



Date: August 3, 2022

To: The Interim Committee on Judicial Discipline

From: The Colorado Women's Bar Association

Regarding: Recommendations on the Judicial Discipline Interim Committee Areas of Study Senate Bill 22-201, independent oversight of matters concerning judicial discipline

The Colorado Women's Bar Association ("CWBA") thanks the Interim Committee for the opportunity to provide comment on several areas of study pursuant to Senate Bill 22-201. The CWBA reviewed the eighteen areas of study presented to this Committee in Senate Bill 22-201 and has identified nine areas that are priority to its membership:

- Section One
 - Effectiveness
 - Balancing public confidence and judicial control
- Section Two
 - Independence
 - Supreme Court Justice misconduct
 - Disqualification standards
- Section Three
 - Confidentiality and transparency
- Section Four
 - Victim-centered approach
- Section Five
 - Judicial appointments
 - Recommendations

As there is substantial overlap between these topics, some are addressed together in a single section. The CWBA also thanks the contributors to this product; Ariana Busby, Megan Cronin, Alison Connaughty, Becky Crotty, Emma Garrison, Brooke Meyer, and Carlos Romo. Please consider the following written research-based commentary, and attachments, for the position of the CWBA on these areas.

Though this memo contains CWBA's position, the recommendations in this memo were informed by input from a broad range of affected stakeholders, including CWBA membership, the Colorado Commission on Judicial Discipline, the Colorado



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Judicial Branch, and the various diversity bar associations that comprise the CBA/DBA Presidents' Diversity Council, some of whom assisted with our research.

I. Effectiveness and Balancing Public Confidence and Judicial Control

- **Effectiveness.** Effectiveness of investigating and addressing the allegations of mishandling judicial misconduct complaints published in 2021;¹
- **Balancing public confidence and judicial control.** Whether a system of judicial discipline can be effective and inspire public confidence while retaining judicial control of final decision-making authority over judicial discipline cases;

Several available measures could make the Judicial Discipline Commission Process more effective and readily available to those who might seek its process and, in turn, increase public confidence in the system. These measures include:

1. Complaint Process

- a. First, modernization. The commission should eliminate unnecessary barriers to complaint filing (called a Request for Evaluation of Judicial Conduct), such as notarization, and provide for online filing. The current complaint form has to be downloaded and printed, filled out, then signed, and mailed or emailed. A form can also be mailed or faxed to the victim or reporting party upon request. An online complaint submission (similar to what the Department of Regulatory Agencies does for other professions, or the Office of Attorney Regulations Counsel does for attorney complaints), with the option of a handwritten form, would increase efficiency and accessibility.

- i. Please see examples of the DORA complaint forms here:

<https://dora.colorado.gov/file-complaint>

- ii. Please see examples of the Office of Attorney Regulation Counsel complaint form here:

<https://coloradosupremecourt.com/Complaints/FAQ.asp#:~:text=To%20file%20a%20complaint%20against%20an%20attorney%20C%20contact,registration%20number%2C%20address%2C%20law%20firm%2C%20and%20phone%20number.>

¹ Bulleted and underlined text taken from Senate Bill 22-201.



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- iii. Please see an example of an online complaint form for judicial misconduct on the New York State Commission on Judicial Conduct website: <https://cjc.ny.gov/>

2. Anonymous Complaints

- a. Second, the complaint rules or instructions should clarify whether the commission will accept anonymous complaints. Commission websites should advise complainants of the extent of their legitimate expectation of anonymity. It is the CWBA's understanding that anonymous complaints are allowed. However, that process is not clearly set out on the website and it is not mentioned in the Rules of Judicial Discipline. Further, the Commission should review any policies that restrict complainants or subject judges from discussing complaints publicly, consistent with the First Amendment.

