

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

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LLS NO. R23-0150.01 Conrad Imel x2313

HOUSE CONCURRENT RESOLUTION

HOUSE SPONSORSHIP

Weissman and Lynch, Bacon

SENATE SPONSORSHIP

Gardner and Gonzales, Moreno, Van Winkle

House Committees

Senate Committees

HOUSE 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.**

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*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 district court judges, 4 attorneys, and 4 citizens. The resolution prohibits a member of the commission from being appointed to the board and prohibits a member of the board from being appointed to the commission. 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. 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 when: The proceedings involve a complaint against a Colorado supreme court justice; a Colorado supreme court justice, a staff member to a justice, or a family member of a justice is a complainant or a material witness in the proceeding; or more than 2 justices have recused themselves from the proceeding. The tribunal reviews the panel's decision in the same manner and using the same standards of review as the supreme court does when it reviews panel decisions.

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 and clarifies that appeals to the board of informal remedial sanctions are confidential. The resolution clarifies that a person is absolutely immune from any action for defamation based on papers filed with or testimony before the commission, adjudicative board, supreme court, or tribunal. 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.

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

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

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

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

12 (3) (a) There shall be a commission on judicial discipline. It shall consist
13 of: Two judges of district courts and two judges of county courts, each
14 selected by the supreme court; two citizens admitted to practice law in the
15 courts of this state, neither of whom shall be a justice or judge, who shall
16 have practiced in this state for at least ten years and who shall be
17 appointed by the governor, with the consent of the senate; and four
18 citizens, none of whom shall be a justice or judge, active or retired, nor
19 admitted to practice law in the courts of this state, who shall be appointed
20 by the governor, with the consent of the senate. AN APPOINTING
21 AUTHORITY SHALL NOT APPOINT A MEMBER OF THE INDEPENDENT JUDICIAL
22 DISCIPLINE ADJUDICATIVE BOARD ESTABLISHED IN SUBSECTION (3)(c.5) OF

1 THIS SECTION TO THE COMMISSION.

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

27 (II) UPON ORDER OF A FORMAL HEARING PURSUANT TO

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

8 (e) (I) The commission may, after such investigation as it deems
9 necessary, DISMISS A COMPLAINT, order informal remedial action, OR
10 order a formal hearing to be held before ~~it~~ A PANEL OF THE ADJUDICATIVE
11 BOARD concerning the removal, retirement, suspension, censure,
12 reprimand, or other discipline of a justice or a judge. ~~or request the~~
13 ~~supreme court to appoint three special masters, who shall be justices or~~
14 ~~judges of courts of record, to hear and take evidence in any such matter~~
15 ~~and to report thereon to the commission.~~ THE RESPONDENT JUSTICE OR
16 JUDGE MAY APPEAL THE COMMISSION'S ORDER FOR INFORMAL REMEDIAL
17 ACTION TO A PANEL OF THE ADJUDICATIVE BOARD. THE ADJUDICATIVE
18 PANEL SHALL REVIEW THE COMMISSION'S INFORMAL REMEDIAL ACTION
19 ORDER FOR ABUSE OF DISCRETION. AN APPEAL OF AN INFORMAL REMEDIAL
20 ACTION ORDER IS CONFIDENTIAL CONSISTENT WITH SUBSECTION (3)(g) OF
21 THIS SECTION.

