August 1, 2022

Legislative Interim Committee on Judicial Discipline
State Capitol
100 Colfax
Denver, CO 80202

Re: **Rationalizing a New Judicial Discipline System**

Dear members of the interim committee,

The Code of Judicial Conduct is supposed to protect the public from the inappropriate acts of judges. To be effective, the Code must be enforced. Whether the Code is vigorously enforced depends on a state's judicial discipline system. The Code actually provides significant guidance regarding a discipline system that most often is overlooked. For instance, the Code forbids the mere appearance of impropriety. CJC Rule 1.2. The Code also focuses on promoting the public's confidence in the independence, integrity, and impartiality of the judiciary. CJC Rule 1.2. Using these cornerstones of the Code helps with the selection of appropriate choices in a judicial discipline system.

Why do we have a judicial discipline system?

Understanding the rationale for a judicial discipline system is essential to building an effective judicial discipline system. Colorado has not published many judicial discipline cases. No case in Colorado addresses the purpose of judicial discipline. Other states, however, have addressed the purpose of judicial discipline. The purpose of judicial discipline is not primarily to punish a judge. The purpose is to preserve the public's confidence in the judicial system. Indiana case law states as follows:

> The purpose of judicial discipline is not primarily to punish a judge, but rather to preserve the integrity of and public confidence in the judicial system and, when necessary, safeguard the bench and public from those who are unfit.

In re Hawkins, 902 N.E.2d 231, 244 (Ind. 2009). Case law from Kansas shows a similar approach to judicial discipline.

> The purpose of judicial discipline is to maintain the honor and dignity of the judiciary and the proper administration of justice rather than to punish the individual. *State ex rel. Comm'n on Judicial Qualifications v. Rome*, 229 Kan. 195, 206, 623 P.2d 1307 (1981). Public trust is essential to the effective operation of the judicial system, and the conduct of one judge may have a significant adverse impact on the public perception of the entire judicial system. *In re Robertson*, 280 Kan. 266, 272, 120 P.3d 790 (2005).

In re Trigg, 414 P.3d 1203, 307 Kan. 719 (Kan. 2018). Nebraska also views the purpose of discipline in a similar manner.

> The purpose of judicial discipline is not vengeance; it is to preserve the integrity of and the public confidence in the judiciary.

Kelly, In re, 407 N.W.2d 182, 225 Neb. 583 (Neb. 1987). Case law from Rhode Island also shows the importance of public confidence regarding judicial discipline.

> No one can dispute that a significant purpose of judicial-removal statutes is the preservation of the public confidence in the credibility and integrity of the judicial system. See *Matter of Coruzzi*, 95 N.J. 557, 472 A.2d 546, 553 (1984), and cases cited therein. The purpose of judicial discipline in general is not to punish individual judges, but to maintain the high standards of the judiciary and the proper administration of justice. *In re Wright*, 313 N.C. 495, 329 S.E.2d 668, 671 (1985).

In re Advisory Opinion (Chief Justice), 507 A.2d 1316 (R.I. 1986).

Case law from yet more states reads similarly to the above. States that have addressed the purpose of judicial discipline all note that preserving public confidence in judicial integrity is the primary focus of discipline. Focusing on the issue of public confidence provides guidance regarding the membership of a judicial discipline commission.

Who is in the best position to determine the public's confidence?

The membership of discipline commissions varies from state to state. There does not appear to be any rationale for the membership of various commissions other than the belief that lawyers and judges need to be on the commission most often with citizens who are not legal professionals. The underlying question in judicial discipline, however, is whether a judge's actions promote the public's confidence in the judiciary and whether there is an appearance of impropriety. Given that the Code of Judicial Conduct is to be viewed from the viewpoint of the public, shouldn't a judicial discipline commission be primarily made up of members of the public as opposed to legal professionals?

The Code of Judicial Conduct is not complicated. It is not filled with complex rules regarding how far an advocate can go in the representation of a client. It is not filled with complicated rules regarding the diligence a lawyer owes his client. The Code is much simpler than the Rules of Professional Conduct which lawyers must follow. A legal education is not required to determine whether a judge's actions promote the public's confidence in the judiciary. Any reasonable person can adequately and fairly determine whether there is an appearance of impropriety in a judge's actions.

In addition, one must remember that the commission will have an office where it employs attorneys and other staff members to help with the prosecution of judicial misconduct. There will be no shortage of legal professionals involved in the process of disciplining judges. It is well known that the public is wary of the legal profession. The profession is rightfully the butt of an infinite number of jokes. The best way to combat the public's skepticism regarding judicial discipline is to put non-legal professionals in control of whether a judge should be disciplined.

In the consideration of a judicial discipline system, we cannot lose sight of the fact that being a judge is a privilege and not a right. *In re Seitz*, 441 Mich. 590, 625 (Mich. 1993). The judicial system relies on the trust and confidence of the people to enforce its judgments. If any judge is committing acts that endanger the trust and confidence of the people, that judge should be disciplined. Unlike an attorney discipline proceeding, the judge is not at risk of losing a license to practice law in a judicial discipline proceeding. A judge who is removed from the bench can still have a successful career in the legal profession. The bench should be reserved for people who instill trust and confidence in the people. The fact that a person is appointed to be a judge does not always mean that person is up to the task of promoting public confidence in the judiciary. Over the years in Colorado, far too much time has inappropriately been spent on protecting judges who fall far short of the qualities necessary in a trustworthy judge.

There should be a solid rationale behind who is on a judicial discipline commission. In 1966, Colorado adopted a judicial discipline commission. As the Blue Book for the 1966 election noted, the system was patterned after California's system. Colorado's discipline commission includes four judges chosen by the chief justice, two lawyers selected by the governor, and four citizens who are not lawyers or judges appointed by the governor. California has changed its system multiple times over the years and now has a more transparent system where the majority of the members on the discipline commission are members of the public and not lawyers or judges. Colorado has not changed its outdated system.

Because the public is in the best position to determine whether a judge's actions promote or preserve the confidence of the people, we propose a commission with eight citizens who are not lawyers or judges and who are selected by House and Senate leadership. The citizens have a greater opportunity to come from a more diverse background if they are appointed by House and Senate leadership as opposed to all being appointed by the governor. In addition to these eight citizens, we propose that three lawyers who are unaffiliated with a political party be appointed by the governor. The three lawyers are sufficient to give the commission an educated insider's view of the judiciary without overwhelming the votes of the citizens who are not legal professionals. These eleven members, who each serve four-year terms, would be the voting members on the discipline commission. In addition to these eleven members, we propose that one judge would

serve in a non-voting, consulting capacity on the commission. The judge would be a chief judge of a judicial district. The chief judges of the judicial districts would serve one-year terms on a rotating basis. Therefore, the commission would always have access to the views of someone in the judicial branch.

The proposal for these members on the commission is based on the language in the Code of Judicial Conduct. It's the public's trust that matters. Therefore, a judicial discipline commission primarily composed of non-legal professionals is appropriate. The commission should, however, include some members of the legal system. By not having judges serve in a voting capacity on the commission, conflicts of interest are avoided. There is a solid rationale for having a judicial discipline commission where the voting members are eight citizens who are not legal professionals and three lawyers who are not affiliated with a political party. There is also a solid rationale for allowing a judge to be on the commission in a non-voting, consulting capacity. A judge's point of view can be relevant to the commission.

California's commission currently has a majority of public members on its discipline commission. The non-legal professionals, however, only outnumber the legal professionals by one. We propose eight non-legal professionals and three lawyers so the public members would have greater control over the commission. The public will have the most confidence in a system where citizens who are not legal professionals control the outcome. People don't want judges disciplining judges. Even the current chief justice, Brian Boatright, has stated he wants to get the Supreme Court out of the business of investigating and disciplining judges.

Does hiding complaints against judges promote public confidence?

Why does Colorado spend so much time and energy hiding information about judges? The judicial scandal was caused, in part, by Mindy Masias allegedly trying to blackmail the chief justice with the threat that she would make some complaints against judges public. She allegedly threatened to expose the problems in the judicial branch. The RCT investigation found that the chief justice did not award Masias a contract due to her threats. But the investigation was paid for by the judicial branch. Because the judicial branch paid for the investigation, essential witnesses, such as Masias, understandably refused to talk with investigators. Therefore, the investigation is fundamentally flawed and will always be rightfully criticized.

The scandal did show us that hiding information about judges gives rise to a blackmail situation. We need to do everything we can to ensure that does not happen again. The scandal revealed a troubling scenario where the state court administrator and others in the office believed they were above the law. They believed they were invincible. It is alarming.

Masias was referred to as "the fixer," according to the RCT investigation. The label was appropriate because Masias brokered a deal with the discipline commission to have it defer to her position in human resources. The RCT investigative report referred to a signed agreement but did not place a copy of the agreement in its report. The agreement is attached as Exhibit 1. In paragraph 4 of the memorandum of understanding, the executive director of the discipline commission agreed to provide judicial branch human resources a copy of any complaint involving a non-judge employee of the judicial branch. Furthermore, the executive director of the

discipline commission agreed to allow human resources to investigate the matter "before proceeding with disciplinary action against the Judge." It appears the executive director of the discipline commission gave the power to Masias to determine what would happen with complaints against judges that involved judicial branch employees. That is why she was referred to as "the fixer." The actions of the executive director are inappropriate, not trustworthy, and provide significant impetus for an overhaul of the discipline system.

Given Colorado's judicial system, and the manner in which the Colorado legislature has always catered to the judicial branch's desires, the attitude of Masias, Ryan, and even the former executive director of the discipline commission should not be surprising. The state court administrator and others acted out because Colorado's system created an environment where they could act out. The judicial branch employees believed their misdeeds would be hidden from public view. After all, the misdeeds of judges are hidden from public view. Therefore, a good place to start with change would be to make judicial discipline proceedings public. Because the state constitution states that judicial discipline proceedings are confidential, we must amend the constitution to shed light on the judicial discipline process.

Thirty-five states have public judicial discipline proceedings. Colorado should become the thirty-sixth. We are unable to find any support for the level of confidentiality that Colorado currently has regarding judicial discipline proceedings. Even groups filled with judges are admitting that judicial discipline proceedings should be public. The American Bar Association recommends public judicial discipline proceedings.

The problem with not making the proceedings public until a formal complaint is filed by the commission is that Colorado has a long history of not filing formal complaints. The judicial discipline commission and judges often state that people are just angry about the result in their case, so they file a complaint. If that is the case, then simply show us. Show us what was filed by the public. The filings may begin to show an improper pattern of misconduct which would not come to light unless the complaints are made public.

Attorney discipline proceedings in Colorado are public. And there is a good reason why. A published case regarding lawyer discipline, whether the lawyer is punished or not, provides guidance to other lawyers on what to do in a similar situation. Lawyers are constantly learning.

Colorado judges, on the other hand, are not learning anything because judicial discipline cases are confidential and are not published. Judges do not get the benefit of published opinions advising them of how to behave in certain situations. Judges are not learning how to be better judges. And judges have little fear regarding committing misconduct because they know if they behave badly it will most likely be kept under wraps.

Judges are public servants. Yet judicial discipline proceedings are private. Most lawyers work in the private sector. Yet lawyer discipline proceedings are public. The disparate treatment makes no sense. The discipline proceedings of public servants should be public. Judicial misconduct in Colorado, or even allegations of judicial misconduct, should not be kept from public view.

A vigorous system that enforces judicial ethics does more than discipline the individual at issue. It teaches other judges how to act in a similar situation. But when discipline decisions are not published or shared, the knowledge is lost. Colorado's dark judicial discipline system benefits no one except bad judges. The lack of transparency undermines the judiciary's credibility.

We propose that any complaint filed with the commission be public with the exception that a victim or witness may choose to have their names kept confidential until a formal complaint is filed. The investigation of the discipline commission would be protected by work product and would not be public. So the scenario would be similar to criminal cases. Such cases are sometimes made public when they occur and when charges are filed. But police investigation and the prosecutor's work product are kept under wraps. Judicial discipline should be handled in a similar manner. The public's confidence will be increased if the system stops hiding information about judges. Colorado should go from one of the darkest states regarding judicial discipline to the sunniest state. Judicial discipline proceedings should be public from the moment a complaint is filed by the public with the commission.

Is the appearance of impropriety standard erased with a heightened burden of proof?

Three words – "appearance of impropriety" – are whispered in the ears of citizens to make them fall under the spell of the judicial branch which must earn their trust. The phrase "appearance of impropriety" is enshrined in the Code of Judicial Conduct. CJC Rule 1.2. Therefore, it appears to the public that a judge will get into trouble if there is the mere "appearance of impropriety" in any of the judge's actions. This leads the public to believe that judges are held to a very high standard. Unfortunately, this is where the mistrust of the judiciary begins.

Like a lustful soul, the judicial branch doesn't always have honorable intentions. Judges are people, too. The public is understandably heartbroken and upset when the promise forbidding the mere "appearance of impropriety" is not kept. The public doesn't understand that the phrase is an empty promise to encourage the public's trust. The judicial discipline system is built, however, to make some people feel scorned.

The burden in judicial discipline proceedings is clear and convincing evidence as provided in Rule 31 of the Colorado Rules of Judicial Discipline. This is the highest burden possible in a non-criminal proceeding. Such a high burden in a judicial discipline proceeding erases the "appearance of impropriety" standard. The word "appearance" leads people to believe that the burden of proving judicial misconduct is low and that judges are held to a very high standard. But because you have to prove the "appearance of impropriety" with a burden just short of reasonable doubt, you have to prove much more than the simple "appearance of impropriety" to discipline a judge. You must prove actual impropriety.

Because of the well-known and often-touted phrase "appearance of impropriety," the burden in judicial discipline proceedings should be a preponderance of the evidence. Having the burden in judicial discipline proceedings be anything greater than a preponderance of the evidence misleads the public and is inconsistent with the "appearance of impropriety" standard.

It may be argued that clear and convincing evidence is the burden in lawyer discipline cases and the burden in judicial discipline should be the same. Such argument has no merit. Judges should be held to a higher standard than lawyers. Judges are more in a position to harm the public and the public's confidence than any individual lawyer. The Code of Judicial Conduct is much simpler than the Rules of Professional Conduct which lawyers must follow. It will promote the public's confidence in the judicial system to have preponderance of the evidence be the burden in judicial discipline proceedings. If the burden is preponderance of the evidence then the appearance of impropriety standard will be revived.