- i. Please see an example of New York's anonymous complaint procedures at page 4 of the New York State Commission on Judicial Conduct:
<https://cjc.ny.gov/Legal.Authorities/NYSCJC.PolicyManual.pdf>
("The Commission may authorize investigation of anonymous complaints that are sufficiently detailed and allege conduct that, if true, would constitute misconduct. An anonymous complaint authorized for investigation shall be treated as a complaint brought by the Commission on its own motion pursuant to Judiciary Law §44(2).")
- ii. Please see the Arizona Commission on Judicial Conduct's FAQ section on its website, explaining the complaint process and other questions, including confidentiality:
<https://www.azcourts.gov/azcjc/Frequently-Asked-Questions>
("Section 2.f. Is My Complaint Confidential? . . . [A]ll complaints become public at some point. The degree and timing of the public disclosures depend on how a complaint is resolved. . . . Most information that is available to the public is available on th[e] website.") See AZ ST J COND COMM Rule 9 (2021).

3. Accessibility of information

- a. The decisions of the Judicial Discipline Commission should be more readily available online and detailed statistical information about decisions should be made available. Please see Section Three on confidentiality for further discussion on the contents of those orders. The Judicial Discipline Commission does not appear to make its orders

readily available online. Though the Commission mentions both private and public discipline in its annual report, little information is disclosed. The 2020 report has a bulleted list of examples of previous discipline, but not how often it occurred or the nature of the outcome. No aggregate disciplinary record is available. While some numbers are reported (number of complaints, etc.), the report contains little statistical analysis. Commission orders—at least in non-dismissed cases—should be available online, searchable, and with guides or filters to identify different types of orders. The Commission should provide summary statistics on Commission activity and consider posting judges' aggregate disciplinary record, as state bars generally do as to lawyers.

- b. Statutory amendments could require these reports; for example, the CWBA recommends amendment of Colorado Revised Statute § 13-5.3-103(2)(b)(VII)-(VIII), which presently requires the Executive Director to maintain Commission Records and Statistics. The CWBA also recommends an amendment to Colorado Revised Statute § 13-5.3-102, which governs the Commission on Judicial Discipline's powers and duties, to codify this information sharing.
 - i. Please see the New York State Commission on Judicial Conduct website as an example of a searchable database and easily accessible aggregated data:
https://cjc.ny.gov/Determinations/all_decisions.html
 - ii. Please see the Pennsylvania website on Judicial Discipline for another example of a searchable database:
<https://www.pacourts.us/courts/court-of-judicial-discipline/court-cases>.
 - iii. Please also see the Arizona Commission on Judicial Conduct's website, public discipline is searchable by year:
<https://www.azcourts.gov/azcjc/Public-Decisions>
 - iv. Texas statute requires that an annual report be prepared and submitted to the legislature each year regarding the number of complaints finalized within a statutory period of filing. Tex. Gov't Code § 33.040. A provision like this should be adopted, specifying statistical information including (1) number of complaints filed, (2) number of complaints deemed frivolous, (3) how complaints were ultimately disposed, (4) general subject



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matter of complaints, and (5) demographic information regarding the complainants and the investigated judicial officers for each category complaints discussed.

- v. Further, a Texas statute – effective only September 2022 to September 2023 – requires the judicial conduct commission to prepare a report for the legislature with “recommendations for statutory changes that would improve the commission’s effectiveness, efficiency, and transparency in filing, investigating, and processing any complaint filed with the commission.” Tex. Gov’t Code § 33.041. Something similar could be considered to keep the dialogue on this issue going beyond this Interim Committee and could also include request for an analogous report from the judicial branch.

II. Independence, Supreme Court Justice Misconduct, and Disqualification Standards

- **Independence.** How to achieve a system of judicial discipline in which individual cases are investigated and determined independent of undue influence by the judiciary, to be overseen by the community, the bar, and the judiciary;
- **Supreme Court Justice misconduct.** How to address judicial discipline effectively and credibly when members, actions, or decisions of the supreme court are being evaluated for potential judicial misconduct;
- **Disqualification standards.** The appropriate method for defining a consistent and clear set of disqualification standards for each of the decision makers, including supreme court justices, commission members, special counsel, and special masters, and for determining disqualification issues;

The CWBA recommends adding recusal provisions and disqualification standards to the current framework of rules, statutes, and constitutional provisions to improve the present disqualification process for all parties to the Judicial Discipline Commission process.

