

COMMISSION ON JUDICIAL DISCIPLINE

Joint Judiciary Committee SMART Government Act Hearing
January 25, 2022

Elizabeth Espinosa
Krupa
Chair

David Prince
Vice-Chair

Christopher Gregory
Executive Director

Mission

- Accountability through Independent Oversight of Judicial Ethics

Established in 1966

- Creation of the Commission on Judicial Discipline (“the Commission”)
 - In 1966, the electorate amended Article VI of the Colorado Constitution, effective Jan. 17, 1967, to establish the Commission

Current members and Staff

Elizabeth Espinosa Krupa, *Chair* – Attorney
Hon. Rachel Fresquez, *Secretary* – County Court Judge
Hon. David Prince *Vice-Chair* – District Court Judge
Jim Carpenter – Citizen
Bruce A. Casias – Citizen
Hon. Sara Garrido – County Court Judge
Yolanda Lyons – Citizen
Hon. Bonnie McLean – District Court Judge
Drucilla Pugh – Citizen
Mindy Sooter - Attorney

Christopher Gregory, *Executive Director*
Lauren A. Solomon, *Administrative Assistant*

Duties

- Article VI, Section 23(3) grants the Commission the authority to recommend that judges and Justices in Colorado “be removed or disciplined for willful misconduct in office, willful or persistent failure to perform [their] duties, intemperance, or violation of any canon of the Colorado code of Judicial Conduct...”
- The Commission investigates complaints of judicial impropriety and makes recommendations of discipline when necessary. Analogous to a grand jury.
- The Commission aims to maintain public confidence in the judiciary and create greater awareness of proper judiciary conduct in Colorado

Jurisdiction

- The Commission has statewide jurisdiction over the conduct of Judges of County and District Courts, Judges of the Court of Appeals, and Justices of the Supreme Court.
- It has no jurisdiction regarding the conduct of magistrates, court staff, municipal judges, administrative law judges, or the federal judiciary.

Composition

- The Commission is comprised of four judges, two experienced attorneys, and four non-attorney citizens of the State
- All commissioners serve a four-year appointment without salary
- For administration, the Commission has one full-time staff member, an Executive Director and a part-time Administrative Assistant
- Currently, the Commission must arrange separate professional staffing for investigations on a case-by-case basis

Confidentiality

- Confidentiality is set by the Constitution, Art. VI, Sec. 23(3)(g)
 - The Disciplinary Commission's examination of misconduct allegations is confidential unless and until it files recommendations with the Colorado Supreme Court.
 - When and if the Disciplinary Commission files recommendations, the recommendations are public.
 - While individual investigations are confidential, the Disciplinary Commission can discuss how it operates and how its processes are working
 - CRJD 6.5(d)(i) authorizes the Commission to make disclosures as needed to fulfill the Commission's mandate.

Request for Evaluation

- Concerns about a judge's compliance with the Canons is reported to the Commission by filing a Request for Evaluation of Judicial Conduct (RFE)
- The Executive Director or a Commissioner conducts a preliminary review of the allegations to determine if they involve the conduct of a judge and provide a reasonable basis for the Commission to process the RFE as a complaint through disciplinary proceedings.
- If there is a reasonable basis for the complaint, the judge is notified and asked to respond to the allegations, and the Commission will conduct a thorough investigation of the alleged misconduct.

Enforcement

Upon a finding of misconduct, the Commission may

- Confidentially
 - Issue a letter of admonition, reprimand, or censure the judge
 - Require the judge to seek training, counselling or medical treatment
 - Initiate disability proceedings
- Recommend that the Colorado Supreme Court
 - Publicly sanction/reprimand the judge
 - Remove, suspend, or retire the judge
 - Pursue a diversion or deferred discipline plan

Procedure

- The Constitution provides that the papers and proceedings of the Commission are confidential.
- Most disciplinary actions are taken privately.
- When appropriate, the Commission may conduct formal proceedings that may lead to a recommendation to the Colorado Supreme Court for further action.

Contrasted with Performance Commissions

Disciplinary Commission

- Statewide Jurisdiction
- Enforce Ethics Rules Only
- Investigate at any Time
- Remedy: Pursuit of Sanction, Possible Removal
- Constitutional Creation but No Implementation Statute

Performance Commissions

- Divided into Local Comm'ns
- Rate Overall Performance of Judge
- Review Only Periodically with Judge's Term of Office
- Remedy: Report to Voters
- Implementation Statute, C.R.S. 13-5.5-101 et seq.