After all, being a judge is not a right. It is a privilege. The public's confidence in the judiciary will be increased if the burden in judicial discipline proceedings is preponderance of the evidence.

Should judicial independence mean judges can do whatever they want?

Judges are supposed to be constrained by the constitution, the statutes, the rules, and the facts before them. The problem in Colorado is that judges don't really have such constraints because the judicial discipline system allows them to violate all of the above without fear of discipline.

Since 1984, the Supreme Court, which writes the rules for judicial discipline proceedings, has forbidden the commission from pursuing complaints related to anything that occurs in an actual case in court. Unfortunately, this is when we expect the Code of Judicial Conduct to protect us the most. Previous versions of the rules stated the executive director "shall dismiss complaints" related to an appealable order. At present, the rule requires the executive director to close a matter when: "The allegations involve subject matter that is not within the jurisdiction of the Commission." Colo. Rules of Judicial Discipline, Rule 13(c)(4). The discipline commission has no jurisdiction over an appeal, so the rule is a clever way to require the executive director to dismiss complaints regarding a judge's actions in a courtroom. After all, the actions would involve subject matter that is not within the jurisdiction of the commission. Historically, the Colorado Supreme Court has used Rule 13 to screen complaints and require the executive director, a position which the Supreme Court created and which reports to the Supreme Court, to dismiss complaints. It has been 36 years and counting since a judge was publicly disciplined for anything related to a court case in Colorado.

Other states do not approach judicial discipline in the same manner as Colorado. They approach judicial discipline in a much more professional and ethical manner. One case from the state of Washington addresses a lot of the issues this interim committee is dealing with regarding judicial discipline. Because of the arguments raised in defense of the judge, the Court addressed broad questions regarding judicial discipline. From the judge's intent, to judicial independence, to whether a judge can be discipline regarding acts related to an appeal, this case confronts issues this interim committee is facing. Therefore, I have quoted extensively from the case below. And the entire case is attached as Exhibit 2.

> A judge's action need not be undertaken in bad faith or malice. Discipline

> may be appropriate even though the judge acted out of neglect or ignorance. *Mississippi Comm'n on Judicial Performance v. Hartzog*, 646 So.2d 1319; *Kloepfer v. Commission on Judicial Performance*, 49 Cal.3d 826, 782 P.2d 239, 264 Cal.Rptr. 100, 89 A.L.R. 4th 235. A judge has an affirmative duty to learn the relevant legal procedures of which he or she is ignorant. *In re Inquiry Concerning a Judge*, 265 Ga. 843, 462 S.E.2d 728; *In re Hamel*, 88 N.Y.2d 317, 668 N.E.2d 390, 645 N.Y.S.2d 419.

Discipline of Hammermaster, 985 P.2d 924, 937 (Wash. 1999).

> The judge's argument that he cannot be disciplined because his decisions have not been overturned or appealed is similarly unpersuasive. The judge has the basic duty to ensure that courtroom practice conforms with the law. While we recognize that legal error is usually a matter for appeal and does not generally trigger judicial discipline, a repeated pattern of failing to protect a defendant's constitutional rights can constitute misconduct. *In re Reeves*, 63 N.Y.2d 105, 469 N.E.2d 1321, 480 N.Y.S.2d 463; *In re Yengo*, 72 N.J. 425, 371 A.2d 41; *In re Seraphim*, 97 Wis.2d 485, 294 N.W.2d 485. As the Michigan Supreme Court noted:
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>> **Judicial conduct creating the need for disciplinary action can grow from the same root as judicial conduct creating potential appellate review, but one does not necessarily exclude the other. One path seeks to correct past prejudice to a particular party; the other seeks to prevent potential prejudice to future litigants and the judiciary in general.** *In re Laster*, 404 Mich. 449, 462, 274 N.W.2d 742.

Hammermaster, 985 P.2d 924, 938 (Wash. 1999)(emphasis added).

> Underlying the concept of judicial independence is the belief held by the framers over 200 years ago that an independent judiciary is an essential tool in guarding the constitution and the rights of individuals. As the Supreme Court said of the judiciary nearly one hundred and thirty years ago:
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>> It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear. This provision of the law is not for the protection or benefit of a . . . judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences. *Bradley v. Fisher*, 80 U.S. 335, 349 n. 16 [1871].

> **Judicial independence does not equate to unbridled discretion to bully and threaten, to disregard the requirements of the law, or to ignore the constitutional rights of defendants.** While a judge must insist on compliance with his or her judgments, in this case Judge Hammermaster's threats, coupled with his failure to ascertain the Defendants' ability to pay, demonstrate the judge exceeded his role as judge. A judge's primary function is the administration of justice, not the collection of fines.
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> Judge Hammermaster additionally asserts that if the Commission's decision is allowed to stand the "judicial independence of the courts of this state will be threatened." Opening Br. of Resp't Judge at 35. Judicial independence requires a judge to commit to following the constitution, the statutes, common law principles, and precedent without intrusion from or intruding upon other branches of government. It does not refer to independence from judicial disciplinary bodies (or from higher courts). Decision making is constrained by the evidence, by appropriate procedural rules, recordsa and legal principles. *See* Deanell Reece Tacha, *Independence of the Judiciary for the Third Century*, 46 Mercer L. Rev. 645 [1995]. Judge Hammermaster's actions in the cases reviewed by the Commission demonstrate an unwillingness to follow the law or to protect the rights of those defendants appearing in front of him. His actions do not represent an exercise of judicial independence.

Hammermaster, 985 P.2d 924, 935-936 (Wash. 1999).

Comparing the *Hammermaster* decision with Colorado law shows how far Colorado has strayed from the path to judicial integrity. First, the Colorado Constitution states that judges may be disciplined only for willful violations. Colo. Const. Art. VI, § 23(3)(d). Willful means the acts of the judge must be deliberate. *Turner v. Lyon*, 539 P.2d 1241 (Colo. 1975). The *Hammermaster* decision shows that judges may be disciplined for mere ignorance. Therefore our proposal removes the word "willful" from the state constitution.

Second, the *Hammermaster* decision quotes yet another state court in stating that judges may be disciplined for acts that "grow from the same root as judicial conduct creating potential appellate review." The Colorado Rules for Judicial Discipline, however, state that a judge may not be disciplined for actions that "involve" an appealable order over which the commission does not have jurisdiction. Colo. Rules of Judicial Discipline, Rule 13(c)(4). Therefore our proposal gives the power to make the rules regarding judicial discipline to the commission as opposed to the Supreme Court. The Supreme Court's conflict of interest is what led it to write rules that improperly focus on dismissing complaints.

Finally, the *Hammermaster* decision states that "Judicial independence does not equate to unbridled discretion to bully and threaten, to disregard the requirements of the law, or to ignore the constitutional rights of defendants." Colorado's judicial discipline system, however, allows

judges to do all of those things without fear of discipline. Colo. Rules of Judicial Discipline, Rule 13(c)(4). This is why we propose an overhaul of Colorado's judicial discipline system. Lawyers are being disciplined for what happens in Colorado courtrooms and for what happens within a court case. Judges are not being disciplined for such acts. Judges must be held accountable for inappropriate acts related to a court case.

Is the interim committee limited by the categories listed in the SB22-201?

During the interim committee's hearings, multiple references have been made to the 18 categories the committee must consider. The reference is to the section of SB22-201 which created this interim committee. The committee, however, is not limited to 18 categories. In the paragraph preceding the list, the language "at a minimum" is used. The paragraph does not forbid the committee from considering items that are not specifically stated. The only limitation on the committee is that whatever it considers should be related to judicial discipline.

The fear is that the committee will allege it cannot address such an issue as the judicial branch's contact with the legislature. In our proposal, we request that contact between the judicial branch and legislature be limited. The proposal makes it a violation of the Code of Judicial Conduct for any member of the judicial branch to have contact with any member of the General Assembly during legislative session and for any member of the judicial branch to lobby any member of the General Assembly on anything other than a funding issue. This committee is allowed to consider such a proposal because it relates to judicial discipline.

The judicial branch has been far too successful at getting the legislature to give judges what judges want. What judges want is not always what is best for the judicial system. Judges are not term-limited. Legislators are term-limited. Judges have the upper-hand when dealing with legislators, and legislators have proven themselves to be too susceptible to the political desires of the judicial branch. The promise in the 1966 Blue Book, which regarded our current selection system for judges, was that politics would be removed from the court system. That has not happened. Indeed, an incredibly powerful judicial lobby has been the result of Colorado's commission-based system for selecting judges. Most recently, the legislature adopted a referendum to amend the constitution at the request of the judicial branch. The referendum regards the appointment of judges to a new judicial district. The Colorado Constitution already addresses how to nominate and appoint judges to fill vacancies on the bench. Judges currently serving in the judicial district that is being divided, however, did not want to be forced to go through the nomination/appointment process again. So to save the jobs of judges who are currently serving, the legislature is proposing a constitutional amendment. The only thing the amendment would do is ensure that judges currently serving as judges will continue serving as judges when the new district is created. Furthermore, the language in the referendum conflicts with language currently in the constitution. The referendum is an example of the inappropriate power the judicial branch has with the legislature. The committee should consider and adopt our proposal in its entirety.

Is the judicial branch using red herrings to misdirect the interim committee?

During the existence of the interim committee, two-tier or two-panel judicial discipline systems have been briefly discussed. Most states have a one-tier system such as Colorado where the discipline commission investigates and imposes discipline. There is no requirement to have a two-tier or two-panel system where the investigation and prosecution of judicial discipline is separated from the adjudicatory function. The U.S. Supreme Court has determined that a two-tier system is not necessary. *Withrow v. Larkin*, 421 U.S. 35 (1975). Unfortunately, it appears that such systems are being proposed as a means for the interim committee to propose changes to Colorado's judicial discipline system without substantively changing judicial discipline in Colorado.

The two-panel system would divide the existing commission or a new commission into two parts. A few people within the commission would work as investigators/prosecutors of a case while the remaining people on the commission would serve in an adjudicatory capacity. The problem with such a scenario is that it reduces the number of individuals who determine to proceed on a complaint to only a portion of the entire commission. An entire commission should determine whether to proceed on a complaint. The two-panel system is the worst choice between the two-tier and two-panel system. It would divide a carefully constructed commission into two parts and those parts may constantly change.

The two-tier system would create one commission that investigates and prosecutes judicial discipline and a second commission that serves in a judicial capacity. In states that use this formation, the adjudicatory tier is most often comprised of judges. Essentially, the two-tier system is another obstacle to judicial discipline where judges judge judges. Such a system is not trustworthy. Colorado has had a hard enough time getting a one-tier system to discipline judges.

The point of a two-tier system would be to make it look to the public that the judicial discipline system has been revised for the better when indeed a two-tier system helps protect bad judges by creating more hoops to jump through to obtain judicial discipline. The harder we make it to discipline a judge the further away from the appearance of impropriety standard we get.

Another red-herring was the state court administrator's request that conflicts of interest be addressed when a Supreme Court justice is alleged to have committed misconduct. He stated the Supreme Court was very willing to have such conflicts addressed. It was an attempt at misdirection. Under our proposal, most conflicts of interest in the current system would be removed because the Supreme Court would no longer write the judicial discipline rules and judges would not serve in a voting capacity on the judicial discipline commission.

Real and substantial changes need to be made to Colorado's judicial discipline system. Neither a two-tier system nor merely addressing the conflicts of interest for Supreme Court justices will provide real or substantial change to the judicial discipline system. Such proposals are an attempt to get this interim committee to leave a judicial discipline system in place that is endangering the public with its lax prosecution.

Has the state court administrator position diminished public confidence in the judiciary?

Colorado's state court administrator is not an elected official. The Supreme Court appoints the state court administrator. Colo. Const. Art. VI, § 5, para. 3. Therefore, the state court administrator is a judicial branch employee hired by the Supreme Court. The administrator is not accountable to voters. Yet he oversees the judicial branch's annual budget, which currently is around $700 million, most of which is funded with taxpayer money. Given the fact that the current judicial scandal involved the improper awarding of a contract, it is very concerning that the state court administrator is responsible for selecting retired judges to be placed under contract and assigning such judges to cases. In particular, the awarding of such contracts and the assignment of retired judges at the Court of Appeals is very concerning. Statewide public policy is made at the Court of Appeals where the ratio of retired judges to full-time judges is exponentially greater than any other Colorado court. Has the state court administrator hired and assigned retired judges to ensure a certain result at the Court of Appeals?

The current controversy is not the first time the state court administrator has been mired in scandal. In order to get the Ralph L. Carr Justice Complex (the Supreme Court building) built in downtown Denver, then State Court Administrator Gerald Marroney told legislators and the public in 2008 that no tax dollars would be used to pay for the building. He stated that the judicial branch would generate the revenue to pay for the building. The statements were made on the legislative record to convince legislators to support the bill that created the complex.

The statements convinced legislators, but the statements weren't accurate. As subsequent events have shown, the legislature has repeatedly had to use millions of taxpayer dollars to cover the debt for the building. Year after year. The only question is how much taxpayers will ultimately end up paying. The lease-purchase agreement doesn't end until 2046. Right now, Colorado's taxpayers are on track to pay $128 million for the building legislators were duped into approving by Marroney's statements that no taxpayer dollars would be used.

Shouldn't a state official who can get the state to incur such a high amount of taxpayer debt be subject to a vote of the people?

After Marroney retired, the Supreme Court searched for a new administrator. Many people applied and the judicial branch claimed to have a nationwide search. Yet the Supreme Court hired Christopher Ryan, a long time judicial branch employee who climbed the judicial branch's corporate ladder to become the clerk for the Court of Appeals and Supreme Court. He did not have a master's degree in business administration. The hiring process which ended up with Ryan's selection was appropriately criticized in the RCT investigative report.

In 2019, Ryan resigned the day after he cancelled a $2.5 million contract he awarded to a former judicial branch employee who had been recently disciplined for falsifying receipts. The Denver Post investigated and reported the story. This interim committee is the result of the alleged wrongdoing of Ryan and others in the state court administrator's office along with then chief justice Nathan Coats.