1. Disqualification Rules for Commissioners
 - a. With respect to disqualification rules for commissioners: Recusal rules should address “recurring issues, such as when judge-commissioner sits on the same, collegial court as the respondent-judge or knows or believes some good or bad fact about the respondent-judge.” *Recommendations for Judicial Discipline Systems*, IAALS, July 2018, p. 7. The Colorado Rules of Judicial Discipline Rule 3.5(d) and 3.5(g)

set out rules regarding appearances of impropriety and disqualification. These rules appear comprehensive but do not contain a provision for challenging a Commission member's recusal decision. If a Commission member does not recuse on a particular matter, there should be a mechanism for review of that decision, possibly by the Executive Director or, alternatively, a rotating Supreme Court Justice.

2. Disqualification Rules for Judiciary Participants

- a. With respect to disqualification rules for judiciary participants: Colorado Code of Judicial Conduct Rule 2.11 sets out disqualification standards that judges must follow. While this rule should naturally and automatically extend to judges' review of the Commission's work, the CWBA recommends application of the specific recusal and disqualification scenarios of Colorado Rules of Judicial Discipline Rule 3.5(d) and 3.5(g) to any judges who are reviewing the work of the Commission. Likewise, the CWBA recommends implementing a mechanism to challenge a judge's decision not to recuse from a particular proceeding.

3. Creation of a replacement panel of judges for when one judge is conflicted off a proceeding

- a. Upon a judge's recusal from a proceeding, a codified mechanism must exist to replace that judge in the disciplinary process. Several other states provide models that Colorado can look to for writing these new recusal standards.

In Indiana, all supreme court justices, except the chief justice, are required to recuse from review of a discipline case involving a justice. Upon the justices' recusal, the clerk of the supreme court and court of appeals randomly select six court of appeals' members to join the chief justice on the panel. The commission and the respondent justice each strike one judge from that selection, so the final panel consists of the chief justice plus four judges. If the commission or the justice does not strike a judge, the clerk strikes one "at random in their stead."

In Minnesota, review is "heard by a panel consisting of the Chief Judge of the court of appeals or designee and six others chosen at random from among the judges of the court of appeals by the Chief Judge or designee."



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In California, a tribunal of seven court of appeals' judges selected by lot reviews a Commission on Judicial Performance's determination to admonish or censure a judge or former justice of the supreme court or remove or retire a justice of the supreme court. Ca. Const. Article VI section 8.

In Massachusetts, there is a default roster in place when a supreme court justice is being investigated: "[t]he chief justice and the six most senior justices of the appeals court other than the chief justice shall serve in the place of the supreme judicial court when charges are brought against a member of the supreme judicial court." (<https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211C/Section9>).

III. Confidentiality and Transparency

- **Confidentiality and transparency.** The best method of balancing the values of confidentiality and transparency for judicial discipline matters;

The CWBA recommends modifying the present constitutional provision (by introducing a referred measure) that mandates confidentiality until the conclusion of formal proceeding. An amended constitutional provision should remove confidentiality upon a formal proceeding's filing. The current constitutional provisions undermine the potential deterrent effect of disciplinary proceedings. Further, modification of the current confidentiality provisions would allow for greater transparency of the overall process.

The CWBA cites the *IAALS Recommendations for Judicial Discipline Systems*, published in 2018. (Attached as Exhibit One). Colorado has already incorporated a lot of the recommendations contained in the IAALS white paper. The CWBA endorses IAALS' recommendation to amend Colorado Constitution Article VI, Section 23(3)(a) to include recommendations and best practices on diversity of power and authority, separation of the commission's investigation powers from its adjudicatory powers and making proceedings public upon a formal complaint's filing.

To promote greater transparency, the CWBA endorses IAALS' recommendation that the Commission look for emerging patterns of problematic behavior as reflected in received complaints (even non-actionable complaints) and alert the respective judges of those patterns for educational and reform purposes.

