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Seventy-fourth General Assembly  
STATE OF COLORADO

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**BILL 1**

LLS NO. R23-0150.01 Conrad Imel x2313 INTERIM COMMITTEE CONCURRENT RESOLUTION

**Legislative Interim Committee on Judicial Discipline**

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**BILL TOPIC:** "Judicial Discipline Procedures & Confidentiality"

**DEADLINES:** File by: 9/9/2022

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**INTERIM COMMITTEE CONCURRENT RESOLUTION**

101     **SUBMITTING TO THE REGISTERED ELECTORS OF THE STATE OF**  
102             **COLORADO AN AMENDMENT TO THE COLORADO CONSTITUTION**  
103             **CONCERNING JUDICIAL DISCIPLINE, AND, IN CONNECTION**  
104             **THEREWITH, ESTABLISHING AN INDEPENDENT JUDICIAL**  
105             **DISCIPLINE ADJUDICATIVE BOARD, SETTING STANDARDS FOR**  
106             **JUDICIAL REVIEW OF A DISCIPLINE CASE, AND CLARIFYING WHEN**  
107             **DISCIPLINE PROCEEDINGS BECOME PUBLIC.**

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**Resolution Summary**

*(Note: This summary applies to this resolution as introduced and does not reflect any amendments that may be subsequently adopted. If this resolution passes third reading in the house of introduction, a resolution summary that applies to the reengrossed version of this resolution will be*

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

available at <http://leg.colorado.gov/>.)

**Legislative Interim Committee on Judicial Discipline.** The concurrent resolution amends section 23 of article VI of the Colorado constitution as it relates to judicial discipline. Under existing law, the commission on judicial discipline (commission) investigates complaints of judicial misconduct; conducts formal judicial disciplinary proceedings; and may dismiss complaints, impose informal sanctions, or recommend that the Colorado supreme court impose formal sanctions. The commission may also request that the supreme court appoint special masters to hear and take evidence on a matter and report to the commission.

The resolution clarifies the commission's authority to dismiss complaints. The resolution repeals the authority of the commission to conduct formal judicial disciplinary proceedings and request appointment of special masters, and creates an independent adjudicative board (board) to conduct formal proceedings and hear appeals of the commission's orders imposing informal sanctions. The board is comprised of 4 judges, 4 attorneys, and 4 citizens. A randomly selected panel of the board, comprised of one judge, one attorney, and one citizen, conducts formal proceedings in a case. The resolution permits the panel to dismiss a complaint, impose informal sanctions, or impose formal sanctions.

The resolution sets the standards of review to be used by the supreme court when it reviews a panel's decision. In proceedings involving a complaint against a Colorado supreme court justice and those in which a Colorado supreme court justice is a complainant or a material witness in the proceeding, the resolution requires a tribunal of 7 randomly selected court of appeals judges to review the panel's decision in the same manner and using the same standards of review.

Under existing law, commission proceedings are confidential until the commission files recommendations with the supreme court. The resolution makes proceedings public at the commencement of formal proceedings. The resolution clarifies the circumstances in which the commission may release otherwise confidential information.

The resolution creates a rule-making committee to propose rules for the commission. The supreme court approves or rejects each rule proposed by the rule-making committee. The Colorado rules of evidence and Colorado rules of civil procedure, as amended, apply to proceedings before a panel of the adjudicative board until and unless the supreme court promulgates rules specifically governing panel proceedings.

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1            *Be It Resolved by the House of Representatives of the*  
2            *Seventy-fourth General Assembly of the State of Colorado, the Senate*

1 *concurring herein:*

2           **SECTION 1.** At the election held on November 5, 2024, the  
3 secretary of state shall submit to the registered electors of the state the  
4 ballot title set forth in section 2 for the following amendment to the state  
5 constitution:

6           In the constitution of the state of Colorado, section 23 of article  
7 VI, **amend** (3)(e), (3)(f), (3)(g), and (3)(h); and **add** (3)(c.5) and (3)(k)  
8 as follows:

9           **Section 23. Retirement and removal of justices and judges.**

10 (3) (c.5) (I) THERE IS CREATED THE INDEPENDENT JUDICIAL DISCIPLINE  
11 ADJUDICATIVE BOARD AS AN INDEPENDENT AGENCY WITHIN THE JUDICIAL  
12 DEPARTMENT. THE ADJUDICATIVE BOARD SHALL CONDUCT FORMAL  
13 JUDICIAL DISCIPLINARY PROCEEDINGS AND HEAR APPEALS, WHICH REMAIN  
14 CONFIDENTIAL, OF THE COMMISSION'S ORDERS OF INFORMATION ACTION.  
15 THE ADJUDICATIVE BOARD CONSISTS OF FOUR JUDGES WITHOUT ANY  
16 JUDICIAL OR ATTORNEY DISCIPLINARY HISTORY, APPOINTED BY THE  
17 SUPREME COURT; FOUR ATTORNEYS WITHOUT ANY JUDICIAL OR ATTORNEY  
18 DISCIPLINARY HISTORY WHO ARE LICENSED TO PRACTICE LAW IN  
19 COLORADO AND WHO RESIDE IN COLORADO, APPOINTED BY THE  
20 GOVERNOR AND CONFIRMED BY THE SENATE; AND FOUR CITIZENS WHO ARE  
21 NOT JUDGES OR ATTORNEYS LICENSED TO PRACTICE LAW IN COLORADO,  
22 APPOINTED BY THE GOVERNOR AND CONFIRMED BY THE SENATE. WHEN  
23 MAKING THE INITIAL APPOINTMENTS TO THE ADJUDICATIVE BOARD, THE  
24 APPOINTING AUTHORITY SHALL DESIGNATE TWO MEMBERS FROM EACH  
25 CATEGORY TO A FIVE-YEAR TERM AND TWO MEMBERS FROM EACH  
26 CATEGORY TO A THREE-YEAR TERM. ALL SUBSEQUENT APPOINTMENTS ARE  
27 FOR A TERM OF FIVE YEARS; EXCEPT THAT IN THE EVENT OF A VACANCY ON

1 THE ADJUDICATIVE BOARD, THE ORIGINAL APPOINTING AUTHORITY SHALL  
2 APPOINT, IN THE SAME MANNER AS AN ORIGINAL APPOINTMENT, A  
3 REPLACEMENT TO SERVE THE REMAINDER OF THE TERM.

4 (II) UPON ORDER OF A FORMAL HEARING PURSUANT TO  
5 SUBSECTION (3)(e) OF THIS SECTION, A PANEL OF THE ADJUDICATIVE  
6 BOARD SHALL CONVENE TO CONDUCT THE HEARING. A PANEL CONSISTS OF  
7 ONE JUDGE, ONE ATTORNEY LICENSED TO PRACTICE LAW IN COLORADO,  
8 AND ONE CITIZEN. THE STATE COURT ADMINISTRATOR, OR THE  
9 ADMINISTRATOR'S DESIGNEE, SHALL RANDOMLY SELECT THE PANEL FROM  
10 AMONG THE ADJUDICATIVE BOARD'S MEMBERSHIP. THE RANDOM  
11 SELECTION OF A PANEL IS A PURELY ADMINISTRATIVE FUNCTION.

12 (e) (I) The commission may, after such investigation as it deems  
13 necessary, DISMISS A COMPLAINT, order informal remedial action, OR  
14 order a formal hearing to be held before ~~it~~ A PANEL OF THE ADJUDICATIVE  
15 BOARD concerning the removal, retirement, suspension, censure,  
16 reprimand, or other discipline of a justice or a judge. ~~or request the~~  
17 ~~supreme court to appoint three special masters, who shall be justices or~~  
18 ~~judges of courts of record, to hear and take evidence in any such matter~~  
19 ~~and to report thereon to the commission.~~ THE JUSTICE OR JUDGE MAY  
20 APPEAL THE COMMISSION'S ORDER FOR INFORMAL REMEDIAL ACTION TO A  
21 PANEL OF THE ADJUDICATIVE BOARD. AN APPEAL OF AN INFORMAL  
22 REMEDIAL ACTION ORDER IS CONFIDENTIAL.