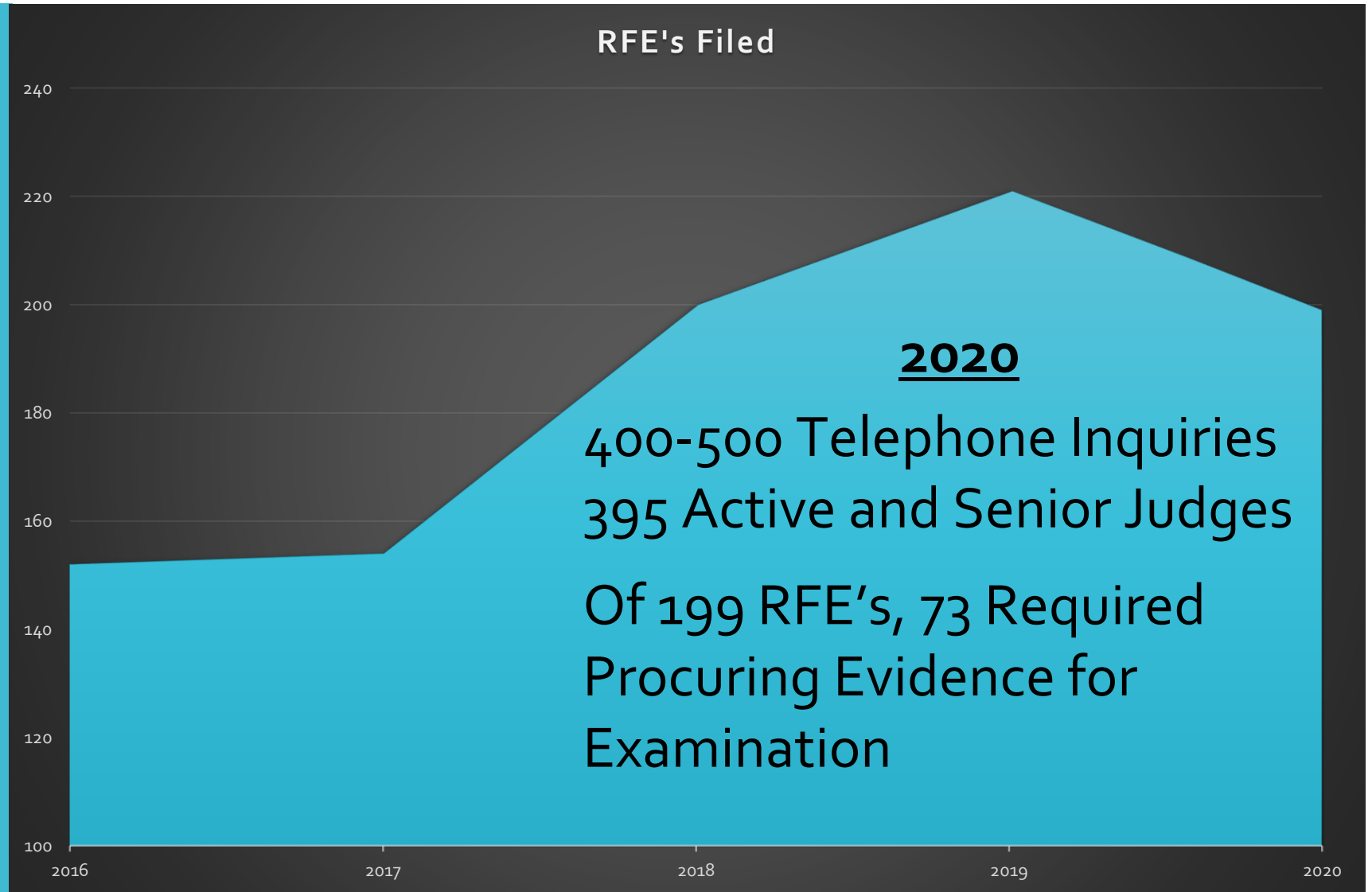
Independence

- **Pursuant to the ABA Model Rules for Judicial Disciplinary Enforcement:**
- The commission should be established by a constitutional provisions to make certain it is free from interference from any branch of government.
- To assure the commission's fiscal and operational independence, its necessary expenses should be provided for in a budget separate from that of the judicial branch.
- This protects the judiciary from the charge that it is withholding funds and thereby hampering the commission in investigating the conduct of its members.
- The Commission should not have to rely on any other agency.

Current Funding

- Funding currently provided through Attorney Registration Fees.
- C.R.C.P. 227(1)(c) names the programs that are the beneficiaries of those funds when the Judiciary collects them. The Disciplinary Commission is one of those beneficiaries.
- Under CRJD 3(d)(8), the ED for the Commission sets our budget and handles the funds with oversight by the Disciplinary Commission.

Annual RFE Volume



Disciplinary Commission's 2022 Session Goals

- Establish Independent Access to Funding and Resources for Judicial Discipline
- Implement Structure for Independent Judicial Discipline in Colorado