Additionally, administrators of judicial performance evaluations should share misconduct as appropriate with disciplinary authorities. While records concerning attorney discipline are made available to the judges who oversee the judicial appointment process, the CWBA recommends extending this information-sharing to Judicial Discipline Commission actions concerning judges who apply for a position in a higher court. The CWBA also recommends implementation of additional measures to promote transparency, such as listing Judicial Discipline opinions in a readily available and searchable database.

The CWBA also cites *Judicial Disciplinary Hearings Should Be Open*, by Robert H. Tembeckjian. Tembeckjian argues that judicial disciplinary hearings should be public based on (i) the Sixth Amendment's "guarantee that criminal trials shall be public;" (ii) most civil proceedings are public under federal and state laws; and (iii) debates that shaped the drafting of the Constitution. *Judicial Disciplinary Hearings*, p. 419. Of the 35 states with public judicial disciplinary hearings, the majority's proceedings become public upon conclusion of the investigation phase and the filing of formal charges. In the remaining 15 states, the proceeding does not become public until imposition of discipline on the theory that a public proceeding would cause a judge who may eventually be exonerated [to] suffer irreparable harm[.]”*Id.* pg 420. On the flipside, however, non-public proceedings make the process seem “sudden and mysterious,” and undermine the public’s confidence. *Id.* pg 421.

Tembeckjian draws a parallel between disciplinary hearings and the criminal process, and in doing so, he argues the filing of charges (or the initiation of a disciplinary proceeding) is the proper removal of confidentiality. At the time the article was published, the ABA Model Rules for Judicial Disciplinary Enforcement recommended confidential investigations but public formal disciplinary proceedings; the American Judicature Society took a similar position in 1996. *Id.* pg 424.

Finally, the CWBA cites the National Center for State Courts Study on Judicial Discipline Sanctions. At the time of publication, more than 80% of complaints investigated by judicial conduct committees were dismissed without filing formal charges. *NCSC Study on Judicial Discipline*, pg 3. The “general purpose of judicial discipline proceedings is preserving the integrity of the judicial system and public confidence in the system.” *Id.* pg 3. In one instance in California, a judge who was sanctioned by the California Supreme Court was reelected to the bench because the public “has only limited knowledge of her improprieties” since the disciplinary proceedings had remained confidential until after the election.” *Id.* pg 5. The study suggests that confidential proceedings lead to an uninformed public that consequently and unwittingly reelects an unfit judge. The study also found that most removal cases “involve more than one act of misconduct or a continuing failure



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to act.” *Id.* pg 60. In Colorado, the public could potentially be asked to vote on the retention of a judge who has faced disciplinary proceedings when that public is not fully informed on a judge’s performance.

Overall, the article underscores that a number of factors—some obvious, others less so—are considered in a judicial disciplinary proceeding (see a specific list of factors on pages 81 through 82). “There is no magic formula for balancing aggravating and mitigating factors that would reduce the sanction decision in all cases to a science, resulting in sanctions with which no reasonable person could disagree.” *Id.* pg 83. Public proceedings would inform the public that “judges are held to a higher level of scrutiny than are ordinary lawyers” (pg 79, citing *In re Inquiry Concerning a Judge*, 788 P.2d 716, 723 (Alaska 1990). The study contends that “part of the purpose of judicial discipline is to deter other judges and to reassure the public that the judiciary does not tolerate judicial misconduct . . . and should be treated as other important decisions by the court and be made available on a web-site, in the court’s official reporter, and in the regional reporter.” *Id.* pg 83.

