, § 23(3)(g) and § 24-72-401, C.R.S. Unlawful disclosure of confidential records outside of necessary/authorized parties is punishable according to § 24-72-402, C.R.S. If you are not the intended recipient, you are hereby notified that you must not read this transmission and that any disclosure, copying, printing, distribution or use of any of the information contained in or attached to this transmission is prohibited. If you have received this transmission in error, please notify us immediately by e-mail and delete the original transmission.

From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Sent: Tuesday, June 25, 2024 3:00 PM

To: Jeff Walsh <j.walsh@jd.state.co.us>

Subject: HCR23-1001 Judicial Discipline Procedures & Confidentiality - 1st Draft

Ballot Analysis

Legislative Council Staff

HCR23-1001 Judicial Discipline Procedures & Confidentiality - 1st Draft

Each year the Legislative Council Staff prepares a voter information booklet that includes an analysis of measure that will appear on the statewide ballot. We distribute drafts of each analysis to people who are interested in commenting on the draft. The attached document is the second draft of the Legislative

Council Staff analysis of **HCR23-1001 Judicial Discipline Procedures & Confidentiality**. The second attachment describes the process for writing each analysis.

You can reply to this email to send your comments via e-mail. Comments are due by **7/02/2024**. If you are having problems accessing the documents, please click [here](#). The website contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your assistance.

Draft of Analysis

Analysis Process

Legislative
Council Staff
200 East Colfax
Ave., Room 029
Denver, CO
80203

303-866-3521

Want to change
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these emails?
You can [update
your preferences](#)
or [unsubscribe
from this list](#).



24.07.01 HCR 213-1001 Voter Information Booklet (JMW redlines).docx

Jeff Walsh
Interim Exec. Dir.
Commission on
Judicial
Discipline

1st Draft

- 1 -

HCR23-1001: Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature • Passes with 55 percent of the vote

HCR23-1001 proposes amending the Colorado Constitution to:

- reduce the Colorado Supreme Court's influence over judicial ethical misconduct hearings, role in ethical misconduct cases involving
—judges; and
- allow for increased public access to information about judicial discipline proceedings.

What Your Vote Means

YES 7

A "yes" vote on HCR23-1001 changes how judicial misconduct cases are handled by reducing the Colorado Supreme Court's involvement in the disciplinary process and allowing for more information to be shared with the public and other judicial oversight agencies.

A "yes" vote on HCR23-1001 reduces the influence that the Colorado Supreme Court has over judicial discipline hearings by (1) removing from the Supreme Court the power to unilaterally select the judges who preside over judicial ethical misconduct hearings and instead delegating that authority to an independent hearing board comprised of judges, lawyers, and citizens, and (2) removing from the Supreme Court the power to unilaterally write the rules that govern judicial discipline hearings and instead delegating that authority to an independent rule-making committee. A yes vote also means that information about formal charges of judicial ethical misconduct will be made public sooner in the judicial discipline process (i.e. when charges are filed) instead of later in the process (i.e. after litigation, and after a formal recommendation for discipline is made).

NO

A "no" vote on HCR23-1001 means that the Colorado Supreme Court will continue to have a direct role in disciplining judges for misconduct and will keep judicial discipline cases confidential until the final stages of the proceeding.

A "no" vote on HCR23-1001 means that the Colorado Supreme Court (1) will continue to be able to unilaterally select the judges who preside over judicial ethical misconduct hearings, and (2) will retain the power to unilaterally write the rules that govern judicial discipline hearings. A yes vote also means that information about formal charges of judicial ethical misconduct may never be made public; and if they are made public, it will only be at the end of the judicial discipline process (i.e. after litigation, and after a recommendation for discipline is made to the Supreme Court).

Summary and Analysis of HCR23-1001

What is judicial misconduct and discipline?

Judicial misconduct occurs when a judge is found to have violated the law or the Canons of Judicial Conduct, or acts unethically or in a ways that discredits the courts. Common misconduct complaints include poor/improper demeanor, alcohol and drug use, conflicts of interest, and inappropriate communication with parties or their counsel, and mistreatment/harassment of subordinate employees or staff, among others. Any person may file a complaint, and judges found to have violated judicial ethics may be disciplined publicly or privately, depending upon the seriousness of the misconduct.

How are judicial discipline cases currently handled?

The Commission on Judicial Discipline (the Commission), an independent state agency charged with investigating allegations of misconduct against judges, screens and investigates complaints. The screening process eliminates complaints that dispute a judge's legal, factual, or evidentiary rulings, which can be remedied by appeal, ask to review a judge's ruling or order a new trial. Complaints found to have potential merit are investigated by the Commission. Thereafter, the Commission either issues a private reprimand, dismisses the complaint, issues private discipline, or, in more serious cases, files formal charges of misconduct with the Supreme Court. After formal charges are filed, the Supreme Court appoints three judges to preside over an evidentiary hearing on the matter. The procedural rules that govern the fact finding process of a formal disciplinary proceeding are written exclusively by the Supreme Court. After the formal evidentiary hearing, the three presiding judges make findings, and they issue a recommendation to the Commission on what discipline is appropriate, if any. The Commission then submits the presiding judges' findings and recommendation to the Supreme Court, along with its own recommendation, at which point the Supreme Court makes the final decision on what discipline is appropriate, if any. The allegations of misconduct are only made public when the Commission files the above-referenced recommendations with the Supreme Court. If, after a formal hearing on misconduct, the Commission recommends private discipline, and if the Supreme Court agrees, neither the evidentiary findings of the presiding judges, nor the allegations themselves, are ever made public.

~~forwards findings about the more serious cases to the Colorado Supreme Court. The forwarded cases are reviewed further and tried by independent judges appointed by the Colorado Supreme Court. After the trial, the Colorado Supreme Court receives disciplinary recommendations and agrees on a final ruling.~~

Misconduct cases are made public only in the final stage of proceedings when judges are publicly punished. Otherwise, complaints and informal punishments are not shared with the public, the person who filed a complaint, and other judicial oversight agencies, such as nominating and judicial performance commissions that evaluate judges.

What changes does HCR23-1001 make to the judicial discipline process?

HCR 23-1001 makes three significant changes to the judicial discipline process. First, it changes who presides over formal evidentiary hearings in judicial discipline cases by replacing the three judges appointed by the Supreme Court with a three person "panel" selected from what is called the establishes Adjudicative Board. The Adjudicative Board consists of four judges (appointed by the Supreme Court), four lawyers (appointed by the Governor), and four citizens (appointed by the Governor). When a formal hearing on judicial misconduct occurs, one judge, one lawyer, and one citizen from the Adjudicative Board are randomly selected to preside over the case. the Independent Judicial Discipline Adjudicative Board (board), separate from the commission and the Colorado Supreme Court, to decide judicial discipline cases. The board consists of four district court judges, four attorneys, and four citizens. After a formal evidentiary hearing, the panel of three individuals from the Adjudicative Board will issue findings and a recommendation on what discipline is appropriate, if any. The Panel's findings and recommendation are final and are not subject to reversal by the Supreme Court absent proof of legal or factual error. Second, HCR 23-1001 removes from the Supreme Court the power to unilaterally write the procedural rules that govern the evidentiary hearing in a judicial discipline case and instead delegates that authority to an independent rule-making committee. Finally, HCR 23-1001 will makes allegations of ethical misconduct public as soon as formal charges are filed against a judge, as opposed to later in the process, after an evidentiary hearing has been conducted, and after a recommendation for public discipline is made to the Supreme Court. The flow chart below summarizes the new process.

The new board's decisions are considered final, and the Colorado Supreme Court's role is limited to appeals. If a case involves a Colorado Supreme Court justice, the appeal is heard by a tribunal made up of randomly selected appellate and district court judges. The flow chart below summarizes this new process.

Figure 1 13

Judicial Discipline Proceedings Under HCR23-1001 14

In addition to this new hearings process, complaints are made public earlier. The commission 15 may provide status updates to the person who filed the complaint, share information with 16 judicial oversight agencies about public and informal disciplinary actions, and report 17 aggregate information about trends or patterns in complaints. 18 Note: excluding the part about formal charges being made public earlier, all of this stuff already happens, and the constitutional amendment, whether it passes or not, will not affect this.

A summary of the major changes proposed in HCR23-1001 can be found in Table 1 below. 19
1st Draft

Table 1 1

**Current Judicial Discipline Proceedings
Under Current Law Compared to
HCR23-1001**

Current Judicial Discipline

Formal Disciplinary Hearings

The Colorado Supreme Court selects three judges to preside over evidentiary hearings, make findings, and issue a recommendation on discipline, appoints judges to hear cases and make disciplinary recommendations, and determines sanctions against judges. The Supreme Court then decides if discipline is appropriate after reviewing the recommendation, but it need to follow the recommendation.

Discipline Cases Involving State Colorado Supreme Court Justices

The Colorado Supreme Court justices may discipline their own members.

State Colorado Supreme Court Role

The Colorado Supreme Court is the final decision-maker in judicial discipline cases. It also has exclusive authority to write the rules about the judicial discipline process, arbiter of cases after receiving disciplinary recommendations and makes rules about the process.

Public Access to Information

All aspects of all judicial discipline proceedings are confidential and remain confidential unless the Commission on Judicial Discipline files a recommendation for public discipline with the Colorado Supreme Court. Cases that result is private discipline are never made public.

Formal judicial disciplinary hearings are held privately until the announcement of public sanctions, and reporting requirements and communication with the person who filed the

Judicial Discipline Under HCR23-1001

The Independent Judicial Discipline Adjudicative Board, made up of an equal number of attorneys, judges, and citizens, conducts judicial discipline hearings and determines sanctions. Three panelists (a judge, a lawyer, and a citizen) are randomly selected from the 12-person Adjudicative Board to preside over evidentiary hearings, make findings, and issue a recommendation on discipline. The Panel's recommendation is final, though it can be reversed by the Supreme Court if legal or factual error is proven on appeal.

Seven randomly selected Colorado Court of Appeals and District Court judges review any appeal made by a Colorado Supreme Court justice who has been disciplined.

Colorado Supreme Court's role is limited to hearing appeals in judicial discipline cases and can only reverse an Adjudicative Board Panel's recommendation on discipline if there is proof of a legal or factual error on appeal. Also, the procural rules in discipline cases are drafted by an independent rule-making committee, not the Supreme Court. Rules for the process are established by an independent body.

When the Commission files formal charges against a judge alleging ethical misconduct, the charges can be made public. Upon the start of proceedings, the commission may share case information with complainants and judicial oversight agencies, and the general public. Case information may also be included in aggregate data used for required reports on complaints against judges.

~~complaint is limited. [Note: this is incorrect. The Commission, by law, has to keep the complainant apprised of developments throughout the case. Plus, the matter becomes public once the Commission files the case with the Sup Ct, not once the Sup. Ct issues its discipline.]~~

Appointments

~~Colorado Supreme Court nominates members for the Commission on Judicial Discipline and appoints judges to hear discipline cases. [Note: this is wrong. The Sup Ct. appoints the 4 judges on the Commission and the Governor appoints the other six. I would just delete this whole section on "Appointments" because it is duplicative of information already stated above.]~~

~~Commission members and the new adjudicative board are appointed by the Supreme Court and the Governor and confirmed by the Senate. The State Court Administrator randomly selects judges for the tribunal. [Note: I would just delete this whole section on "Appointments" because it is duplicative of information already stated above.]~~

HCR23-1001 Blue Book feedback

Juliann Jenson

to: judicialdiscipline2024

07/02/2024 04:01 PM

Juliann,

I have a few thoughts that I want to share regarding the first draft of the Blue Book analysis for HCR23-1001. I appreciate the challenge of writing a fair analysis with limited space. I'm grateful that you are providing an opportunity for me, and others, to review your work and provide feedback.

1. In Table 1, under the heading of appointments in the current judicial discipline process, it says the Supreme Court nominates members for the Commission on Judicial Discipline. The Court is just one of two appointing authorities. The governor actually appoints a majority of the commission members. Per Article VI of the Colorado Constitution, the Judicial Discipline Commission is comprised of 10 members. Six of those members are appointed by the governor and confirmed by the Senate. Four of those members are appointed by the Supreme Court.
2. Also in Table 1, under the heading of discipline cases involving supreme court justices, it says supreme court justices may discipline their own members. That was theoretically the case historically, although it never occurred. Recognizing that possibility, the Court adopted a rule to establish a special tribunal to act as the supreme court in cases where the justices have a conflict to ensure fairness and impartiality. So, under existing law, justices of the Supreme Court do not hear cases that involved their colleagues or cases where justices are otherwise conflicted. Here's the rule adopted in January 2023 that establishes special tribunals:
<https://casetext.com/rule/colorado-court-rules/colorado-rules-of-civil-procedure/chapter-24-colorado-rules-of-judicial-discipline/part-f-special-tribunal/rule-41-proceedings-involving-a-current-or-former-justice-of-the-colorado-supreme-court>
3. Also in Table 1, under public access to information, it says the amendment will require the sharing of information with judicial oversight agencies. SB22-201, created 13-5.3-105, which requires information regarding complaints to be shared with judicial oversight agencies. So this is already the current practice.
4. The analysis discusses the sharing information with complaints in a couple of places. HB23-1019 created [13-5.3-112](#) created a requirement for the Commission to share certain information with complainants.

A couple of broader thoughts:

1. It might be worth adding to the section "What is judicial misconduct and discipline" that the [Colorado Code of Judicial Conduct](#) places on judges a mores strict set of ethical rules than any other elected officials are required to meet.
2. The first draft places an inordinate amount of attention on the role of the Supreme Court. The amendment changes the role of the supreme court, but it also significantly restricts the role of the discipline commission and creates a new adjudicatory board to create a tiered disciplinary structure. The current draft suggests that primary purpose, and the most significant gains, in the constitutional amendment are related to the role of the Court, while the other changes are just as significant.
 - i. First, the Court, in the current system, plays a very modest role. It writes the rules for the process. It appoints special masters to hear cases, and it enters orders in cases that have a stipulated outcome. The Court is not aware of the overwhelming majority of complaints lodged with the Commission on Judicial Discipline

and the Court has no role in determining the course of action or the outcome in the overwhelming majority of cases.

ii. Maybe instead of focusing on reducing the Court's rule, another way of viewing the amendment is that it expands the process - creates a new panel -- to ensure a more robust consideration of complaints that will ensure more fairness, accountability, and transparency.

Thank you for taking time to review my feedback. I am available to discuss these issues more at any time. I appreciate the work that you and your colleagues perform to ensure that voters receive fair, accurate, and helpful information in the Blue Book.

Terry

23

Terry Scanlon (*he/him/his*)

Legislative Liaison

Colorado Courts and Probation

1300 Broadway, Suite 1200

Denver, Colo. 80203

██████████ (call or text)

Amendment H--Comments on 2nd Draft

Christopher Gregory to: judicialdiscipline2024@coleg.gov

07/29/2024 03:59 PM

Good afternoon Juliann,

Attached, please find my updated comments for the second draft of the Bluebook statement for HCR 23-1001/Amendment H. As before, I am submitting these comments as an individual without affiliation with an organization or other third-party individual(s). Please let me know if Legislative Council Staff has any questions regarding the comments provided or if there are any issues accessing the attached Word document containing my comments.

I hope that you have a pleasant week and appreciate your help with this process.

Warmest regards,
Christopher Gregory



The Gregory Law Firm, LLC

Christopher S.P. Gregory
Attorney at Law

201 Coffman St., #1822, Longmont, CO 80502

• Phone: [REDACTED] • Fax: 970.648.0643 •

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HCR23_1001v2 (w revisions).docx

CJI's comments on 2nd draft re Amendment H Judicial Discipline Procedures and Confidentiality

Jeff Rupp to: judicialdiscipline2024

07/30/2024 11:29 AM

Hello. I'm writing to submit comments from the Colorado Judicial Institute about the 2nd draft ballot analysis for HCR23-1001 - Judicial Discipline Procedures and Confidentiality. See the attached document with our redline edits and comments. The submitters are Marilyn Chappell, emeritus board member, Colorado Judicial Institute; and Jeff Rupp, Executive Director, Colorado Judicial Institute. Thank you and we look forward to reviewing the 3rd draft in a couple weeks.

Best regards,

--Jeff

Jeffrey (Jeff) A. Rupp, MA (he/him/his)

Executive Director

Colorado Judicial Institute

Email: [REDACTED]

Mobile: [REDACTED]

CJI office: [REDACTED]



CJI's mission: To promote excellence, equity, impartiality, and public trust in Colorado's courts through outreach, education, and engagement.



From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Sent: Tuesday, July 23, 2024 3:48 PM

To: Jeff Rupp <[REDACTED]>

Subject: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Ballot Analysis

Legislative Council Staff

Amendment H
Judicial
Discipline
Procedures
and
Confidentiality -
2nd Draft

Each year the Legislative Council Staff prepares a voter information booklet that includes an analysis of each measure that will appear on the statewide ballot. We distribute drafts of each analysis to people who are interested in commenting on the draft. The attached document is the second draft of the Legislative Council Staff analysis of **Amendment H Judicial Discipline Procedures and Confidentiality**. The second attachment describes the process for writing each analysis.

You can reply to this email to send your comments to the writing team. Comments are due by **7/30/2024**. If you are having problems accessing the documents, please click [here](#). The website contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your assistance.

Draft of Analysis

Analysis Process

Legislative
Council Staff
200 East Colfax
Ave., Room 029
Denver, CO
80203
303-866-3521

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CJI-comments-re-HCR23-1001-ballot-analysis-draft2.docx

2nd Draft

Amendment H: Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature • Passes with 55 percent of the vote

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Commented [MC1]: In CJI's view, a major point of the resolution is the creation of an independent judicial discipline board that includes citizens as well as attorneys and judges, thus broadening participation in the discipline process and fostering increased public confidence in the process. CJI respectfully submits that the current draft unduly emphasizes the role of the Colorado Supreme Court. That emphasis detracts from the point of broader participation, and could create a perception of non-neutrality toward the Colorado Supreme Court.

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Commented [MC2]: The word "common" here could be viewed as meaning such conduct occurs frequently, as opposed to referring to the types of complaints typically made in those complaints that are made. CJI submits that the proposed wording is clearer.

Commented [MC3]: CJI submits that this phrase adds clarity to the scope of judicial complaints handled by the Commission.

