

Amendment H: Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature • Passes with 55 percent of the vote

1 **Amendment H proposes amending the Colorado Constitution to:**

- 2 • create an independent adjudicative board to preside over ethical misconduct
- 3 hearings involving judges; and
- 4 • allow for increased public access to judicial discipline proceedings and records.

5 **What Your Vote Means**

6 **YES**

7 A “yes” vote on Amendment H creates an
8 independent adjudicative board made up
9 of citizens, lawyers, and judges to conduct
10 judicial misconduct hearings and impose
11 disciplinary actions, and allows more
12 information to be shared earlier with the
13 public.

14 **NO**

15 A “no” vote on Amendment H means that
16 a select panel of judges will continue to
17 conduct judicial misconduct hearings and
18 recommend disciplinary actions, and cases
19 remain confidential unless public
20 sanctions are recommended at the end of
21 the process.

22 **Summary and Analysis of Amendment H**

23 **What is judicial misconduct and discipline?**

24 Colorado judges must follow a code of conduct. Judicial misconduct occurs when a judge
25 acts unethically or in ways that diminish public confidence in the integrity of the courts.
26 Misconduct complaints may include improper demeanor, alcohol and drug use, dishonesty,
27 retaliation, conflicts of interest, inappropriate communication, and mistreatment or
28 harassment of staff. Any person may file a complaint, and judges found to have violated
29 their ethical duties may be disciplined publicly or privately, depending upon the nature of
30 the misconduct.

31 **How are judicial discipline cases currently handled?**

32 Pursuant to the Colorado Constitution, the Commission on Judicial Discipline (commission),
33 an independent judicial agency charged with investigating allegations of misconduct against
34 judges, screens and investigates complaints. Members of the commission are appointed by
35 the Colorado Supreme Court and the Governor. The screening process eliminates complaints
36 that are outside the commission’s jurisdiction, such as those that ask to review a judge’s
37 rulings or order new trials. The commission further investigates complaints when there is
38 sufficient evidence of misconduct.

1 Thereafter, the commission can do one of the following: 1) dismiss the complaint; 2) impose
2 private discipline; 3) hold an informal hearing; or 4) initiate formal hearings. Formal hearings
3 are conducted by a panel of judges selected by the Colorado Supreme Court. When the
4 hearing is over, the commission reviews the panel's findings and forwards disciplinary
5 recommendations to the Colorado Supreme Court for a final determination. Misconduct
6 cases are made public upon the commission filing its recommendations for public discipline.
7 Complaints that result in informal punishments are not disclosed to the general public.

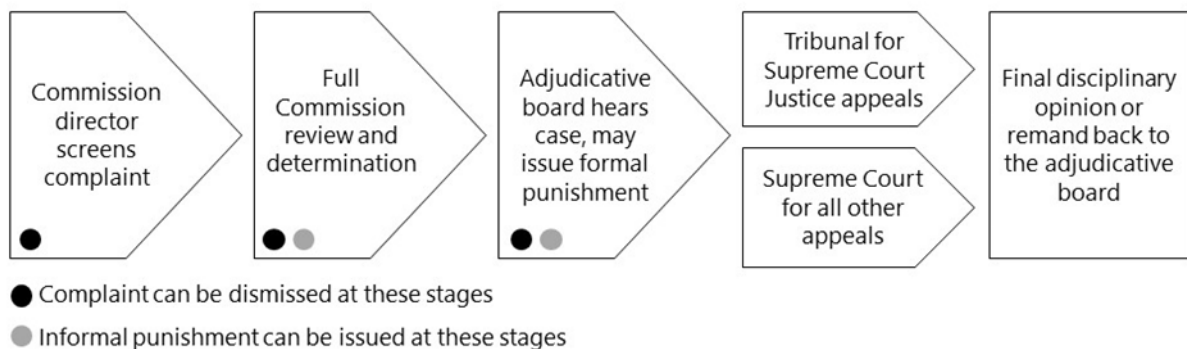
8 **What changes does Amendment H make to the judicial discipline process?**

9 Amendment H creates the Independent Judicial Discipline Adjudicative Board (adjudicative
10 board), separate from the Colorado Supreme Court and commission, to preside over judicial
11 discipline hearings and impose sanctions. The adjudicative board consists of four district
12 court judges, four attorneys, and four citizens appointed by the Colorado Supreme Court
13 and the Governor. The new board's decisions are considered final unless there is proof of a
14 legal or factual error upon appeal to the Colorado Supreme Court. If an appeal involves a
15 Colorado Supreme Court justice, it is heard by a tribunal made up of randomly selected
16 appellate and district court judges. Formal disciplinary charges against judges are also made
17 public at the beginning of the hearing.