The employee who allegedly falsified receipts, Mindy Masias, had been hired by Ryan to

provide leadership training to judges and judicial administrative officials. Ryan was also responsible for hiring retired judges, placing them under contract, and assigning them to cases. Were any of those contracts improperly awarded as well?

After Ryan resigned, the Supreme Court again searched for a state court administrator. We're told there were numerous applicants. Presumably, some of those candidates had business degrees and master's in business administration. Yet again, however, the Supreme Court chose another insider. Another current employee, Steven Vasconcellos, was hired to replace Ryan. Vasconcellas served under both Ryan and Marroney. So he did not exactly learn from the best. Vasconcellas has no business education. He's a history major. His resume is attached as Exhibit 3.

Does the fact that the Supreme Court hired a history major to manage a $700 million budget promote your confidence in the judiciary? Does the fact that they hired an insider they were comfortable with, as opposed to an educated outsider, promote your confidence in the judiciary.

The National Center for State Courts has issued guidelines for court administrators. Although the guides are very vague, they do recommend that the administration function of the court be kept separate from the judicial function. The scandal in Colorado was so salacious because the chief justice was involved with the awarding of the contract to Masias. Colorado should not allow that to happen again. It is imperative that we stop allowing the Supreme Court to hire the state court administrator and we must separate the financial function of the judicial branch from the judicial function.

The state court administrator should be an elected official who is selected by the people in a contested election. Then, when something goes wrong in the office, the judicial function is left untainted. Colorado should essentially erect walls between the administrative function of the courts and the judicial function. The state court administrator has repeatedly been mired in controversy. We need to ensure that the administrator cannot directly affect justice as he is currently allowed to do.

Because the state court administrator has diminished the public confidence in the judiciary, and because public confidence is the primary reason for a judicial discipline commission to exist, this interim committee should put forth a referendum to the people that would make the state court administrator an elected position. The administrator should become the chief financial officer for the judicial branch. The chief justice should become the chief judicial officer for the judicial branch. The language in the constitution stating that the chief justice is "the executive head of the judicial system" should be removed. Colo. Const., Art. VI., § 5, para. (2). By separating the administrative function from the judicial function and creating two leaders of the judicial system who operate separately and independently, we should be able to avoid a repeat of the judicial scandal.

What does the public think?

We have already provided the interim committee with a copy of the signatures on our petition for judicial reform. Some people entered comments on the petition when they signed it. Below are some of the more pertinent comments:

> *We desperately need integrity in our judicial system. There is very little. If they have nothing to hide, then why are they afraid of transparency.*
> - Commented by *Synthia Morris*

> *Disciplinary records about judges should be made public, as well as any conflicts of interest. Citizens have a right to this information in order to make informed voting decisions about retaining judges.*
> - Commented by *Elizabeth Kain*

> *Colorado should be on the leading edge of states ensuring an ethical judiciary, but presently it is not. The judiciary's insistence on regulating itself and dismissing almost all complaints of every nature, leaves serious questions as to the ethics of our bench, and that should change.*
> - Commented by *Norman Beecher*

> *The fact that you discipline 3% of all complaints should terrify you... if it doesn't, you are the problem.*
> - Commented by *Piper Wood*

> *Please consider changing the way you are keeping the integrity of your own courts in check. Having the court review its own behavior is obviously a conflict of interest. I know judges are mostly good hard working people who have to make tough decisions but no one can be allowed to grade their own performance, that should be obvious. Thanks for all the hard work.*
> - Commented by *Chris Sedgwick*

> *Disciplinary records should not be withheld from the public. It's unconscionable.*
> - Commented by *Cordelia Edison*

> *Our courts do a lot of great work but they slip up too, just like any organization (private or public). When they do slip up we need to have the ability to hold people accountable and fix the problem. Unfortunately, right now, we don't have the ability to do that.*
> - Commented by *Jeff Wilson*

> *Do the right thing and make Colorado's judicial branch accountable And transparent!*
> - Commented by *Dianne Archuleta*

Colorado government - This statement says it well: "We support the efforts of The Judicial Integrity Project to increase transparency, enhance accountability and remove the conflicts of interest in the judicial branch. Colorado needs judicial reform."
- Commented by *Beverly Hill*

Please help to end the rubber-stamping of judicial retention that happens in the elections. We need more information about the performance of these judges so that we can make educated decisions when voting on whether or not they should be retained. Please bring some level of accountability to these public servants.
- Commented by *Adam Howell*

The lack of transparency and integrity in the judicial dept. up to and including the justices on the Supreme Court is disgusting and unacceptable!
- Commented by *Dinah Land*

Colorado's judiciary is devoid of accountability and transparency. I applaud your efforts. It's not easy and takes tremendous dedication. Thank you for your work!
- Commented by *Carl Roberts*

What are you going to do?

Colorado has a commission-based judicial system. We have a commission that nominates judges, a commission that disciplines judges, and commissions that are supposed to evaluate a judge's performance for voters. Unless all of these commissions are completely transparent, the commission-based system is unworkable and not worthy of the public's trust.

Judicial discipline is ground zero for judicial reform in Colorado. At present, we allow performance commissions to give recommendations to voters regarding judges when those commissions do not have the discipline information regarding the judges they evaluate. It is preposterous. Likewise, if a judge seeks a position on a different court the nominating commissions do not have the discipline information for such judge. It is a completely dysfunctional system. And that's without consideration for the fact that the Supreme Court has for many years exploited the conflict of interest in the judicial discipline system and systematically stopped discipline from occurring in the first place by requiring the executive director to dismiss complaints.

According to the constitution, a judge can be disciplined for any violation of the Code of Judicial Conduct. The Supreme Court behaved inappropriately when it required the executive director to dismiss complaints related to an appealable order or to close cases involving matters over which the commission has no jurisdiction, such as an appeal. The legal professionals on the commission failed all of us by not blowing the whistle on the Supreme Court's improper use of its rule-making function.

By focusing on the purpose for judicial discipline and the ballyhooed phrase "appearance of impropriety," we can build a much better judicial discipline system. It must be completely transparent. Judges are too important for discipline to be delved out behind closed doors.

Conflicts of interest in the system must be removed. The commission, as opposed to the Supreme Court, should write the rules for judicial discipline. The voting members of the discipline commission should not be judges.

The budget for the discipline commission should be public and separate from any other agency. All discipline records should be kept in an electronic database that is accessible to the public and searchable under the judge's name.

There are simple, fundamental changes to the system that can and should be made to improve the public's confidence in the system. Your actions on this interim committee could be the most important thing you do in your legislative career. Any of the other legislation you have proposed and voted on may some day end up in court. When that happens, you want judges with the utmost judicial integrity to help ensure the laws you made are interpreted correctly. Your actions here may affect all the laws up to this date and for the foreseeable future. You have an incredibly important task at hand.

Please keep your eyes on the path toward judicial integrity and don't get distracted by the attempts at misdirection and the red herrings thrown in the way. Please focus on increasing transparency, removing conflicts of interest, and enhancing accountability. Please don't let partisan politics get in the way of a better system. Please do what is best for your constituents.

We sincerely hope you will give our proposal for an improved judicial discipline system serious consideration. Exhibit 4. Leadership sometimes requires the willingness to approach something differently than it has been approached before. We don't want another judicial scandal to happen. You have the power to propose a system that will greatly reduce the potential of such a scandal ever happening again.

Thank you for your hard work and thank you for your time and consideration.

Sincerely,

Chris Forsyth, Esq.
Executive Director
The Judicial Integrity Project
cforsyth@judicialintegrity.org
Phone: 303-892-3894

EXHIBIT 1

MEMORANDUM OF UNDERSTANDING (MOU)

Between

THE DIVISION OF HUMAN RESOURCES (HRD)
of the
COLORADO JUDICIAL DEPARTMENT (Department)

And

THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE (CCJD)

This MOU, effective February 5, 2010, confirms the working relationship and respective responsibilities of HRD and CCJD in matters which come to the attention of either HRD or CCJD and which involve or could involve misconduct of judges or justices of courts of record in the State of Colorado (Judges) under the Colorado Code of Judicial Conduct (Code) or of non-judge employees of the Department.

The purposes of this MOU are: a) to provide an opportunity for HRD, as the representative of the Department, to be advised by CCJD of allegations of employee or judicial misconduct that may result in a financial penalty or other remedial action against the Department; b) to avoid a complaint which is filed in confidence with CCJD that alleges a factual basis for judicial misconduct under the Code being deemed notice to the Department of misconduct by a Judge or non-judge employee under federal or state law, in the absence of actual notice thereof to the Department; and c) to guide HRD in advising CCJD of information received or developed by HRD regarding situations that may involve judicial misconduct under the Code .

1. If HRD becomes aware of any allegations of criminal activity in which a Judge is named as a party or participant, HRD will defer to and cooperate with the appropriate law enforcement authorities and CCJD in the handling of such matters.
2. If HRD receives a complaint concerning the misconduct of a Judge from a person who is not an employee of the Department or that does not involve an employee of the Department, HRD will refer such matters to CCJD and provide CCJD's contact information to the complainant.
3. If HRD receives a complaint alleging (a) misconduct of a Judge under the Code that may involve a non-judge employee of the Department; (b) misconduct of a Judge under provisions of Chief Justice Directive 08-06 (Directive 08-06), and attachments thereto, as amended, including but not limited to the Anti-Harassment Policy and the Policy Concerning Personal Relationships in the Workplace; or (c) judicial conduct that may violate non-criminal federal or state statutes, including but not limited to complaints filed with the Colorado Civil Rights Division or the U.S. Equal Opportunity Employment Commission, HRD will undertake a preliminary investigation of the complaint and determine the degree, if any, to which a Judge or non-judge employee may be involved and provide CCJD with all of HRD's investigatory notes and findings that address the alleged judicial misconduct. HRD will follow procedures found in CJD 08-06 during the investigation of such complaints.

4. If CCJD receives a complaint alleging misconduct by a Judge under the Code, Directive 08-06, or federal or state statutes that may involve a non-judge employee of the Department, CCJD shall provide HRD a reasonable opportunity to investigate such matters under the protocol of paragraph 3 above, before proceeding with disciplinary action against the Judge.
5. HRD may file a complaint with CCJD alleging misconduct of a Judge, but HRD's cooperation with CCJD, including the forwarding of information by HRD to CCJD under any of the paragraphs of this MOU, shall not be deemed to be a complaint unless expressly so designated.
6. CCJD and HRD shall maintain the confidentiality of papers, pleadings, proceedings, investigatory notes, and other documentation regarding alleged judicial misconduct, as required under Article VI, Section 23 of the Colorado Constitution and under Rule 6 of the Colorado Rules of Judicial Discipline.

Human Resources Division
Office of the State Court Administrator

By__________________________
Director

Colorado Commission on Judicial Discipline

By__________________________
Executive Director

EXHIBIT 2

985 P.2d 924
139 Wash.2d 211

In the Matter of the Disciplinary Proceeding Against A. Eugene HAMMERMASTER, Municipal Court Judge.

No. JD # 15.

Supreme Court of Washington, En Banc.

Argued June 10, 1999.

Decided October 7, 1999.

[985 P.2d 926]

Kurt Bulmer, Seattle, for Judge Hammermaster.

Byrnes & Keller, Paul R. Taylor, Seattle, for Commission on Judicial Conduct.

Beth M. Andrus of Skellenger Bender P.S., for amicus curiae American Civil Liberties Union of Washington.

[985 P.2d 925]

MADSEN, J.

Municipal Court Judge A. Eugene Hammermaster appeals a determination by the Commission on Judicial Conduct (the Commission) ordering censure, and recommending suspension for 30 days without pay. The Commission found that Judge Hammermaster violated the Code of Judicial Conduct (CJC) Canons 2(A), 3(A)(1) and 3(A)(3) by making improper threats of life imprisonment and indefinite jail sentences, improperly accepting guilty pleas, holding trials in absentia, and engaging in a pattern of undignified and disrespectful conduct toward defendants. Judge Hammermaster admits that he engaged in the alleged conduct, but maintains that his conduct was a reasonable exercise of judicial independence which did not violate the Canons. We affirm the Commission's findings of misconduct, but also find that Judge Hammermaster's practice of ordering defendants to leave the country constitutes a violation of Canon 3(A)(3). We substantially agree with the Commission's order of censure but find that a six-month suspension without pay is more appropriate than the sanction recommended by the Commission.

Facts

Judge Hammermaster is an appointed part-time municipal court judge for the Sumner, Orting, and South Prairie courts of Pierce County, Washington. He has been a judge for one or more of these courts for 30 years. Report of Commission Proceedings (RP) at 322. On June 25, 1996, the Commission on Judicial Conduct received a letter of complaint about Judge Hammermaster from an inmate at the Sumner City Jail who was serving jail time because he had not paid a fine imposed by the judge. In the letter the inmate stated that "Judge Hammermaster has told me before that if I didn't pay my 300$ (sic) fine he would throw me in jail for life. I've sat out the time in jail to pay off the fine but thats (sic) not exaptbl (sic) to him." CJC, Finding of Probable Cause (May 13, 1998). The letter goes on to request an investigation of the inmate's situation.

In response to the complaint, the Commission reviewed 21 cases in which Judge Hammermaster had presided between June and November 1996, to determine whether and to what extent any misconduct occurred. A number of those cases are discussed below and serve as examples of the Commission's case in chief.

On March 17, 1998, the Commission filed a Supplemental Statement of Allegations and informed Judge Hammermaster that the Commission was pursuing initial proceedings against him.[1] On April 22, 1998, the Commission

[985 P.2d 927]

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filed its final amended Statement of Charges, alleging that Judge Hammermaster had engaged in misconduct which violated Canons 1, 2(A), 3(A)(1) through (5), and 3(B)(3) of the Code of Judicial Conduct. Amended Statement of Charges (April 22, 1998) at 8 (hereafter Statement of Charges).

The Commission's first allegation charged that the judge had abused his authority and exhibited a demeanor that is not respectful or dignified by threatening defendants with life imprisonment or indefinite jail sentences; routinely ordering Spanish-speaking defendants to enroll in English courses, become citizens or leave the country; issuing or threatening to issue orders beyond his legal authority as a municipal court judge; and making statements or issuing orders that denigrate unmarried individuals who lived together. Statement of Charges at 1-4.