Please see below for language from other states that make proceedings public upon filing of charges and not the conclusion of a proceeding:

Alabama	<ul style="list-style-type: none"> • Proceedings of the Judicial Inquiry Commission are kept confidential except the fact that a complaint has been filed with the Court of the Judiciary; confidentiality is maintained during the Commission’s investigation; Commission is to act as an impartial investigator. • https://judicial.alabama.gov/appellate/jic
Alaska	<ul style="list-style-type: none"> • “All investigative records, files, and reports of the commission are confidential and no disclosure may be made except as permitted by AS 22.30.060. All confidential documents acquired in the course of a commission investigation shall be accorded the same confidentiality as commission-generated documents.” • When Commission has finished its investigation, it discloses either (i) that no basis for action was found against the judge; (ii) appropriate corrective action that cannot be disclosed has been taken; or (iii) Committee has filed a formal charge against the judge. • Judge can choose to waive confidentiality. • Alaska Jud. Cond. Comm. R. 5 (current through July 14, 2022)
Arkansas	<ul style="list-style-type: none"> • All investigatory records, files, and reports of the Commission shall be kept confidential except: (a) upon written waiver of judge; upon inquiry by an appointing authority in connection with the selection or appointment of judges; upon inquiry in connection with the assignment or recall of a retired judge to



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	<p>judicial duties; or (b) if, after the investigation, the Commission reasonably believes that there has been a violation of any rules of professional conduct or a violation of criminal law.</p> <ul style="list-style-type: none"> • To note, the show cause portion of the hearing is not open to the public, only the formal disciplinary hearing is open to the public. • https://www.jddc.arkansas.gov/wp-content/uploads/2020/05/Statement_of_Confidentiality.pdf
California	<ul style="list-style-type: none"> • “Under the California Constitution and the commission’s rules, complaints to the commission and commission investigations are confidential. The commission ordinarily cannot confirm or deny that a complaint has been received or that an investigation is under way. Persons contacted by the commission during an investigation are advised regarding the confidentiality requirements. After the commission orders formal proceedings, the charges and all subsequently filed documents are made available for public inspection. Any hearing on the charges is also public.” • https://cjp.ca.gov/complaint_process/
Connecticut	<ul style="list-style-type: none"> • “Any investigation to determine whether or not there is probable cause that conduct [prohibited under statute/rule]has occurred shall be confidential and any individual called by the council for the purpose of providing information shall not disclose his knowledge of such investigation to a third party prior to the decision of the council on whether probable cause exists, unless the respondent requests that such investigation and disclosure be open, provided information known or obtained independently of any such investigation shall not be confidential . . . If a preliminary investigation indicates that probable cause exists that the judge, compensation commissioner, or family support magistrate is guilty of [prohibited] conduct . . . , the council shall hold a hearing concerning the conduct or complaint. All hearings held pursuant to this subsection shall be open[.]” • https://portal.ct.gov/JRC/Left-Nav/statutes/Governing-Statutes
Georgia	<ul style="list-style-type: none"> • Before formal charges are filed, “all information regarding a disciplinary or incapacity matter of a judge shall be kept confidential by the Investigative Panel and Commission staff before formal charges are filed and served; provided, however, that if prior to filing formal charges the judge and the Investigative Panel agree to a satisfactory disposition of a disciplinary matter other than by a private admonition or



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	<p>deferred discipline agreement, a report of such disposition shall be publicly filed in the Supreme Court[.]”</p> <ul style="list-style-type: none"> • Once the formal charges are filed, all pleadings and information shall be subject to disclosure to the public. • However, “with respect to an incapacity matter of a judge, all pleadings, information, hearings, and proceedings shall remain confidential[.]” • https://casetext.com/rule/georgia-court-rules/rules-of-the-judicial-qualifications-commission-of-georgia/section-ii-general-provisions/rule-11-confidentiality
Louisiana	<ul style="list-style-type: none"> • The Louisiana Supreme Court adopted several substantive amendments to its Judicial Discipline Rules, in 2020 and 2021, including hearings on allegations of judicial misconduct that have been investigated will now be public, as will the record and results of the formal proceedings. LA ST S CT Rule 23, § 23 (2020). • If a judge is admonished, any additional admonishments within a judge’s term of office (ten years for appellate court judges and six years for district court and other judges) shall now be public. • Information will be made available about confidential non-disciplinary dispositions on the supreme court’s website and in supreme court publications.
Texas	<p>Tex. Gov’t Code § 33.032 (https://statutes.capitol.texas.gov/Docs/GV/htm/GV.33.htm#33.0321)</p> <ul style="list-style-type: none"> • The formal hearing and any evidence introduced during the formal hearing, including papers, records, documents, and pleadings filed with the clerk, shall be public. • The disciplinary record of a judge, including any private sanctions, is admissible in a subsequent proceeding before the commission, a special master, a special court of review, or a review tribunal. <ul style="list-style-type: none"> • A voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission shall be public on the commission’s acceptance of the agreement.

