



EL PASO COUNTY  
BAR ASSOCIATION

P.O. Box 0429  
Colorado Springs, CO 80903

The Honorable Terri Carver  
200 E. Colfax Rm 307  
Denver, CO 80203  
VIA E-mail [terri@terricarver.org](mailto:terri@terricarver.org)

**RE: Judicial Discipline Committee**

Dear Representative Carver:

I am writing on behalf of the El Paso County Bar Association (“EPCBA”). The lawyers of the EPCBA work daily in the 4<sup>th</sup> Judicial District, the largest and busiest judicial district in Colorado. Because of our daily work in the courts, we understand and value the importance of maintaining an independent and exemplary judiciary. An essential component of both those values is an effective and credible system for examining and resolving allegations of ethical misconduct by judges.

We at the EPCBA have been following the work of your bipartisan committee on Judicial Discipline closely. We have met and discussed the issues revealed through your committee’s work and the various recommendations available to us. We focused on the report of the CWBA and the joint statement of positions from the Judicial Department and the Judicial Discipline Commission. We appreciate your comments and request that the committee also consider opinions of local bar associations like the EPCBA on the changes to Colorado’s system of judicial discipline.

First and foremost, we have concluded that **the status quo is no longer acceptable**. The testimony before your committee reveals that the system is not working and is not credible with the public or the legal community. We believe the primary goals for reform to the system are ensuring genuinely independent review of judicial misconduct allegations and transparency for the public to have confidence in our judiciary.

To these ends we support the recommendations set forth by the CWBA and the Judicial Discipline Commission that are before you.

- For the final decision-making body, we support the establishment of a citizen-involved body that has representatives of the bench, the bar, and citizenry to provide genuine independence and public accountability for resolving allegations of judicial misconduct. There should be meaningful diversity on the body, including gender, age, racial, cultural, disability and geographic diversity to ensure that the body is not Denver-centric. The judges on the body should not hold leadership positions in the judiciary to avoid conflict situations. We also believe that the majority of the

decision-making body should be judges to address separation of powers concerns and honor their unique insights on the role of the judge.

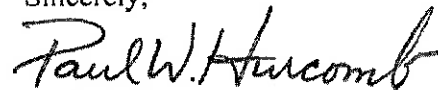
- In support of independence, the Colorado Supreme Court should no longer hold rulemaking authority over judicial discipline. If a new final decision-making body is created, it should hold rulemaking authority. If not, the Discipline Commission should hold rulemaking authority.
- On the issue of transparency, we need to protect the judiciary from being damaged by publicizing meritless claims of misconduct. We understand these are the large majority of complaints made. We also must end the secrecy that deprives the current system of investigating misconduct complaints of credibility with the public. In Colorado, formal proceedings cannot be filed until a claim is found to be supported by a preponderance of the evidence. Therefore, the interests of confidentiality and transparency are best balanced by ending confidentiality at the time formal proceedings are filed, when the allegation has been found to be supported by a preponderance of evidence. Formal proceedings should be as transparent as any other litigation such as a criminal, civil, or domestic relations case.

In addition, the EPCBA recommends the Judicial Disciplinary Commission be permitted and encouraged to communicate with the local Judicial Nominating Committees and Judicial Performance Committees.

We believe these are the most important reforms. While we believe the final decision-making body should be reformed, until that constitutional amendment can take effect, we agree with the CWBA's critical point that when a current or former member of the Colorado Supreme Court is the subject the misconduct allegation, the full Court should be disqualified and replaced by a random selection of conflict-free judges. This can be enacted by statute as an interim measure on disqualification.

We appreciate your committee's work. One of our board members, Dan Kay, will be available for any questions at the committee hearing on August 10<sup>th</sup>, 2022 at 1:50 p.m. We encourage you to seek his input.

Sincerely,



Paul W. Hurcomb  
EPCBA President-Elect

cc: Board of Trustees, EPCBA