The Commission's second allegation charged the judge with conducting criminal proceedings in a manner which violated defendants' basic due process rights, thus calling into question the integrity and impartiality of the judicial office and his own competence and faithfulness to the law. The allegation was based on Judge Hammermaster's practice of accepting guilty pleas without first determining whether defendants' pleas were knowingly, voluntarily, and intelligently made; the use of guilty plea forms which failed to comply with CrRLJ 4.2; holding trials in absentia; and using unlawful not guilty plea forms. Statement of Charges at 3-4, 6.

The Commission's third allegation charged that the judge's conduct raised the appearance of impropriety as a result of (1) his relationship with the City of Orting Police Chief whom he allowed to act as a city attorney before the court and (2) an alleged arrangement that his son serve as a pro tem judge in his absence. Statement of Charges at 7-8. The allegation regarding the Police Chief was dismissed by stipulation.

Judge Hammermaster admitted that he engaged in conduct which the Commission has grouped into five types of inappropriate behavior: (1) improper threats of life imprisonment; (2) denial of basic due process in taking guilty pleas; (3) trials in absentia; (4) conduct that is not "dignified, patient or courteous"; and (5) ordering Hispanic defendants to leave the country. Commission Decision (CD) at 2-5. He disagreed with the Commission's characterization of that conduct as improper, however.

The Commission held a hearing on May 13 and 14, 1998, and filed its decision on August 7, 1998. With regard to the allegation regarding Judge Hammermaster's son serving as a pro tem judge, the Commission found no intentional arrangement had been made and thus concluded no violation had been committed. CD at 5. The Commission also found that the allegation charging the judge with abuse of authority in his treatment of Hispanic defendants was proved, but declined to find a violation of the Canons because federal law regarding a court's authority to order persons to leave the country is ambiguous and because the orders were alternatives to other lawful conditions of sentencing. CD at 6. Eight members found that Judge Hammermaster had committed the remaining acts of alleged misconduct and concluded that such misconduct violated Canons 2(A), 3(A)(1) and 3(A)(3). CD at 5-6.

After considering aggravating and mitigating factors, the Commission ordered censure and recommended suspension for 30 days without pay. CD at 7-8. The Commission also ordered that Judge Hammermaster take a corrective course of action including (1) completing judicial education courses in criminal procedure, ethics, and diversity, approved in advance by the Commission and paid for at his own expense; (2) meeting with a judicial mentor prescribed by the Commission; and (3) Commission monitoring for a period of two years. CD at 7-8.

One member of the Commission filed a dissenting opinion. He found only one violation based on Finding of Fact 3(a)[2] and disagreed with the majority's recommended

[985 P.2d 928]

discipline, arguing instead for reprimand. CD at 3-4, 8 (Dissent by Judge Schultheis).

1. Improper threats of life imprisonment

Judge Hammermaster told 12 different defendants that he would either impose an indefinite jail sentence or life imprisonment until fines and costs were paid. The following excerpts from a few of those cases are illustrative.

In *City of Sumner v. Link,* No. 15779, the defendant requested another chance to make arrangements to pay his fines:

Judge: Then why shouldn't I treat you the same way you treated me? So that's back to my original question, should I not just allow you to remain in jail?

Defendant: By rights I would, that's what I'm expecting you to do, but I ask of you not to.

Judge: Why should I not do it?

Defendant: Because this is the last time I will allow myself to not comply with what I tell you. I can't believe that, this is the third time I've had to see you for this, such matter and—

Judge: In other words what I should do is find you in contempt of court, should I not?

Defendant: Yes, you should.

Judge: And if I do that, then you're going to have to pay 40 dollars a day, each day you're in jail, which means you'd be in jail the rest of your life because every week you'd owe another 300, every month you'd owe another roughly 1200, every year you'd owe roughly another 15 thousand.

....

Defendant: Okay, after I leave here today and if I don't make contact with somebody that would do this for me, what do I do then?

Judge: I guess you stay in jail the rest of your life. I can't think of any other alternative. I've given you two alternatives. If you want to come up with a third one, do so, but I gave you two of them. And I guess you don't like either one of them....

....

Defendant: No, no I just can't, I can't call my grandmother to call because she will then call my mother and my mother will say I won't do it, so why should you. Nobody just thinks that I[sic] worth giving the chance to. I haven't given anybody a reason for that.

Judge: Well, you've sure given me reasons. You've lied to me time after time after time. Maybe you've lied to them too, I don't know. You've given me lots of reasons to throw away the key.

Defendant: I know that sir.

Judge: In fact, I guess you should feel fortunate that at this point I've not found you in contempt of court.

Exhibits Notebook (Link) at 1-2, 6-7.

In seven other cases, Judge Hammermaster made nearly identical comments regarding the defendant's debt compounding to such a high amount that he would have to find the defendant in contempt of court, and the defendant would have to stay in jail either indefinitely or for life. *See City of Orting v. Lybeck,* No. 5382; *City of Sumner v. Sattler,* No. C00010554; *City of Orting v. Sita,* No. 4605; *City of Orting v. Powell,* No. 6120; *City of Sumner v. Leggitt,* No. 13846; *City of Sumner v. Ceras-Campos,* Nos. XXXXXXXXX, C00010522; *City of South Prairie v. Batten,* No. C00058228; *City of Orting v. Cebula,* No. C00000189.

In *City of Sumner v. Reisenauer,* No. 13361, the defendant appeared before the court on a warrant for failure to make payment on his fine.

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Defendant: I haven't paid anything because I didn't have a real job. I was only working part-time.

Judge: Go ahead.

[985 P.2d 929]

Defendant: I don't make a lot of money when I'm working part-time, I made 5 dollars an hour.

Judge: Wouldn't it make sense that you spend the rest of your life in jail?

Defendant: No.

Judge: Why not?

Defendant: Because I don't want that.

Judge: What difference does it make?

What's the other choice?

Exhibits Notebook (Reisenauer) at 4.

In *City of Orting v. Deen,* No. C00000280, where the defendant was explaining why he did not contact the court, Judge Hammermaster stated, "Well, is that what the answer is, that you should stay in jail indefinitely?" In his concluding remarks, after making arrangements for the defendant to pay, Judge Hammermaster then stated: "The only time I throw the key away is when they act like you."

In *City of Sumner v. Luddington,* No. 16210, Judge Hammermaster remarked: "So I should find you in contempt of court and throw the key away."

In Judge Hammermaster's testimony before the Commission he admitted that he knew the law did not allow for life imprisonment for failure to pay fines[3] and that he has no authority as a municipal court judge to impose such sentences. Judge Hammermaster also testified that he did not know if a fact-finding hearing was required before imposing sanctions on delinquent defendants. Further, when asked whether he believes that he has the authority to impose any sanction he wants, Judge Hammermaster responded "I don't think so, but I don't know where the limitations are. I don't know that I've ever thought about that." Verbatim Report of Proceedings (RP) at 94.

2. Denial of due process in taking guilty pleas

The defendants in 10 cases under review expressed an intent to plead guilty. In each case, Judge Hammermaster required the defendant to sign a guilty plea form, which the judge had approved.[4] These forms contained neither the elements of the offense charged nor the penalties available, but says simply:

> I am the defendant in this case. I plead guilty to the crime(s) of ________________ ___________________________ ________________.
>
> I understand that, by this process, I am giving up my constitutional right to a jury or bench trial, the right to hear and question witnesses, the right to call witnesses in my own behalf, the right to testify or not to testify, and the right to appeal the determination after trial.
>
> I understand that the judge can impose any sentence up to the maximum, no matter what the prosecution or I or my attorney recommends. I further understand that the State of Washington may suspend or revoke my drivers license. (to be deleted if not applicable).
>
> No one has made any threats or promises to get me to plead guilty.

_________ _____________________ DATE DEFENDANT
___________________________ DEFENSE ATTORNEY

Comm'n Ex. at 3.

A comparison of the form used by Judge Hammermaster with that recommended by CrRLJ 4.2 demonstrates that much of the vital content has been omitted. Among other things, CrRLJ 4.2 requires that the plea form include: the elements of the charged offense, an indication that the defendant has been informed of and understands the nature and elements of the offense, and the potential penalties for the offense. CrRLJ 4.2.

Not only were the plea forms deficient, the omissions were not corrected during the plea colloquy. The judge accepted these pleas

[985 P.2d 930]

without first determining whether the defendant was aware of the elements of the crime charged and whether the guilty pleas was knowing, voluntary, and intelligent. Further, he did not inform defendants of the maximum and minimum sentences for the offenses to which they plead. His colloquy with defendants regarding the plea was typically limited to the following:

> Judge: [Y]ou've been charged with a violation of an ordinance of the City of Sumner allegedly taking place on or about April 29, 1995, when you were charged with driving while your license is suspended or revoked in the third degree. As to this charge you have two choices. First, you have the right to enter a plea of not guilty, in which event a trial date will be set. Second, you have the right to enter a plea of guilty, in which event sentencing would take place at this time. Are you prepared to make some disposition of the matter?
>
> Defendant: Yeah, guilty.
>
> Judge: Plea of guilty will be entered.

Exhibits Notebook (Petroff) at 1; *City of Sumner v. Petroff,* No. C00010269.[5]

In two cases in which the defendants inquired specifically as to the penalties associated with their charges Judge Hammermaster failed to provide the information. In *City of Sumner v. Potter,* No. C00010615, the defendant asked Judge Hammermaster

> "What is the recommended or the standard days?"
>
> The judge replied:
>
> I don't have any idea. I'll hear from you and I'll make my decision on that. All right, you want to step up here and take that statement on your plea of guilty, take it back to the table, read it and sign it. Right at the table there. All right, Mr. Potter, why were you driving when you didn't have a valid license?

Exhibits Notebook (Potter) at 2.

In another case involving a Spanish interpreter, *City of Sumner v. Perez-Cuiriz,* No. C00010069, Judge Hammermaster accepted the defendant's written plea of guilty and proceeded with the terms of the defendant's penalty without engaging in any discussion regarding the defendant's ability to understand the nature of the offense, the maximum penalties, or the rights he was giving up by pleading guilty. *See also* Comm'n Ex. 3.

In all of the cases reviewed by the Commission in which the form was used, these defendants were unrepresented.[6] Judge Hammermaster did not ask any of the defendants whether they could afford counsel or if they wished to give up the right to an attorney prior to signing the form or pleading guilty.

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Judge Hammermaster testified that he believed his method of accepting guilty pleas was sufficient because defendants also receive forms and pamphlets explaining their constitutional rights in addition to court information and procedures. Judge Hammermaster further testified that he believed the form was in substantial compliance with CrRLJ 4.2 because city prosecutors and defense attorneys had assisted in the drafting. At the same time, he conceded that it is ultimately his responsibility to make sure guilty pleas by defendants are knowing, voluntary, and intelligently made. One prosecutor for the City of Sumner testified that she believed the forms were in substantial compliance with the rule, and that ultimately, it was the prosecutor's job to inform defendants of their rights. The Sumner City Attorney further indicated that at the time the forms were drafted, she "took comfort" in the fact that an American Civil Liberties Union (ACLU) attorney had reviewed the language and did not raise concerns about it. RP at 230. However, she also conceded that the ACLU never indicated the form was satisfactory.

Judge Hammermaster testified that he did not know that an explanation of the elements of the offense was required. He further testified that he did not understand that he was also required to explain the maximum

[985 P.2d 931]

and minimum sentences when accepting guilty pleas.

3. Trials in absentia

Judge Hammermaster admits that since 1993, he has routinely held trials without defendants being present. He purports to obtain authority for this practice by securing defendant's signature on a form entitled, "Statement of Defendant on Plea of Not Guilty," in which the defendant not only waives the right to counsel at arraignment and right to a jury trial, but also the right to be present at trial. Comm'n Ex. 2. The following is an example of the forms Judge Hammermaster used:

> I AM THE DEFENDANT IN THIS CASE. I WISH TO ENTER A PLEA OF NOT GUILTY.
>
> I understand that I have the right to be represented by a lawyer and that the court will appoint one for me if it is determined I cannot afford one. I waive the right to be represented by a lawyer at this time. I understand this does not preclude me from asserting the right to a lawyer later in the proceedings.
>
> I hereby waive my right to a jury trial. I may withdraw this waiver and request a jury trial, provided I do so within 10 days of this arraignment date.
>
> I will appear on the time for court dates or a warrant may be issued for my arrest. If I am not in attendance at the time of trial, including the commencement thereof, it is because I have deliberately and intentionally refused to be present, and under such circumstances request that I be deemed "excused" by the court pursuant to CrRLJ 3.4.
>
> If I fail to appear, the State of Washington may suspend or revoke my driver's license. (if applicable).

__________ __________________________ Date
Defendant ___________________________
Defense Attorney

Comm. Ex. 2.

In eight of the cases examined by the Commission, Judge Hammermaster used the above forms.[7] In two of those cases, the judge proceeded to trial in the defendants' absence. When the defendants finally appeared in the later

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two cases, Judge Hammermaster proceeded to sentencing.

In *City of Sumner v. Potter,* No. C00010615, the defendant stated that he had intended to plead not guilty at his trial, but ultimately pleaded guilty when he learned the court had proceeded to trial in his absence.

Judge: All right. What is your intention concerning these two charges, driving while your license is suspended in the second degree and negligent driving resulting in a collision.

> Defendant: First degree.
>
> Judge: Beg your pardon?
>
> Defendant: Negligent driving in the first degree?
>
> ....

Defendant: I was going to plead not guilty at the trial, but I guess—

Judge: All right. Are you going to change your plea to guilty right now?

Defendant: I wanted to plead not guilty, but I guess I have to if you guys went ahead to the trial with me not being there.

Judge: Well, that's, you need to tell me if you're to going to ask me for a new trial date, you need to tell me why I should do that when you failed to show up the first time.

> ....

Defendant: I was going to try and see if I can get a second trial, but if you don't.

Judge: Well, you can talk away, but I'm certainly not going to let you out of jail until the trial date.

> Defendant: I guess I'm going to have to plead guilty then.
>
> Judge: It's up to you. Is that what you want to do?
>
> Defendant: Yes, I'll just plead guilty.
>
> [985 P.2d 932]
>
> Judge: All right.
>
> Exhibits Notebook (Potter) at 1, 2.

Similarly, in *City of Sumner v. Erroll Cayald,* Case No. C00010318, the defendant appeared before the court after a trial was held in his absence.