Additionally, Massachusetts – which generally does not allow any information to be disclosed –allows its Commission on Judicial Conduct to share

information deemed relevant with its judicial nominating body simply by providing written notice to the judge. The pertinent statute provides the commission with the authority to create procedures to divulge information when “any federal agency, the judicial nominating council, or any like agency for screening candidates for judicial appointment . . . seeks information or written materials from the commission concerning a judge, in connection with his selection or appointment as a judge.” (<http://malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter211C/Section5>).

The Massachusetts Commission’s current rule provides that

[T]he Commission may:

- (a) divulge whatever information is a matter of public record; and
- (b) after obtaining the judge’s signed waiver, divulge other relevant information; or
- (c) divulge other relevant information after giving written notice to the judge affected of its intention to do so and allowing the judge seven (7) days to respond.

(<https://www.mass.gov/professional-conduct-rules/commission-on-judicial-conduct-rule-5-confidentiality>.)

Finally, the CWBA recommends reinforcing the sharing of information between the Commission on Judicial Performance and the Commission on Judicial Discipline. This would also increase transparency in discipline proceedings and in our state judicial retention process.

As part of IAALS 15 Recommendations: Recommendation 3 says in part: "Administrators of judicial performance evaluations should share misconduct as appropriate with disciplinary authorities." Some states that share disciplinary information with performance evaluations are:

- Alaska Performance evaluation tracks public files from the state Commission on Judicial Conduct, as well as recusal filings, peremptory challenge filings, and conflict-of-interest forms.
- Arizona requires its Commission on Judicial Performance Review (JPR) to obtain information from the state’s Commission on Judicial Conduct about any discipline that has been imposed on any evaluated judge. The language on Arizona's website says:

The Commission on Judicial Performance Review shall carefully consider:

- (1) statistical reports of the survey results;
- (2) comments from public hearings, Rule 6 (d);
- (3) written comments from the public, Rule 6 (d);
- (4) written or oral comment to the Commission submitted by the judge being reviewed, Rule 6 (e);
- (5) its own factual report relating to a judge, Rule 6 (e);
- (6) the information obtained from the Commission on Judicial Conduct;
- (7) the assignment of the judge (civil, criminal, domestic relations, juvenile, administrative, probate, special assignment, etc.); and
- (8) a comparison of the judge's scores with the mean scores of all judges reviewed, Rule 6 (e).

· Utah performance standards, require that judges “not be the subject of more than one public reprimand issued by the Judicial Conduct Commission for the current term; . . . Utah Supreme Court. Utah Code Section 78A-12-205 (2022)

https://le.utah.gov/xcode/Title78A/Chapter12/78A-12-S205.html?v=C78A-12-S205_2022021120220211

IV. Victim-centered Approach

- **Victim -centered approach.** Benefits of a victim-centered approach to judicial misconduct complaints that allows the victim to have a voice in how complaints are handled and resolved;

A process that keeps victims informed throughout the disciplinary process is of great importance to the CWBA.

The CWBA could not locate a model in another state that codifies victims’ rights in judicial discipline proceedings. Such a model would apparently make Colorado a vanguard of judicial discipline reform.

Colorado’s Victim Rights Act (VCRA), codified at Colorado revised Statute section 24.4.1-300.1-303, provides helpful guidance. First, the term “victim” must be properly defined with respect to disciplinary proceedings and who is entitled to be considered as that title. At the very least, the term should apply to the subjects of harassment and discrimination. The term should also be considered for reporting parties whose pending cases are potentially impacted by judicial misconduct



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findings. And, as with VCRA victims, judicial discipline victims must be entitled to notice and an opportunity to be heard in the disciplinary process.