23 (II) After a formal hearing, ~~or after considering the record and~~  
24 ~~report of the masters,~~ if the ~~commission~~ ADJUDICATIVE PANEL finds good  
25 cause therefor, ~~it~~ THE ADJUDICATIVE PANEL may DISMISS THE CHARGES  
26 BEFORE IT; take informal remedial action; or ~~it may recommend to the~~  
27 ~~supreme court~~ ORDER the removal, retirement, suspension, censure,

1 reprimand, or OTHER discipline, as the case may be, of the justice or  
2 judge. The ~~commission~~ ADJUDICATIVE PANEL may also recommend that  
3 the costs of ~~its~~ THE investigation and hearing be assessed against such  
4 justice or judge. THE JUSTICE OR JUDGE MAY APPEAL AN ADJUDICATIVE  
5 PANEL'S DISCIPLINARY ORDER, AND THE COMMISSION MAY APPEAL AN  
6 ADJUDICATIVE PANEL'S DISMISSAL, TO THE SUPREME COURT OR, WHEN THE  
7 HEARING INVOLVES A SUPREME COURT JUSTICE, TO THE TRIBUNAL  
8 DESCRIBED IN SUBSECTION (3)(f)(II) OF THIS SECTION.

9 (f) (I) ~~Following receipt of a recommendation from the~~  
10 ~~commission, the supreme court shall review the record of the proceedings~~  
11 ~~on the law and facts and in its discretion may permit the introduction of~~  
12 ~~additional evidence and shall order~~ ON APPEAL OF AN ADJUDICATIVE  
13 PANEL'S ORDER FOR removal, retirement, suspension, censure, reprimand,  
14 or OTHER discipline, ~~as it finds just and proper, or wholly reject the~~  
15 ~~recommendation~~ OR A PANEL'S DISMISSAL OF CHARGES, THE SUPREME  
16 COURT SHALL REVIEW THE RECORD OF THE PROCEEDINGS ON THE LAW AND  
17 FACTS. WHEN REVIEWING THE ADJUDICATIVE PANEL'S DECISION, THE  
18 SUPREME COURT SHALL REVIEW MATTERS OF LAW DE NOVO, REVIEW  
19 FACTUAL MATTERS TO DETERMINE WHETHER THE ADJUDICATIVE PANEL'S  
20 DETERMINATION IS CLEARLY ERRONEOUS, AND REVIEW ANY SANCTIONS  
21 IMPOSED BY THE ADJUDICATIVE PANEL FOR ABUSE OF DISCRETION. Upon  
22 an order for retirement, the justice or judge ~~shall thereby be~~ IS retired with  
23 the same rights and privileges as if ~~he~~ THE JUSTICE OR JUDGE retired  
24 pursuant to statute. Upon an order for removal, the justice or judge ~~shall~~  
25 ~~thereby be~~ IS removed from office and ~~his~~ THE JUSTICE'S OR JUDGE'S  
26 salary ~~shall cease~~ CEASES from the date of such order. On the entry of an  
27 order for retirement or for removal of a judge, ~~his~~ THE JUDGE'S office

1 ~~shall be~~ IS deemed vacant. UPON A DETERMINATION THAT A SANCTION  
2 IMPOSED BY THE ADJUDICATIVE PANEL IS UNLAWFUL, THE SUPREME COURT  
3 SHALL REMAND THE PROCEEDINGS TO THE PANEL THAT IMPOSED THE  
4 SANCTION WITH DIRECTIONS THE COURT DEEMS NECESSARY.

