

STATEMENT OF THE COLORADO JUDICIAL INSTITUTE
Legislative Interim Committee on Judicial Discipline
August 10, 2022 Hearing

The Colorado Judicial Institute (CJI) – an independent, nonpartisan, nonprofit organization – has for over 40 years worked to preserve Colorado judges' ability to fairly and impartially decide cases, free from partisan politics. CJI respectfully submits:

- **CJI has supported the full and fair investigation of recent allegations of judicial misconduct.**
- **The facts are now in from thorough, independent judicial investigations.**
- **The facts do not match allegations of judicial misconduct that were widely reported before the facts were in – unfortunately and unfairly compromising public trust in Colorado's judiciary.**
- **The facts do not substantiate lack of reporting of judicial misconduct to disciplinary authorities.**
- **The facts do not demonstrate serious problems with or need for major changes to Colorado's judicial discipline system.**
- **Any changes to the system should be carefully designed to ensure they improve the system and do not create unintended adverse consequences.**
- **If anything, the facts support making further education and training resources available to Colorado's judiciary, including pertaining to managerial issues – and CJI stands ready to assist with that effort.**

WHAT CJI IS AND WHY WE'RE INVOLVED

- CJI is an independent, nonpartisan, nonprofit organization, established in 1979 and comprised of non-attorney and attorney members from throughout Colorado.
- Our mission is to promote excellence, equity, impartiality, and public trust in Colorado's courts through outreach, education, and engagement.
- CJI programs include providing scholarships for continuing education of judges; annually recognizing outstanding judges; supporting the Diversity on the Bench initiative that helps ensure the courts reflect the diversity of the communities they serve; and sponsoring public education about the judicial system, merit selection, and the rule of law.
- We believe CJI's mission and programs help ensure that litigants have their day in court with dignity and respect.

COLORADO'S MERIT SYSTEM FOR SELECTING, EVALUATING, RETAINING, AND DISCIPLINING JUDGES

An overview of Colorado's judicial merit system is in order to place the Interim Committee's work in context. In 1966, Colorado's citizens adopted Colorado's merit judicial system, rejecting partisan judicial

elections. Colorado is one of more than 30 states that do not elect judges to the bench. Our system is a "four-legged stool," consisting of the following:

Selection: Bipartisan nominating commissions, made up of volunteer non-attorneys and attorneys, recommend qualified candidates to the Governor for appointment.

Performance Evaluation: Bipartisan evaluation commissions, made up of volunteer non-attorneys and attorneys, review information about judges' performance from multiple sources and make recommendations to voters.

Retention: Judges stand for retention in general elections.

Discipline: The Colorado Commission on Judicial Discipline (Commission), created by Colorado's constitution Art. VI, § 23(3), made up of volunteer commissioners, non-attorneys, attorneys, and judges, address allegations of judicial misconduct.

Colorado's judicial merit system is widely admired and a model for those of other states.

CJI'S INPUT ON THE INTERIM COMMITTEE'S WORK AND PROPOSALS FOR CHANGES

CJI respectfully submits the following comments on the Interim Committee's work.

The facts do not show serious problems with, or need for major changes to, Colorado's judicial discipline system.

- The facts now available to the Interim Committee and public through RCT and ILG investigative reports do not support widely-reported judicial misconduct allegations. They reveal no failure to report alleged judicial misconduct to judicial disciplinary authorities.
- What, if any, changes are needed based on the facts? While Colorado's system is not perfect and can always be tweaked for improvement, there is no serious problem to be "fixed" warranting any major overhaul.
- If anything, the facts show Colorado's judiciary could benefit from additional education and training resources, including pertaining to managerial issues. CJI stands ready to assist in generating such resources.

Changes, if any, to Colorado's system should be carefully designed to ensure they result in improvements.

CJI offers the following comments on proposals to modify Colorado's system.

- **Caution in amending Colorado's Constitution:** Potential changes to the Colorado Constitution's provision on judicial discipline, Art. VI, § 23(3), should be thoughtfully considered, given the expenditure of resources required to change the constitution and possibility of unintended negative consequences through changes. For example, while CJI supports the concept of expanding transparency of judicial disciplinary proceedings, changes to confidentiality should be designed to maintain confidence in the system on the part of complainants, judges under investigation, the judiciary and other stakeholders, and of course the public.

- **Final decisionmakers of judicial discipline – Colorado Supreme Court:** The members of the Colorado Supreme Court are chosen through Colorado’s gold-standard judicial merit selection system. They have extensive experience with the litigation process, and they are accountable to voters in retention elections. They are the best-qualified individuals to make critically important final decisions on judicial discipline. Such decisions should not be made by panels of individuals not selected through such exacting standards and who are not accountable to voters.
- **Rulemaking authority – Colorado Supreme Court, with conferral with Commission:** Judicial disciplinary proceedings are adjudicative proceedings – that is, litigation-like in nature – with substantial potential impact on individuals' livelihoods. They should adhere to due process requirements. They are more formalized proceedings than those used, for example, in judicial performance evaluations. The rules for disciplinary proceedings should be written by judicial officers with experience in adjudicating disputes. Colorado's Constitution provides for rulemaking by the Colorado Supreme Court, Art. VI, § 23(3)(h). C.R.S. § 13-5.3-107, enacted as part of SB 22-201, strikes the right balance in leaving rulemaking authority with the Colorado Supreme Court, with conferral with the Commission.
- **Appointment of members to the Commission – leave as stated in Colorado's Constitution:** Colorado's Constitution, Art. VI, § 23(3)(a), specifies the membership of the Commission, with appointments made by the Colorado Supreme Court and Governor with the consent of Colorado's Senate. The selection process has served Colorado well for decades, and no need for change has been shown. In particular, no need has been shown to remove Colorado's judiciary from a role in appointing members of the Commission.
- **Recusal/disqualification – provide clear conflict rules for all involved in process:** Clear, uniform standards on recusal and/or disqualification of disciplinary process decisionmakers at every level – not just judges – should be implemented. The best means to do so is through rulemaking.

CJI thanks the Interim Committee for consideration of CJI's input.