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

1 ADJUDICATIVE PANEL may also ~~recommend~~ ORDER that the costs of its
2 THE investigation and hearing be assessed against such justice or judge.
3 THE JUSTICE OR JUDGE MAY APPEAL AN ADJUDICATIVE PANEL'S
4 DISCIPLINARY ORDER, AND THE COMMISSION MAY APPEAL AN
5 ADJUDICATIVE PANEL'S DISMISSAL, TO THE SUPREME COURT OR, WHEN THE
6 CIRCUMSTANCES DESCRIBED IN SUBSECTION (3)(f)(II) OF THIS SECTION
7 ARE PRESENT, TO THE TRIBUNAL DESCRIBED IN SUBSECTION (3)(f)(II) OF
8 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, OR THE TRIBUNAL DESCRIBED IN SUBSECTION (3)(f)(II) OF THIS
17 SECTION IF THE TRIBUNAL IS HEARING THE APPEAL, SHALL REVIEW THE
18 RECORD OF THE PROCEEDINGS ON THE LAW AND FACTS. WHEN REVIEWING
19 THE ADJUDICATIVE PANEL'S DECISION, THE SUPREME COURT SHALL REVIEW
20 MATTERS OF LAW DE NOVO, REVIEW FACTUAL MATTERS TO DETERMINE
21 WHETHER THE ADJUDICATIVE PANEL'S DETERMINATION IS CLEARLY
22 ERRONEOUS, AND REVIEW ANY SANCTIONS IMPOSED BY THE ADJUDICATIVE
23 PANEL FOR ABUSE OF DISCRETION. ~~Upon an order for retirement, the~~
24 ~~justice or judge shall thereby be retired with the same rights and~~
25 ~~privileges as if he retired pursuant to statute. Upon an order for removal,~~
26 ~~the justice or judge shall thereby be removed from office, and his salary~~
27 ~~shall cease from the date of such order. On the entry of an order for~~

1 ~~retirement or for removal of a judge, his office shall be deemed vacant.~~

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

19 (A) WHEN THE PROCEEDINGS INVOLVE A COMPLAINT AGAINST A
20 COLORADO SUPREME COURT JUSTICE;

21 (B) WHEN A COLORADO SUPREME COURT JUSTICE IS A
22 COMPLAINANT OR A MATERIAL WITNESS IN THE PROCEEDING;

23 (C) WHEN A STAFF MEMBER TO A COLORADO SUPREME COURT
24 JUSTICE IS A COMPLAINANT OR MATERIAL WITNESS IN THE PROCEEDING;

25 (D) WHEN A FAMILY MEMBER OF A COLORADO SUPREME COURT
26 JUSTICE IS A COMPLAINANT OR MATERIAL WITNESS IN THE PROCEEDING; OR

27 (E) WHEN ANY OTHER CIRCUMSTANCES EXIST DUE TO WHICH

1 MORE THAN TWO COLORADO SUPREME COURT JUSTICES HAVE RECUSED
2 THEMSELVES FROM THE PROCEEDING.

3 (III) UPON A DETERMINATION THAT A SANCTION IMPOSED BY THE
4 ADJUDICATIVE PANEL IS AN ABUSE OF DISCRETION, THE SUPREME COURT
5 OR, IF APPLICABLE, THE TRIBUNAL, SHALL REMAND THE PROCEEDINGS TO
6 THE PANEL THAT IMPOSED THE SANCTION WITH DIRECTIONS THE COURT OR
7 TRIBUNAL DEEMS NECESSARY.

8 (IV) UPON AN ORDER FOR RETIREMENT, THE JUSTICE OR JUDGE IS
9 RETIRED WITH THE SAME RIGHTS AND PRIVILEGES AS IF THE JUSTICE OR
10 JUDGE RETIRED PURSUANT TO STATUTE. UPON AN ORDER FOR REMOVAL,
11 THE JUSTICE OR JUDGE IS REMOVED FROM OFFICE AND THE JUSTICE'S OR
12 JUDGE'S SALARY CEASES FROM THE DATE OF THE ORDER. ON THE ENTRY
13 OF AN ORDER FOR RETIREMENT OR FOR REMOVAL OF A JUSTICE OR JUDGE,
14 THE JUSTICE'S OR JUDGE'S OFFICE IS DEEMED VACANT.

