

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
5 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 process
12 and allowing for more information to be
13 shared with the public and other judicial
14 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 judges
19 for misconduct and will keep judicial
20 discipline cases confidential until the final
21 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?**

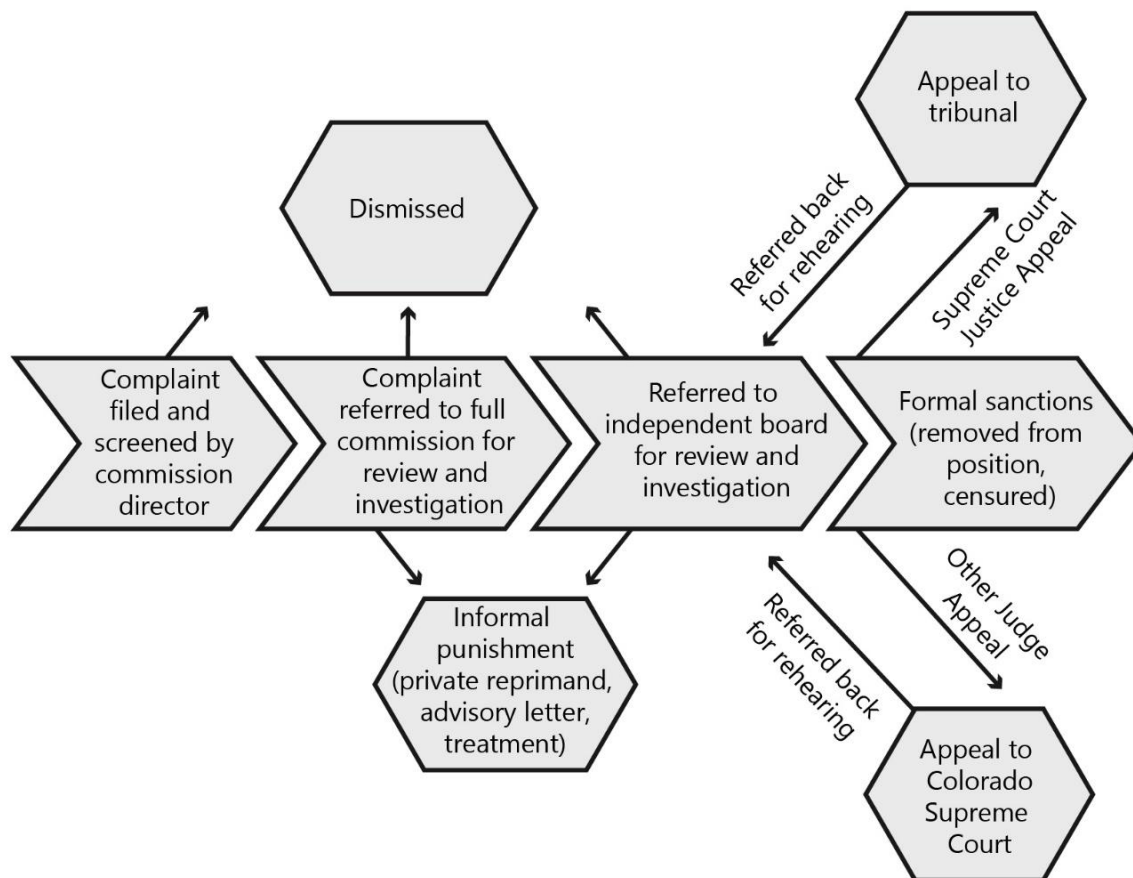
30 The Commission on Judicial Discipline (commission), an independent state agency charged
31 with investigating allegations of misconduct against judges, screens and investigates
32 complaints. The screening process eliminates complaints that ask to review a judge’s ruling
33 or order a new trial. Complaints found to have merit are investigated. Thereafter, the
34 commission either issues a private reprimand, dismisses the complaint, or forwards findings
35 about the more serious cases to the Colorado Supreme Court. The forwarded cases are
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.

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 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**



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.

1 **Table 1**
 2 **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.

3 **Why is HCR23-1001 on the ballot?**

4 In 2023, the Colorado legislature passed three bipartisan bills about judicial discipline
 5 procedures and workplace culture, including HCR23-1001. The other two bills address
 6 confidentiality, complaint filing and reporting, and data collection, as well as created a new
 7 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. 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.

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.

14 **Fiscal Impact of HCR23-1001**

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