1 Amendment H proposes amending the Colorado Constitution to:

- 2 • create an independent board separate from the Colorado Supreme Court to
- 3 preside over ethical misconduct hearings involving judges; and
- 4 • allow for increased public access to information about judicial discipline
- 5 proceedings.

6 What Your Vote Means

7 YES

8 A "yes" vote on Amendment H changes
9 how judicial discipline cases are handled
10 by creating an independent board made
11 up of citizens, lawyers, and judges to
12 conduct hearings, reducing the Colorado
13 Supreme Court's role in these hearings,
14 and allowing more information to be
15 shared earlier with the public.

15 NO

16 A "no" vote on Amendment H means that
17 the Colorado Supreme Court the current
18 system of disciplining judges, in which judicial
19 officers will continue
20 to select the judges who preside over
21 judicial discipline misconduct hearings, will
22 continue.
23 and cases will remain confidential unless
24 punishment is publically issued at the end
25 of the process.

23 Summary and Analysis of Amendment H

24 What is judicial misconduct and discipline?

25 Colorado judges must follow a code of conduct. Judicial misconduct occurs when a judge
26 acts unethically or in ways that discredit the courts. Common misconduct complaints may
27 include
28 improper demeanor, alcohol and drug use, conflicts of interest, inappropriate
29 communication, and mistreatment or harassment of staff. Any person may file a complaint,
30 and judges found to have violated judicial ethics may be disciplined publicly or privately,
31 depending upon the seriousness of the misconduct.

31 How are judicial discipline cases currently handled?

32 Pursuant to the Colorado Constitution, the Commission on Judicial Discipline (Commission),
33 an independent state agency charged with investigating allegations of misconduct against
34 judges, screens and investigates complaints. Members of the Commission are appointed by
35 the Colorado Supreme Court and the Governor. The screening process eliminates complaints
36 that ask to review a judge's rulings or order a new trial, which are resolved through the
37 appeals process in the courts. Complaints that do not seek reviews of rulings or orders, and those
38 found to have merit are

37 investigated. Thereafter, the Commission either ~~can~~ issues a private reprimand, ~~or~~ dismisses
the
38 complaints. ~~In , or forwards findings about the more serious cases~~ it makes findings of fact
and forwards them to the Colorado Supreme

2nd Draft

1 Court. The forwarded cases are reviewed further and tried by judges appointed by the
2 Colorado Supreme Court. After the trials, these judges send disciplinary recommendations to
3 the Colorado Supreme Court, which makes receives disciplinary
4 recommendations and agrees on a final rulings. Misconduct cases are made public only in
5 the final stage of proceedings when judges are publicly punished. Otherwise, complaints
6 and informal punishments may not be shared with the persons who filed complaints.

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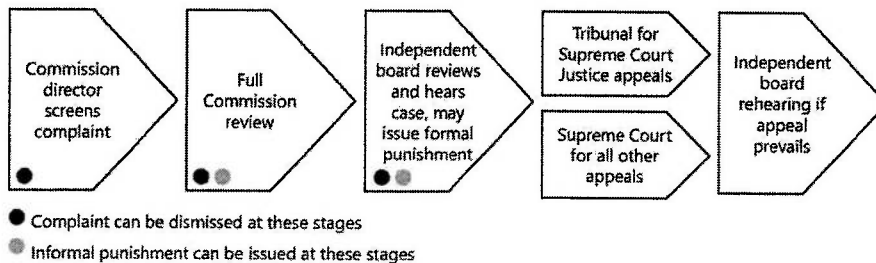
Commented [MC4]: This provision was included in the first draft but was omitted from the second draft. CJI submits that some form of this provision should be included. The proposed language is consistent with current rules on the issue.

5 What changes does Amendment H make to the judicial discipline process?

6 Amendment H establishes the Independent Judicial Discipline Adjudicative Board
7 (independent board) to preside over judicial discipline hearings and make disciplinary
8 recommendations. The independent board consists of four district court judges appointed
9 by the Colorado Supreme Court, and four attorneys and four citizens appointed by the
10 Governor. The
11 new independent board's decisions are considered final unless there is proof of a legal or
12 factual error. If a case involves a Colorado Supreme Court justice, the appeal is heard by a
13 tribunal made up of randomly selected appellate and district court judges. Formal charges
14 against judges are also made public at the beginning of the hearing.
15 The flow chart below summarizes the new discipline process.

Figure 1

Judicial Discipline Proceedings Under Amendment H



Commented [JR5]: CJI respectfully notes this chart, while improved from the 1st draft, still needs work. The "arrow" effect of the box on the far right suggests continuation of the process but it's not clear what's next. Perhaps an arrow that points back to the middle box would help.

Table 1 compares current practices with those proposed in Amendment H.

Table 1

Current Judicial Discipline Proceedings Compared to Amendment H

Current Judicial Discipline	Judicial Discipline Under Amendment H
Formal Disciplinary Hearings	
The Colorado Supreme Court appoints Appointed judges to hear cases, make disciplinary recommendations, and determine sanctions against judges accused of misconduct.	The independent board, made up of number of attorneys, judges, and citizens, conducts judicial discipline hearings and determines sanctions.
Discipline Cases Involving Colorado Supreme Court Justices	
A tribunal made up of seven randomly selected Court of Appeals judges hears cases involving Colorado Supreme Court justices. If the proposed sanction recommended by the tribunal is rejected by the accused judge, the Colorado Supreme Court makes the final decision.	The independent board hears discipline cases for Supreme Court justices. Seven randomly selected Colorado Court of Appeals and District Court judges review any appeal made by a Colorado Supreme Court justice who has been disciplined.
Colorado Supreme Court Role	
The Colorado Supreme Court is the final arbiter of cases after receiving disciplinary recommendations and makes rules about the process.	Colorado Supreme Court role is limited to appeals. Rules for the process are established by an independent body.
Public Access to Information	
Formal judicial disciplinary hearings are held privately until the announcement of public sanctions.	Charges against a judge can be made public upon the start of proceedings
Appointments	
Commission members are appointed by the Colorado Supreme Court and the Governor and confirmed by the Senate. Colorado Supreme Court appoints special master judges to hear discipline cases. The State Court Administrator selects judges for the tribunal that hears cases involving Supreme Court justices.	Commission members and the new adjudicative-independent board are appointed by the Colorado Supreme Court and the Governor and confirmed by the Senate. The State Court Administrator randomly selects judges for the tribunal to hear appeals from Supreme Court justices.

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Why is Amendment H on the ballot?

In 2023, following extensive public hearings, the Colorado legislature passed three bipartisan bills about judicial discipline procedures and workplace culture, including Amendment H. The other two bills address confidentiality, complaint filing and reporting, and data collection, as well as ~~created~~ creating a new office to assist judicial employees with workplace and other complaints. Because Amendment H would change Colorado's constitutional provisions on judicial discipline, it is being submitted to voters to decide.

Commented [MC6]: CJI believes the history and content of Amendment H are important in informing voters why Amendment H is presented to them for consideration.

2nd Draft

For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2024, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/InitiativesHome.html>

Commented [MC7]: CJI notes that information currently at this link is limited and may not be clear to voters. CJI would be happy to assist in providing further information for inclusion at this link.

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Commented [MC8]: CJI contends that the suggested language is warranted to remind voters of the impact of adopting changes to the Colorado Constitution.

1 Arguments For Amendment H

2 1) Colorado judges should not have direct influence and oversight over the discipline of
3 their colleagues. Amendment H aims to enhance the autonomy, transparency, integrity,
4 and independence of the judicial discipline process by creating an independent judicial
discipline board and increasing information available to the public about judicial discipline
proceedings. Historically, judicial discipline has
5 largely been self-regulated, facing challenges in oversight and self-protection. This
6 amendment serves to enhance public confidence and trust in the courts. Finally, this
7 measure is a compromise recommended by nearly all members of the General Assembly
8 and the Judicial Branch.

9 Arguments Against Amendment H

10 1) The current system works. Judges understand how to review cases, hold hearings, and
11 make impartial and hard decisions. As a result, they are well-suited to hear judicial
12 discipline cases. The amendment transfers this authority to attorneys and citizens, who
13 cannot fully understand judicial ethics and the unique challenges of being a judge. The
14 judiciary's existing system of checks and balances, such as nomination and retention
15 elections, ensures only the best become and remain judges. The current system of disciplining
judges is based on Colorado's Constitution. Changing Colorado's Constitution is a complex process
and cannot easily be undone if changes are later determined not to have been a good idea.

16 Fiscal Impact of Amendment H

17 **State spending.** The measure will increase state costs by about \$50,000 per year. This
18 funding provides compensation and training to members of the newly created judicial
19 discipline board and rulemaking committee.

**FW: CJI's comments on 2nd draft re Amendment H Judicial Discipline
Procedures and Confidentiality**

Jeff Rupp to: judicialdiscipline2024

07/30/2024 11:46 AM

History: This message has been replied to.

Quick add-on to my previous message from a few moments ago (below) to explain why CJI takes an interest in this legislation. CJI is an independent, non-partisan, nonprofit community organization that promotes excellence, equity, impartiality, and public trust in Colorado's courts. We advocate on behalf of Colorado's judicial system and that includes advocating for smart change that makes the system better. We believe this legislation does indeed make the system better and we feel our comments on the draft ballot analysis help convey the legislation's intent. Again, thanks for the opportunity to provide feedback.

Best regards,

--Jeff

Jeffrey (Jeff) A. Rupp, MA (he/him/his)

Executive Director

Colorado Judicial Institute

Email: [REDACTED]

Mobile: [REDACTED]

CJI office: [REDACTED]



CJI's mission: To promote excellence, equity, impartiality, and public trust in Colorado's courts

through outreach, education, and engagement.



From: Jeff Rupp <[REDACTED]>
Sent: Tuesday, July 30, 2024 11:30 AM
To: 'judicialdiscipline2024@coleg.gov' <judicialdiscipline2024@coleg.gov>
Subject: CJI's comments on 2nd draft re Amendment H Judicial Discipline Procedures and Confidentiality

Hello. I'm writing to submit comments from the Colorado Judicial Institute about the 2nd draft ballot analysis for HCR23-1001 - Judicial Discipline Procedures and Confidentiality. See the attached document with our redline edits and comments. The submitters are Marilyn Chappell, emeritus board member, Colorado Judicial Institute; and Jeff Rupp, Executive Director, Colorado Judicial Institute. Thank you and we look forward to reviewing the 3rd draft in a couple weeks.

Best regards,

--Jeff

Jeffrey (Jeff) A. Rupp, MA (he/him/his)

Executive Director

Colorado Judicial Institute

Email: [REDACTED]

Mobile: [REDACTED]

CJI office: [REDACTED]



CJI's mission: To promote excellence, equity, impartiality, and public trust in Colorado's courts through outreach, education, and engagement.



From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Sent: Tuesday, July 23, 2024 3:48 PM

To: Jeff Rupp <[REDACTED]>

Subject: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Ballot Analysis

Legislative Council Staff

Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Each year the Legislative Council Staff prepares a voter information booklet that includes an analysis of each measure that will appear on the statewide ballot. We distribute drafts of each analysis to people who are interested in commenting on the draft. The attached document is the second draft of the Legislative Council Staff analysis of **Amendment H Judicial Discipline Procedures and Confidentiality**. The second attachment describes the process for writing each analysis.

You can reply to this email to send your comments to the writing team. Comments are due by **7/30/2024**. If you are having problems accessing the documents, please click [here](#). The website contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your
assistance.

Draft of Analysis

Analysis Process

Legislative
Council Staff
200 East Colfax
Ave., Room 029
Denver, CO
80203
303-866-3521

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FW: Amendment H--Comments on 2nd Draft

Christopher Gregory to: judicialdiscipline2024@coleg.gov

07/30/2024 11:58 AM

History:

This message has been replied to.

Good Afternoon,

Please confirm receipt of the email below with comments for the 2nd draft of Amendment H Bluebook language attached.

I hope that you have a good day. Again, if you have any questions, please do not hesitate to contact me.

Warmest regards,
Christopher Gregory



The Gregory Law Firm, LLC

Christopher S.P. Gregory
Attorney at Law

201 Coffman St., #1822, Longmont, CO 80502

• Phone: [REDACTED] • Fax: 970.648.0643 •

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From: Christopher Gregory
Sent: Monday, July 29, 2024 3:54 PM
To: judicialdiscipline2024@coleg.gov
Subject: Amendment H--Comments on 2nd Draft

Good afternoon Juliann,

Attached, please find my updated comments for the second draft of the Bluebook statement for HCR 23-1001/Amendment H. As before, I am submitting these comments as an individual without affiliation with an organization or other third-party individual(s). Please let me know if Legislative Council Staff has any questions regarding the comments provided or if there are any issues accessing the attached Word document containing my comments.

I hope that you have a pleasant week and appreciate your help with this process.

Warmest regards,

Christopher Gregory



The Gregory Law Firm, LLC

Christopher S.P. Gregory
Attorney at Law

201 Coffman St., #1822, Longmont, CO 80502

• Phone: [REDACTED] • Fax: 970.648.0643 •

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HCR23_1001v2 (w revisions).docx

2nd Draft

Amendment H: Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature • Passes with 55 percent of the vote

1 Amendment H proposes amending the Colorado Constitution to:

- 2 • reduce the Colorado Supreme Court's role and control over Colorado's judicial discipline system;
- 3 • create an independent adjudicative board separate from the Colorado Supreme Court and the Colorado Commission on Judicial Discipline to
- 4 preside over ethical misconduct hearings involving judges; and
- 5 • allow for increased public access to information about judicial discipline proceedings and records.

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6 What Your Vote Means

7 YES

- 8 A "yes" vote on Amendment H changes
- 9 how judicial discipline cases are handled
- 10 by creating an independent board to
- 11 conduct hearings, reducing the Colorado
- 12 Supreme Court's role (in exercise of
- appointive powers, in rulemaking, in cases
- requiring disqualification of the whole
- Court, and in applying appellate standards
- of review) in these hearings,
- 13 and allowing more information to be
- 14 shared earlier with the made public earlier
- in the judicial discipline process.

15 NO

- 16 A "no" vote on Amendment H means that
- 17 the Colorado Supreme Court will continue
- 18 to select the judges who preside over
- 19 judicial discipline misconduct hearings, to
- control rulemaking, and to have plenary
- authority when reviewing disciplinary
- recommendations with cases remaining
- 20 and cases remain confidential unless public
- sanctions are recommended
- 21 punishment is publically issued at the end
- 22 of the process.

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2322 Summary and Analysis of Amendment H

2423 What is judicial misconduct and discipline?

- 2524 Colorado judges must follow a code of conduct. Judicial misconduct occurs when a judge
- 2625 acts unethically or in ways that discredit the courts diminish public confidence in the integrity
- of the judiciary. Common misconduct complaints include failure to perform judicial duties
- competently and diligently, abuse of the prestige of the judicial office,
- 2726 improper demeanor, alcohol and drug use, conflicts of interest, inappropriate

2nd Draft

2827 communication, and mistreatment or harassment of staff, ~~criminal or other unlawful conduct,~~
dishonesty, and retaliation. Judges are prohibited from engaging in actual impropriety as well as
even conduct that creates appearances of impropriety. Any person may file a complaint,
2928 and judges found to have violated judicial ~~their~~ ethical ~~duties~~ may be disciplined publicly or
privately,
3029 depending upon the ~~seriousness~~ ~~nature~~ of the misconduct.

3430 **How are judicial discipline cases currently handled?**

3231 Pursuant to the Colorado Constitution, the Commission on Judicial Discipline (Commission),
3332 an independent state agency charged with investigating allegations of misconduct against
3433 judges, screens and investigates complaints. Members of the Commission are appointed by
3534 the Colorado Supreme Court and the Governor. The screening process eliminates complaints
36 that ask to review a judge's ruling or order a new trial ~~are outside of the Commission's~~
jurisdiction (including frivolous allegations, disputed rulings, and other appellate issues), and
those Requests for evaluation of judicial conduct that present reasonable grounds for judicial
discipline proceedings require the Commission to conduct an investigation and commence
judicial discipline proceedings. ~~found to have merit are~~
3735 investigated. Thereafter, the Commission either issues a private reprimand, dismisses the
3836 complaint, imposes one or more private dispositions, or files formal proceedings. In formal
proceedings, the subject judge's case may be heard directly by the Commission or through the
Colorado Supreme Court's appointment of a panel of judges (called special masters). Following the
disciplinary hearing, the special masters (or the Commissioners if a hearing is held before them)
issue a report with findings of fact, conclusions of law, and recommendations for sanctions or
informal disposition. The Commission then reviews the special masters' report to make its own
final disciplinary recommendation. Alternatively, the subject judge or justice may waive their right to
the formal disciplinary process and resolve the case by stipulation. The Commission's
recommendation and the record of proceedings (including a stipulation for discipline) becomes
public upon filing with the Colorado Supreme Court. In turn, the Colorado Supreme Court reviews
the case to accept, reject, or modify the Commission's recommendation with authority to remand
the case for further development of the record, or forwards findings about the more serious
cases to the Colorado Supreme Court. Only the Colorado Supreme Court may impose public
sanctions on a subject judge or justice.

Commented [CG1]: It is not the seriousness of the misconduct that determines the difference between a public or a private disciplinary response. If the conduct occurred publicly or in connection with a public duty (i.e. financial reporting requirements), the discipline should be public (even if it is a low level public reprimand).

Commented [CG2]: Although there are good reasons for brevity, the draft description of this process is inaccurate.

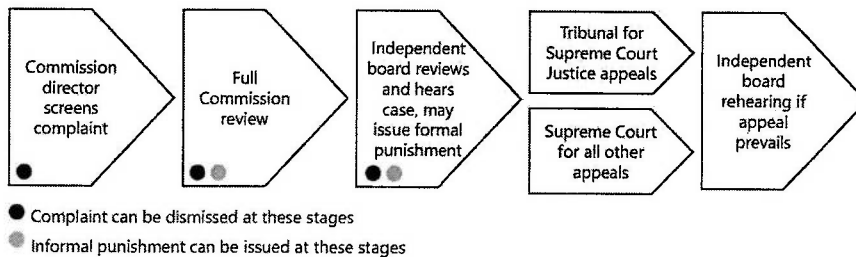
1 Court. The forwarded cases are reviewed further and tried by judges appointed by the
2 Colorado Supreme Court. After the trial, the Colorado Supreme Court receives disciplinary
3 recommendations and agrees on a final ruling. Misconduct cases are made public only in
4 the final stage of proceedings when judges are publicly punished.