18 Figure 1 below summarizes the new discipline process.

19
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Figure 1
Judicial Discipline Flow Chart



21 Table 1 compares current practices with those proposed in Amendment H.

1
2

Table 1
Current Judicial Discipline Proceedings Compared to Amendment H

Current Judicial Discipline	Judicial Discipline Under Amendment H
Formal Disciplinary Hearings	
Judges selected by the Colorado Supreme Court hear cases and make disciplinary recommendations to the commission, who in turn makes recommendations to the Colorado Supreme Court for a final discipline ruling.	The independent adjudicative board, made up of an equal number of attorneys, judges, and citizens, conducts judicial discipline hearings and makes the final discipline ruling.
Independent Tribunals	
In cases involving a Colorado Supreme Court justice, their family members, or staff, the entire Colorado Supreme Court must disqualify themselves and be replaced with a tribunal composed of seven randomly selected Colorado Court of Appeals judges. The tribunal hears the case and is the final decision-maker on sanctions.	The tribunal is composed of randomly selected District and Appeal Court judges representing different districts and only hears cases that involve Colorado Supreme Court justices, their staff or family members, or any other case where two justices have recused themselves. A tribunal will also hear appeals from the independent adjudicative board.
Colorado Supreme Court Role	
The Colorado Supreme Court is the final arbiter of cases after receiving disciplinary recommendations and makes rules about the process.	Colorado Supreme Court role is limited to appointments and appeals. Rules for the process are established by an independent committee.
Public Access to Information	
Formal judicial disciplinary hearings are held privately until the commission files a formal recommendation for public sanctions with the Colorado Supreme Court.	The proceedings against a judge and the related record become public when formal charges are filed.
Appointments	
Commission members are appointed by the Colorado Supreme Court and the Governor with Senate confirmation. Colorado Supreme Court appoints special master judges to hear discipline cases. The State Court Administrator randomly selects judges for the tribunal in cases where the Colorado Supreme Court is disqualified.	Commission members and the new adjudicative board are appointed by the Colorado Supreme Court and the Governor with Senate confirmation. The State Court Administrator randomly selects Court of Appeals and District Court judges for the tribunal to hear Colorado Supreme Court related appeals.

1 **Why is Amendment H on the ballot?**

2 After extensive hearings involving experts, stakeholders, and the public, the Colorado
3 legislature passed three bipartisan bills in 2023 that change judicial discipline procedures
4 and workplace culture, including Amendment H. Because this amendment would change
5 Colorado's constitutional provisions on judicial discipline, it requires voter approval to
6 become law. The other two bills address confidentiality, complaint filing and reporting, and
7 data collection, as well as creating a new office to assist judicial employees with workplace
8 and other complaints.

For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2024, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/InitiativesHome.html>

9 **Argument For Amendment H**

10 1) Colorado judges should not have direct influence and oversight over the discipline of
11 their colleagues. Amendment H is an important change that aims to enhance the
12 transparency, integrity, and independence of the judicial discipline process. Historically,
13 judicial discipline has largely been self-regulated, facing challenges in oversight and
14 self-protection. This amendment serves to enhance public confidence and trust in the
15 courts. Finally, this measure is a compromise recommended by nearly all members of the
16 General Assembly and formally by the Judicial Branch.

17 **Argument Against Amendment H**

18 1) The current system works. Judges understand how to review cases, hold hearings, and
19 make impartial and hard decisions. As a result, they have the experience to hear judicial
20 discipline cases. The amendment transfers this authority to attorneys and citizens, who
21 cannot fully understand judicial ethics and the unique challenges of being a judge. The
22 judiciary's existing system of checks and balances, such as nomination and retention
23 elections, ensures only the best become and remain judges.

24 **Fiscal Impact of Amendment H**

25 **State spending.** The measure will increase state costs by about \$50,000 per year. This
26 funding provides compensation and training to members of the newly created judicial
27 discipline board and rulemaking committee.