Judge: City of Sumner and Erroll Cayald, C-a-y-a-l-d. All right, Mr. Cayald your matter went to trial in your absence. Any reason why I should not enter a finding of guilty and proceed to sentence you?

Defendant: Yes, sir. Last week, I was disoriented. What happened was I thought it was one o'clock and not this, that morning. I came in and talked to the clerk that afternoon.

> Judge: And what's your defense to this matter?

Defendant: I didn't receive any kind of a notification or anything that the license was suspended.

> ....

Judge: Anything else that I should know before I proceed to sentence on this matter?

> Defendant: No, sir.
>
> Exhibits Notebook (Cayald) at 1, 2.

According to Judge Hammermaster, the not guilty form effectively excuses the defendants when they do not appear at trial, and thereby provides him with the authority to hold trials in absentia. Moreover, Judge Hammermaster testified that the method in which he holds trials in absentia provides defendants an opportunity to

request a continuance or to ask for a new trial, once a defendant does appear after his or her trial has been held.

4. Conduct that is not "dignified, patient or courteous"

Judge Hammermaster admits to making various remarks in at least four of the cases examined by the Commission, one involving a mentally ill individual, and three others involving the relationship of unmarried individuals. Judge Hammermaster testified that in each of those cases, he did not intend his remarks to be offensive and that they were reasonable given the context in which they were made.

The defendant in *City of Sumner v. Amburgy,* No. C00010460, had bipolar disorder and attempted to explain his condition to the Judge:

Defendant: All right, well, I was in Western State for, since that happened. I was sick and I didn't have any medication cause I've got a bipolar disorder, manic depressant and I, I did it because I just can't stand, I can't get a job, I can't get a job. I've filled out applications already, I did, they put me in Western State because of this, part of this. At the same time they put me in Western State. I was in there, first it was a couple of weeks at Puget Sound, then it was 90 days in Western State. They released me on Halloween this year and I've already filled out applications and I was, I was happy to be alive today just to be able to come down here because I can't handle it, I'm ready to go to the hospital again today. I can't handle it. I try to get a job everywhere man and nobody will f_______ hire me. I can't stand being alone and being bored all the time.

....

Judge: For somebody to say they're bored is ridiculous. If you're bored it's your own fault. It sounds to me like a bunch of pity pot, feeling sorry for yourself, which as far as I'm concerned is garbage.

....

I mean it appears to me you're just sticking your head in the sand and feeling sorry for yourself, and frankly I don't buy that. For somebody to say they're bored, then go volunteer some place.

[985 P.2d 933]

....

I mean I just don't agree with your analysis of being bored. That's a ridiculous excuse. I mean, see how bored you'd be if you were sitting in jail with nothing.

....

You'll probably be coming back next time and saying they're keeping me so busy I'm going to crack up. Now you're telling me you're so bored you're going to crack up and if you say well, I'm so busy I'm going to crack up, I know how to solve that too. There's a place here where you can have free room and board where you won't be busy at all, called the crow bar hotel. Ridiculous, is it not?

Exhibit Notebook (Amburgy) at 1, 2, 3, 4, 6.

In his testimony before the Commission, Judge Hammermaster indicated that he used the term "bored" in this conversation in an attempt to motivate the defendant to become involved in the community.

In *City of Sumner v. Elliot,* No. C00010705, Judge Hammermaster threatened to order the defendant to stop living with his girl friend and also order the car that belonged to defendant's girl friend sold:

Defendant: It's just a money problem, you know, I'm trying, trying to get them paid, but you

know rent, and the power and the phone, it's just ... I have a girlfriend with two young daughters, it's very hard.

Judge: Any reason why I shouldn't order you to sell your car?

Defendant: I don't own a car, your honor.

Judge: Well, who's car were you driving?

Defendant: That was my girlfriend's.

Judge: Well, Maybe I should order you to stop living with your girlfriend, then, if that's causing your problem. I mean, if you're supporting her, and not taking care of your situation, you're driving her car, sounds like you better terminate that.

Exhibits Notebook (Elliot) at 3.

Judge Hammermaster testified that the above remarks were intended to determine the appropriate sentence and the defendant's ability to pay.

In *City of Orting v. Sita,* No. 4605, Judge Hammermaster criticized the defendant's living arrangement with his girl friend when discussing defendant's inability to pay his fine:

Defendant: I'm spending over a hundred dollars worth of food a week.

Judge: Why so much?

Defendant: Because I have a girlfriend that lives with me.

Judge: Ah, so you're supporting somebody else, why didn't you get rid of that? Is she employed?

Defendant: She's trying to find work.

Judge: So you're supporting somebody.

Defendant: Yes.

Judge: I'd suggest you get rid of her. So you're just throwing away money there. Why is she not working?

Defendant: I don't know, sir, I really don't.

Judge: Then why are you allowing her to live with you and freeloading off of you?

Exhibits Notebook (Sita) at 7. Again, Judge Hammermaster explained that such remarks were meant to determine the defendant's ability to pay.

In *City of Sumner v. Petroff,* No. C00010269, Judge Hammermaster indicated that, in light of defendant's "meretricious relationship" with his girl friend, he would order the car owned by defendant's fiancée sold if it was not licensed and insured by the end of the year. Here, Judge Hammermaster explained that his remarks were based on his belief that defendant had a legal interest in his girl friend's car.

5. Ordering Hispanic defendants to leave the country

Judge Hammermaster admits that he frequently asks Hispanic defendants if they are

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"legal" and orders them to enroll in English classes, "become legal," and/or leave the country within a set time. RP at 76-92; Comm'n Exs. 6-12, 15 (Municipal Court of Sumner Docket Record of Proceedings summarizing the penalties imposed on various Hispanic defendants included enrollment in an English course and becoming legal); Comm'n App. 19, at 1. Judge Hammermaster sometimes threatened Hispanic defendants with immediate deportation.

Although Judge Hammermaster testified that he has told defendants to leave the country, he also admitted that he was aware that he did not have the authority to order defendants to leave

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the country immediately and that such remarks were wrong. When asked why he frequently asked Hispanic defendants about their legal status, Judge Hammermaster testified that he asked those questions as part of the sentencing process. Judge Hammermaster could not explain the relevancy of the legal status of Hispanic defendants. He stated his questions were based on a "gut instinct" that the defendant was illegally in the United States, though occasionally a person's inability to speak English would also prompt him. RP at 76-85.

Analysis

The Washington State Constitution establishes a commission on judicial conduct and empowers the commission to investigate complaints against judicial officers, conduct hearings, make recommendations for discipline to the Supreme Court, and to establish rules of procedure for commission proceedings. Const. art. IV, § 31 (amend.77); *In re Disciplinary Proceeding Against Buchanan,* 100 Wash.2d 396, 399, 669 P.2d 1248 (1983). Further, the constitution provides:

> The supreme court may censure, suspend, or remove a judge or justice for violating a rule of judicial conduct....
>
> ....
>
> The supreme court may not discipline or retire a judge or justice until the commission on judicial conduct recommends after notice and hearing that action be taken and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against a judge or justice.

Const. art. IV, § 31 (amend.77).

The Commission bears the burden of proving the alleged ethical violations by clear, cogent, and convincing evidence. *In re Disciplinary Proceeding Against Sanders,* 135 Wash.2d 175, 181, 955 P.2d 369 (1998); CJC RP 7. Our review of the CJC's judicial disciplinary proceedings is de novo. *In re Disciplinary Proceedings Against Anderson,* 138 Wash.2d 830, ____, 981 P.2d 426, 432 (1999); *In re Disciplinary Proceeding Against Deming,* 108 Wash.2d 82, 87-89, 736 P.2d 639, 744 P.2d 340 (1987). This requires an independent evaluation of the record; the Commission's findings or conclusions do not bind us. *In re Anderson,* 138 Wash.2d at ____, 981 P.2d at 432; *In re Disciplinary Proceedings Against Turco,* 137 Wash.2d 227, 246, 970 P.2d 731 (1999); DRJ 9(c). This Court gives considerable weight to credibility determinations made by the Commission and serious consideration to the Commission's recommended sanctions. *In re Disciplinary Proceeding Against Ritchie,* 123 Wash.2d 725, 870 P.2d 967 (1994). But the constitution's use of the word "recommend" indicates an intent to place the ultimate decision to discipline in the Supreme Court. *Deming,* 108 Wash.2d at 88, 736 P.2d 639.

The Commission in this case found that Judge Hammermaster's conduct, as outlined above, violated Canons 2(A), 3(A)(1) and 3(A)(3). Although the judge does not dispute that he engaged in the alleged conduct, he argues that the Commission has failed to demonstrate, by clear, cogent, and convincing evidence, that such conduct demonstrated a pattern of misconduct violative of Canons 2 and 3. We disagree.

> Canon 2(A) states:
>
> Judges should respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
>
> Canon 3(A)(1) states:

Judges should be faithful to the law and maintain professional competence in it. Judges should be unswayed by partisan

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interests, public clamor, or fear of criticism.

> Canon 3(A)(3) states:
>
> Judges should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom judges deal in their official capacity, and should require similar conduct of lawyers, and of the staff, court officials, and others subject to their direction and control.

The Comment which accompanies Canon 3(A)(3) explains:

> The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and business-like while being patient and deliberate.

A. Improper threats of life imprisonment

The Commission found that in 12 cases, Judge Hammermaster's threats of life imprisonment or indefinite jail sentences constituted a pattern and practice violating Canons 2(A), 3(A)(1) and 3(A)(3).

Judge Hammermaster argues that his comments were reasonable given their context. The defendants were back before his court for failing to comply with sentencing obligations. Judge Hammermaster claims that he made those remarks as a technique of obvious exaggeration, in order to alert the defendants to the serious consequences of their actions. While Judge Hammermaster admits he does not have the authority to impose life sentences or indefinite jail sentences, he apparently believes he has the statutory authority to impose an extended jail sentence for a defendant who fails to pay fines.[8] RP at 60-61. Ultimately, Judge Hammermaster defends his conduct on grounds that a judge is entitled to latitude in dealing with defendants and that his statements were a reasonable exercise of judicial independence.

Although we agree that a judge must have latitude when speaking with defendants, Judge Hammermaster's practice of consistently intimidating defendants with life imprisonment or indefinite jail sentences falls outside the bounds of such latitude. The record belies his assertion that his comments were mere rhetoric and were intended to alert defendants of the consequences of nonpayment of fines. His repeated statements that appear to break down the daily, weekly, monthly, and yearly accumulation of fines had no use other than to bully defendants, some of whom were very apologetic and confused by Judge Hammermaster's remarks. *See, e.g., Lybeck,* No. 5382. As this Court noted in *In re Deming,* "threats of improper sentencing do not befit the dignity of our judicial system." *In re Deming,* 108 Wash.2d at 117, 736 P.2d 639. While a judge is entitled to latitude in discussions with defendants, using threats which exceed judicial authority is unacceptable, even if the judge believes such threats are the only way to coerce compliance. *In re Sadofski,* 98 N.J. 434, 440, 487 A.2d 700 (1985) (improper threats of imprisonment constitute misconduct regardless of judge's belief that threats are the only effective means to communicate or method of securing compliance).

Judge Hammermaster also defends his conduct as an exercise of judicial independence. This argument misses the mark and demonstrates a misunderstanding of that concept. In the traditional sense, the concept of an independent judiciary refers to the need for a separation between the judicial branch and the legislative and executive branches. As Alexander Hamilton observed in *The Federalist No. 78:*

> There is no liberty, if the power of judging be not separated from the legislative and executive powers ... the complete independence of the courts of justice is particularly essential in a limited constitution.

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The Federalist No. 78, at 402 (Alexander Hamilton) (George W. Carey & James McClellan eds., 1990).

Underlying the concept of judicial independence is the belief held by the framers over 200 years ago that an independent judiciary

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is an essential tool in guarding the constitution and the rights of individuals. As the Supreme Court said of the judiciary nearly one hundred and thirty years ago:

> It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law, independently and freely, without favor and without fear. This provision of the law is not for the protection or benefit of a ... judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences.

Bradley v. Fisher, 13 Wall. 335, 80 U.S. 335, 349 n. 16, 20 L.Ed. 646 (1871).

Judicial independence does not equate to unbridled discretion to bully and threaten, to disregard the requirements of the law, or to ignore the constitutional rights of defendants. While a judge must insist on compliance with his or her judgments, in this case Judge Hammermaster's threats, coupled with his failure to ascertain the defendants' ability to pay, demonstrate the judge exceeded his role as judge. A judge's primary function is the administration of justice, not the collection of fines.

Judge Hammermaster additionally asserts that if the Commission's decision is allowed to stand the "judicial independence of the courts of this state will be threatened." Opening Br. of Resp't Judge at 35. Judicial independence requires a judge to commit to following the constitution, the statutes, common law principles, and precedent without intrusion from or intruding upon other branches of government. It does not refer to independence from judicial disciplinary bodies (or from higher courts). Decision making is constrained by the evidence, by appropriate procedural rules, records and legal principles. *See* Deanell Reece Tacha, *Independence of the Judiciary for the Third Century,* 46 Mercer L.Rev. 645 (1995). Judge Hammermaster's actions in the cases reviewed by the Commission demonstrate an unwillingness to follow the law or to protect the rights of those defendants appearing in front of him. His actions do not represent an exercise of judicial independence.

We agree with the Commission that Judge Hammermaster's improper threats are contrary to the directive of Canon 3(A)(3) that judges be patient, dignified, and courteous.

The judge's threats also demonstrate a failure to remain faithful to the law and maintain professional competence in violation of Canon 3(A)(1). Judge Hammermaster acknowledged that he lacked authority to impose the sentences he threatened. He also testified that he has never thought about the limits of his ability to make defendants pay fines. Although the judge acknowledged there are limits on his sentencing authority, he does not know what the limits are. Judge Hammermaster has been a municipal court judge for 30 years. A large percentage of the business of such courts involves traffic violations and the imposition of fines. Under these circumstances, the judge's ignorance and disregard for the limits of his authority is particularly disturbing.