5 (II) IN PROCEEDINGS INVOLVING A COMPLAINT AGAINST A JUSTICE  
6 OF THE COLORADO SUPREME COURT OR WHEN A COLORADO SUPREME  
7 COURT JUSTICE IS A COMPLAINANT OR A MATERIAL WITNESS IN THE  
8 PROCEEDING, A TRIBUNAL COMPRISED OF SEVEN COURT OF APPEALS  
9 JUDGES SHALL REVIEW THE RECOMMENDATION OF THE ADJUDICATIVE  
10 PANEL OR HEAR ANY OTHER APPEAL IN THE SAME MANNER AND USE THE  
11 SAME STANDARDS OF REVIEW AS THE SUPREME COURT WHEN IT REVIEWS  
12 RECOMMENDATIONS AND HEARS APPEALS AS DESCRIBED IN SUBSECTION  
13 (3)(f)(I) OF THIS SECTION. THE STATE COURT ADMINISTRATOR, OR THE  
14 ADMINISTRATOR'S DESIGNEE, SHALL RANDOMLY SELECT MEMBERS OF THE  
15 TRIBUNAL FROM AMONG ALL COURT OF APPEALS JUDGES WHO DO NOT  
16 HAVE A CURRENT DISCIPLINARY INVESTIGATION OR PROCEEDING PENDING  
17 BEFORE THE COMMISSION OR ADJUDICATIVE BOARD; HAVE NOT RECEIVED  
18 A DISCIPLINARY SANCTION FROM THE COMMISSION, ADJUDICATIVE BOARD,  
19 OR SUPREME COURT; AND ARE NOT OTHERWISE REQUIRED BY LAW, COURT  
20 RULE, OR JUDICIAL CANON TO RECUSE THEMSELVES FROM THE TRIBUNAL.  
21 THE RANDOM SELECTION OF TRIBUNAL MEMBERS IS A PURELY  
22 ADMINISTRATIVE FUNCTION.

23 (g) (I) Prior to the ~~filing of a recommendation to the supreme~~  
24 ~~court by the commission~~ COMMENCEMENT OF FORMAL DISCIPLINARY  
25 PROCEEDINGS against any justice or judge, all papers filed with and  
26 proceedings before the commission on judicial discipline ~~or masters~~  
27 ~~appointed by the supreme court, pursuant to this subsection (3), shall be~~

1 ARE confidential, and the filing of papers with and the giving of testimony  
2 before the commission ~~or the masters shall be~~ IS privileged; but no other  
3 publication of such papers or proceedings ~~shall be~~ IS privileged in any  
4 action for defamation; except that the record filed by the commission in  
5 the supreme court continues privileged and a writing ~~which~~ THAT was  
6 privileged prior to its filing with the commission ~~or the masters~~ does not  
7 lose such privilege by such filing.

8 (II) NOTWITHSTANDING THE CONFIDENTIALITY REQUIREMENT  
9 DESCRIBED IN THIS SUBSECTION (3)(g), THE COMMISSION MAY:

10 (A) RELEASE INFORMATION ABOUT THE STATUS OF AN  
11 EVALUATION, INVESTIGATION, OR PROCEEDING TO THE VICTIM OF  
12 MISCONDUCT OR THE COMPLAINANT;

13 (B) RELEASE INFORMATION ABOUT A COMPLAINT THAT RESULTED  
14 IN PRIVATE OR PUBLIC DISCIPLINE OF A JUDGE OR JUSTICE TO THE STATE  
15 COURT ADMINISTRATOR AS NECESSARY FOR THE SELECTION OF A  
16 TRIBUNAL PURSUANT TO SUBSECTION (3)(f)(II) OF THIS SECTION; ANY  
17 RELEVANT COMMISSION ON JUDICIAL PERFORMANCE OR JUDICIAL  
18 NOMINATING COMMISSION, THE OFFICE OF ATTORNEY REGULATION  
19 COUNSEL, AND THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE, OR  
20 SUCCESSORS TO EACH COMMISSION OR OFFICE; THE OFFICE OF THE  
21 GOVERNOR, FOR THE PURPOSE OF JUDICIAL APPOINTMENTS; THE JUDICIAL  
22 DEPARTMENT, FOR THE PURPOSE OF REVIEWING APPLICANTS FOR THE  
23 SENIOR JUDGE PROGRAM; AND OTHER LIMITED RECIPIENTS CONSISTENT  
24 WITH THE PURPOSES OF THIS SECTION ALLOWED BY RULE; AND