51 **What changes does Amendment H make to the judicial discipline process?**

62 Amendment H establishes the Independent Judicial Discipline Adjudicative Board
7 (independent adjudicative board) to preside over judicial discipline hearings and make
83 disciplinary recommendations impose sanctions. The adjudicative independent board consists of four
94 district court judges appointed by the Supreme Court, and four attorneys and four citizens appointed by the Governor. The
10 new independent adjudicative board's decisions are considered final, subject to appellate
115 review to the Colorado Supreme Court, unless there is proof of a legal or
12 factual error. If a case involves ~~there are recognized grounds for the~~ Colorado Supreme Court
136 to disqualify itself justice, the appeal is heard by a
tribunal made up of randomly selected appellate and district court judges (with no more than
one judge from the same court or judicial district). Formal charges
against judges are also made public at the beginning of the hearing. In contrast to the current
system, judicial discipline proceedings (including the judicial disciplinary hearings and pre-
hearing proceedings conducted by the adjudicative board) will become public upon the filing
of formal discipline charges.

147 The flow chart below summarizes the new discipline process.

158 **Figure 1**
169 **Judicial Discipline Proceedings Under Amendment H**



Commented [CG3]: The grounds for disqualification of the entire Colorado Supreme Court are broader than just circumstances where a justice is himself/herself the subject of discipline. These grounds are in Amendment H itself.

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Commented [CG4]: The second arrow is better titled "Determination by Full Commission." The adjudicative board does not "review" the case, it just conducts the pre-hearing and hearing phases. The arrows for the Special Tribunal and the Supreme Court should be combined to describe "Appellate Review." The final arrow should be "Issuance of final disciplinary opinion or remand to the adjudicative board." A footnote might be added to explain that the adjudicative board's judgment/order becomes final if an appeal is not pursued. "Sanction" rather than "punishment" might be a better description.

1 Table 1 compares current practices with those proposed in Amendment H.

2
3

Table 1

Current Judicial Discipline Proceedings Compared to Amendment H

Current Judicial Discipline	Judicial Discipline Under Amendment H
Formal Disciplinary Hearings	
The Commission may conduct adjudicative proceedings directly. Alternatively, the Commission may request that The Colorado Supreme Court appoints judges as special masters to hear cases and make disciplinary recommendations, and determine sanctions against judges accused of misconduct, that are reviewed by the Commission before it submits its final recommendation for public discipline to the Colorado Supreme Court for a final order.	The independent adjudicative board, made up of an equal number of attorneys, judges, and citizens, conducts judicial discipline hearings and determines sanctions. The order / judgment of the adjudicative board is final and enforceable.
Discipline Cases Involving Colorado Supreme Court Justices	
A tribunal made up of seven randomly selected Court of Appeals judges hear cases involving Colorado Supreme Court justices. If the proposed sanction recommended by the tribunal is rejected by the accused judge, the Colorado Supreme Court makes the final decision. The Colorado Constitution requires a justice who is the subject of judicial discipline proceedings to disqualify himself or herself. The Colorado Supreme Court has adopted Colo. RJD 41 which authorizes the disqualification of the entire Court in certain circumstances with a replacement Special Tribunal composed entirely of Colorado Court of Appeals Judges.	The independent board hears discipline cases for Supreme Court justices. The grounds for disqualification of the entire Colorado Supreme Court recognized in Colo. RJD 41 are added to Article VI, § 23(3) of the Colorado Constitution. Under Amendment H, the replacement Special Tribunal will be composed of seven randomly selected Colorado Court of Appeals and District Court judges, none of whom may serve on the same court or in the same Judicial District, review any appeal made by a Colorado Supreme Court justice who has been disciplined.
Colorado Supreme Court Role	
The Colorado Supreme Court is the final arbiter of cases after receiving disciplinary recommendations and makes rules about the controls the rulemaking process.	Colorado Supreme Court role is limited to appeals with defined standards of review. Rules for the process are established by an independent committee body.
Public Access to Information	
Formal judicial disciplinary hearings proceedings are held privately until the announcement of public sanctions. Commission files a formal recommendation for public sanctions with the Colorado Supreme Court.	Charges. The proceedings against a judge and the record of those proceedings can be made become public upon the start of proceedings when formal charges are filed.
Appointments	

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Commented [CG5]: As drafted, this description is inaccurate. A primary change through Amendment H is that the Commission will no longer make the final disciplinary recommendation. Amendment H abandons a 1-tier judicial discipline system for a 2-tier system.

Commented [CG6]: This description does not address how Amendment H is constitutionalizing the structure for disqualification of the entire Colorado Supreme Court. The difference between a collegial Special Tribunal made up of Colorado Court of Appeals judges and a non-collegial Special Tribunal made up of no more than one Court of Appeals judge and District Court judges (none from the same Judicial District) is critical.

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2nd Draft

Commission members are appointed by the Colorado Supreme Court and the Governor and with Senate confirmation confirmed by the Senate. Colorado Supreme Court appoints special master judges to hear discipline cases. The State Court Administrator randomly selects Court of Appeals judges for the Special Tribunal that hears cases where the Colorado Supreme Court is disqualified involving Supreme Court justices.

Commission members and the new adjudicative board are appointed by the Colorado Supreme Court (through a process further defined by the Colorado Legislature) and the Governor and confirmed by the Senate with Senate confirmation. The State Court Administrator randomly selects Court of Appeals and District Court judges for the Special Tribunal to hear appeals when the Colorado Supreme Court is disqualified from Supreme Court justices:

Commented [CG7]: The "as determined by law" change in HCR 23-1001 is significant and gives the Legislature some authority to control potential abuse of the Colorado Supreme Court's authority to appoint members to the Commission. Under HB 23-1019, judge members will be selected randomly by the Supreme Court moving forward and there will be a requirement that judge members not have histories of discipline.

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4 Why is Amendment H on the ballot?

- 5 In 2022, the Colorado legislature passed SB 22-201 to address novel circumstances that arose in connection with the later public censure of former Colorado Supreme Court Chief Justice Nathan B. Coats. SB 22-201 created an interim committee to propose legislation to reform the judicial discipline system and to address concerns about the Colorado Judicial Department's overall workplace culture. Amendment H was drafted and introduced through a process that included a series of public hearings during which the Interim Committee on Judicial Discipline received extensive input from stakeholders and experts. In 2023, based upon the work of the Interim Committee, the Colorado legislature passed three bipartisan bills about addressing judicial discipline
- 6 procedures and workplace culture, including Amendment H. The concurrent resolution containing Amendment H was passed unanimously by both the Colorado House of Representatives and the Colorado Senate. The other two bills address
- 7 confidentiality, complaint filing and reporting, and data collection, as well as created creating a new ombuds
- 8 office to assist judicial employees personnel with workplace and other complaints.

Commented [CG8]: The background of SB 22-201 and the Interim Committee on Judicial Discipline is essential context for why Amendment H is on the ballot. Amendment H is being proposed after significant deliberation and public engagement by the Legislature.

2nd Draft

For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2024, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/InitiativesHome.html>

Arguments For Amendment H

- 1) Colorado judges should not have direct influence and oversight over the discipline of their colleagues. Amendment H aims to enhance the autonomy, transparency, integrity, and independence of the judicial discipline process. Historically, judicial discipline has largely been self-regulated, facing challenges in oversight and self-protection. This amendment serves to enhance public confidence and trust in the courts. Finally, this measure is a compromise recommended by nearly all members of unanimously by the General Assembly and officially by the Judicial Branch.

Arguments Against Amendment H

- 1) The current system works. Judges understand how to review cases, hold hearings, and make impartial and hard decisions. As a result, they are well-suited to hear judicial discipline cases. The amendment transfers this authority to attorneys and citizens, who cannot fully understand judicial ethics and the unique challenges of being a judge. The judiciary's existing system of checks and balances, such as nomination and retention elections, ensures only the best become and remain judges.

Fiscal Impact of Amendment H

State spending. The measure will increase state costs by about \$50,000 per year. This funding provides compensation and training to members of the newly created judicial discipline board and rulemaking committee.

Commented [CG9]: It is unclear if there is any opposition to Amendment H. This language is reflective of a position taken by the Colorado Judicial Institute at the Interim Committee on Judicial Discipline's hearing on August 10, 2022. Since that time, however, the CJI has publicly endorsed Amendment H. Where Does Colorado's Judicial Discipline Legislation Go From Here? : Newsroom : Newsroom & Blogs : News & Events : Colorado Judicial Institute. The draft language is fine, but if there is no opposition to Amendment H, can't the Bluebook explanation simply state "none"?

RE: FW: Amendment H--Comments on 2nd Draft
Christopher Gregory to: LCS Judicial Discipline Procedures
HCR23-1001

07/30/2024 12:28 PM

Hi Juliann,

Thanks for confirming receipt. I just wanted to make sure that I was on the list for the third round.

I realize that there is a balance with the comments and keeping the statement as brief as possible. If there are any questions about any specific comment / suggested edit, please do not hesitate to let me know. As always, I greatly appreciate your work and assistance.

Warmest regards,
Christopher Gregory



The Gregory Law Firm, LLC

Christopher S.P. Gregory
Attorney at Law

201 Coffman St., #1822, Longmont, CO 80502

• Phone: [REDACTED] • Fax: 970.648.0643 •

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From: Juliann Jenson <juliann.jenson@coleg.gov> **On Behalf Of** LCS Judicial Discipline Procedures
HCR23-1001

Sent: Tuesday, July 30, 2024 12:25 PM

To: Christopher Gregory <[REDACTED]>

Subject: Re: FW: Amendment H--Comments on 2nd Draft

Mr. Gregory -

Received and thank you for the comments, very helpful! - LCS Staff

From: "Christopher Gregory" <[REDACTED]>
To: "judicialdiscipline2024@coleg.gov" <judicialdiscipline2024@coleg.gov>
Date: 07/30/2024 11:58 AM
Subject: FW: Amendment H--Comments on 2nd Draft

Good Afternoon,

Please confirm receipt of the email below with comments for the 2nd draft of Amendment H Bluebook language attached.

I hope that you have a good day. Again, if you have any questions, please do not hesitate to contact me.

Warmest regards,
Christopher Gregory



The Gregory Law Firm, LLC

Christopher S.P. Gregory
Attorney at Law

201 Coffman St., #1822, Longmont, CO 80502

• Phone: [REDACTED] • Fax: 970.648.0643 •

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From: Christopher Gregory
Sent: Monday, July 29, 2024 3:54 PM
To: judicialdiscipline2024@coleg.gov
Subject: Amendment H--Comments on 2nd Draft

Good afternoon Juliann,

Attached, please find my updated comments for the second draft of the Bluebook statement for HCR 23-1001/Amendment H. As before, I am submitting these comments as an individual without affiliation with an organization or other third-party individual(s). Please let me know if Legislative Council Staff has any questions regarding the comments provided or if there are any issues accessing the attached Word document containing my comments.

I hope that you have a pleasant week and appreciate your help with this process.

Warmest regards,
Christopher Gregory



The Gregory Law Firm, LLC

Christopher S.P. Gregory
Attorney at Law

201 Coffman St., #1822, Longmont, CO 80502
• Phone: [REDACTED] • Fax: 970.648.0643 •

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[attachment "HCR23_1001v2 (w revisions).docx" deleted by Juliann Jenson/CLICS]

Fw: *Confidential: RE: [BULK] Fw: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Juliann Jenson to: LCS Judicial Discipline Procedures
HCR23-1001

07/30/2024 02:06 PM

----- Forwarded by Juliann Jenson/CLICS on 07/30/2024 02:06 PM -----

From: "scanlon, terry" <terry.scanlon@judicial.state.co.us>
To: "Juliann Jenson" <juliann.jenson@coleg.gov>
Date: 07/30/2024 02:00 PM
Subject: RE: *Confidential: RE: [BULK] Fw: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Juliann,
I want to touch on two issues - special master and special tribunals.

Special masters

I think I've done a fairly poor job trying to articulate the current role of special masters in discipline proceedings. Yes, the Colorado Supreme Court appoints the special masters. But the special masters are not decision makers in judicial discipline proceedings. To help resolve a case, the Discipline Commission can request that the Supreme Court appoint three special masters. The special masters hold a hearing and then make a recommendation back to the Discipline Commission. The 10-member discipline commission -- which includes six non-judges - then decides to either dismiss the case, resolve it through a stipulated agreement, or recommend a sanction to the Colorado Supreme Court.

The misunderstanding about the special masters appears to be at the root of two elements of the analysis that I ask you to considering amending so it would be more clear:

- In the "No" section on page 1, it suggests that the judges appointed by the court for disciplinary hearings are making decisions in those hearings. Those judges, the special masters, are simply making recommendations to the Discipline Commission.
- In Table 1 on page 3, under the header "formal disciplinary hearings" it says the judges appointed by the court "determine sanctions." That is not accurate. The special masters make recommendations to the Discipline Commission.

Special Tribunals

I have a few points to make on this topic.

First, in Table 1, in the section "Appointments", in both the current process and the process, if a special tribunal is needed the State Court Administrator randomly selects judges to serve. In the second draft, "randomly" is included in the proposed Amendment H process but omitted from the current process, which suggests that in the current process the SCA might be hand-picking select judges to serve on the special tribunal. That's not the case. The selection of judges for the special tribunal in the current system is random.

Second, it is important to note that when a special tribunal is appointed it fills the role of the Supreme Court. in Table 1, in the section "Discipline cases involving Colorado Supreme Court Justices" the section regarding the current process the analysis inaccurately says that the accused judge can reject a sanction recommended by the special tribunal and, in that case, the

Colorado Supreme Court makes the final decision. When the special tribunal is convened under the current court rules, it is filling the role of the Colorado Supreme Court. The special tribunal is the final decision maker, and the Colorado Supreme Court has no role in reviewing the decision of the special tribunal or of any sanctions imposed .

Third, please consider changing the header “Discipline Cases Involving Colorado Supreme Court Justices.” Table 1, in total, highlights five issues, which I suppose is designed to help readers succinctly compare and contrast the current and proposed processes. I request that you reconsider the name and content for the section titled “Discipline cases involving Colorado Supreme Court justices.” I suggest that a more useful topic for readers might be “The role of independent tribunals in deciding cases.”

It seems that this section already is trying to accomplish two goals - discuss discipline when it involves supreme court justices and discuss the role of the supreme court broadly in discipline. In the table, it says in the current process the accused “judge” can reject the recommendation. I just discussed in the previous paragraph that the tribunal is making decision not recommendations. But the use of the word “judge” suggests that this section is trying to talk about more than justices.

More importantly, just by having this section header the Blue Book analysis overstates an issue that has proven to be not a real problem with the current system. The overarching narrative of the entire Blue Book analysis is confronting voters with the question of whether judges should continue to have a role in selecting judges who preside over discipline cases. I get that. But this section that focuses exclusively on the supreme courts justices exaggerates the issue to an extent that misleads voters regarding the problems with the current system.

There has been one case in history in which a justice was the subject of a discipline complaint resulting in public discipline. A tribunal was appointed and adjudicated the case, and the Supreme Court had no role in that process. The Court has never decided a discipline case involving its own members, and this could not happen under the current rules.

The justices have for decades had a requirement to follow the canons, just like all other judges. Those canons require justices to recuse if they have a conflict. When a conflict was apparent, the Court developed the rule to ensure that it was acting ethically. The Court has never overseen the discipline of one of its own in any way, or in any way, made a decision regarding a complaint against a justice.

In the current process, special tribunals are invoked in the current process when a justice has a specified connection to a case or when more than two justices need to recuse themselves. Obviously, if a member of the Colorado Supreme Court is the subject of a complaint, then all of the justices would recuse. But the tribunals provide broader assurances of fairness and impartiality. The scope of tribunals in the current process goes beyond cases in which a justice is the subject of the disciplinary proceeding. Failing to highlight the breadth of the role of tribunals in the current process incorrectly portrays the current process.

Thank you for taking time to review my feedback.
Terry

Terry Scanlon (*he/him/his*)
Legislative Liaison
Colorado Courts and Probation
1300 Broadway, Suite 1200

Denver, Colo. 80203
[REDACTED] (call or text)

From: Juliann Jenson <juliann.jenson@coleg.gov>
Sent: Tuesday, July 30, 2024 12:59 PM
To: scanlon, terry <terry.scanlon@judicial.state.co.us>
Subject: [External] *Confidential: RE: [BULK] Fw: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

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Today is fine - thanks Terry!

From: "scanlon, terry" <terry.scanlon@judicial.state.co.us>
To: "Juliann Jenson" <juliann.jenson@coleg.gov>
Date: 07/29/2024 04:43 PM
Subject: RE: [BULK] *Confidential: Fw: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

I'm going to send you feedback on the second draft tomorrow. I assume that will meet the deadline. Please let me know if I misread that. Thanks

From: Juliann Jenson <juliann.jenson@coleg.gov>
Sent: Tuesday, July 23, 2024 4:39 PM
To: scanlon, terry <terry.scanlon@judicial.state.co.us>
Subject: [External] [BULK] *Confidential: Fw: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

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Draft Ballot Analysis from Legislative Council Staff

[REDACTED]

Ballot Analysis

Legislative Council
Staff

Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Each year the Legislative Council Staff prepares a voter information booklet that includes an analysis of each measure that will appear on the statewide ballot. We distribute drafts of each analysis to people who are interested in commenting on the draft. The attached document is the second draft of the Legislative Council Staff analysis of

Amendment H Judicial Discipline Procedures and Confidentiality.

The second attachment describes the process for writing each analysis.

You can reply to this email to send your comments to the writing team. Comments are due by **7/30/2024**. If you are having problems accessing the documents, please click [here](#). The website contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your assistance.

Draft of Analysis

Analysis Process

Legislative Council Staff
200 East Colfax Ave., Room 029
Denver, CO 80203
303-866-3521

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RE: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Anne Mangiardi

to: judicialdiscipline2024@coleg.gov

07/30/2024 04:06 PM

Good afternoon,

Thank you for the opportunity to comment on the draft Bluebook language for this measure. I'm providing these comments in connection with my role as executive director for the Colorado Commission on Judicial Discipline.

We have just two comments on the Second Draft:

- Page 1, Line 37, we suggest removing "reprimand" and instead saying "issues private discipline..." This broader term would encompass all three kinds of private discipline the Commission may impose (admonishment, reprimand, or censure).
- Page 2, line 3: we suggest removing "agree" and replacing it with "decide."