We also agree with the Commission that the judge's threats of life imprisonment or indefinite jail sentences undermine public confidence in the judiciary in violation of Canon 2(A). For most citizens, appearing as witnesses, spectators, or defendants in municipal court is their only contact with the judicial system. A 1998

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comparison of case loads between the superior courts and the district and municipal courts reveals that the lower courts considered 2,154,748 cases as compared with 280,682 cases considered by the superior courts of this State. Office of the Administrator of the Courts, *Caseloads of the Courts of Washington* (1998). The impressions which individuals involved in court proceedings receive help form their opinion of our justice system and of the manner in which our laws are enforced. It is a judge's duty to see that the opinion is one of confidence and respect. *In re Yengo,* 72 N.J. 425, 433, 371 A.2d 41 (1977) (discussing importance of municipal courts on public's perception of judicial system). The defendants in the cases at issue were not represented by counsel. People appearing pro se and without legal training are the ones least able to defend themselves against rude, intimidating, or incompetent judges. The conduct here

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denigrates the public view of municipal courts as places of justice. *Id.* at 57.

B. Denial of basic due process in taking guilty pleas

The Commission found that Respondent's method of accepting guilty pleas failed to comply with the requirements of due process and CrRLJ 4.2, and constituted a pattern and practice violating Canon 3(A)(1). CD at 4-5. Judge Hammermaster does not dispute that he accepted guilty pleas without first determining whether the guilty pleas were knowing, intelligent, and voluntary. Judge Hammermaster claims, however, that he was acting in the good faith belief that his use of the guilty plea form in combination with the information sent to a defendant regarding his or her rights and court procedures substantially complied with the law. He also relies on the fact that prosecutors and defense attorneys had input in drafting the form and that no attorney ever complained about his method of taking pleas. Finally, the judge argues that his process, which is subject to appellate review, has never been reversed. He reasons that judicial discipline is inappropriate because an appeal is available to correct any legal error in the taking of guilty pleas. Again, we disagree.

The law is clear that a judge has a duty to ensure that guilty pleas are knowingly, voluntarily, and intelligently made. *Boykin v. Alabama,* 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969). At a minimum, this requires the defendant be apprised of the essential elements of the offense as well as any mandatory minimum sentence and the statutory maximum. *State v. Holsworth,* 93 Wash.2d 148, 607 P.2d 845 (1980). In addition, CrRLJ 4.2 sets out the information to be included in a guilty plea form.

There is no question that Respondent's method of accepting guilty pleas is defective. Judge Hammermaster failed to explain the nature of the charges and the potential consequences, in either his colloquy with defendants or in the written forms he required defendants to sign. *See, e.g., Amburgy,* No. C00010460. Further, the additional procedural information mailed to the defendants was not tailored to the particular defendant and therefore did not advise the defendant of the requisite information. In his colloquy the judge did not determine whether the defendants had received or read the court information pamphlet. In testimony the judge stated his belief that he is only required to explain the minimum and maximum penalties if he is asked to do so. That is not so. Moreover, even in response to direct questions about the consequences of a guilty plea, the judge declined to provide the information and, in one case, became hostile. *See, e.g., Cebula,* No. C00000189; *Potter,* No. C00010615.

Neither Judge Hammermaster's good faith belief nor his misguided reliance on attorneys can excuse the deprivation of constitutional rights which resulted from the judge's conduct. Judge Hammermaster testified that as a municipal court judge, he has presided over thousands of cases. In light of this fact, his continued acceptance of defective guilty pleas makes his conduct even more egregious. Judge Hammermaster's reliance on other attorneys for validation of his guilty plea

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forms cannot excuse his duty to be faithful to the law and to maintain professional competence.

Other states have held that a judge's failure to honor the basic rights of defendants is evidence of judicial misconduct. *In re Reeves,* 63 N.Y.2d 105, 480 N.Y.S.2d 463, 469 N.E.2d 1321 (1984); *In re Field,* 281 Or. 623, 576 P.2d 348 (1978); *Ryan v. Commission on Judicial Performance,* 45 Cal.3d 518, 754 P.2d 724, 247 Cal.Rptr. 378, 76 A.L.R.4th 951 (1988). A judge's action need not be undertaken in bad faith or malice. Discipline may be appropriate even though the judge acted out of neglect or ignorance. *Mississippi Comm'n on Judicial Performance v. Hartzog,* 646 So.2d 1319 (1994); *Kloepfer v. Commission on Judicial Performance,* 49 Cal.3d 826, 782 P.2d 239, 264 Cal.Rptr. 100, 89 A.L.R.4th 235 (1989). A judge has an affirmative duty to learn the relevant legal procedures of which he or she is ignorant. *In re Inquiry Concerning a Judge,* 265 Ga. 843, 462 S.E.2d 728 (1995); *In re Hamel,* 88 N.Y.2d 317, 668 N.E.2d 390, 645 N.Y.S.2d 419 (1996). As the Commission and Amicus Curiae ACLU point out, CrRLJ 4.2 provides a ready source for the requirements of written

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guilty pleas. Additionally, case law explicitly sets forth requirements for a constitutional guilty plea.

The judge's argument that he cannot be disciplined because his decisions have not been overturned or appealed is similarly unpersuasive. The judge has the basic duty to ensure that courtroom practice conforms with the law. While we recognize that legal error is usually a matter for appeal and does not generally trigger judicial discipline, a repeated pattern of failing to protect a defendant's constitutional rights can constitute misconduct. *In re Reeves,* 63 N.Y.2d 105, 469 N.E.2d 1321, 480 N.Y.S.2d 463 (1984); *In re Yengo,* 72 N.J. 425, 371 A.2d 41 (1977); *In re Seraphim,* 97 Wis.2d 485, 294 N.W.2d 485 (1980). As the Michigan Supreme Court noted:

> Judicial conduct creating the need for disciplinary action can grow from the same root as judicial conduct creating potential appellate review, but one does not necessarily exclude the other. One path seeks to correct past prejudice to a particular party; the other seeks to prevent potential prejudice to future litigants and the judiciary in general.

In re Laster, 404 Mich. 449, 462, 274 N.W.2d 742 (1979). The record in this case establishes a pattern and practice of accepting guilty pleas in a manner which denied defendants basic due process rights. The Commission has met its burden of establishing this conduct violated Canon 3(A)(1) by clear, cogent and convincing evidence.

C. Trials in Absentia

The Commission found that Respondent's method of conducting trials in absentia constitutes a pattern and practice of violating defendants' basic due process rights, and is contrary to this Court's holdings in *State v. Hammond,* 121 Wash.2d 787, 854 P.2d 637 (1993) and *State v. Jackson,* 124 Wash.2d 359, 878 P.2d 453 (1994), constituting a violation of Canon 3(A)(1). As described above, Judge Hammermaster conducted trials in absentia by requiring defendants to sign a "not guilty" form at arraignment, which waived the rights to counsel, to a jury trial, and to be present at trial. Judge Hammermaster does not dispute the fact that since 1993, he has regularly held trials in absentia. Again, his defense to this charge is that he believed in good faith that his practice was in accordance with the law and that appeal, not judicial discipline, is the appropriate remedy to any error in his procedure. He believes that the last paragraph of the "not guilty" plea form he fashioned gave him authority to hold a trial without the defendant's presence:

> If I am not in attendance at the time of trial, including the commencement thereof, it is because I have deliberately and

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> intentionally refused to be present, and under such circumstances request that I be deemed "excused" by the court pursuant to CrRLJ 3.4.

Comm'n Ex. 2. He is mistaken about the significance of this form.

CrRLJ 3.4(a) provides that a defendant "shall" be present at trial unless "excused or excluded by the court for good cause shown." The rule also says the defendant's absence "after the trial has commenced" does not prevent it from continuing to verdict. CrRLJ 3.4(b). Thus, trial may not commence in the absence of the defendant regardless of his purported waiver of his right to be present. *Jackson,* 124 Wash.2d 359, 878 P.2d 453; *Crosby v. United States,* 506 U.S. 255, 113 S.Ct. 748, 122 L.Ed.2d 25 (1993). In *Jackson,* the defendant appeared for several pretrial hearings but failed to appear for a competency hearing and for trial. The trial court held that the defendant had voluntarily absented himself and proceeded in absentia. This Court reversed, holding that CrR 3.4 permits trials to continue, not commence, in the defendant's absence.[9]

Even if the rule did permit trial to begin without the defendant, his absence would have to be knowing, intelligent, and voluntary. The language in Judge Hammermaster's form purports to be a request by the defendant that his or her absence at the time of trial be deemed excused. It is unlikely that a defendant who signs the form is aware that he or she is thereby waiving a constitutional

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right and consenting to be tried in his or her absence. In fact, the records in two cases demonstrates that the defendants were confused that they had waived their right to be present at trial. In *Potter,* No. C00010615, for example, the defendant stated, "I wanted to plead not guilty, but I guess I have to [plead guilty] if you guys went ahead to the trial with me not being there." Additionally, the defendants in all the cases reviewed were unrepresented and their "permission" for trials in absentia was initiated by the judge. As Amicus ACLU points out, in order to assert the constitutional right to plead not guilty, the defendant is required to sign the form which essentially forces a waiver of other basic procedural rights, including the right to consult with counsel.

In short, the forms which the judge had a part in drafting are constitutionally defective in several respects. Under Canon 3(A)(1), Judge Hammermaster has a duty to ensure that he be faithful to the law and maintain professional competence. His habitual use of the "not guilty" forms that force defendants to waive basic procedural rights, and his treatment of at least two defendants who appeared before him after being tried in absentia, demonstrate the extent to which Judge Hammermaster is unwilling to faithfully adjudicate cases in accordance with the law.

We find that clear, cogent and convincing evidence supports the Commission's finding that Judge Hammermaster's practice of holding trials in absentia constituted a pattern and practice which violated Canon 3(A)(1).

D. Conduct that is not "patient, dignified, and courteous"

The Commission found that Respondent's various remarks to defendants constituted a pattern and practice that violated Canons 2(A), 3(A)(1) and 3(A)(3). CD at 6. Similar to his response to the Commission's first charge, Judge Hammermaster defends his conduct on grounds that a judge should have reasonable latitude when addressing defendants without the fear of being criticized.

Judge Hammermaster admits that the remarks he made to the defendant suffering from bipolar disorder and his various remarks regarding the unmarried relationship of defendants are routine in his courtroom. However, he also believes that his comments do not rise to the level of misconduct because they

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were not outrageous or vulgar. Further, he maintains that such rhetoric, similar to his remarks regarding life sentences, was used to alert defendants to the consequences of their actions. The judge testified that he believed he was getting through to defendants and that comments like the ones above are helpful to defendants. However, the record in the various cases does not indicate that defendants have reacted as positively as Judge Hammermaster believes.

Washington judicial discipline cases provide some guidance on the extent to which intemperate or rude remarks will constitute actionable conduct. In *In re Thronson,* No. 93-1548-F-45, Comm'n on Judicial Conduct (Aug. 5, 1994), the Commission considered a complaint of misconduct in a single case. There the judge called the defendant a "smart aleck," told him to "shut up before you go to jail" and lectured him on "being a loser." The judge stipulated that his conduct constituted a violation of Canons 1, 2(A), and 3(A)(3). In *In re Warren,* No. 95-2015-F-55, Comm'n on Judicial Conduct (Oct. 13, 1995), the Commission considered several cases involving inappropriate comments from the judge. Among other comments, the judge's remarks included the following:

> [I]t's bullshit. This thing was sentenced on July 9, 1991. You've had 11 months and you have not paid a single dime to this man. You've screwed him....
>
> ....
>
> In this country you use bathrooms. And if you can't use bathrooms, you go back to Morales.
>
> ....
>
> [A]ll you're doing is making her look like like an idiot....
>
> All I want to do is chew butt on Mr. Wybenga at the moment.
>
> ....
>
> Now, if, Mr. Flores, she didn't post the money, deciding that she had some other good lookin' guy she'd rather spend the
>
> [985 P.2d 940]
>
> time with, ah, if it wasn't posted you could certainly post it now.
>
> ....
>
> All you've done to these courts is say, "screw you, judge" every time down the line, including ours from back in 1991....

In re the Matter of Warren, No. 95-2015-F-55, Comm'n on Judicial Conduct (Oct. 13, 1995). The Commission found, and the judge agreed, that this conduct violated Canons 1, 2(A), 3(A)(2) and 3(A)(3).

In *In re Turco,* a municipal court judge was disciplined for the remarks he made in the course of sentencing which demonstrated insensitivity to victims of domestic violence. In one case the judge stated, "[Y]ou didn't need to bite her. Maybe you needed to boot her in the rear end...." In another matter he told the defendant, "[F]ifty years ago I suppose they would have given you an award...." In another case he said, "[T]he police do 95% of the work when they separate the parties.... [A]ll we're doing is slapping someone after the police have remedied the situation." *Turco,* 137 Wash.2d at 252, 970 P.2d 731. The Commission found and the judge agreed that the remarks violated Canons 1, 2(A) and 3(A)(1)-(4).

This Court has also found offensive comments by judges both in and out of the courtroom have violated the Canons. In *In re Deming,* 108 Wash.2d 82, 736 P.2d 639, a district court judge was removed for attempting to enhance the position of a probation officer with whom he was personally involved. There the court also found that the judge's myriad of improper

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and offensive comments and sexual innuendoes to women were actionable misconduct. *Deming,* 108 Wash.2d at 110-17, 736 P.2d 639. The Court found that his behavior was inconsistent with service as a judge. *Id.* at 117, 736 P.2d 639.

Opinions from other states are also helpful. In *Dodds v. Commission on Judicial Performance,* 12 Cal.4th 163, 906 P.2d 1260, 48 Cal.Rptr.2d 106 (1995), the court found the appearance of rudeness and prejudgment by a Superior Court judge on four occasions relating to his conduct in presiding over settlement hearings to be "unjudicial." *Id.* at 172, 48 Cal.Rptr.2d 106, 906 P.2d 1260. The judge there argued that his "assertive" judicial style enabled him to effect settlement in difficult cases. *Id.* at 176, 48 Cal.Rptr.2d 106, 906 P.2d 1260. The California Supreme Court rejected his explanation, and held that "when a judge, clothed with the prestige and authority of his judicial office, repeatedly interrupts a litigant and yells angrily and without adequate provocation, the judge exceeds his proper role and casts disrepute on the judicial office." *Id.* at 177, 48 Cal.Rptr.2d 106, 906 P.2d 1260.