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36 rulings or order new trials. The commission further investigates complaints when there is
37 sufficient evidence of misconduct.

1 Thereafter, the commission can: dismiss the complaint, impose private discipline, hold an
 2 informal hearing, or recommend formal hearings. The formal hearings are conducted by a
 3 panel of judges selected by the Colorado Supreme Court. When the hearing is over, the
 4 commission reviews the panel’s findings and forwards disciplinary recommendations to the
 5 Colorado Supreme Court for a final determination. Misconduct cases are made public only if
 6 a judge receives a public punishment order at the end of the process. Complaints and
 7 informal punishments may not be shared with the persons who filed the complaints or the
 8 general public.

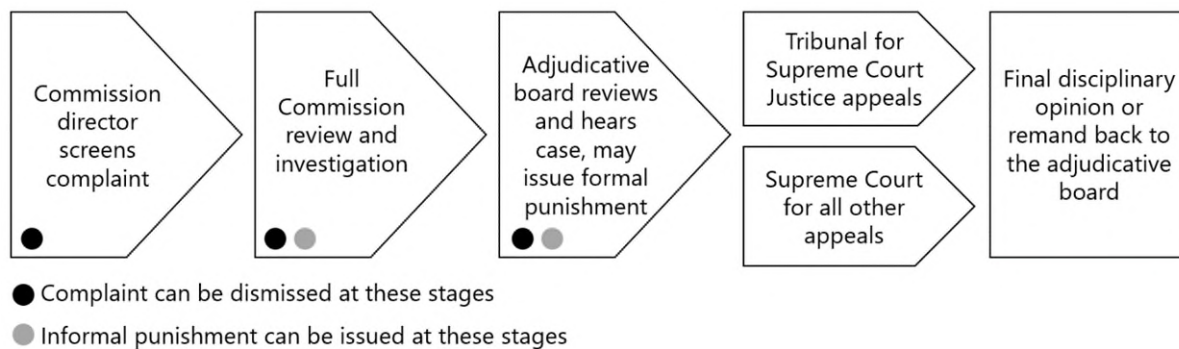
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24 discipline board and rulemaking committee.

Last Draft Comments from Interested Parties

Amendment H Judicial Discipline Procedures and Confidentiality

Christopher Forsyth, representing The Judicial Integrity Project:

I am in receipt of the third draft analysis. There is little changed from the previous analysis which was alarmingly insufficient. Therefore, my comments regarding the previous draft are being provided again because they are also pertinent to this draft. I also drafted a better ballot analysis and encourage you to adopt that analysis for the Blue Book. It is attached.

The judicial scandal involved the state court administrator behaving improperly. What does Amendment H do? It increases the state court administrator's power and gives him or her direct power in judicial discipline proceedings. Voters need to know that.

The draft analysis provided by your office fails to provide sincere arguments against Amendment H. It fails to accurately describe the current process or Amendment H. It is confusing and misleading.

It is troubling enough that the judicial branch hoodwinked the legislature into proposing Amendment H. The amendment contains a lot of words but changes very little in the process. It affects less than one percent of complaints filed against judges. Why would you add to that conundrum by putting forth this inaccurate and lazy misleading ballot analysis? I implore you to accurately state the current system and what Amendment H would do.

The attached proposed draft is more accurate and does not mislead the public regarding the current system or what Amendment H would do. I encourage you to adopt it.

Thank you for your time and attention to this matter. The analysis in the Blue Book should be accurate. Voters have the right to expect it to be accurate. The current draft analysis is not accurate. It is not helpful to voters.

Mr. Forsyth also submitted marked-up copy of the analysis with recommended language (Attachment A).

Christopher Gregory, representing himself:

I appreciate legislative staff's efforts to incorporate many of my previous editing suggestions for this ballot analysis. Consistent with the instructions provided in the

Last Draft Comments from Interested Parties

August 12, 2024 letter from Legislative Council, I have included some of my previous requests for edits in the attached document.