Best,

Anne Mangiardi

Anne Mangiardi
Executive Director
Pronouns: she/her



COLORADO
Office of Judicial Discipline

P: [REDACTED] | F: [REDACTED]
1300 Broadway, Ste. 210, Denver, CO
80203
ccjd.colorado.gov

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transmission.

From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Sent: Tuesday, July 23, 2024 3:48 PM

To: Anne Mangiardi <amangiardi@jd.state.co.us>

Subject: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft



Ballot Analysis

Legislative Council Staff

Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

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Legislative Council Staff
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information booklet that
includes an analysis of
each measure that will

appear on the statewide ballot. We distribute drafts of each analysis to people who are interested in commenting on the draft. The attached document is the second draft of the Legislative Council Staff analysis of **Amendment H Judicial Discipline Procedures and Confidentiality**. The second attachment describes the process for writing each analysis.

You can reply to this email to send your comments to the writing team. Comments are due by **7/30/2024**. If you are having problems accessing the documents, please click [here](#). The website contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your assistance.

Draft of Analysis

Analysis Process



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Council Staff
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Comments from CWBA on Amendment H

Chelsea Augelli

to: judicialdiscipline2024@coleg.gov

07/30/2024 05:11 PM

Cc : "Kim Sporrer", "Iris Halpern", "Morgan L. Carroll"

History: This message has been replied to and forwarded.

Hello,

On behalf of the Colorado Women's Bar Association please see the attached letter regarding our comments to the second draft of Ballot Amendment H.

Best,

Chelsea M. Augelli, Shareholder

Wells Family Law | PC

1660 Lincoln Street, Suite 1525

Denver, CO 80264

Phone: (303) [REDACTED]

Fax: (720) 677-0110

[REDACTED]
<https://wellsfamilylawcolorado.com>

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Draft Letter Commenting on Amendment H Ballot Analysis.docx



July 29, 2024

VIA Email

LEGISLATIVE COUNCIL
ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784
lcs.ga@coleg.gov

Dear Colorado Legislative Council Staff,

I am writing on behalf of the Colorado Women's Bar Association (CWBA) to provide feedback on the ballot analysis for Amendment H - Judicial Discipline Procedures and Confidentiality. As an organization dedicated to advancing women as leaders in the law that actively supported the legislative efforts related to judicial discipline in the 2023 session, we appreciate the opportunity to comment on Draft 2 of the ballot analysis.

We have reviewed the proposed draft. Overall, we think it succinctly and accurately summarizes the major components of the measure. We offer for your consideration the following comments that would further clarify certain aspects:

- In the section titled "What changes does Amendment H make to the judicial discipline process?"
 - We suggest adding the **bolded** clause to the end of this sentence: "The new independent board's decisions are considered final unless there is proof of a legal or factual error **upon appeal to the Colorado Supreme Court.**"
- In Table 1, under "Formal Disciplinary Hearings"
 - It would be helpful to clarify that under Amendment H the Supreme Court and the Governor would share the responsibility of making appointments to the independent board to more directly correspond to the summary of current practice.
- In Table 1, under "Colorado Supreme Court Role"
 - The difference between the Colorado Supreme Court being the "final arbiter" and "limited to appeals" is a little unclear. We recommend clarifying that:
 - Under current practices, the Colorado Supreme Court acts on the disciplinary recommendation of the commission following which there is no further right of appeal.



- Under Amendment H, the independent board makes the disciplinary decision, and the Colorado Supreme Court's role is limited to appeals, except in cases involving a Colorado Supreme Court Justice.
- In the section titled "Arguments For Amendment H"
 - We suggest adding the **bolded** to the end of this sentence: "This amendment serves to enhance public confidence and trust in the courts **and ensure reporting parties have an entity completely independent of the court to oversee a judicial discipline proceeding.**"

We appreciate your attention to these suggestions and your efforts to inform Colorado voters about the merits of Amendment H. Please feel free to contact me if there are any questions or further discussions needed.

Sincerely,

Carime Lee
President
Colorado Women's Bar Association

Re: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Chris Forsyth to Colorado Legislative Council Staff

07/30/2024 05:40 PM

History:

This message has been replied to.

Attached are our comments on Amendment H. I have attached a pdf which contains all of the comments. A Word version of a revised draft analysis is also attached.

I would appreciate it if you would confirm receipt.

If you have any questions, please feel free to contact me.

Thank you,

Chris Forsyth

From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Sent: Tuesday, July 23, 2024 3:48 PM

To: Chris Forsyth <[REDACTED]>

Subject: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Draft Ballot Analysis from Legislative Council Staff

Ballot Analysis

Legislative Council Staff

Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

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each measure that will appear on the statewide ballot. We distribute drafts of each analysis to people who are interested in commenting on the draft. The attached document is the second draft of the Legislative Council Staff analysis of **Amendment H Judicial Discipline Procedures and Confidentiality**. The second attachment describes the process for writing each analysis.

You can reply to this email to send your comments to the writing team. Comments are due by **7/30/2024**. If you are having problems accessing the documents, please click [here](#). The website contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your assistance.

Draft of Analysis

Analysis Process

Legislative Council Staff
200 East Colfax Ave., Room 029
Denver, CO 80203
303-866-3521

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Comments on draft analysis - judicial discipline.pdf



Amendment H analysis rewrite.docx

Amendment H: Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature . Passes with 55 percent of the vote

Amendment H proposes Amending the Colorado Constitution to:

- require a separate panel from the Colorado Commission on Judicial Discipline to preside over ethical misconduct hearings involving judges; and
- make proceedings public if a judicial misconduct case goes to a formal proceeding.

What Your Vote Means

YES

A “yes” vote on Amendment H requires judicial discipline cases that proceed to a formal proceeding be decided by a panel separate from the Colorado Commission on Judicial Discipline. The Supreme Court and the governor select members of an adjudicatory board of judges, attorneys, and citizens from which three members are selected to hear a judicial discipline case. Formal proceedings in judicial discipline proceedings become public when they are commenced.

NO

A “no” vote on Amendment H means that the current system remains in place where the Colorado Commission on Judicial Discipline can preside over formal proceedings in a judicial discipline case or upon the commission’s request, the Supreme Court can select three special masters to determine a judicial discipline case. Formal proceedings in judicial discipline proceedings remain confidential unless a case is referred to the Supreme Court with a discipline recommendation.

Summary and Analysis of Amendment H

What is judicial misconduct and discipline?

Colorado judges must follow the Code of Judicial Conduct which is adopted by the Supreme Court. Judicial misconduct occurs when a judge violates the code. Any person may file a complaint with the Colorado Commission on Judicial Discipline alleging a judge violated the code. If a violation is found by the commission, the commission may recommend private or public discipline to which the accused judge may agree. If the judge does not agree, then the matter may proceed to formal proceedings.

How are judicial discipline cases currently handled?

The Colorado Commission on Judicial Discipline receives complaints regarding judicial misconduct. Members of the commission are appointed by the Colorado Supreme Court and the governor. Pursuant to rule, a screening process is used to dismiss complaints for various

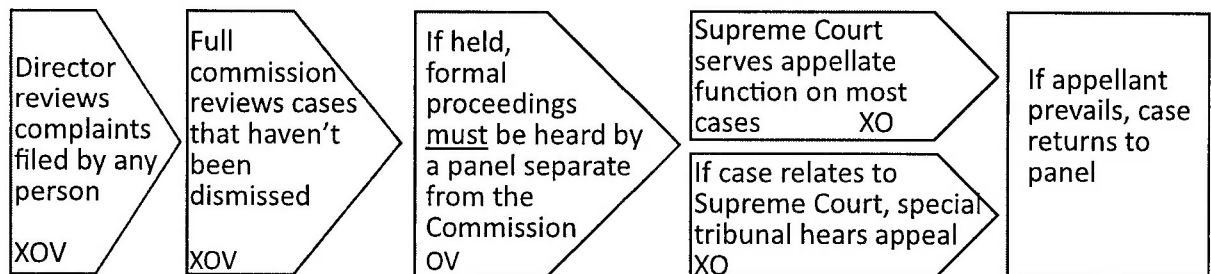
reasons. If a case proceeds to the full commission, the commission may dismiss the complaint or proceed with an investigation. The Commission may issue private discipline. If a judge disagrees with the Commission's stance regarding discipline, the matter may proceed to formal proceedings. Historically, this happens in less than one percent of cases filed with the Commission. The Commission may preside over formal proceedings or request that the Colorado Supreme Court select three special masters to preside over the case. If formal proceedings result in a finding of discipline, the matter is referred to the Supreme Court with a recommendation for discipline. Once a matter is referred to the Supreme Court, it becomes public. Only the supreme Court can discipline a judge against the judge's will.

What changes does Amendment H make to the judicial discipline process?

If a judicial discipline case proceeds to formal proceedings, Amendment H requires the case to be heard by a panel separate from the Colorado Commission on Judicial Discipline. The Commission will only prosecute the case. The three-member panel that hears a case is selected by the state court administrator from an adjudicative board comprised of four district court judges appointed by the Supreme Court, and four attorneys and four citizens appointed by the governor. The three-member panel will consist of one judge, one attorney, and one citizen. The determination by the panel is considered final unless an appeal is filed. The Colorado Supreme Court would hear most appeals. If a case relates to a Supreme Court Justice, however, an appeal will be heard by a tribunal comprised of six district court judges, each from a different judicial district, and one Court of Appeals judge. If a judge does not appeal a panel's determination, then the judge can be disciplined against the judge's will without Supreme Court involvement.

The flow chart below summarizes how the discipline process would work if Amendment H passes.

Figure 1
Judicial Discipline Proceedings Under Amendment H



- X – This is the same procedure as current law
- O – complaint can be dismissed at these stages
- V – informal punishment can issue at these stages

Table 1

Current Judicial Discipline Proceedings Compared to Amendment H

Current Judicial Discipline	Judicial Discipline Under Amendment H
Prior to Any Formal Disciplinary Hearing	
Amendment H does not change the procedure before a formal disciplinary hearing. As shown by the annual reports of the Colorado Commission on Judicial Discipline, the vast majority of complaints (97%) filed with the Commission are dismissed by the Commission either through a screening process or through a vote of the entire commission. Of the remaining 3% of cases, most are resolved with private discipline. Less than one percent of cases filed with the Commission get to the point of formal proceedings. The procedures provided in Amendment H only apply if a case proceeds to formal proceedings.	
Formal Disciplinary Hearings	
Either the Commission on Judicial Discipline or a panel of three special masters selected by the Colorado Supreme Court preside over formal disciplinary hearings. If discipline is recommended, the recommendation is provided to the Supreme Court and the recommendation can be accepted, modified, or rejected.	A panel of three members (one judge, one lawyer, one citizen) preside over formal disciplinary hearings. The decision is final unless an appeal is filed. Most appeals will be heard by the Supreme Court. If a case relates to a Supreme Court justice, however, a tribunal of six district court judges and one Court of Appeals judge hear the appeal.
Public Access to Information	
Judicial discipline proceedings are confidential until a recommendation for discipline is filed with the Supreme Court. Cases sometimes, however, can become public before this point. No publication of papers filed with or proceedings before the commission are privileged in any action for defamation except that the record filed by the Commission in the Supreme Court continues to be privileged.	Judicial discipline proceedings are confidential until the commencement of formal proceedings. Cases sometimes, however, can become public before this point. A person is immune from defamation based on papers filed or testimony given, but no other publication, such as a newspaper, has absolute immunity in any action for defamation filed by a judge.
Appointments	
Commission members are appointed by the Colorado Supreme Court and the governor with consent of the Senate. Colorado Supreme Court appoints special master judges to hear discipline cases. The state court administrator selects judges for the panel that hears cases relating to Supreme Court justices.	Commission members and adjudicative board are appointed by the Colorado Supreme Court and the governor with Senate confirmation. The state court administrator selects from adjudicative board the panel members to hear cases. The state court administrator selects judges who serve on appeal panel if case relates to Supreme Court justice.

Rules	
Supreme Court makes the rules regarding judicial discipline.	A rulemaking committee comprised of four members appointed by the Supreme Court, four members appointed by the adjudicative board, four members appointed by the Commission, and one victim's advocate appointed by the governor determine the rules regarding judicial discipline.

Arguments For Amendment H

Requiring a separate panel from the discipline commission to decide judicial discipline cases is an important change even though such process is allowed by current law. Allowing an attorney and a citizen to be on an adjudicatory panel along with a judge is an important change. Making the proceedings public when formal proceedings are commenced provides additional and sufficient transparency in the process. Amendment H is approved by the judicial branch and that is important because judges must approve their disciplinary process. The state court administrator should have an important role regarding the selection of who is placed on an adjudicatory panel. Judges should be involved in making the rules for the judicial discipline system.

Arguments Against Amendment H

Amendment H makes minimal changes to the judicial discipline process when much more substantial change is needed. Having judges in roles on the discipline commission, on adjudicatory panels, and on the rulemaking board leaves too many conflicts of interest in the process. The current judicial discipline process does not work, and Amendment H will not make it work. History shows that the procedures in Amendment H affect less than one percent of complaints against judges and are not worthy of a constitutional amendment. If Amendment H passes, it will be almost impossible to obtain necessary reforms because legislators will allege they did the job with Amendment H. Empowering the state court administrator with a role in the judicial discipline process is a mistake.



July 30 2024

Legislative Council
State Capitol
200 East Colfax, Room 29
Denver, CO 80203

Re: Amendment H Draft Analysis

To whom it may concern.

This letter is to respond to the draft analysis as requested. Overall, the draft analysis is confusing because it fails to effectively communicate how the current process works. Therefore, it also fails to effectively communicate what Amendment H does. This letter provides a critique of the draft analysis. Because the analysis is so problematic, however, a complete draft analysis proposal is also being submitted. It is attached to this letter.

The first section

In the first sentence under “Amendment H Proposes amending the Colorado Constitution to,” “create an independent board separate from the Colorado Supreme Court . . .” This is inaccurate for two reasons. First, the board is not independent of the Colorado Supreme Court. The Supreme Court selects members of the adjudicative board. The state court administrator, who is hired by and works for the Supreme Court, picks the members of an adjudicative panel from the entire board, and the Supreme Court maintains appellate functions over the adjudicative board. Although the resolution passed by the General Assembly which resulted in Amendment H uses the word “independent,” it is nothing more than a catchphrase or a marketing term and Legislative Council should not be using the word in its analysis of the measure.

Second, what Amendment H really does is create a separate panel from the Colorado Commission on Judicial Discipline to preside over judicial discipline hearings. Lines 2 and 3 of page one of the draft analysis are not correct and mislead the public.

In addition, it must also be noted that a separate panel to adjudicate judicial discipline is nothing new. Under current law, the discipline commission can ask the Supreme Court to appoint three special masters to hear a judicial discipline case. All Amendment H does is require a separate

panel if a case actually proceeds to formal proceedings. And Amendment H changes the makeup of the panel. Amendment H also makes the findings of the panel final unless appealed. Under the current system, the findings of the panel aren't final and are a recommendation to the Supreme Court.

In the second bullet under the title, the vagueness of the writing oversells what the measure really does. If formal proceedings are initiated, which historically has happened in less than one percent of cases handled by the commission, the proceedings become public. At present such proceedings are not public unless the proceeding concludes with a finding of misconduct and that recommendation for discipline is submitted to the Supreme Court. It would be much more clear to simply state exactly what Amendment H does: if a judicial misconduct case goes to a formal proceeding, such proceeding shall be public.

The second section

In the "yes" position, it states "creating an independent board." What does independent mean? The board is not independent of the Colorado Supreme Court as the paragraph implies. The Supreme Court selects members of the adjudicative board. Although the referendum uses the word "independent" in its language, the word is nothing more than a catchphrase or marketing copy. It is inaccurate because the board is not independent of the Supreme Court.

What the referendum does is create a separate – as opposed to independent – panel to hear and decide judicial discipline cases. The current system can have the prosecution and adjudicative functions in the same office if the Commission does not request a panel of special masters. Amendment H changes that by requiring a separate panel.

Under Amendment H, the Supreme Court still selects members of the panel that hears cases. Therefore, the adjudicatory board does not reduce the Supreme Court's role in judicial discipline hearings. So, the "yes" position is inaccurate.

What a "yes" vote does is require a separate adjudicative panel to preside over judicial discipline proceedings. In regard to transparency, the measure will provide more information to the public only if a case proceeds to formal proceedings which, historically, happens in fewer than one percent of complaints with the commission. This statistic comes from the annual reports of the Colorado Commission on Judicial Discipline.

The "no" position is also inaccurate. If Amendment H is adopted, and in the current system, the Colorado Supreme Court selects judges who preside over judicial discipline hearings. Amendment H does not change that. Amendment H allows the governor to appoint some members of the adjudicatory board who end up on a hearing panel. A "no" vote means a separate adjudicatory panel will only be provided if the Commission requests one. The statement regarding confidentiality is also incorrect. Confidentiality currently ceases when the Commission recommends discipline to the Supreme Court. As it reads, the paragraph state discipline does not become public until the Supreme Court issues discipline. This is not correct.

Under the Summary and Analysis of Amendment H

What is judicial misconduct and discipline?

Lines 25-26 are too vague to be helpful to a voter. Judges can be disciplined if they violate the Code of judicial Conduct. What may seem unethical or what may seem to most people as something that discredits the courts may not actually be a violation of the Code. Line 30 is inaccurate and should be removed. The section should end on line 29 with a period after “privately.” The phrase “depending upon the seriousness of the misconduct” is not an accurate description of the law.

How are judicial discipline cases currently handled?

In line 33, the phrase “independent state agency” is used. It is inaccurate and should not be used by Legislative Council in its analysis. What does “independent” mean? It is misleading. The commission is not independent of the Supreme Court in any way, shape, or form. The Supreme Court selects judges to be on the Commission, writes the rules for the Commission, and ultimately what, if any, discipline is issued. The word “independent” should be removed.

Line 35 on page 1 through line 4 on page 2 are misleading and therefore very problematic. The description of the screening process is inaccurate. The Colorado Constitution does not provide for the screening of complaints as alleged in lines 32-34. Screening is created by a rule promulgated by the Supreme Court. A lot of complaints are dismissed in the controversial screening process of the commission. Often the complaints are dismissed by the executive director without involvement of the entire commission. And the basis used to dismiss complaints in the screening process are much more numerous than those stated. The statement regarding merit in line 36 is also misleading. A complaint can have merit, but if it's in a complaint related to an order or an action in court that could be appealed, it will be dismissed in the screening process. Likewise, the description regarding what the commission does is inaccurate and misleading. Private discipline can take different forms. And the description about what the commission does is grossly inaccurate, especially considering that this is what Amendment H is about. The pertinent section in the constitution reads as follows:

The commission may, after such investigation as it deems necessary, order informal remedial action; order a formal hearing to be held before it concerning the removal, retirement, suspension, censure, reprimand, or other discipline of a justice or a judge; or request the supreme court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter and to report thereon to the commission.