25 (C) MAKE PUBLICLY AVAILABLE AGGREGATE INFORMATION ABOUT  
26 TRENDS OR PATTERNS IN COMPLAINTS MADE TO THE COMMISSION, BUT THE  
27 COMMISSION SHALL NOT MAKE PUBLIC ANY INFORMATION THAT IDENTIFIES

1 ANY SPECIFIC PERSON OR COMPLAINT.

2 (III) THE GENERAL ASSEMBLY MAY PROVIDE BY LAW FOR  
3 CONFIDENTIAL REPORTING AND COMPLAINANT RIGHTS CONSISTENT WITH  
4 SUBSECTION (3)(g)(II) OF THIS SECTION.

5 (h) ~~The supreme court shall by rule provide for procedures before~~  
6 ~~the commission on judicial discipline, the masters, and the supreme court.~~  
7 ~~The rules shall also provide the standards and degree of proof to be~~  
8 ~~applied by the commission in its proceedings.~~ A justice or judge who is  
9 a member of the commission or supreme court shall not participate in any  
10 proceedings involving ~~his~~ THE JUSTICE'S OR JUDGE'S own removal or  
11 retirement.

12 (k) (I) THERE IS CREATED A RULE-MAKING COMMITTEE TO PROPOSE  
13 RULES FOR THE COMMISSION ON JUDICIAL DISCIPLINE. THE RULE-MAKING  
14 COMMITTEE CONSISTS OF FIVE MEMBERS APPOINTED BY THE SUPREME  
15 COURT AND FIVE MEMBERS APPOINTED BY THE COMMISSION. MEMBERS  
16 SERVE AT THE PLEASURE OF THEIR APPOINTING AUTHORITY. THE  
17 RULE-MAKING COMMITTEE SHALL ELECT A CHAIR WHO IS A MEMBER OF  
18 THE COMMITTEE AND COMMISSION. THE SUPREME COURT SHALL REVIEW  
19 AND EITHER APPROVE OR REJECT EACH RULE PROPOSED BY THE  
20 RULE-MAKING COMMITTEE. THE RULES MUST INCLUDE THE STANDARDS  
21 AND DEGREE OF PROOF TO BE APPLIED BY THE COMMISSION IN ITS  
22 PROCEEDINGS; CONFIDENTIAL REPORTING PROCEDURES; AND  
23 COMPLAINANT RIGHTS DURING THE EVALUATION, INVESTIGATION, AND  
24 HEARING PROCESS. THE GENERAL ASSEMBLY MAY PROVIDE BY LAW FOR  
25 CONFIDENTIAL REPORTING AND COMPLAINANT RIGHTS.

26 (II) THE SUPREME COURT MAY PROMULGATE SPECIFIC RULES  
27 GOVERNING PROCEEDINGS BEFORE A PANEL OF THE ADJUDICATIVE BOARD.



1 THE COLORADO RULES OF EVIDENCE AND COLORADO RULES OF CIVIL  
2 PROCEDURE, AS AMENDED, APPLY TO PROCEEDINGS BEFORE A PANEL OF  
3 THE ADJUDICATIVE BOARD UNTIL AND UNLESS THE SUPREME COURT  
4 PROMULGATES RULES GOVERNING PANEL PROCEEDINGS.

5 **SECTION 2.** Each elector voting at the election may cast a vote  
6 either "Yes/For" or "No/Against" on the following ballot title: "Shall  
7 there be an amendment to the Colorado constitution concerning judicial  
8 discipline, and, in connection therewith, establishing an independent  
9 judicial discipline adjudicative board, setting standards for judicial review  
10 of a discipline case, and clarifying when discipline proceedings become  
11 public?"

12 **SECTION 3.** Except as otherwise provided in section 1-40-123,  
13 Colorado Revised Statutes, if at least fifty-five percent of the electors  
14 voting on the ballot title vote "Yes/For", then the amendment will become  
15 part of the state constitution.