Overall, I believe that this draft language is fairly close to what it should be. Consequently, my comments focus on three primary points: 1) the ballot analysis should at least note that this amendment will limit the Colorado Supreme Court's control/influence over the judicial disciplinary process, 2) the description of what constitutes judicial misconduct should be more robust and acknowledge that judges are held to a higher standard (which includes avoiding even the appearance of impropriety), and 3) the explanation of Amendment H being on the ballot should emphasize the robustness of the Interim Committee on Judicial Discipline's process and how the final version of HCR 23-1001 passed unanimously through both houses on its third reading. As I note, I am unaware of other prior constitutional amendment referrals with such a level of universal support.

Although I do not know if it is helpful to the drafters, I was struck by how well Rep. Weissman summarized HCR 23-1001 when it was introduced in the House Judiciary Committee (3/15/23). Rep. Weissman stated:

All right, thank you, Madam Chair and committee. I should make this close enough. Thank you for hearing House Concurrent Resolution 1001 today. This is half of the work of last summer's Interim Committee on Judicial Discipline, of which Minority Leader Lynch and I were both members and, of course, colleagues. The Vice Chair was part of this journey as well with us. Just to provide a little bit of groundwork, and because not everybody was part of that, the prior phases of the journey that lead us to where we are today, I thought I'd say just a little bit about it, and then we'll make some comments that are more directly to the measure. Excuse me, really, I wanted to start briefly with a bill that the legislature passed last spring, House Bill, or rather, I'm sorry, Senate Bill 22-201. Among other things, that measure, for the first time, codified in statute the Commission on Judicial discipline and the Office of Judicial Discipline. Previously, those had existed in court rule. They specified information sharing responsibilities between what were in that Bill called judicial discipline agencies, so the Commission and things like Attorney Regulation Counsel and otherwise. Because we knew that there would be some even bigger changes to have to grapple with, including changes of the constitutional nature that we really couldn't deal with in the last weeks of session, part of that bill last year created the interim committee that begat the legislation that we're here to talk about today. I want to note that 201, was bipartisan and bicameral. I was one of the four sponsors of that and it passed. The final recorded votes in both chambers by a combined vote of 94 to 6. Moving then to the Interim Committee, I wanted to observe a little bit about how that was set up, and intentionally so. It could have been a majoritarian interim committee. Those happen sometimes. Senator Lee and I last year decided that this particular committee should not be majoritarian, because what we're talking about here

Last Draft Comments from Interested Parties

is even bigger than party identities. We drew inspiration from HB 21-1325 that set up an evenly 4-4, so 2 each House Dems, Senate Republicans interim committee to grapple with school finance, which is also a big question, that is something else that doesn't need to be purely party line. So Senator Lee began chairing. I then took over chairship midway. And Rep. Carver, who is not with us, because she was term limited, was Vice Chair. And she was a great partner to work with throughout the summer. I wanted to note that, because it's not every interim committee that is like that, and that was an integral part of all of our work, the legislation, and you can see the list if you'd like at 13-5.3-110(7), the legislation charged the interim committee to study 17 specific areas or aspects of judicial discipline. We took testimony over the course of multiple hearings from a variety of folks, bar associations, heavily the Colorado Bar Association and the Colorado Women's Bar Association, variety of outside organizations, and I want to specifically acknowledge the National Center for State Courts, which as an entity that kind of studies judicial branch operations across the 50 states, survivor advocacy organizations, and I want to specifically mention CCASA (the Colorado Coalition Against Sexual Assault) and various members of the public. Process wise, in talking with Rep. Carver near the end of our work, we decided to try to operate in a consensus way. Sometimes, what will happen in an interim committee is both sides might go to their respective corners. The blue team will draft over here, the red team will draft over here. You'll see what happens. What I proposed to Vice Chair Carver was that we not do that. Was that we bring forward one set of measures that we could agree to. And ultimately we did. Measure A, which was the parlance from the interim, is now this concurrent resolution. Measure B from the interim is the companion bill that we'll turn to next. And of course, Mr. Minority Leader and Madam Vice Chair will speak about the ombuds aspect, which is the third and last thing on our docket. With that setup, I'm going to turn it over to Minority Leader Lynch.

In any event, I appreciate all the work that you and other members of legislative staff have put into this. I humbly request further consideration of the additional edits and comments that I am submitting here.

As I have previously explained, my participation in this process has been as an individual without speaking on behalf of any third party or organization.

