

Interim Committee on Judicial Discipline

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Legislative Interim Committee on Judicial Discipline

Committee Charge

Senate Bill 22-201 created the Interim Committee on Judicial Discipline and directed the committee to work with judges, lawyers, and members of the public, and other interested parties, to:

- review and examine Colorado's system of judicial discipline;
- evaluate other states' models; and
- make recommendations to the General Assembly for statutory or constitutional reforms during the 2023 session.

Committee Activities

During the 2022 interim, the Interim Committee on Judicial Discipline held five meetings at the State Capitol. The committee heard presentations from a variety of experts in the fields of judicial discipline and misconduct. These experts gave presentations on judicial discipline commission structure and composition in other states, as well as confidentiality, transparency, reporting, and complainant procedural rights. Representatives of the Judicial Department, the Commission on Judicial Discipline, Office of the State Auditor, and the Office of Attorney Regulation also testified about Colorado's judicial discipline system and their respective roles in the process. The following subsections discuss the committee's activities during the 2022 interim.

Confidentiality. The committee learned that Colorado, along with 14 other states, privately conducts judicial disciplinary hearings until a recommendation for a public disciplinary sanction is made. The remaining states allow judicial misconduct proceedings to become public earlier in the process, once charges are filed or judges have formally responded to allegations. Concurrent Resolution A makes judicial misconduct proceedings public at the commencement of formal proceedings. It also clarifies the circumstances in which the commission may release otherwise confidential information and addresses immunity in defamation lawsuits.

Complaint filing. Anyone may lodge a complaint against a judge with the Colorado Commission on Judicial Discipline. These complaints must be written and signed and then submitted via US mail, email, or fax. Testimony pointed out issues with this system and suggested ways to streamline the process by making it more user-friendly. Committee members also considered recommendations to allow anonymous and confidential reporting of judicial misconduct. These discussions led to the drafting of Bill B, which permits a complainant to file a complaint either online or by mail and to have the option of submitting it anonymously or confidentially.

Procedural rights for complainants. A common theme heard throughout committee hearings was the lack of notification and support mechanisms in place for individuals who file a complaint against a judge. Committee members discovered that complainants may not be kept apprised about the status of their complaint, and may not know how to follow the status of their complaints on their own. This led to provisions in Bill B, which develops complainant notification procedures to include status updates about case dismissals, completions, hearing schedules, and disposition.

Data and reporting. The Commission on Judicial Discipline is required to file an annual report and post it on the commission's website. The committee heard from multiple sources, however, that the report is limited in scope and does not provide enough aggregate information to identify trends or patterns. The committee also discussed accountability and transparency in connection with better data collection. Bill B requires the commission to include additional information about complaints in its annual report and online in a searchable format, including types, numbers, disposition, and reasons for informal remedial actions or dismissals.

Rulemaking. In Colorado, the state Supreme Court promulgates rules governing disciplinary procedures, including staff and commission member duties and responsibilities. Committee members heard from national experts that this practice may be perceived as self-monitoring, allowing the court to play a larger than necessary role in the process. Looking to other states that allow judicial discipline commissions to operate more independently, the committee deliberated about a different rulemaking approach. Concurrent Resolution A constitutionally creates a rulemaking committee to propose rules for the commission and allows the Supreme Court to approve or reject the proposed rules. Bill B statutorily outlines rulemaking procedures, such as notice and opportunities for public comment, and addresses rules governing certain judicial discipline proceedings.

Independent entity to adjudicate formal hearings and hear appeals. For serious judicial discipline cases that have reached formal proceedings, the Colorado Supreme Court determines whether to suspend, publicly censure, or remove a judge from the bench. Testimony from national experts and local organizations alike expressed concerns about conflicts of interest in these cases and recommended shifting decision-making power away from the state's high court to an independent board. As a result of these conversations, Concurrent Resolution A creates a new Judicial Discipline Adjudicative Board, made up of an equal number of attorneys, judges, and citizens, to hear more serious judicial discipline cases, as well as appeals of remedial actions issued by the Commission on Judicial Discipline.

Tribunal for cases involving Supreme Court justices. The current judicial system discipline system in Colorado allows for the state Supreme Court to mete out discipline to one of its own members, without a clear recusal process for conflicts of interest. Judicial discipline experts and practitioners provided the committee with information about other ways to handle judicial discipline cases involving Supreme Court justices. Based on these suggestions, Concurrent Resolution A requires a tribunal of seven randomly selected court of appeals judges to review any appeal from a Supreme Court justice who is being disciplined.

Committee Recommendations

As a result of committee discussion and deliberation, the Interim Committee on Judicial Discipline recommends the following two pieces of legislation for consideration in the 2023 legislative session.

Concurrent Resolution A – *Judicial Discipline Procedures and Confidentiality*. The concurrent resolution refers a question to the 2024 general election ballot to ask voters to amend the constitution to change how disciplinary hearings for judges are conducted. The resolution specifically reduces the roles of the Commission on Judicial Discipline and Colorado Supreme Court in formal judicial disciplinary proceedings and transfers responsibilities to a new board. The resolution also creates a different process for when complaints are made public and removes confidentiality during formal disciplinary proceedings. Lastly, the resolution assembles a rulemaking committee, instead of the Supreme Court, to propose rules for judicial discipline proceedings.

- *Judicial Discipline Adjudicative Board.* The resolution creates the Independent Judicial Discipline Adjudicative Board to conduct formal disciplinary hearings and to hear appeals about informal orders from the Commission on Judicial Discipline. The board consists of an equal number of judges without any disciplinary history, attorneys without any disciplinary history, and citizens.

When the Commission on Judicial Discipline orders a formal hearing to discipline a justice or judge, or a justice or judge wants to appeal an order for informal remedial action from the commission, a panel of the Judicial Discipline Adjudicative Board, which includes one judge, one attorney, and one citizen of the board randomly selected by the State Court Administrator, will convene to conduct the hearing. After the formal hearing, the adjudicative panel may dismiss the charges, take informal remedial actions, or impose sanctions, such as the removal, suspension, or censure of a justice or judge.

- *Appeals of disciplinary orders.* The resolution allows a justice or judge or the Commission on Judicial Discipline to appeal a Judicial Discipline Adjudicative Board’s disciplinary order or dismissal to the Supreme Court or a tribunal consisting of seven court of appeals judges if the disciplinary action involves a Supreme Court justice.
- *Confidentiality.* The resolution allows judicial disciplinary proceedings to be public at the commencement of formal proceedings. The resolution also allows the Commission on Judicial Discipline to release information about the status of an evaluation, investigation, or proceeding to the victim of misconduct or the complaint; release information about a complaint that resulted in discipline to specified government agencies; and to make aggregate information on complaints publically available.
- *Rulemaking committee.* The resolution creates the 10-member rulemaking committee to propose rules for the Commission on Judicial Discipline. The Supreme Court must approve or reject each rule proposed by the committee and the court may promulgate specific rules governing proceedings before the Judicial Discipline Adjudicative Board

Bill B – *Judicial Discipline Procedures and Reporting.* Bill B requires the Commission on Judicial Discipline to report more information in its annual report and online about the allegations, investigations, and complaints it receives and the type of discipline imposed or recommended. Additionally, the bill allows a person to submit a complaint of judicial misconduct either by mail or online, through a form developed by the commission, and also allows a person to submit a confidential or anonymous complaint. Further, the commission, upon receipt of a complaint, is required to explain to the complainant the judicial discipline process and to designate a point of contact to keep a complainant apprised of the complaint status. Finally, the bill outlines judicial rulemaking procedures to notify the public and give them an opportunity to submit comments.