Colo. Const., Art. IV, Sec. 23. Para (3)(e).

The same procedure in Amendment H, with a separate adjudicatory panel, can happen under present law. Current law says either the commission can proceed to a formal hearing and make its own ruling, or a separate panel can have a hearing and make the ruling if requested by the

commission. In both instances, the Supreme Court appoints members to the adjudicatory panel. Under current law, the determination after hearing, if it recommends discipline, becomes a recommendation to the Supreme Court. Under Amendment H, the determination becomes final unless it is appealed to the Supreme Court. So how different is Amendment H from current law? It simply requires the separate panel, changes the membership of the panel, and requires an appeal to get to the Supreme Court. It's essentially the same system.

The statement that the forwarded cases are reviewed further and tried by judges appointed by the Colorado Supreme Court, on lines 1 and 2 of page 2, is simply not correct. It can happen that way under the current system, but it doesn't always happen that way. At this point, the Colorado Supreme Court can basically do whatever it wants, including dismiss the case. The last sentence of this section is also misleading. Current law is that until the commission files a recommendation with the Supreme Court, the proceedings are confidential. The statement written in the draft on lines 3 and 4 of page 2 is very misleading because it is vague and implies judges receive discipline. The phrase "when judges are publicly punished" is not correct. If it reads in this manner, which it should not, it should read "if" judges are publicly punished. The paragraph as written is very confusing and incorrect.

What changes does Amendment H make to the judicial discipline process?

Lines 6-16 on page 2 are incorrect, misleading, and need to be changed. Again, the word "independent" is used on lines 6, 8, 10, and in the chart in line 16. The word "independent" is a catchphrase or marketing term. The board is not independent of the Supreme Court, which is the improper selling tactic that is being attempted. The word "independent" should be removed from the draft analysis. It is not helpful. Amendment H replaces the current three special masters with an adjudicatory board. Lines 10-11 are incorrect because the Supreme Court reviews legal issues de novo.

This section is also confusing because it fails to describe the two appellate paths. In most instances an appeal of the adjudicatory panel's decision will be heard by the Colorado Supreme Court. If a complaint relates to a Supreme Court Justice, however, then an appeal is heard by a special tribunal comprised of six district court judges and a Court of Appeals judge.

The chart is misleading because it fails to show where the changes are in the system. Furthermore, the first two sections of the chart, from left to right, are not created for or provided for by Amendment H. Those two sections are created by current rules. If it is insisted that this particular chart be used, it should contain a separate circle, possibly half filled, to show that this is the way the system currently works. So, the first figure regarding screening would have a half-filled circle showing that this is currently the process. The second figure regarding full commission review would also have a half-circle. Under both Amendment H and current law the executive director can dismiss cases on his own without full involvement of the commission. The chart is misleading.

The third figure regarding the "independent" board is also allowed under current law. As stated above, the word "independent" should be removed. This third figure should also contain a half-circle. Amendment H requires, as opposed to allows, the separate panel and changes the

membership of the panel which is not reflected in the chart. The figures in the 4th column, going left to right, are also misleading. The top box should be the Supreme Court for appeals. Below should be a box relating that a tribunal hears appeals that relate in any way to a Supreme Court Justice. The fifth column again improperly uses the word “independent.” The word should be removed and replaced with “adjudicatory.” Furthermore, the entire board does not hear an appeal. Only the panel of three would hear an appeal.

The current system works as this chart, only the Supreme Court would not remand a case back to a panel under current law. This chart is not helpful. It is misleading because it implies the current system does not work this way.

Page 3

The table on page three is problematic. What is missing from the beginning of this page is glaring. If comparing the current judicial discipline proceedings to Amendment H in this manner, it needs to be stated that complaints are still filed with the Commission on Judicial Discipline where they can be dismissed. Amendment H only changes judicial discipline if there are formal proceedings. **Historically, formal proceedings have happened in less than one percent of cases filed with the commission. Actually, it's a fraction of that one percent. So, it needs to be made clear that Amendment H will affect very, very few cases.** This should be stated in the first paragraph in this section.

Under the current first paragraph, “Formal Disciplinary Hearings” the Supreme Court appoints judges both currently and under Amendment H. Amendment H simply adds a lawyer and citizen appointed by the governor to a three-person panel. The three-person panel is selected from the entire adjudicatory board. The state court administrator, who is hired by and reports to the Supreme Court, puts the adjudicatory panel together for each case. This section is misleading because it makes it look like the Supreme Court isn’t involved in the adjudicatory board or panel when the Supreme Court is still very much involved. The state court administrator is hired by and works for the Supreme Court.

The current second paragraph, “Discipline Cases Involving Colorado Supreme Court Justices” is also confusing and misleading. Under Amendment H the word “independent” is again used. As stated previously, that word is not helpful to voters and is misleading. Therefore, Legislative Council should refrain from using it for the language that ends up in the ballot book. Furthermore, a Supreme Court justice does not have to be the respondent in the judicial discipline hearing for this special tribunal to be used.

The current third paragraph, “Colorado Supreme Court Role,” is misleading and oversells Amendment H. The Colorado Supreme Court’s role both currently and under Amendment H is limited to appeals. Under the current system, a judge can accept discipline at any time. Historically 97% of cases against judges are completely dismissed. This statistic is calculated from the annual reports of the Colorado Commission on Judicial Discipline. Of the remaining 3%, private discipline is most often issued which does not involve the Supreme Court. In other words, the current Commission issues discipline without Supreme Court involvement. Judges accept private and public discipline without the involvement of the Supreme Court.

Under current law, only if there are formal proceedings (the accused judge and the commission don't agree on discipline) which result in a recommendation of discipline does the matter get to the Supreme Court. Stating the Supreme Court is the "final arbiter" makes the Supreme Court sound much more involved in individual cases than it is. The Supreme Court's role under Amendment H is very similar. It has the ability to overturn the commission's finding both currently and under Amendment H. Saying the rules under Amendment H are established by an "independent body" is misleading. The Supreme Court appoints members of the rulemaking board. Again, the word "independent" should not be used. It is not helpful.

The "Public Access to Information" is also incorrect. Under current law, the proceedings become public when a recommendation is filed with the Supreme Court for discipline. Under Amendment H, the proceedings become public when formal disciplinary proceedings are commenced.

Why is Amendment H on the ballot?

This section should not be in the draft analysis. If it is included, it should relate the judicial scandal wherein a state court administrator and chief justice offered a contract to a former employee who was angry she was passed over for the state court administrator position. The employee threatened to expose acts of judges that should have been disciplined. The contract was offered as a way to shut her up. This was exposed and made news all around the state. The legislature felt forced to do something. But unfortunately, the legislature worked closely with the judicial branch. Supreme Court justices actively spoke out to ensure any changes would not harm them. The judicial branch, where judges are not term-limited like legislators, is very skilled and took advantage of legislators. The result is Amendment H along with other measures passed by the General Assembly. That's why H is on the ballot. What is written in the draft analysis does not explain why H is on the ballot, nor is it helpful in understanding what Amendment H does or whether voters should vote for it.

Furthermore, understanding the state court administrator's role as the impetus for Amendment H shows how Amendment H is truly a bad policy. Amendment H puts the state court administrator in control of who is on the adjudicatory panel to determine judicial discipline. The very position that was used corruptly is given more power in the judicial discipline process under Amendment H.

Argument For Amendment H

This paragraph is wrong, misleading, and not fair. It oversells Amendment H with its misleading language. The first sentence improperly leads the reader to believe H removes the direct influence of judges over the discipline process. It does not. It cannot even be argued that it does remove such influence. The Supreme Court appoints judges to the adjudicative board. The Supreme Court appoints members of the rulemaking committee. The Supreme Court appoints judges to the discipline commission. The argument that states what Amendment H aims to do is irrelevant and misleading because Amendment H fails to do what it allegedly aims to do – miserably. There is absolutely nothing in this paragraph related to what Amendment H actually

does. It is irrelevant mumbo jumbo. The argument in the paragraph needs to state why the proposals in Amendment H should be adopted. The argument for should be revised to specifically address why the minimal changes proposed in Amendment H are worthy of a constitutional amendment.

Argument Against Amendment H

The current paragraph is not acceptable and is insulting to attorneys and citizens. The nomination and retention process is irrelevant to Amendment H. This paragraph is written to make people vote for Amendment H.

We propose the following argument against:

Amendment H makes minimal changes to the judicial discipline process when much more substantial change is needed. Having judges in roles on the discipline commission, on adjudicatory panels, and on the rulemaking board leaves too many conflicts of interest in the process. The current judicial discipline process does not work, and Amendment H will not make it work. History shows that the procedures in Amendment H affect less than one percent of complaints against judges and are not worthy of a constitutional amendment. If Amendment H passes, it will be almost impossible to obtain necessary reforms because legislators will allege they did the job with Amendment H. Empowering the state court administrator with a role in the judicial discipline process is a mistake.

Conclusion

Thank you for allowing us to comment regarding Amendment H. The draft analysis is so problematic, we are submitting our own analysis which is a rewrite of the draft analysis. It more clearly explains the current process and the effect Amendment H has on the process.

If you have any questions, please feel free to contact me.

Sincerely,



Chris Forsyth, Esq.
Executive Director

Phone: [REDACTED]

Email: [REDACTED]

***Confidential: Re: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft** 📎

Juliann Jenson

to: Chris Forsyth

07/31/2024 10:16 AM

Cc "elizabeth.burger@coleg.gov", "Colorado Legislative Council Staff",
: "natalie.castle@coleg.gov"

Hi Chris,

No documents of yours were deleted, but thank you for resending them just in case. I have both your comments and rewrites on file. Sorry for any confusion - I am not sure why you received an email noting your document was deleted.

Thank you for your comments. - Juliann



Juliann Jenson | MPA
Senior Research and Committee Analyst

Direct: 303-866-3264 | **LCS Main:** 303-866-3521
Email: juliann.jenson@coleg.gov
200 East Colfax Ave, Suite 029, Denver CO 80203



"Chris Forsyth"		I submitted comments yesterday regarding Ame...	07/31/2024 09:12:52 AM
From:	"Chris Forsyth" <[REDACTED]>		
To:	"Colorado Legislative Council Staff" <judicialdiscipline2024@coleg.gov>, "natalie.castle@coleg.gov" <natalie.castle@coleg.gov>, "elizabeth.burger@coleg.gov" <elizabeth.burger@coleg.gov>		
Date:	07/31/2024 09:12 AM		
Subject:	Re: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft		

I submitted comments yesterday regarding Amendment H: Judicial Discipline. I received an email acknowledging receipt of the documents I sent. But it notes that at least one of the documents I submitted was deleted by Juliann Jensen.

So, I'm sending both documents I sent yesterday a second time. Apologies for the second email, but I don't think deleting documents is appropriate. The first document is a pdf which contains all comments including a new draft analysis. Because the draft analysis was so incorrect in its understanding of the current system and what Amendment H does, I took the time to rewrite it, The rewrite is in the pdf. I also attached a Word document of the rewrite to make it easier to cut and paste any copy into a new analysis.

Just trying to help.

Thank you,
Chris Forsyth

From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>
Sent: Tuesday, July 23, 2024 3:48 PM
To: Chris Forsyth <[REDACTED]>
Subject: Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Draft Ballot Analysis from Legislative Council Staff

Ballot Analysis

Legislative Council Staff

Amendment H Judicial Discipline Procedures and Confidentiality - 2nd Draft

Each year the Legislative Council Staff prepares a voter information booklet that includes an analysis of each measure that will appear on the statewide ballot. We distribute

drafts of each analysis to people who are interested in commenting on the draft. The attached document is the second draft of the Legislative Council Staff analysis of **Amendment H Judicial Discipline Procedures and Confidentiality**. The second attachment describes the process for writing each analysis.

You can reply to this email to send your comments to the writing team. Comments are due by **7/30/2024**. If you are having problems accessing the documents, please click [here](#). The website contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your assistance.

Draft of Analysis

Analysis Process



Legislative Council Staff
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[attachment "Comments on draft analysis - judicial discipline.pdf" deleted by Juliann Jenson/CLICS] [attachment "Amendment H analysis rewrite.docx" deleted by Juliann Jenson/CLICS]

Amendment H Ballot Analysis

Christopher Gregory

to: judicialdiscipline2024@coleg.gov

08/13/2024 01:00 PM

History:

This message has been replied to.

Good afternoon Juliann,

I appreciate legislative staff's efforts to incorporate many of my previous editing suggestions for this ballot analysis. Consistent with the instructions provided in the August 12, 2024 letter from Legislative Council, I have included some of my previous requests for edits in the attached document.

Overall, I believe that this draft language is fairly close to what it should be. Consequently, my comments focus on three primary points: 1) the ballot analysis should at least note that this amendment will limit the Colorado Supreme Court's control/influence over the judicial disciplinary process, 2) the description of what constitutes judicial misconduct should be more robust and acknowledge that judges are held to a higher standard (which includes avoiding even the appearance of impropriety), and 3) the explanation of Amendment H being on the ballot should emphasize the robustness of the Interim Committee on Judicial Discipline's process and how the final version of HCR 23-1001 passed unanimously through both houses on its third reading. As I note, I am unaware of other prior constitutional amendment referrals with such a level of universal support.

Although I do not know if it is helpful to the drafters, I was struck by how well Rep. Weissman summarized HCR 23-1001 when it was introduced in the House Judiciary Committee (3/15/23). Rep. Weissman stated:

All right, thank you, Madam Chair and committee. I should make this close enough. Thank you for hearing House Concurrent Resolution 1001 today. This is half of the work of last summer's Interim Committee on Judicial Discipline, of which Minority Leader Lynch and I were both members and, of course, colleagues. The Vice Chair was part of this journey as well with us. Just to provide a little bit of groundwork, and because not everybody was part of that, the prior phases of the journey that lead us to where we are today, I thought I'd say just a little bit about it, and then we'll make some comments that are more directly to the measure. Excuse me, really, I wanted to start briefly with a bill that the legislature passed last spring, House Bill, or rather, I'm sorry, Senate Bill 22-201. Among other things, that measure, for the first time, codified in statute the Commission on Judicial discipline and the Office of Judicial Discipline. Previously, those had existed in court rule. They specified information sharing responsibilities between what were in that Bill called judicial discipline agencies, so the Commission and things like Attorney Regulation Counsel and otherwise. Because we knew that there would be some even bigger changes to have to grapple with, including changes of the constitutional nature that we really couldn't deal with in the last weeks of session, part of that bill last year created the interim committee that begat the legislation that we're here to talk about today. I want

to note that 201, was bipartisan and bicameral. I was one of the four sponsors of that and it passed. The final recorded votes in both chambers by a combined vote of 94 to 6. Moving then to the Interim Committee, I wanted to observe a little bit about how that was set up, and intentionally so. It could have been a majoritarian interim committee. Those happen sometimes. Senator Lee and I last year decided that this particular committee should not be majoritarian, because what we're talking about here is even bigger than party identities. We drew inspiration from HB 21-1325 that set up an evenly 4-4, so 2 each House Dems, Senate Republicans interim committee to grapple with school finance, which is also a big question, that is something else that doesn't need to be purely party line. So Senator Lee began chairing. I then took over chairship midway. And Rep. Carver, who is not with us, because she was term limited, was Vice Chair. And she was a great partner to work with throughout the summer. I wanted to note that, because it's not every interim committee that is like that, and that was an integral part of all of our work, the legislation, and you can see the list if you'd like at 13-5.3-110(7), the legislation charged the interim committee to study 17 specific areas or aspects of judicial discipline. We took testimony over the course of multiple hearings from a variety of folks, bar associations, heavily the Colorado Bar Association and the Colorado Women's Bar Association, variety of outside organizations, and I want to specifically acknowledge the National Center for State Courts, which as an entity that kind of studies judicial branch operations across the 50 states, survivor advocacy organizations, and I want to specifically mention CCASA (the Colorado Coalition Against Sexual Assault) and various members of the public. Process wise, in talking with Rep. Carver near the end of our work, we decided to try to operate in a consensus way. Sometimes, what will happen in an interim committee is both sides might go to their respective corners. The blue team will draft over here, the red team will draft over here. You'll see what happens. What I proposed to Vice Chair Carver was that we not do that. Was that we bring forward one set of measures that we could agree to. And ultimately we did. Measure A, which was the parlance from the interim, is now this concurrent resolution. Measure B from the interim is the companion bill that we'll turn to next. And of course, Mr. Minority Leader and Madam Vice Chair will speak about the ombuds aspect, which is the third and last thing on our docket. With that setup, I'm going to turn it over to Minority Leader Lynch.

In any event, I appreciate all the work that you and other members of legislative staff have put into this. I humbly request further consideration of the additional edits and comments that I am submitting here.

As I have previously explained, my participation in this process has been as an individual without speaking on behalf of any third party or organization.

I hope that you have a pleasant week. If there are any questions about my comments or suggested edits, please do not hesitate to let me know.

Warmest regards,
Christopher Gregory



The Gregory Law Firm, LLC

Christopher S.P. Gregory
Attorney at Law

201 Coffman St., #1822, Longmont, CO 80502

• Phone: [REDACTED] • Fax: [REDACTED] •

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HCR23_1001v3 (w revisions).docx

Re: Amendment H Judicial Discipline Procedures and Confidentiality - 3rd Draft

Chris Forsyth to Colorado Legislative Council Staff

08/14/2024 10:07 AM

History:

This message has been replied to and forwarded.

Attached are my comments on the 3rd draft.

Please advise whether the legislators on legislative council will receive a copy of these comments.

Thank you,

Chris Forsyth

From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Sent: Monday, August 12, 2024 12:33 PM

To: Chris Forsyth <[REDACTED]>

Subject: Amendment H Judicial Discipline Procedures and Confidentiality - 3rd Draft

Draft Ballot Analysis from Legislative Council Staff

Ballot Analysis

Legislative Council Staff

Amendment H Judicial Discipline Procedures and Confidentiality - 3rd Draft

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You can reply to this email to send your comments to the writing team. Comments are due by **8/16/2024**. If you are having problems accessing the documents, please click [here](#). The website contains the ballot analysis, the language of the measure, deadlines, and staff contacts.