15 (g) (I) ~~Prior to the filing of a recommendation to the supreme~~
16 ~~court by the commission~~ COMMENCEMENT OF FORMAL DISCIPLINARY
17 PROCEEDINGS against any justice or judge, all papers filed with and
18 proceedings before the commission on judicial discipline ~~or masters~~
19 ~~appointed by the supreme court, pursuant to this subsection (3), shall be~~
20 ARE confidential, ~~and the filing of papers with~~ and the giving of testimony
21 before the commission ~~or the masters shall be privileged; but no other~~
22 ~~publication of such papers or proceedings shall be privileged in any~~
23 ~~action for defamation; except that the record filed by the commission in~~
24 ~~the supreme court continues privileged~~ IS CONFIDENTIAL. A PERSON IS
25 ABSOLUTELY IMMUNE FROM ANY ACTION FOR DEFAMATION BASED ON
26 PAPERS FILED WITH OR TESTIMONY BEFORE THE COMMISSION, THE
27 ADJUDICATIVE BOARD, THE SUPREME COURT, OR THE TRIBUNAL, BUT NO

1 OTHER PUBLICATION OF THE PAPERS OR PROCEEDINGS HAS ABSOLUTE
2 IMMUNITY IN ANY ACTION FOR DEFAMATION and a writing which THAT
3 was privileged prior to its filing with the commission or the masters does
4 not lose such privilege by such filing.

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

7 (A) RELEASE INFORMATION ABOUT THE STATUS OF AN
8 EVALUATION, INVESTIGATION, OR PROCEEDING TO THE VICTIM OF
9 MISCONDUCT OR THE COMPLAINANT;

10 (B) RELEASE INFORMATION ABOUT A COMPLAINT THAT RESULTED
11 IN INFORMAL REMEDIAL ACTION OR PUBLIC DISCIPLINE OF A JUDGE OR
12 JUSTICE TO THE STATE COURT ADMINISTRATOR AS NECESSARY FOR THE
13 SELECTION OF A TRIBUNAL PURSUANT TO SUBSECTION (3)(f)(II) OF THIS
14 SECTION; ANY RELEVANT COMMISSION ON JUDICIAL PERFORMANCE OR
15 JUDICIAL NOMINATING COMMISSION, THE OFFICE OF ATTORNEY
16 REGULATION COUNSEL, AND THE OFFICE OF THE PRESIDING DISCIPLINARY
17 JUDGE, OR SUCCESSORS TO EACH COMMISSION OR OFFICE; THE OFFICE OF
18 THE GOVERNOR, FOR THE PURPOSE OF JUDICIAL APPOINTMENTS; THE
19 JUDICIAL DEPARTMENT, FOR THE PURPOSE OF REVIEWING APPLICANTS FOR
20 THE SENIOR JUDGE PROGRAM AND APPOINTMENTS TO THE ADJUDICATIVE
21 BOARD PURSUANT TO SUBSECTION (3)(c.5)(I) OF THIS SECTION; AND OTHER
22 LIMITED RECIPIENTS CONSISTENT WITH THE PURPOSES OF THIS SECTION
23 ALLOWED BY RULE; AND

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

1 (III) A RECIPIENT OF CONFIDENTIAL INFORMATION PURSUANT TO
2 SUBSECTION (3)(g)(II)(B) OF THIS SECTION SHALL PRESERVE THE
3 CONFIDENTIALITY OF THE INFORMATION SUBJECT TO ANY SANCTIONS FOR
4 VIOLATION OF CONFIDENTIALITY AS MAY BE PROVIDED BY LAW.

5 (IV) THE GENERAL ASSEMBLY MAY PROVIDE BY LAW FOR
6 CONFIDENTIAL REPORTING AND COMPLAINANT RIGHTS CONSISTENT WITH
7 SUBSECTION (3)(g)(II) OF THIS SECTION.

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

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

1 CONFIDENTIAL REPORTING AND COMPLAINANT RIGHTS.

2 (II) THE SUPREME COURT MAY PROMULGATE SPECIFIC RULES
3 GOVERNING PROCEEDINGS BEFORE A PANEL OF THE ADJUDICATIVE BOARD.
4 THE COLORADO RULES OF EVIDENCE AND COLORADO RULES OF CIVIL
5 PROCEDURE, AS AMENDED, APPLY TO PROCEEDINGS BEFORE A PANEL OF
6 THE ADJUDICATIVE BOARD UNTIL AND UNLESS THE SUPREME COURT
7 PROMULGATES RULES GOVERNING PANEL PROCEEDINGS.

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

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