Considering the other conduct Judge Hammermaster has engaged in, his remarks are consistent with his tendency to bully and intimidate defendants. His repeated conduct shows that Judge Hammermaster fails to take seriously his duty to act patiently, and in a dignified and professional manner toward defendants. The record thus contains clear, cogent, and convincing evidence supporting the Commission's finding that Judge Hammermaster's various remarks to defendants constituted a pattern and practice that violated Canons 2(A), 3(A)(1) and 3(A)(3).

E. Ordering Hispanic defendants to leave the country

The Commission found that Judge Hammermaster routinely asked Hispanic defendants about their immigration status, ordered them to enroll in English courses, and/or ordered them to leave the country. CD at 3. Due to the ambiguity in the federal law regarding a nonimmigration court's authority to issue such orders, the Commission concluded that Judge Hammermaster had not violated any specific canon. The Commission did not separately address the allegation that the judge's conduct violated Canon 3(A)(3).

This Court is not bound by the Commission's decision. *Turco,* 137 Wash.2d at 246, 970 P.2d 731. Judge Hammermaster admitted that he routinely asks Hispanic defendants about their immigration status, and orders them to enroll in English classes, in addition to threatening them with deportation. *See Ceras-Campos,* No. XXXXXXXXXX, C00010522; *Aparicio-Zaldivar,* No. C00010365. Respondent's testimony before the Commission on this issue provided no

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reasonable explanation for his treatment of Hispanic defendants. He could not explain why he was concerned only with the citizenship of Hispanic defendants and not of other defendants.

Setting aside the question of whether a municipal court judge has the authority to order deportation under federal law, Judge Hammermaster's practice of inquiring only about the citizenship of Hispanic defendants raises serious concerns about Judge Hammermaster's motivation and undermines the public's confidence in the judiciary.

A 1999 national survey conducted by the National Center for State Courts questioning citizens about their view of state courts has revealed a significant issue regarding the perceptions of the justice system among minority respondents. Although the report found that "overall, people have a good deal of confidence in American institutions", confidence in those institutions varies systematically across racial groups with minority respondents expressing significantly less confidence. Nat'l Ctr. for State Courts, *How the Public Views the State Courts: A 1999 National Survey* (1999).

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A recent publication developed by the Washington State Office of the Administrator for the Courts under a grant from the State Justice Institute has summarized the issues relating to the Mexican immigrants in our courts.

> Mexican immigrants come to the United States to face grossly incorrect perceptions, negative stereotypes, both malignant and benign prejudices, hostility, and antipathy. The history of U.S. aggression, the cycles of welcome and rejection of Mexican labor, the climate of suspicion and fear of immigrants and their children, and incidents of discriminatory behavior combine to reinforce the immigrants' need to exercise extreme caution in their interactions with U.S. institutions and individuals of authority. The sheer numbers of Mexican immigrants in the United States and their great diversity assure that they will, with increasing frequency, come into contact with the U.S. courts, as plaintiffs, defendants, witnesses, or subjects of actions. It is incumbent upon personnel in the courts—law officers, clerks, attorneys, mediators, arbitrators, and judges—to assure that all have equal access to justice. In the case of Mexican immigrants—especially those from rural Mexico—additional effort probably will be required to assure access and equal protection.

Juan-Vicente Palerm et al., *Mexican Immigrants in Courts, Immigrants in Courts* 96, (Joanne I. Moore, ed., 1999).

Judge Hammermaster's treatment of Hispanic defendants described above falls far below the levels of dignity and respect litigants have a right to expect from judges. We find this conduct constitutes a pattern and practice that violates Canon 3(A)(3).

Sanctions

A majority of the Commission ordered censure of Judge Hammermaster, and ordered that he take a corrective course of action by completing judicial education courses in ethics, criminal procedure, and diversity, in addition to meeting with a judicial mentor, paid for at his own expense and approved in advance by the Commission. CD at 8. The Commission also ordered that Judge Hammermaster's conduct be monitored by the Commission, in a manner prescribed by the Commission, for a period of two years. *Id.* Additionally, the Commission recommended that this Court impose a sanction of suspension for 30 days without pay. *Id.* Judge Hammermaster urges that a sanction is not appropriate in his case.

This Court must consider 10 factors when imposing sanctions for judicial misconduct:

> (a) whether the misconduct is an isolated instance or evidenced a pattern of conduct; (b) the nature, extent and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or in his private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his conduct; (g) the length of service on the bench; (h) whether there have been
>
> [985 P.2d 942]
>
> prior complaints about this judge; (i) the effect the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited his position to satisfy his personal desires.

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In re Matter of Deming, 108 Wash.2d at 119-20, 736 P.2d 639. As outlined above, Judge Hammermaster is guilty of a pattern or practice of misconduct, committed in the courtroom, in his official capacity. Although he admits the actions, he does not acknowledge their impropriety or the adverse effect they have on the integrity of and respect for the judiciary. Nor, therefore, has he made any effort to change his behavior (though he may be willing to do so in the future).

In considering the level of discipline, the Commission considered some of these factors but also found several mitigating circumstances: Judge Hammermaster did not exploit his judicial position to satisfy personal desires, he is willing to change his behavior, no prior disciplinary action has been taken against him during his 30 years of service, and he fully cooperated with the Commission's investigation.

We do not agree that these factors are so mitigating as to justify only a 30-day suspension. The Code of Judicial Conduct, particularly Canons 2(A), 3(A)(1) and 3(A)(3), requires judges to be faithful to the law, to maintain professional competence, and to act in a manner that is patient, dignified, and courteous toward defendants. Judge Hammermaster violated all of these obligations by demonstrating a pattern of intimidating and offensive behavior, ignorance or disregard of basic legal principles, particularly in regard to sentencing and an ambivalence toward maintaining professional competence in his courtroom.

As we observed earlier, courts of limited jurisdiction perform an important function and their impact on Washington citizens is great. In days gone by, these courts were frequently termed police courts or justice courts, often presided over by justices of the peace or non-lawyer judges. *See* Laws of 1961, ch. 299, § 15. Now these courts are on the record and presided over by professional judges and have achieved important strides in gaining the confidence of the community. To maintain and enhance that confidence the judges of these courts must meet the high standards expected of all members of the judiciary. Judge Hammermaster's conduct fails to meet those standards. We find that the Commission's recommended 30 day suspension is insufficient to restore public confidence. Judge Hammermaster's conduct has significantly damaged the credibility of the courts of justice.

There are few cases in Washington with which to compare the judge's conduct. *In Warren,* No. 95-2015-F-55, the judge made several inappropriate comments to defendants. Most occurred at arraignment to persons who were unrepresented. The Commission reprimanded the judge and required completion of a cultural diversity program. As distinguished from this case there was no allegation that the judge threatened unlawful sentences or attempted to deprive defendants of basic constitutional rights. Similarly, in *In re Thronson,* No. 93-1548-F-45, the Commission admonished a pro-tem judge for inappropriate remarks in a single case.

Although prior cases decided by the Commission and this Court offer little for comparison, there are a few cases from other states involving conduct similar to Judge Hammermaster's. In a majority of these cases the judge was removed from office. For example, *Sardino v. Commission on Judicial Conduct,* 58 N.Y.2d 286, 448 N.E.2d 83, 461 N.Y.S.2d 229 (1983) involved the removal of a judge who routinely denied criminal defendants their rights, ignored the mandates of law, disregarded the jurisdiction of other courts, disparaged attorneys, demeaned defendants and generally acted in a manner which discredited the court. In another case the Oregon Supreme Court ordered the removal of a judge for general incompetent performance of judicial duties and disregard for the statutory and constitutional rights of defendants. *In re Field,* 281 Or. 623, 576 P.2d 348 (1978). Removal was also ordered in *In re Inquiry Concerning a Judge,* 265 Ga. 843, 462 S.E.2d 728 (1995) where the judge refused to issue mandatory appeal bonds, issued warrants unsupported by probable cause, and forced a defendant to enter a plea without his attorney. The case

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[985 P.2d 943]

for removal in the cases above was more compelling than in this one. In *Sardino,* for example, in addition to his consistent failure to inform accuseds of their right to counsel or to inform them of their rights at arraignment, the judge refused to set bail, even where required by law, and ordered defendants held for mental examinations without cause. In *In re Field,* the court found the judge's conduct stemmed from mental health problems, which could not be brought under control, even with professional help. And the conduct of the judge in *In re Inquiry Concerning a Judge* included issuance of warrants without probable cause in addition to his disregard for basic constitutional rights.

Judge Hammermaster's conduct involved more than the rude and inappropriate remarks in *Warren* and *Thronson,* but was not as egregious as the conduct in the cases outlined above. Nevertheless, we are persuaded that his actions demand a very serious sanction. Therefore, we order Judge Hammermaster suspended for six months without pay.

We uphold the Commission's order of a corrective course of action with the exception of the Commission's order that Judge Hammermaster pay for the judicial education courses. The purpose of completing the recommended courses is to educate Judge Hammermaster and modify his behavior. In view of Judge Hammermaster's part-time status as a municipal court judge and his willingness to change his behavior, he is free to request assistance in paying for the required education from his employers, Sumner, Orting, and South Prairie.

GUY, C.J., SMITH, JOHNSON, ALEXANDER, TALMADGE, IRELAND, JJ., and AGID, J.P.T., concur.

TALMADGE, J. (concurring).

I agree with the majority's disposition of this case, both as to Judge Hammermaster's culpability under the Code of Judicial Conduct and the sanction for his violations of the Code. I write separately to emphasize my views on the operation of some courts of limited jurisdiction in the state of Washington.

Justice Madsen appropriately notes in the majority opinion that concerns have arisen regarding the independence of courts of limited jurisdiction, particularly municipal courts, in our state. Indeed, in this case, involvement of the City executive authorities in the development of Judge Hammermaster's "rules" creates separation of powers and judicial independence concerns.

Our opinion today conveys a very strong message to the judiciary and local governments in Washington that the Supreme Court will not tolerate short cuts in due process. While many municipalities have established municipal courts because they want to administer justice locally, it is also true many jurisdictions establish municipal courts for purely avaricious reasons—as revenue agencies to be operated if they "make money" and be dispensed with if they become inconvenient to administer or generate insufficient revenues. *See, e.g., Whatcom County v. City of Bellingham,* 128 Wash.2d 537, 909 P.2d 1303 (1996) (upholding statutory limitation on ability of city to repeal municipal criminal code). Some local jurisdictions have even attempted to control performance of duties by municipal court judges through devices such as performance audits, the provision of substandard court facilities, or nonjudicial control of court personnel. Occasionally, in some jurisdictions, when the judge has been too independent and has refused to generate sufficient revenue for the municipality, the city's legislative or executive authorities have forced the ouster of the judge.

The Washington Supreme Court has inherent authority to supervise the administration of justice in the lower courts. We should strictly enforce the Code of Judicial Conduct in the operation of courts of limited jurisdiction. Moreover, we must not condone any derogation of the independence of the judicial branch of government by officials intent on revenue

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collection; we should not permit our courts to degenerate into collection agencies for local government at the expense of due process of law.

Notes:

1. The Statement of Charges against Judge Hammermaster indicated that prior to initiating formal proceedings, the Commission had twice amended the Statement of Allegations. The first statement was served on Respondent Judge May 14, 1997. The Commission amended it on August 1, 1997, and again for the second time on April 22, 1998.

2. Finding of Fact 3(a) relates to *City of Sumner v. Amburgy,* No. C00010460 discussed infra.

3. For the offense of driving with a suspended or revoked driver's license, for example, which make up many of the cases referred to by the Commission, RCW 46.20.342(1)(a) provides that the sentencing range for persons convicted under the statute ranges from 10 days to 180 days.

4. Judge Hammermaster testified that he has used this form in hundreds of cases.

5. The judge testified that this colloquy is illustrative of the typical colloquy between him and a defendant on a plea of guilty in hundreds of cases.

6. Comm'n Ex. at 3.

7. Comm'n Ex. at 2.

8. *See, e.g.,* RCW 10.01.180 allowing for the commitment of defaulting defendant on grounds of contempt of court; RCW 10.82.030 allowing imprisonment until amount of fine and costs paid; RCW 10.01.160 allowing costs of incarceration to be imposed against defendant.

9. CrRLJ 3.4 and CrR 3.4 are the same.

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EXHIBIT 3

STEVEN VASCONCELLOS

EMPLOYMENT

07/2019 – 08/2019
Interim State Court Administrator, Colorado State Court Administrator's Office, Denver, CO

Close collaboration with the Chief Justice and other executives in the Colorado Judicial Department to help set the strategic administrative direction for the Department. Currently, I lead the State Court Administrator's Office (SCAO), which provides central administrative support and services for Colorado's state trial courts, appellate courts, and probation departments. Oversight of SCAO includes organizational leadership, budget and personnel oversight, team building, and strategic planning for the organization. Part of a team that advises the Chief Justice on critical organizational issues.

05/2019 – 07/2019
Chief Operations Officer, Colorado State Court Administrator's Office, Denver, CO

Responsible for oversight, leadership, and strategic guidance for the two program divisions at SCAO—the Court Services Division and the Probation Services Division.

04/2018 – 05/2019
Court Services Division Director, Colorado State Court Administrator's Office, Denver, CO

Collaborate with Chief Judges, Court Executives, and division management team on assessing and implementing program support for Colorado's state trial courts. Responsible for division leadership, budget and personnel oversight, division team building, and strategic planning for the division.

08/2011 – 04/2018
Senior Court Programs Manager, Court Services Division, Colorado State Court Administrator's Office, Denver, CO

Deputy Director in the Court Services Division of SCAO. Responsible for day-to-day oversight of division operations. Close collaboration with the Court Services management team to meet the needs of Colorado's courts. Duties include: strategic planning for the division, establishing unit-level goals and objectives, project trouble shooting, recruiting new employees, budget management, completion of annual performance evaluations for employees, addressing disciplinary issues, and providing coaching and mentoring.

Member of the cross-divisional team at SCAO collaborating on the annual Judicial Department budget request to the General Assembly and general legislative issues. Staff for the Colorado Chief Judge Council.