Thank you for your assistance.

Draft of Analysis

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Legislative Council Staff
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Amendment H - comments on 3rd draft.pdf

Re: *Confidential: Re: Amendment H Judicial Discipline Procedures and Confidentiality - 3rd Draft

Chris Forsyth to LCS Judicial Discipline Procedures
: HCR23-1001

08/15/2024 10:21 AM

History:

This message has been replied to.

Will you please tell me who wrote the drafts? And who helped with drafting the first draft? In other words, did someone from the judicial branch assist? If so, who was it? Did someone from the Colorado Judicial Institute contribute? If so, who was it?

Also, will the record be provided to the legislators on Legislative Council? Or is it just available to them?

I'd appreciate it if you would let me know.

Thanks,

Chris Forsyth

From: Juliann Jenson <juliann.jenson@coleg.gov> on behalf of LCS Judicial Discipline Procedures HCR23-1001 <judicialdiscipline2024@coleg.gov>

Sent: Wednesday, August 14, 2024 3:43 PM

To: Chris Forsyth <[REDACTED]>

Subject: *Confidential: Re: Amendment H Judicial Discipline Procedures and Confidentiality - 3rd Draft

Mr. Forsyth,

Your comments on Amendment H have been received and made part of the record. Thank you - Leg Council Staff

From: "Chris Forsyth" <[REDACTED]>

To: "Colorado Legislative Council Staff" <judicialdiscipline2024@coleg.gov>

Date: 08/14/2024 10:07 AM

Subject: Re: Amendment H Judicial Discipline Procedures and Confidentiality - 3rd Draft

Attached are my comments on the 3rd draft.

Please advise whether the legislators on legislative council will receive a copy of these comments.

Thank you,

Chris Forsyth

From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Sent: Monday, August 12, 2024 12:33 PM

To: Chris Forsyth <[REDACTED]>

Subject: Amendment H Judicial Discipline Procedures and Confidentiality - 3rd Draft

Draft Ballot Analysis from Legislative Council Staff

Ballot Analysis

Legislative Council Staff

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CJI's comments on 3rd draft of Amendment H Judicial Discipline Procedures and Confidentiality

Jeff Rupp to: 'Colorado Legislative Council Staff'

08/15/2024 01:26 PM

History: This message has been replied to.

To the Legislative Council:

I'm writing to submit comments from the Colorado Judicial Institute (CJI) about the 3rd draft ballot analysis for Amendment H – Judicial Discipline Procedures and Confidentiality. See the attached document with our redline edits and comments. The submitters are Marilyn Chappell, emerita board member, CJI; and Jeff Rupp, Executive Director, CJI.

CJI is grateful for the opportunity to provide this input. CJI is an independent, nonpartisan, nonprofit organization, established in 1979. CJI's mission is to promote excellence, equity, impartiality, and public trust in Colorado's courts. As part of its work, CJI advocates on behalf of Colorado's judicial system and that includes advocating for smart change that makes the system better.

Amendment H is vitally important to CJI. It addresses Colorado's judicial discipline process – part of our merit system for selecting, evaluating, and retaining judges, adopted by voters in 1966. CJI participated in 2022 legislative hearings on judicial discipline bills and in the 2022 legislative interim committee process producing what is now Amendment H.

CJI's comments on the Amendment H analysis have emphasized the two main features of the amendment: creating an independent adjudicative board to preside over judicial discipline proceedings, and providing public access to such proceedings at an earlier stage. CJI's current comments on the analysis are based on those two features, and on the importance of reminding voters of the context of Amendment H – a proposed change to Colorado's Constitution that should be thoughtfully undertaken.

CJI plans to participate in the upcoming September 4 hearing. We welcome any further questions or comments. Thank you.

Best regards,

--Jeff

Jeffrey (Jeff) A. Rupp, MA (he/him/his)

Executive Director

Colorado Judicial Institute

Email: [REDACTED]

Mobile: [REDACTED]

CJI office: [REDACTED]



CJI's mission: To promote excellence, equity, impartiality, and public trust in Colorado's courts through outreach, education, and engagement.



From: Colorado Legislative Council Staff <judicialdiscipline2024@coleg.gov>

Sent: Monday, August 12, 2024 12:34 PM

To: Jeff Rupp <[REDACTED]>

Subject: Amendment H Judicial Discipline Procedures and Confidentiality - 3rd Draft



Ballot Analysis

Legislative Council Staff

Amendment H Judicial Discipline Procedures and Confidentiality - 3rd Draft

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Thank you for your assistance.

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CJI-comments-re-HCR23-1001-ballot-analysis-draft3.docx

Request for corrections to documentation provided to legislators on legislative council

Chris Forsyth to : natalie.castle@coleg.gov,
elizabeth.burger@coleg.gov, LCS Judicial
Discipline Procedures HCR23-1001

08/29/2024 02:33 PM

I am writing to formally request a change to the documentation that was provided to legislators on Legislative Council prior to their meeting regarding the ballot language for Amendment H.

Attached are the documents I provided in response to the third draft.

Now, compare these documents with the documents that were provided to legislators on Legislative Council. You will see that the pages provided to the legislators – and provided to people interested in Amendment H – contain distortions. The first two pages are not as they appear in the document I sent. The logo is distorted and the type is in bold face in the documents provided to legislators. Furthermore, the proposed draft analysis is also distorted. Lines are misplaced and type is displaced. It does not look like the document I provided which is, again, attached.

The distortions appear to be an attempt to discredit the comments we made. It is unreasonable and unprofessional for legislative staff to distort the documents and provide them to legislators. It is a form of defamation.

I respectfully request that the packet provided to legislators be corrected to contain a copy of the document as I provided and not a distorted, confusing copy. I respectfully request that the correction be made immediately.

Thank you,

Chris Forsyth



Comments on 3rd draft.pdf

Re: Request for corrections to documentation provided to legislators on legislative council

Chris Forsyth to Natalie Castle

09/03/2024 10:02 AM

Cc "elizabeth.burger@coleg.gov", "LCS Judicial Discipline Procedures
: HCR23-1001", "Julia Jackson"

Ms. Castle,

For multiple reasons, your office has not met its constitutional mandate. Those reasons are set forth in the letters to your office. In the last election, your office sent voters to the polls without them understanding that the new judicial district had the constitutional right to select its own judges and that Amendment D would alter that constitutional right. Based on your office's unfair and partial analysis, voters adopted the amendment.

Furthermore, it does not appear your office drafted the analysis independently. Either for Amendment D or for Amendment H. Would you please voluntarily provide a copy of all communication between your office and others regarding Amendment H? Do I need to do an open records request to obtain such information?

Most importantly, the arguments against in the current analysis are framed to make voters vote for Amendment H. The entire draft analysis regarding Amendment H is drafted to get voters to adopt the measure. Perhaps this is because Julianne Jensen wrote the draft? She is certainly not fair or impartial regarding Amendment H for multiple reasons. It is not even arguable that your office's draft is "fair and impartial." You state your office can't present every argument against. Well how about presenting one solid argument against? The current draft analysis by your office is basically malpractice.

A pattern of misinforming voter is developing in your office. I respectfully request that you change that pattern.

Thank you,

Chris Forsyth
Executive Director
The Judicial Integrity Project
[REDACTED]

From: Natalie Castle <natalie.castle@coleg.gov>

Sent: Tuesday, September 3, 2024 9:48 AM

To: Chris Forsyth <[REDACTED]>

Cc: elizabeth.burger@coleg.gov <elizabeth.burger@coleg.gov>; LCS Judicial Discipline Procedures HCR23-1001 <judicialdiscipline2024@coleg.gov>; Julia Jackson <julia.jackson@coleg.gov>

Subject: Re: Request for corrections to documentation provided to legislators on legislative council

Hello Mr. Forsyth,

We are very grateful to you for your participation and contributions to the Amendment H ballot analysis, and hope that you will continue to participate in the future. Section (7.5)(a) of Article V of the Colorado

Constitution requires and empowers Legislative Council Staff to write a "fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure...". We believe we have fulfilled that requirement with the draft we distributed to Legislative Council. We actively seek out arguments from the opponents and proponents of each measure. However, the law requires us to write the arguments independently, and toward that end, does not require us to incorporate every argument provided to us by opponents and proponents.

I want to again reiterate how sorry I am that the version of your comments on the 3rd draft initially distributed to stakeholders had distortions. This was absolutely not intentional and was the result of technical errors in the administrative (scanning of PDFs) process that we used to prepare the materials. I am grateful to you for pointing out that the distortions were present, since we do not want distortions in anyone's materials.

Best wishes,

natalie



Natalie Castle

Director, CO Legislative Council Staff

Mobile: [REDACTED]

Direct: 303-866-4778 | **LCS Main:**

303-866-3521

Email: natalie.castle@coleg.gov

200 East Colfax Ave, Suite 029, Denver

CO 80203



From: "Chris Forsyth" <[REDACTED]>
To: "Natalie Castle" <natalie.castle@coleg.gov>
Cc: "elizabeth.burger@coleg.gov" <elizabeth.burger@coleg.gov>, "LCS Judicial Discipline Procedures HCR23-1001" <judicialdiscipline2024@coleg.gov>, "Julia Jackson" <julia.jackson@coleg.gov>
Date: 09/03/2024 08:38 AM
Subject: Re: Request for corrections to documentation provided to legislators on legislative council

Ms. Castle,

Thank you for correcting the documents. It is quite troubling, however, how much the draft ballot analysis is skewed toward supporting Amendment H as opposed to being a fair and

accurate description of the measure. This, coupled with the distortions in the documents we presented, has me quite concerned about the Blue Book process in Legislative Council. I can make educated guesses and speculate regarding why the draft for the Blue Book is so fundamentally flawed. But instead, I will propose constructive solutions to correct the analysis regarding Amendment H.

At a minimum, the opposition in the analysis should state the opposition's opinion. From the comments received in your office regarding the analysis, we are the only group that stated opposition. Therefore, I respectfully request that your office move that Legislative Council adopt the arguments against that we presented. In other words, we specifically request that the argument against in the Blue Book read exactly as we set forth in the documents sent to your office. The arguments against in your office's analysis are created to make voters support the amendment. That's not fair. It would raise public confidence in the Blue Book analysis if your office moved Legislative Council to adopt the arguments against that were actually presented by the opposition.

Better yet, surely you can see how much more fair and accurate the entire analysis is that we presented. Our draft analysis more accurately describes the current process and more clearly defines how Amendment H changes current law. It is not confusing or misleading like the draft analysis from your office. The draft analysis we presented is simply an infinitely better analysis – it is not propaganda for or against the measure. It would provide voters with much better information to make their choice. Therefore, we respectfully request that your office move Legislative Council to adopt the analysis we presented in its entirety.

Such actions by your office would go very far toward showing that there was no ill intent in distorting the documents we presented to Legislative Council. Again, I could go on and on about the rationale behind what your office has done. Your office's actions in previous elections help frame my concerns. But it would be best at this point to focus on what can be done to rectify the situation regarding Amendment H.

Voters should have the most accurate, unbiased, and helpful statements in the Blue Book. Please have your office move to adopt the analysis we presented for Amendment H.

Thank you,

Chris Forsyth
Executive Director
The Judicial Integrity Project
[REDACTED]

From: Natalie Castle <natalie.castle@coleg.gov>

Sent: Friday, August 30, 2024 3:55 PM

To: Chris Forsyth <[REDACTED]>

Cc: elizabeth.burger@coleg.gov <elizabeth.burger@coleg.gov>; LCS Judicial Discipline Procedures HCR23-1001 <judicialdiscipline2024@coleg.gov>; Julia Jackson <julia.jackson@coleg.gov>
Subject: Re: Request for corrections to documentation provided to legislators on legislative council

Hello Mr. Forsyth,

Thank you! Mailchimp has replaced the document within their system, so now anyone who clicks the link in the email we sent to the Amendment H electronic mailing list will get the accurate document. We are grateful to you for alerting us to the fact that our technical processes had this effect on the materials you submitted.

Best wishes,

natalie



Natalie Castle

Director, CO Legislative Council Staff

Mobile: [REDACTED]

Direct: 303-866-4778 | **LCS Main:**
303-866-3521

Email: natalie.castle@coleg.gov
200 East Colfax Ave, Suite 029, Denver
CO 80203



From: "Chris Forsyth" <[REDACTED]>
To: "Julia Jackson" <julia.jackson@coleg.gov>
Cc: "elizabeth.burger@coleg.gov" <elizabeth.burger@coleg.gov>, "LCS Judicial Discipline Procedures HCR23-1001" <judicialdiscipline2024@coleg.gov>, "Natalie Castle" <natalie.castle@coleg.gov>
Date: 08/30/2024 01:38 PM
Subject: Re: Request for corrections to documentation provided to legislators on legislative council

Thank you for that. But you need to send a corrected packet to all the people the incorrect packet was previously sent.

Chris Forsyth

From: Julia Jackson <julia.jackson@coleg.gov>

Sent: Friday, August 30, 2024 1:35 PM

To: Chris Forsyth <[REDACTED]>

Cc: elizabeth.burger@coleg.gov <elizabeth.burger@coleg.gov>; LCS Judicial Discipline Procedures HCR23-1001 <judicialdiscipline2024@coleg.gov>; Natalie Castle <natalie.castle@coleg.gov>

Subject: Re: Request for corrections to documentation provided to legislators on legislative council

The corrected packet is available online on our ballot analysis page:

<https://leg.colorado.gov/BallotAnalysis>



Julia Jackson | MPA

Policy and Research Manager, Ballot
Analysis Lead

Office: 303-866-4788 | **Cell:**

Email: julia.jackson@coleg.gov

200 East Colfax Ave, Suite 029, Denver
CO 80203



From: "Chris Forsyth" <[REDACTED]>

To: "Julia Jackson" <julia.jackson@coleg.gov>

Cc: "elizabeth.burger@coleg.gov" <elizabeth.burger@coleg.gov>, "LCS Judicial Discipline Procedures HCR23-1001" <judicialdiscipline2024@coleg.gov>, "Natalie Castle" <natalie.castle@coleg.gov>

Date: 08/30/2024 12:17 PM

Subject: Re: Request for corrections to documentation provided to legislators on legislative council

Ms. Jackson,

I have not received a corrected link or any proof whatsoever that you have done anything to rectify this issue. Are you refusing to provide all the people you emailed with a correct copy of what I submitted?

Please let me know.

Chris Forsyth

From: Chris Forsyth <[REDACTED]>
Sent: Thursday, August 29, 2024 5:24 PM
To: Julia Jackson <julia.jackson@coleg.gov>
Cc: elizabeth.burger@coleg.gov <elizabeth.burger@coleg.gov>; LCS Judicial Discipline Procedures HCR23-1001 <judicialdiscipline2024@coleg.gov>; Natalie Castle <natalie.castle@coleg.gov>
Subject: Re: Request for corrections to documentation provided to legislators on legislative council

Ms. Jackson,

Your office sent an email to a whole lot of people with a link or attachment to the distorted files. I just clicked the link that was sent to me. It still contains the distorted files. So, it does not appear that you have corrected the situation.

Your assurances to me regarding the intentional aspect of the matter are not persuasive. Stuff happens. But this does not, to me, appear to be stuff that just happens.

Chris Forsyth

From: Julia Jackson <julia.jackson@coleg.gov>
Sent: Thursday, August 29, 2024 4:15 PM
To: Chris Forsyth <[REDACTED]>
Cc: elizabeth.burger@coleg.gov <elizabeth.burger@coleg.gov>; LCS Judicial Discipline Procedures HCR23-1001 <judicialdiscipline2024@coleg.gov>; Natalie Castle <natalie.castle@coleg.gov>
Subject: Re: Request for corrections to documentation provided to legislators on legislative council

Dear Mr. Forsyth,

I am sorry this happened, and thank you for bringing it to our attention. We do some extra conversions between filetypes to prepare these packets, and I believe the changes you saw were a result of that. I can assure you they were unintentional, and I am reviewing the other comment files to see if any of them also need to be corrected.

We have replaced the electronic version of your comments, which is available to the legislators on the Legislative Council Committee, and we will have an updated hard copy for their binders at the September 4 meeting as well.

Thanks,
Julia

Julia Jackson | MPA
Policy and Research Manager, Ballot
Analysis Lead
Office: 303-866-4788 | **Cell:** [REDACTED]
Email: julia.jackson@coleg.gov
200 East Colfax Ave, Suite 029, Denver
CO 80203



From: Natalie Castle/CLICS
To: "Chris Forsyth" <[REDACTED]>
Cc: "elizabeth.burger@coleg.gov" <elizabeth.burger@coleg.gov>, "LCS Judicial Discipline Procedures HCR23-1001" <judicialdiscipline2024@coleg.gov>
Date: 08/29/2024 03:23 PM
Subject: Re: Request for corrections to documentation provided to legislators on legislative council

Hello Mr. Forsyth,

I am looking into this. Please stay tuned.

natalie

From: "Chris Forsyth" <[REDACTED]>
To: "natalie.castle@coleg.gov" <natalie.castle@coleg.gov>, "elizabeth.burger@coleg.gov" <elizabeth.burger@coleg.gov>, "LCS Judicial Discipline Procedures HCR23-1001" <judicialdiscipline2024@coleg.gov>
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Thank you,

Chris Forsyth



[attachment "Comments on 3rd draft.pdf" deleted by Natalie.Costello@CLC.ES]

Jeff Walsh to Juliann Jenson - 05/29/2024 10:22 AM

Thanks, Juliann. Jim Carpenter (our Vice Chair) and I would be delighted to talk. Wednesday or Thursday next week would be best for us if you want to suggest a few times. I've CCed Jim here. I think doing it virtually would be easiest.

You also might want to reach out to Judge David Prince (the Commission's former Vice Chair). He was very involved in the process of helping to get HCR23-1001 passed, and he's very knowledgeable on the subject. His email address is David.prince@judicial.state.co.us.