Second, the scope of victim's rights in judicial discipline proceedings must be clearly defined. The VCRA and administrative university disciplinary proceedings offer guides of defining victims' rights. For example, the University of Wisconsin System campus disciplinary process articulates students' right to know the range of possible sanctions the accused faces, to receive notice that their report might be included (in anonymized form) in an annual crime statistic report, and to consent to sharing of information among campus offices and with third parties. UWS 17.10(1). Victims are also provided with notice that their report can result in a report as an annual crime statistic with the victim's name withheld, and campus offices must have a waiver signed by the student in order to share information among one another or with any third party, including parents.

https://docs.legis.wisconsin.gov/code/admin_code/uws/17

The Code of Federal Regulations provides another example of language that could apply in judicial discipline proceedings. Schools are commanded to "consider victims' rights when appropriate," and lists rights such as participating in disciplinary proceedings in writing or in person, providing a statement concerning the impact of the incident on the victim, and having the outcome explained to that victim. 25 CFR section 42.0. <https://www.law.cornell.edu/cfr/text/25/42.9>.

The Louisiana Supreme Court also made several substantive changes to Louisiana Supreme Court Rule XXIII in 2021 after extensive study, review and deliberation, with an eye towards being more victim-centered in its discipline process. While the potential scenarios Louisiana's new language addresses are extreme (alleged criminal conduct), it provides another example of how victim rights can be addressed by expediting proceedings and putting consequences in place for aggravated disciplinary issues. See the press release regarding additional changes to the Judicial Discipline Rules: https://www.lasc.org/Press_Release?p=2021-34. Among the changes, "judges who have been charged and convicted of a felony or lesser crime that reflects adversely on the judge's honesty, trustworthiness, or fitness as judge may now be required to repay the costs of appointing a judge to cover their dockets while they are suspended from performing judicial functions during the pendency of criminal and judicial discipline proceedings. LA ST S CT Rule 23, § 22 (2021). There is a monetary cost for judges who want to resign during a formal proceeding. "[J]udges who retire or resign prior to the conclusion of public judicial discipline proceedings may now be required to repay the costs incurred in the Commission's investigation and litigation of the matter." LA ST S CT Rule 23, § 22 formal proceedings (2021). To expedite matters, such as those involving possible



criminal conduct, the Commission must provide the hearing officer with instructions regarding the expediting of the matter. LA ST S CT Rule 23, § 4 (2021).

The impact of harassment or other misconduct on a victim can be profound, especially in the context of the workplace. The CWBA urges legislators to ensure that victims of judicial misconduct receive notification rights, the option to participate in proceedings, and a guaranteed right to provide input. While a victim's input does not need to be dispositive, it must be considered.

V. Judicial Appointments and Recommendations

- **Judicial appointments.** Whether the supreme court should continue to control the appointment of the four judge members of the commission;
- **Recommendations.** Recommendations from the department, the commission, and any other stakeholders the interim committee deems appropriate.

The CWBA recommends this Interim Committee revisit the Constitutional Provisions and Rules identifying the makeup of the Judicial Discipline Commission. The Commission should aim to have a diverse membership. The current composition of Judicial Discipline Members focuses on geographic diversity as well as having judges, lawyers, and non-lawyers on the Commission. The CWBA recommends that an amendment to the Colorado Constitution Article VI, Section 23(3)(a) include a requirement that the governor consider the overall makeup of the Commission's representation of geographic location, gender, racial, cultural, and disability diversity in his or her appointments. A similar amendment would need to be made in the Colorado Rules of Judicial Discipline Rule 3.

VI. Conclusion

Overall, the CWBA sees this Interim Committee as an excellent opportunity to improve upon Colorado's existing rule, statutory, and constitutional framework for judicial discipline. The CWBA recommends the aforementioned changes to ensure Colorado's judiciary is accountable to the citizens it serves, to ensure the Judicial Discipline Commission is adequately structured and supervised, and to make Colorado is a leader in judicial discipline efforts overall.