12/2004 – 08/2011
Manager, Planning & Analysis Division, Colorado State Court Administrator's Office, Denver, CO
(Management Analyst III: 12/2004 – 05/2007; Court Programs Analyst IV: 05/2007 – 08/2011)

Supervised a unit of six employees providing information to aid court managers with resource planning, allocation, and management. Supervisory duties for the unit including: recruiting new employees, budget management, establishing unit goals and objectives, completion of annual performance evaluations for employees, addressing disciplinary issues, and providing coaching and mentoring. The unit's core functions included: forecasting caseloads and FTE needs, preparing budget requests for legislative approval, legislative analysis, and responding to ad hoc requests for management data and statistics, establishing and maintaining workload models, and statewide policy development and technical assistance for problem solving courts.

04/2001 - 12/2004
Management Analyst II, Planning & Analysis Division, Colorado State Court Administrator's Office, Denver, CO

Provided management data and statistics based on requests from court managers, other state agencies, the media, and private citizens. Performed legislative analysis and prepared legislative fact sheets. Maintained weighted caseload models for Colorado's state trial courts. Forecasted trial court personnel needs for the annual budget request. Prepared decision items for annual Judicial Department budget request to the General Assembly. Recommended resource allocation levels for personnel obtained through budget requests. Recommended workload and salary levels for part-time county judges to the Chief Justice annually.

07/1999 – 04/2001
Information Systems Specialist, Colorado State Court Administrator's Office, Denver, CO

Provided training to court staff statewide on the Judicial Department's electronic case management system. Provided business analysis to aid with the development of new modules and troubleshoot errors in existing modules. Worked as primary business analyst for Electronic Filing project--acted as liaison between SCAO and e-filing project vendor to gather and validate information necessary for system requirements.

12/1995 – 07/1999
Various Court Clerk positions in the Fourth Judicial District, Colorado Springs, CO
(Hired as Court Clerk I; Finished as Court Clerk III)

Performed a range of duties including—data entry for all case types except juvenile; direct staff support for a county court judge; customer service at the public counter; and primary staff for the Pro Se Center.

EDUCATION

University of Montana, Missoula, MT
Bachelor of Arts in History, 12/1994

Denver Paralegal Institute, Colorado Springs, CO
Certificate of Completion with honors, 11/1995

Colorado Judicial Executive Leadership Development Program, Denver, CO
Graduate, 11/2014

REFERENCES

Hon. Michael O'Hara III, Chief Judge, Fourteenth Judicial District
(970) 879-5020; michael.ohara@judicial.state.co.us

Hon. J. Steven Patrick, Chief Judge, Seventh Judicial District
(970) 642-8320; steven.patrick@judicial.state.co.us

Hon. Michael Martinez, Chief Judge, Second Judicial District
(720) 865-8302; michael.martinez@judicial.state.co.us

Laura Snyder, Court Executive, Tenth Judicial District
(719) 404-8700, laura.snyder@judicial.state.co.us

Marci Hoffman, Court Executive, Nineteenth Judicial District
(970) 475-2500; marci.hoffman@judicial.state.co.us

Amber Roth, Court Executive, Denver Probate Court
(720) 865-8389; amber.roth@judicial.state.co.us

Jerry Green, Chief Probation Officer, Nineteenth Judicial District
(970) 475-2800; jerry.green@judicial.state.co.us

EXHIBIT 4

PROPOSED CONSTITUTIONAL AMENDMENT AND STATUTORY REPEALS
REGARDING THE JUDICIAL DISCIPLINE COMMISSION

DRAFT 8-1-22 by The Judicial Integrity Project

In the constitution of the state of Colorado, section 23 of article VI, AMEND paragraph (3) as follows:

(a) There shall be a commission on judicial discipline. It shall consist of: ~~Two judges of district courts and two judges of county courts, each selected by the supreme court; two citizens admitted to practice law in the courts of this state, neither of whom shall be a justice or judge, who shall have practiced in this state for at least ten years and who shall be appointed by the governor, with the consent of the senate; and four citizens, none of whom shall be a justice or judge, active or retired, nor admitted to practice law in the courts of this state, who shall be appointed by the governor, with the consent of the senate.~~ EIGHT CITIZENS NONE OF WHOM SHALL BE A JUSTICE OR JUDGE, ACTIVE OR RETIRED, NOR ADMITTED TO PRACTICE LAW IN THE COURTS OF THIS STATE, TWO OF WHOM ARE APPOINTED BY THE MAJORITY LEADER OF THE SENATE, TWO OF WHOM ARE APPOINTED BY THE MINORITY LEADER OF THE SENATE, TWO OF WHOM ARE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND TWO OF WHOM ARE APPOINTED BY THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES; THREE CITIZENS ADMITTED TO PRACTICE LAW IN THE COURTS OF THIS STATE, NONE OF WHOM SHALL BE A JUSTICE OR JUDGE, WHO SHALL HAVE PRACTICED IN THIS STATE FOR AT LEAST TEN YEARS, WHO HAVE BEEN REGISTERED AS UNAFFILIATED VOTERS FOR AT LEAST THE LAST FIVE YEARS WHO SHALL BE APPOINTED BY THE GOVERNOR; AND ONE CHIEF JUDGE OF A DISTRICT COURT WHO SERVES ON A ROTATING BASIS IN SEQUENTIAL NUMERICAL ORDER OF THE JUDICIAL DISTRICTS, BEGINNING WITH THE FIRST JUDICIAL DISTRICT, WHO SHALL SERVE IN A NON-VOTING, CONSULTING CAPACITY. IF SUCH CHIEF JUDGE IS THE SUBJECT OF A COMPLAINT FILED WITH THE COMMISSION, OR BELIEVES HE OR SHE MUST RECUSE FROM THE CASE, THEN THE CHIEF JUDGE OF THE NEXT JUDICIAL DISTRICT IN THE NUMERICAL SEQUENCE SHALL SERVE AS THE CONSULTANT ON SUCH COMPLAINT.

(b) Each VOTING member shall be appointed to a four-year term; except that one-half of the initial membership in each category shall be appointed to two-year terms, for the purpose of staggering terms. Whenever a commission membership prematurely terminates or a member no longer possesses the specific qualifications for the category from which he was selected, his position shall be deemed vacant, and his successor shall be appointed in the same manner as the original appointment for the remainder of his term. A member shall be deemed to have resigned if that member is absent from three consecutive commission meetings without the commission having entered an approval for additional absences upon its minutes. If any member of the commission is disqualified to act in any matter pending before the commission, the commission may appoint a special member to sit on the commission solely for the purpose of deciding that matter. THE NON-VOTING, CONSULTING CHIEF JUDGE OF A DISTRICT COURT SHALL SERVE A ONE-YEAR TERM.

(c) No member of the commission shall receive any compensation for his services but shall be allowed his necessary expenses for travel, board, and lodging and any other expenses incurred in the performance of his duties, to be paid by the supreme court from its budget to be appropriated by the general assembly.

(d) A justice or judge of any court of record of this state, in accordance with the procedure set forth in this subsection (3), may be removed or disciplined for ~~willful~~ misconduct in office, ~~willful or persistent~~ failure to perform his duties, intemperance, or ANY violation of ~~any canon of~~ the Colorado code of judicial conduct, or he OR SHE may be retired for disability interfering with the performance of his OR HER duties which is, or is likely to become, of a permanent character.

(e) The commission may, after such investigation as it deems necessary: ~~, order informal remedial action;~~ DISMISS ANY MATTER; REACH A SETTLEMENT AGREEMENT WITH THE JUSTICE OR JUDGE FOR REMOVAL, RETIREMENT, SUSPENSION, CENSURE, REPRIMAND, OR DISCIPLINE; OR order a formal hearing to be held before it concerning the removal, retirement, suspension, censure, reprimand, or other discipline of a justice or a judge~~; or request the supreme court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter and to report thereon to the commission~~. After a formal hearing ~~or after considering the record and report of the masters~~, if the commission finds good cause therefor, it may ~~take informal remedial action, or it may recommend to the supreme court the removal, retirement, suspension,~~ remove, retire, suspend, censure, reprimand, or discipline, as the case may be, ~~of~~ the justice or judge. The commission may also recommend that the costs of its investigation and hearing be assessed against such justice or judge.

(f) ~~Following receipt of a recommendation from the commission,~~ ANY JUDGE WHO HAS RECEIVED AN ORDER OF REMOVAL, RETIREMENT, SUSPENSION, CENSURE, REPRIMAND, OR DISCIPLINE FROM THE COMMISSION MAY APPEAL THE ORDER TO THE SUPREME COURT. THE ~~the~~ supreme court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal, retirement, suspension, censure, reprimand, or discipline, as it finds just and proper, or IF THE ORDER OF THE COMMISSION IS NOT SUPPORTED BY THE LAW OR BY SUBSTANTIAL EVIDENCE, ~~wholly reject~~ REVERSE the recommendation AND DISMISS THE MATTER OR IMPOSE DISCIPLINE IT DEEMS MORE APPROPRIATE. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order. On the entry of an order for retirement or for removal of a judge, his office shall be deemed vacant.

(g) ~~Prior to the filing of a recommendation to the supreme court by the commission against any justice or judge, all~~ ALL papers filed with and proceedings before the commission on judicial discipline ~~or masters appointed by the supreme court,~~ pursuant to this subsection (3), shall be ~~confidential~~ PUBLIC UNLESS, AT THE REQUEST OF THE COMPLAINANT, THE COMPLAINANT WANTS HIS OR HER NAME TO NOT BE DISCLOSED. IF THE

COMPLAINANT REQUESTS CONFIDENTIALITY OF HIS OR HER NAME OR OTHERS WHO ARE WITNESSES OR VICTIMS THEN SUCH NAME OR NAMES SHALL NOT BECOME PUBLIC UNLESS AND UNTIL THE COMMISSION INITIATES THE PROCESS FOR A FORMAL HEARING REGARDING THE JUDGE. ~~and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation; except that the record filed by the commission in the supreme court continues privileged and a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing.~~ THE COMMISSION SHALL MAINTAIN AN ELECTRONIC COPY OF ALL PAPERS OR DOCUMENTS FILED WITH THE COMMISSION AND ANY ORDERS OR DOCUMENTS ISSUED BY THE COMMISSION IN AN ELECTRONIC DATABASE THAT IS SEARCHABLE UNDER THE JUDGE'S OR JUSTICE'S NAME. THE SEARCHABLE ELECTRONIC DATABASE MUST BE ACCESSIBLE BY THE PUBLIC. THE WORK PRODUCT OF THE COMMISSION SHALL BE PRIVILEGED.

(h) ~~The supreme court shall by rule provide for procedures before the commission on judicial discipline, the masters, and the supreme court. The rules shall also provide the standards and degree of proof to be applied by the commission in its proceedings. A justice or judge who is a member of the commission or supreme court shall not participate in any proceedings involving his own removal or retirement.~~ THE COMMISSION IS INDEPENDENT OF THE SUPREME COURT. THE COMMISSION SHALL ADOPT PROCEDURAL RULES FOR JUDICIAL DISCIPLINE PROCEEDINGS. THE BURDEN OF PROOF IN SUCH PROCEEDINGS SHALL BE A PREPONDERANCE OF THE EVIDENCE AND THE COLORADO RULES OF EVIDENCE APPLY IN SUCH PROCEEDINGS.

(i) Nothing contained in this subsection (3) shall be construed to have any effect on article XIII of this constitution.

(j) Repealed.

(K) WITH THE EXCEPTION OF REQUESTS FOR JUDICIAL BRANCH FUNDING, NO MEMBER OF THE JUDICIAL BRANCH, OR ANY AGENT THEREOF, MAY LOBBY OR ATTEMPT TO INFLUENCE ANY MEMBER OF THE GENERAL ASSEMBLY, OR ANY AGENT THEREOF, OR APPEAR IN THE CAPITOL DURING A LEGISLATIVE SESSION, UNLESS SUBPOENAED BY THE GENERAL ASSEMBLY OR ANY MEMBER THEREOF. IF ANY MEMBER OF THE JUDICIAL BRANCH, OR ANY AGENT THEREOF, VIOLATES THIS SECTION, IT SHALL BE DEEMED A VIOLATION OF THE CODE OF JUDICIAL CONDUCT THAT IS PUNISHABLE UNDER THIS SECTION.

(L) THE BUDGET OF THE COMMISSION SHALL BE PUBLIC AND SHALL BE SEPARATE FROM THE BUDGET OF ANY OTHER STATE AGENCY OR COURT.

(M) THE COMMISSION SHALL MAINTAIN AN OFFICE TO SUPPORT THE EXERCISE OF ITS DUTIES. THE OFFICE MAY INCLUDE INVESTIGATORS, ATTORNEYS, AND OTHER SUPPORT STAFF NECESSARY TO RECEIVE AND INVESTIGATE COMPLAINTS FILED AGAINST JUDGES.

(N) THE COMMISSION MUST REVIEW ALL COMPLAINTS FILED AND VOTE ON WHETHER TO PROCEED ON ANY COMPLAINT. THE COMMISSION MAY NOT DELEGATE ITS DECISION MAKING ON ANY COMPLAINT TO A STAFF MEMBER.

(O) THE CODE OF JUDICIAL CONDUCT MAY NOT BE AMENDED BY THE SUPREME COURT WITHOUT THE CONSENT OF THE SENATE.

In the Colorado Revised Statutes, REPEAL section 24-72-401 as follows:

~~§ 24-72-401. Commission on judicial discipline - confidentiality of records and procedures~~

~~The record of an investigation conducted by the commission on judicial discipline or by masters appointed by the supreme court at the request of the commission shall contain all papers filed with and all proceedings before the commission or the masters. The record shall be confidential and shall remain confidential after filing with the supreme court. A recommendation of the commission for the removal or retirement of a justice or judge shall not be confidential after it is filed with the supreme court.~~

In the Colorado Revised Statutes, REPEAL section 24-72-402 as follows:

~~§ 24-72-402. Violation - penalty~~

~~Any member of the commission, any master appointed by the supreme court, or anyone providing assistance to such commission or such masters who willfully and knowingly discloses the contents of any paper filed with, or any proceeding before, such commission or such masters, or willfully and knowingly discloses the contents of any recommendation of the commission before such recommendation is filed with the supreme court is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars. This section shall not apply to any necessary communication between the members of the commission or the masters appointed by the supreme court or anyone employed to aid such commission or such masters in the filing or documentation of any paper filed with, or any proceedings before, such commission or such masters or the preparation of the recommendation of such commission.~~