Best,

Jeffrey M. Walsh
Special Counsel



COLORADO
Office of Judicial Discipline

P: [REDACTED] | F: [REDACTED]
1300 Broadway, Ste. 210, Denver, CO 80203
ccjd.colorado.gov

From: Juliann Jenson <juliann.jenson@coleg.gov>
Sent: Tuesday, May 28, 2024 5:01 PM
To: Jeff Walsh <j.walsh@jd.state.co.us>
Subject: Judicial Discipline Blue Book Interview

Jeff,

With the legislative session in the rearview mirror, it's time to start the Blue Book process! As you know, [HCR23-1001](#), judicial discipline procedures and confidentiality, is on the upcoming 2024 Colorado ballot. Legislative Council writes the Blue Book analysis for ballot measures. As part of this process, we aim to interview interested or impacted parties to gain a better understanding of the measure's intent, application, background, pros/cons, etc.

Would you, or someone from the Commission on Judicial Discipline, be able to meet with our writing team within the next couple of weeks? The interview generally takes less than an hour and can be done over Zoom or in-person. Please let me know preferred dates and times, and I'm sure we can work something out on our end. Thank you in advance! - Juliann

prince, david to
06/05/2024 08:19 AM

Ms. Jenson,

Following up on our discussion yesterday, I am attaching the slides of my prior efforts to illustrate and explain the flow of the current process. I hope they offer some insights on options for trying to include a chart—even if it is just showing how not to do it 😊.

Also, one more thought occurred to me that I didn't mention even though it is a fairly obvious point. In this era of fringe or partisan proposals to reform various government systems including courts, it strikes me as important to mention the vote from the legislature, that it was nearly unanimous and highly bipartisan. I don't know if your rules permit that, but it strikes me as a material piece of either the context/history explanation or the arguments "for" summary.

RE: Blue Book HCR23-1001, Judicial Discipline and Confidentiality

06/05/2024
08:19 AM



Discipline Process Slides June 2024 Copy.pptx

From: Juliann Jenson <juliann.jenson@coleg.gov> **On Behalf Of** LCS Judicial Discipline Procedures HCR23-1001

Sent: Monday, June 3, 2024 1:53 PM

prince, david to

08/14/2024 10:14 AM

Ms. Jenson,

I hope this note finds you well. How is the draft coming along? I've never seen anything since our discussion in early June.

David Prince

From: Juliann Jenson <juliann.jenson@coleg.gov>

Sent: Wednesday, June 5, 2024 12:35 PM

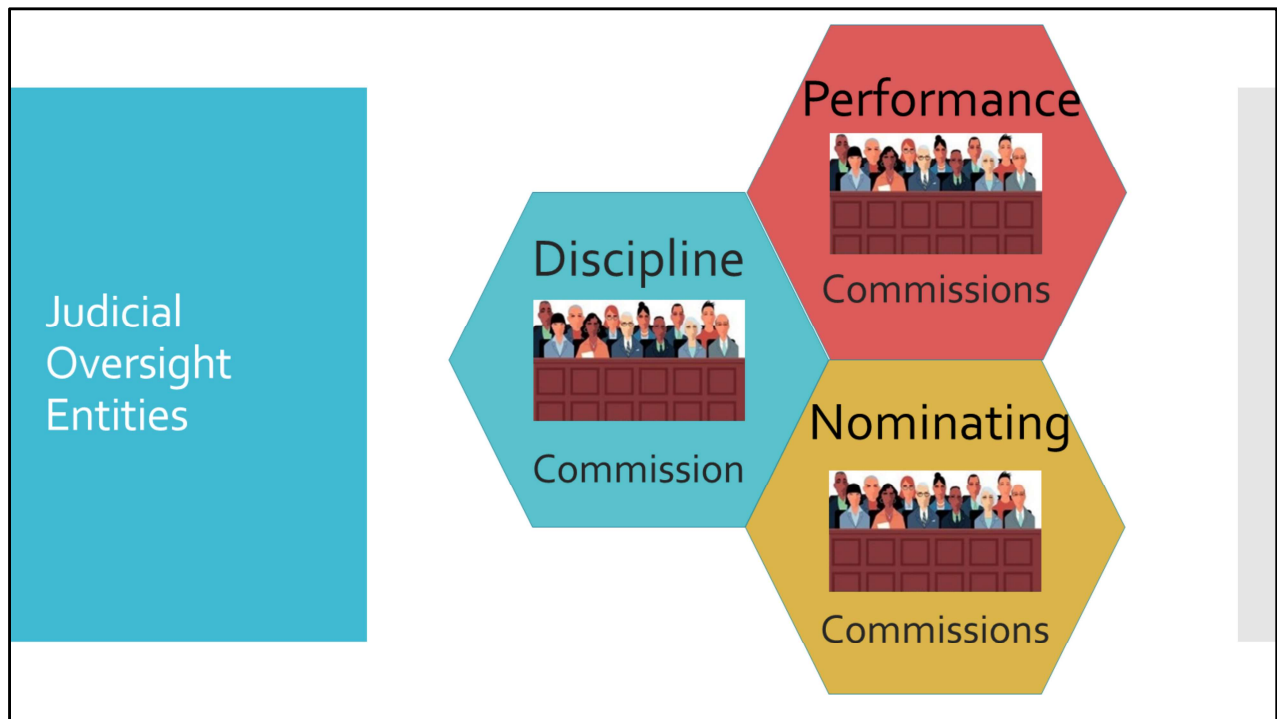
To: prince, david <david.prince@judicial.state.co.us>

Subject: [External] *Confidential: RE: Blue Book HCR23-1001, Judicial Discipline and Confidentiality

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Judge Prince,

Thanks for the slide deck - we were looking at it this morning. I also think we can weave your point about



Colorado originally provided that check on an independent judiciary by creating through the constitution two citizen-involved Commissions. Both commissions bring together perspectives of members from the Judiciary, the legal community, and citizens to help maintain a quality and credible independent judiciary. Decades later, Colorado responded to criticism of the system by adding the Performance Commissions to examine the quality of our judges and inform the voting public for retention elections. Like the other two commissions, the Performance Commissions are multi-perspective citizen-involved bodies. System has evolved over the years including amendments to the constitutional provisions.

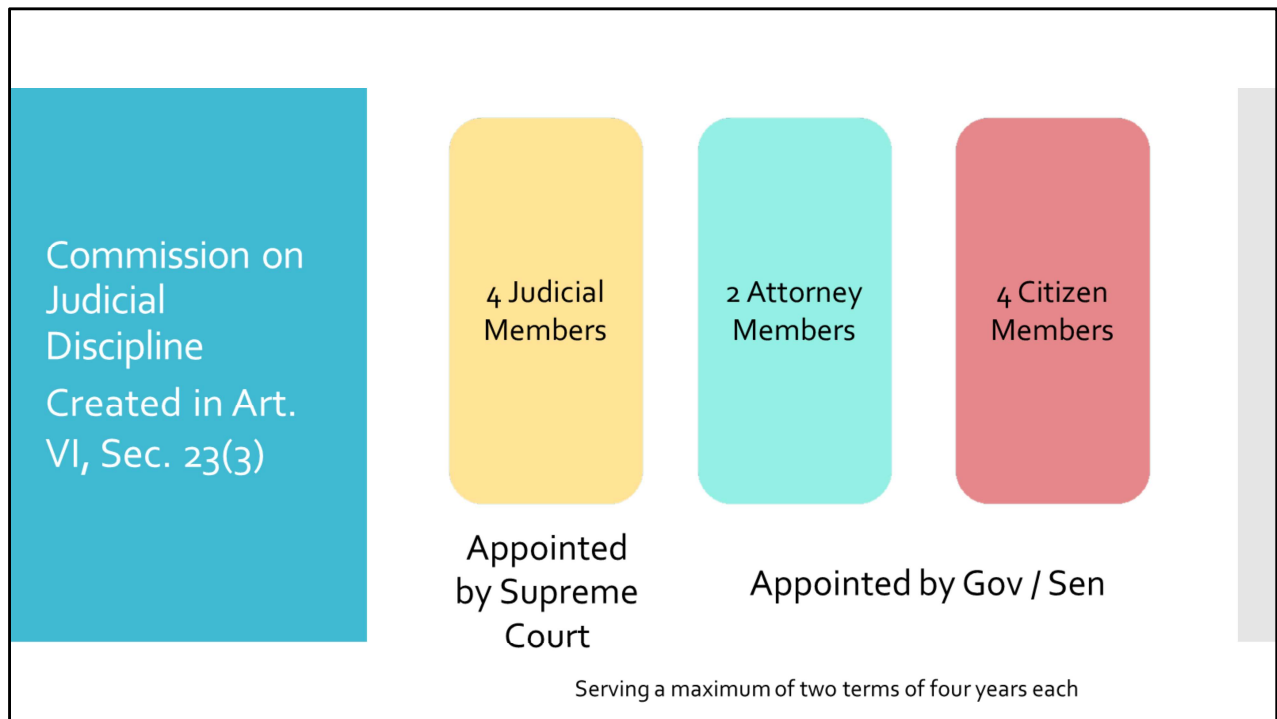
The three Commissions each have separate but complementary roles in judicial accountability.

Nomination takes a close look at the pre-judicial career and interviews general references as well as opponents, but only at the start of the judge's career or at advancement. Examines all judges.

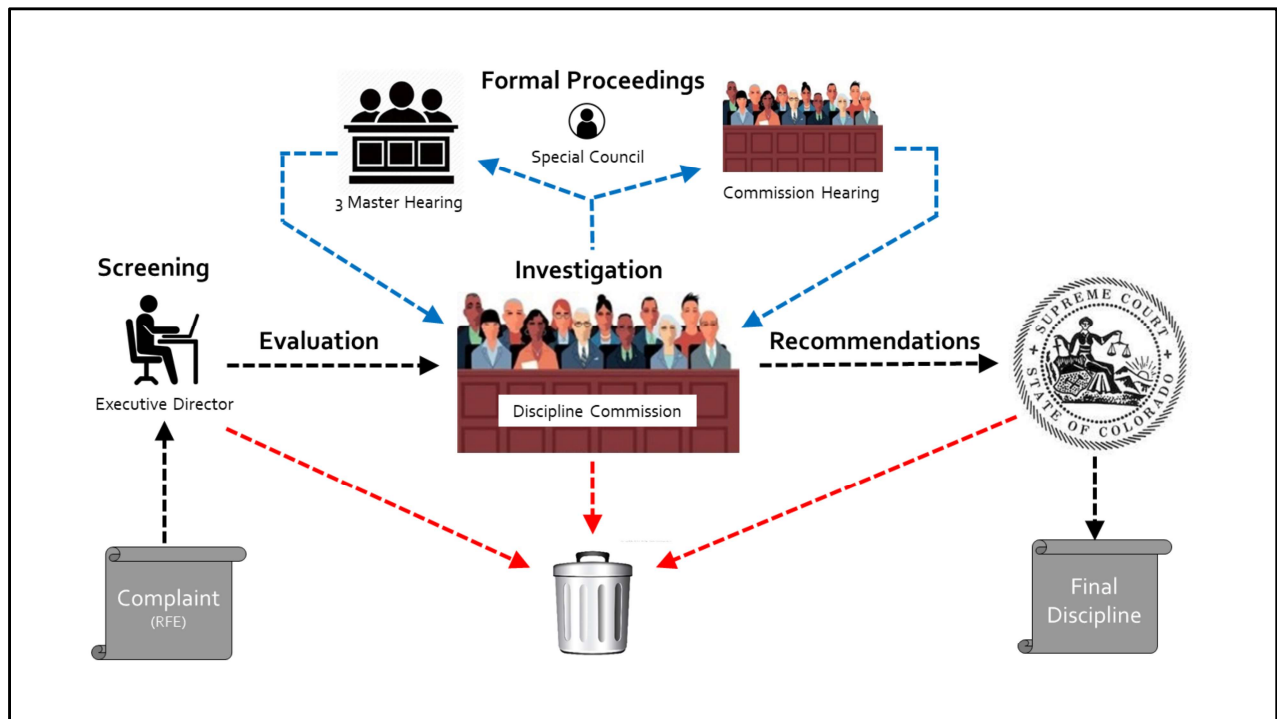
Performance does a thorough examination of the quality of the daily work of the judge over an extended period of time. Does this on a multi-year schedule, depending on level of judge. Examines all judges.

Discipline Is the only to have investigative tools and ability to pursue sanction but only addresses complaints of misconduct and only addresses judges brought to the Commission's attention. Does not review all judges and does not review them absent a complaint.

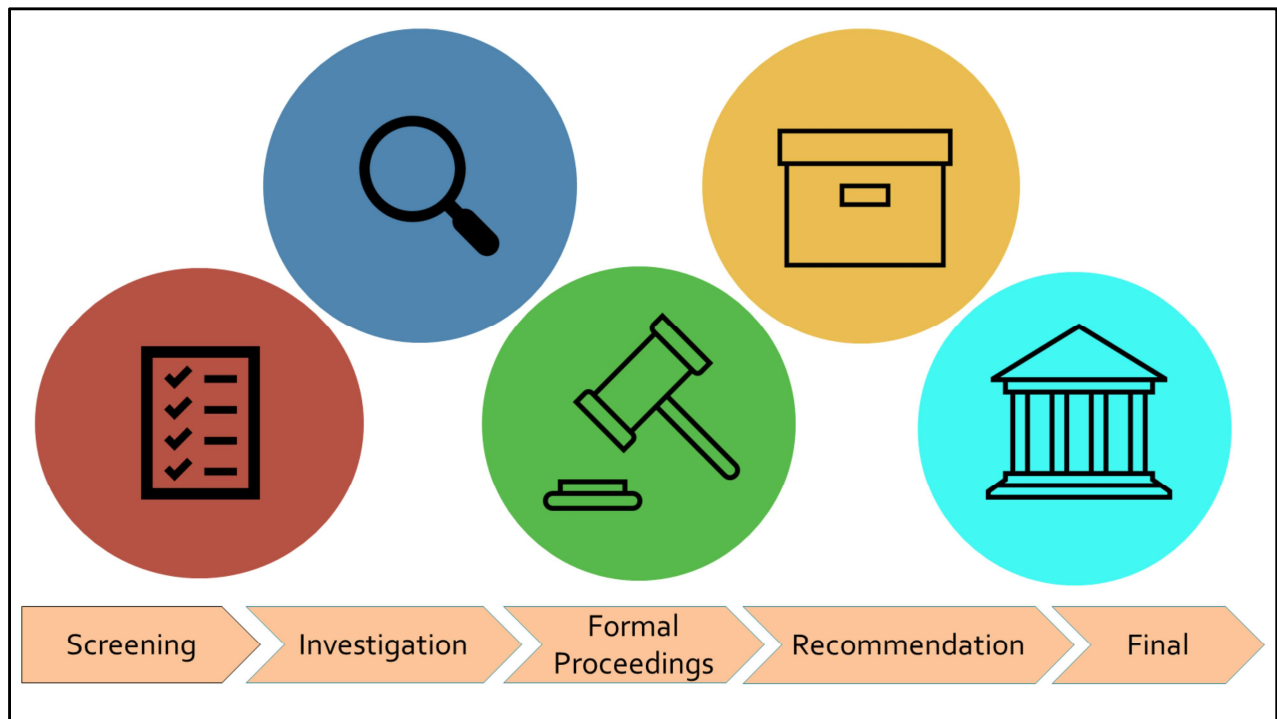
Each Commission has a different perspective and has access to different information. Each may receive information relevant to the job of another commission but not central to their role in the system.



The Constitution created the Commission on Judicial Discipline as a multi-perspective body. It is comprised of 4 judges appointed by the Supreme Court. 2 are from the district court and 2 are from the county court. There are 4 lawyers appointed by the Governor with the advice and consent of the senate. There are 2 non-lawyer citizens also appointed by the Gov. with the advice of the senate.



Overview of flow through the system.



Flowchart of handling Complaint ("RFE") alleging judicial misconduct.
This is an overview and we will break each step down.

A Request for Evaluation is sent to the Commission.

It goes through an initial SCREENING and

if it survives, it goes to the full Commission for EVALUATION

If survives, goes to FACTUAL INVESTIGATION

If supported by a preponderance of evidence, goes to FORMAL PROCEEDINGS

If demonstrated by clear and convincing evidence, goes back to full Commission for RECOMMENDATIONS

Which are then passed to the Supreme Court for further proceedings and a final decision on any DISCIPLINE



Intake and Screening

- Governed by RJD 13
- Exec Dir or Commission may immediately dismiss if no reasonable basis

The Intake and Screening phases covers receipt of an allegation of potential misconduct from whatever source. A problem for all judicial oversight entities across the country is a high volume of frivolous complaints against judges. Many of these are just a lack of understanding of Ethics Oversight. The person is unhappy with a ruling and looking for help. Some of these can also just be malicious.

So the system is set up to have an immediate review to drop the frivolous cases without delay so they won't be hanging out there. The judge is not even told about these complaints, neither is anyone else.

The standard is "reasonable basis". If the allegation lacks a reasonable basis, it is dismissed. The Exec Dir performs this function but must report to the Commission which can reverse the decision.



Complaint Investigation

- Analogous to Grand Jury Role
- Governed by RJD 14
- Develop Factual Evidence
- May Use Investigators and Special Counsel
- Advances only if preponderance of evidence std. met

If the allegation survive the “reasonable basis” screen, it is brought to the Commission to decide what to do next. This is the factual investigation phase. In this phase. The Commission is acting as a grand jury, developing evidence to decide if the trial phase is appropriate. RJD 14 governs this phase

The factual investigation naturally depends on the nature of the allegation. We are often looking at court records in this phase, looking at rulings, listening to recordings of proceedings.

Sometimes we need more records or witness interviews. We do not have personnel to do that work. We call on OARC to provide investigators. The investigators need to have the ability to testify down the road. Right now, we can draw on a stable of several at the OARC.

In some cases, we may involved a lawyer to do legal work at this stage. This is the Special Counsel. Again, in our current system, we have a stable of several at the OARC to provide this service.

The allegation can move on from this stage only if the available evidence demonstrates misconduct “by a preponderance of the evidencde.”



Formal Proceedings

- Trial Phase
- Special Counsel
“prosecutes”
- Hearing conducted either by Commission itself or through special masters
- Standard of proof is clear and convincing

This is the charging and trial phase. In a criminal case, one can file charges if “probable cause” is present. In judicial discipline, however, charges can only be filed if the evidence already demonstrates misconduct by a preponderance. In other words, the case has to meet the final standard in a civil case before the actual case can even be filed.

Up to this point, all proceedings have been confidential. This phase also remains strictly confidential in Colorado. Not all states take that position.

For the trial phase, the Commission has to make a decision. The Constitution provides for the Commission to conduct the hearing itself. However, it also provides the option of using a panel of 3 special masters. Assembling the Commission’s members for a multi-day hearing is a challenge and our prior formal proceedings have used the convenience of the special masters.

The standard of proof at the trial is “clear and convincing.” So, you have to have a “reasonable basis” to investigate and a “preponderance” to file charges. Then the case has to be proven by “clear and convincing” to pursue sanction.

Art. VI, Sec. 23(3)(e) establishes Formal Proceedings process. RJD Part C defines special master process. Supreme Court has never adopted rules specific to formal

proceedings before Commission itself.



Recommendations

- Commission prepares and transmits recommendations to Supreme Court for discipline along with record of proceedings.
- Special Counsel may also make recommendations
- If used, special master recommendations included
- Proceedings confidential until recommendations filed

RJD Part E

After the trial is conducted and findings of fact made, the Commission gathers the record together and prepares its recommendations. If special masters were used, they provide recommendations as well. Special Counsel is also permitted to provide recommendations

These are gathered together and presented to the Supreme Court for the final phase.



Supreme Ct Proceedings

- SC may conduct further proceedings and expand record, RJD 39
- SC may adopt, reject, modify, or remand Commission recommendations
- SC makes final decision, RJD 40
- Decision published unless decide to keep confidential

The Supreme Court receives the record of proceedings and the recommendations. This is the first act that is not automatically confidential, unless the Supreme Court decides to make it confidential in the individual case.

The Supreme Court can then conduct what proceedings it chooses, including further factual inquiry. The Supreme Court makes a final decision and publishes that decision unless it decides to keep it confidential.

the measure being bipartisan in a supporting argument. Thanks again for chatting with us yesterday - it was very helpful, and I think we are getting a clearer picture of how to present this! - Juliann

prince, david to Juliann Jenson

08/16/2024 09:15 AM

Thank you, Ms. Jenson. I remember signing up before our interview, but it must not have taken for some reason. I'll give it another try.

Thank you for going ahead and sending the materials. As we talked, I have a vague idea of how tough your challenge is on this one to boil real complexity down to an understandable summary. These materials look very good to me. Well done. I have no comments.

David Prince

From: Juliann Jenson <juliann.jenson@coleg.gov>

Sent: Wednesday, August 14, 2024 3:41 PM

To: prince, david <david.prince@judicial.state.co.us>

Subject: [External] [BULK] *Confidential: RE: RE: Blue Book HCR23-1001, Judicial Discipline and Confidentiality

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Judge Prince,

The email below instructs you to opt-in to receive the drafts - but you are not too late. Third draft is still receiving comments.

All interested parties may use the following link to opt in to the process:

<https://leg.colorado.gov/BallotAnalysis>

The button titled Subscribe to Ballot Analysis Mailing Lists on the linked page allows you to subscribe and receive the drafts of this measure's ballot analysis, or the drafts for any other potential ballot measures.

You must opt in and subscribe to the process in order to receive future correspondence regarding the ballot analyses.

scanlon, terry to Juliann Jenson - 08/16/2024 03:39 PM

Juliann,

I have three things I would like to highlight:

1. In Table 1, under "formal disciplinary hearings" the draft says "judges selected by the Supreme Court ... make recommendations." That's a reference to the special masters. But the special masters do not make a recommendation to the Court in the current model. The Special Masters do not make recommendation. The Commission makes a recommendation to the Court.

•

- It seems it would be more accurate to say: “In cases involving a Colorado Supreme Court justice, their family members, or staff, the entire Colorado Supreme Court must disqualify themselves and be replaced with a tribunal composed of seven randomly selected District Court Judges and Court of Appeals Judges. The tribunal reviews appeals from cases from the independent adjudicative board.”
2. The section on independent tribunals under Amendment H, the language says the tribunal “only hears supreme court justice-related appeals.” The language could be more clear. The tribunal will serve as the Court instances where a Justice is involved in a case, a family member of a justice, a staff member of a justice, or two or more justices recuse from the case. It might be more fair to say “the tribunal will hear appears on cases that involve justice as a respondent or a witness, or in cases where the justice has a family member or staff member involved in the case, or in cases where two justices have recused.”
 3. There’s a spelling error in the word “discipline” in the header of Figure 1.

Thank you for considering my feedback yet again,
Terry

Terry Scanlon (*he/him/his*)
Legislative Liaison
Colorado Courts and Probation
1300 Broadway, Suite 1200
Denver, Colo. 80203
[REDACTED] (call or text)

prince, david to Juliann Jenson - 08/19/2024 11:18 AM

By the way, when I tried to sign up again, it rejected my sign up because it said my email address is already signed up. I’ve tried with a private email address instead of my office address. We’ll see if that works.

Thanks

David Prince

prince, david to Juliann Jenson -08/19/2024 07:08 PM

Thanks. All worked out since your team did such a great job 🎉🎉

Jeff Rupp to

09/03/2024 02:45 PM

Hi, Juliann. Hope you had a nice holiday weekend. Regarding tomorrow’s Joint Committee Legislative Council hearing, my CJI colleague Marilyn Chappell and I are both registered to testify remotely. Would

you please arrange for us to provide our testimony back-to-back, first me and then Marilyn? Please confirm and thanks much!

Best regards,

--Jeff

Jeffrey (Jeff) A. Rupp, MA (he/him/his)

Executive Director

Colorado Judicial Institute

Email: jeff@coloradojudicialinstitute.org

Mobile: [REDACTED]

CJI office: [REDACTED]

From: "scanlon, terry" <terry.scanlon@judicial.state.co.us>
To: "Juliann Jenson" <juliann.jenson@coleg.gov>
Date: 07/23/2024 04:33 PM
Subject: question

Sorry to pester you. When do you anticipate posting a second draft of the Blue Book narrative on the judicial discipline amendment?

Hope you're doing well.

Terry

Terry Scanlon (he/him/his)
Legislative Liaison
Colorado Courts and Probation
1300 Broadway, Suite 1200
Denver, Colo. 80203
[REDACTED] (call or text)

Re: question [Notes Link](#)

Juliann Jenson to scanlon, terry

07/23/2024 04:37 PM

Hey Terry - not pestering me, second draft was sent out this afternoon! You should have received it, but I'll forward for good measure. - Juliann

Juliann Jenson ^t scanlon, terry
^o

07/12/2024 12:35 PM

Hey Terry,

Quick question about Rule 41 in your second point. Is this tribunal for appeals involving Supreme Court justices? Or if there is a complaint against a Supreme Court justice, is this tribunal only hearing the case and deciding the punishment? Or both?

Thanks for the clarification! - Juliann

From: "scanlon, terry" <terry.scanlon@judicial.state.co.us>
To: "Juliann Jenson" <juliann.jenson@coleg.gov>
Date: 07/02/2024 02:25 PM
Subject: HCR23-1001 Blue Book feedback

Juliann,

I have a few thoughts that I want to share regarding the first draft of the Blue Book analysis for HCR23-1001. I appreciate the challenge of writing a fair analysis with limited space. I'm grateful that you are providing an opportunity for me, and others, to review your work and provide feedback.

- I. In Table 1, under the heading of appointments in the current judicial discipline process, it says the Supreme Court nominates members for the Commission on Judicial Discipline. The Court is just one of two appointing authorities. The governor actually appoints a majority of the commission members. Per Article VI of the Colorado Constitution, the Judicial Discipline Commission is comprised of 10 members. Six of those members are appointed by the governor and confirmed by the Senate. Four of those members are appointed by the Supreme Court.
- II. Also in Table 1, under the heading of discipline cases involving supreme court justices, it says supreme court justices may discipline their own members. That was theoretically the case historically, although it never occurred. Recognizing that possibility, the Court adopted a rule to establish a special tribunal to act as the supreme court in cases where the justices have a conflict to ensure fairness and impartiality. So, under existing law, justices of the Supreme Court do not hear cases that involved their colleagues or cases where justices are otherwise conflicted. Here's the rule adopted in January 2023 that establishes special tribunals: <https://casetext.com/rule/colorado-court-rules/colorado-rules-of-civil-procedure/chapter-24-colorado-rules-of-judicial-discipline/part-f-special-tribunal/rule-41-proceedings-involving-a-current-or-former-justice-of-the-colorado-supreme-court>
- III. Also in Table 1, under public access to information, it says the amendment will require the sharing of information with judicial oversight agencies. SB22-201, created 13-5.3-105, which requires information regarding complaints to be shared with judicial oversight agencies. So this is already the current practice.

- IV. The analysis discusses the sharing information with complaints in a couple of places. HB23-1019 created [13-5.3-112](#) created a requirement for the Commission to share certain information with complainants.

A couple of broader thoughts:

- I. It might be worth adding to the section “What is judicial misconduct and discipline” that the [Colorado Code of Judicial Conduct](#) places on judges a mores strict set of ethical rules than any other elected officials are required to meet.
- II. The first draft places an inordinate amount of attention on the role of the Supreme Court. The amendment changes the role of the supreme court, but it also significantly restricts the role of the discipline commission and creates a new adjudicatory board to create a tiered disciplinary structure. The current draft suggests that primary purpose, and the most significant gains, in the constitutional amendment are related to the role of the Court, while the other changes are just as significant.
 - i. First, the Court, in the current system, plays a very modest role. It writes the rules for the process. It appoints special masters to hear cases, and it enters orders in cases that have a stipulated outcome. The Court is not aware of the overwhelming majority of complaints lodged with the Commission on Judicial Discipline and the Court has no role in determining the course of action or the outcome in the overwhelming majority of cases.
 - ii. Maybe instead of focusing on reducing the Court's rule, another way of viewing the amendment is that it expands the process – creates a new panel -- to ensure a more robust consideration of complaints that will ensure more fairness, accountability, and transparency.

Thank you for taking time to review my feedback. I am available to discuss these issues more at any time. I appreciate the work that you and your colleagues perform to ensure that voters receive fair, accurate, and helpful information in the Blue Book.

Terry

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Terry Scanlon (*he/him/his*)
Legislative Liaison
Colorado Courts and Probation
1300 Broadway, Suite 1200
Denver, Colo. 80203
[REDACTED] (call or text)

[Juliann Jensen](#) ^t
o scanlon, terry

06/12/2024 03:10 PM

Terry,

Hope you don't mind that I shared the webex link with other members of the judicial discipline blue book team - Aaron Carpenter and Adam Alemzada. If it's a problem let me know - otherwise catch-up with you tomorrow afternoon! - Juliann

From: "scanlon, terry" <terry.scanlon@judicial.state.co.us>
To: "Juliann Jenson" <juliann.jenson@coleg.gov>
Date: 06/10/2024 03:26 PM
Subject: RE: Judicial Discipline Blue Book

Thursday at 2pm?

From: Juliann Jenson <juliann.jenson@coleg.gov>
Sent: Monday, June 10, 2024 2:42 PM
To: scanlon, terry <terry.scanlon@judicial.state.co.us>
Subject: [External] RE: Judicial Discipline Blue Book

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Hey Terry,

Welcome back - hope you had a good vacay! Let me know a good time this week to chat about HCR23-1001. We could make Thursday afternoon work if you have any availability then? Thanks! - Juliann

From: "scanlon, terry" <terry.scanlon@judicial.state.co.us>
To: "Juliann Jenson" <juliann.jenson@coleg.gov>
Date: 05/22/2024 02:29 PM
Subject: RE: Judicial Discipline Blue Book

Hi Juliann,
Congratulations on the graduation. That's exciting.
I will have to re-read HCR23-1001, but of course I appreciate the opportunity to chat about it.
The first week of June I'm out of the office. I could really meet almost any other time. My schedule is fairly open this time of year.
Terry

From: Juliann Jenson <juliann.jenson@coleg.gov>
Sent: Wednesday, May 22, 2024 1:55 PM
To: scanlon, terry <terry.scanlon@judicial.state.co.us>
Subject: [External] Judicial Discipline Blue Book

EXTERNAL EMAIL: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hey Terry!

I know, the 74th legislative is barely in the rearview mirror... and this is more of a near future request, not immediate! Regardless, I need to set up a time with you to discuss HCR23-1001 - pros, cons, the usual blue book questions.

I know we talked about this topic at great length during the 2022 interim committee and in related hearings. It still would be helpful to discuss with you and jog memories.

Are you around the week of June 3? If so, let's find a time during that week to meet for about an hour. My son graduates from high school on Friday so I'm taking a few days off to take care of festivities. Hope your interim is off to a good start! - Juliann

The Colorado General Assembly has moved to a new email domain. Please replace @state.co.us with @coleg.gov in your address book.

Judge Prince

intended to be a independent citizen → this reform

to conflict of interest

inherent conflicts in its design → Merit system of judges

Very big picture

2024 Ballot Analysis for [measure number] [short title]

Please be advised that Blue Book work product is subject to the Colorado Open Records Act. We are recording this interview, and after our first draft is made public (scheduled for ____), it could be released if requested.

jud. dis system of account ability

Interview Questions

1. What do you consider to be the most important points that voters should know about the measure?

Address → conflict of interest issues for holding judges accountable, reduces control over that machinery has

2. What information do you think should be included in the background section of the ballot analysis?

Challenges present recent cases + investigations illustrate structural conflicts of interest in the system

3. What are the strongest arguments in favor of the measure?

independent mechanism → Reduce control of judiciary

4. What are the strongest arguments against the measure?

It doesn't go far enough
Trial board will never be used.
Commission more powerful

5. Are you aware of organizations supporting or opposing this measure?

current system is open about its flaws
this bill is window dressing

6. Are there other individuals we should be including in the review of the ballot analysis?

Rep Carver
Weissman Bob Gardner Scanlon

7. Are there any additional comments that you would like to add that were not addressed by our questions?

Reduces judicial control over a system
intend to be independent against

SMART Hearings

Judiciary → control over accountability

This piece is part of a package of reforms

- 1) Transparency
- 2) Deals w/ conflict of interest at SC
- 3) Creates a ~~trial~~ court for ethics complaints less controlled by Judiciary
Judge, lawyer + citizen
- 4) Removes rule-making authority

More independent from judicial control

Tries to address conflicts in
system holding ^{Judicial} to accountable to the
rules of ethics

improve independence
from Judiciary

no one knows
a judge

victims
couldn't talk about
case

Terry
Scanlon

2024 Ballot Analysis for [measure number]

[short title]

Please be advised that Blue Book work product is subject to the Colorado Open Records Act. We are recording this interview, and after our first draft is made public (scheduled for ____), it could be released if requested.

Interview Questions

1. What do you consider to be the most important points that voters should know about the measure?

transparency + accountability
good for branch + public

Judges held
more acc. + held code of ethics

2. What information do you think should be included in the background section of the ballot analysis?

one tier to two tier
merit retention system

3. What are the strongest arguments in favor of the measure?

Public confidence in the courts

4. What are the strongest arguments against the measure?

victims more access
page 6 → share info w/ complainant

5. Are you aware of organizations supporting or opposing this measure?

7 system used as a weapon against judges
more subject to unwarranted complaints

6. Are there other individuals we should be including in the review of the ballot analysis?

7. Are there any additional comments that you would like to add that were not addressed by our questions?

Rulemaking
for SC writes
rules for all
judicial proceedings

Judges are
involved because
they are individual
proceedings
framed

victims couldn't talk
about the case

~~to~~ Judicial
Commission Adjudicator
Board

SC
Appeal

Share info of nominator
Retention

perf. eval.

Commission more active →

One tier to two tier

more likely to hear about it before it is resolved

informal on appeal - still confidential
changes the structure

Should

- 1) adjudicative board - away from special masters
- 2) Transparency - public

Jim Carpenter
 Jeff Walsh

2024 Ballot Analysis for [measure number]

- 3) Rulemaking → public comment at a public mtg [short title]

What will achieve these things?

Please be advised that Blue Book work product is subject to the Colorado Open Records Act. We are recording this interview, and after our first draft is made public (scheduled for ____), it could be released if requested.

Interview Questions

Transparency = Public
 independence = trust

1. What do you consider to be the most important points that voters should know about the measure?

③ independence essential part of bigger effort hasn't been updated since 1960s in-line w/ other states
 ① modernizing
 ② transparency

3 keys

2. What information do you think should be included in the background section of the ballot analysis?

merit select
 judicial
 perf. eval

Judiciary key part of gov
 merit selection of judges -

When was it started?

3. What are the strongest arguments in favor of the measure?

Transpar
 Independence

Modernization

defeated in rules
 master + process

4. What are the strongest arguments against the measure?

Doesn't go far enough - take out all judges involvement w/ SC
 Aaron - why status quo would be better? Transition of power away from Supreme Court

5. Are you aware of organizations supporting or opposing this measure?

Women's Bar

CO Judicial Institute
 Freedom of Info Coalition

6. Are there other individuals we should be including in the review of the ballot analysis?

Liz Kruger

Pete Bob Gardner

7. Are there any additional comments that you would like to add that were not addressed by our questions?

HB 23-1019 - judicial members

Arcane

~~Most~~ Most robust system - judicial dis.

policing their own - gets an arm's length away
from the Judiciary

Argument For
Shouldn't Police their own

★
~~Even~~ Anyone can file a complaint

1. Adviser / conflict of interest to ethics code
- reduces control of boards on system of accountability
 - not advised: monitor ethics, compliance
 - what we learned: Judiciary has a lot of control
 - part of rulebook
 - 4 things:
 - transparency (1) more educated from hierarchical w/ U.S.
 - conflict of interest (2) S.C.
 - creates board; first court for ethics complaints has control of Judiciary board
 - remove S.C. members; committee
 - independence

2. 2023 Sandra

- ↳ schedules and agenda problems
- ↳ knowledge misaligned
- ↳ not updated for advice
- ↳ keep a big picture picture

3. • is more independent, citizen involved accountability
- reduce control of S.C. over accountability

4. Don't go far enough
• less accountability; knew offenders not power
• under pressure to fix it

Judicial questions

transparency and accountability

• held more accountable

• code of ethics

↳ standards are strict

2 stage

process

• second complaint / hearing S.C.

• appeal - S.C. appeals, S.C. order if it's public

↳ victims can't talk; no update; not a first

To: 3 parts

Common → new adjudicative board

appeal

information goes to other members

↳ give more

↳ more quality like

independence

2. Mutual plan

• rotation plans

• no elected judges

• become evaluation and monitoring commission

↳ 3 legs

pol. motives; more

Fair: system used as a weapon

• Complaint going public; more uncontrolled complexity