I hope that you have a pleasant week. If there are any questions about my comments or suggested edits, please do not hesitate to let me know.

Mr. Gregory also submitted a marked-up copy of the analysis with recommended language (Attachment B).

Last Draft Comments from Interested Parties

Jeff Rupp, representing Colorado Judicial Institute:

To the Legislative Council:

I'm writing to submit comments from the Colorado Judicial Institute (CJI) about the 3rd draft ballot analysis for Amendment H – Judicial Discipline Procedures and Confidentiality. See the attached document with our redline edits and comments. The submitters are Marilyn Chappell, emerita board member, CJI; and Jeff Rupp, Executive Director, CJI.

CJI is grateful for the opportunity to provide this input. CJI is an independent, nonpartisan, nonprofit organization, established in 1979. CJI's mission is to promote excellence, equity, impartiality, and public trust in Colorado's courts. As part of its work, CJI advocates on behalf of Colorado's judicial system and that includes advocating for smart change that makes the system better.

Amendment H is vitally important to CJI. It addresses Colorado's judicial discipline process – part of our merit system for selecting, evaluating, and retaining judges, adopted by voters in 1966. CJI participated in 2022 legislative hearings on judicial discipline bills and in the 2022 legislative interim committee process producing what is now Amendment H.

CJI's comments on the Amendment H analysis have emphasized the two main features of the amendment: creating an independent adjudicative board to preside over judicial discipline proceedings, and providing public access to such proceedings at an earlier stage. CJI's current comments on the analysis are based on those two features, and on the importance of reminding voters of the context of Amendment H – a proposed change to Colorado's Constitution that should be thoughtfully undertaken.

CJI plans to participate in the upcoming September 4 hearing. We welcome any further questions or comments. Thank you.

Mr. Rupp also submitted a marked-up copy of the analysis with recommended language (Attachment C).

Terry Scanlon, representing the Judicial Branch:

I have three things I would like to highlight:

1. In Table 1, under "formal disciplinary hearings" the draft says "judges selected by the Supreme Court ... make recommendations." That's a reference to the special masters. But the special masters do not make a recommendation to the Court in the current

Last Draft Comments from Interested Parties

model. The Special Masters do not make recommendation. The Commission makes a recommendation to the Court.

It seems it would be more accurate to say: "In cases involving a Colorado Supreme Court justice, their family members, or staff, the entire Colorado Supreme Court must disqualify themselves and be replaced with a tribunal composed of seven randomly selected District Court Judges and Court of Appeals Judges. The tribunal reviews appeals from cases from the independent adjudicative board."

2. The section on independent tribunals under Amendment H, the language says the tribunal "only hears supreme court justice-related appeals." The language could be more clear. The tribunal will serve as the Court instances where a Justice is involved in a case, a family member of a justice, a staff member of a justice, or two or more justices recuse from the case. It might be more fair to say "the tribunal will hear appears on cases that involve justice as a respondent or a witness, or in cases where the justice has a family member or staff member involved in the case, or in cases where two justices have recused."
3. There's a spelling error in the word "discipline" in the header of Figure 1.

Thank you for considering my feedback yet again,



August 14, 2024

Legislative Council
State Capitol
200 East Colfax, Room 29
Denver, CO 80203

Re: Amendment H Draft Analysis

To whom it may concern.

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Thank you for your time and attention to this matter. The analysis in the Blue Book should be accurate. Voters have the right to expect it to be accurate. The current draft analysis is not accurate. It is not helpful to voters.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Forsyth", with a long horizontal line extending to the right.

Chris Forsyth, Esq.
Executive Director
Phone: 303-892-3894
Email: cforsyth@judicialintegrity.org



July 30 2024

Legislative Council
State Capitol
200 East Colfax, Room 29
Denver, CO 80203

Re: Amendment H Draft Analysis

To whom it may concern.

This letter is to respond to the draft analysis as requested. Overall, the draft analysis is confusing because it fails to effectively communicate how the current process works. Therefore, it also fails to effectively communicate what Amendment H does. This letter provides a critique of the draft analysis. Because the analysis is so problematic, however, a complete draft analysis proposal is also being submitted. It is attached to this letter.

The first section

In the first sentence under “Amendment H Proposes amending the Colorado Constitution to,” “create an independent board separate from the Colorado Supreme Court . . .” This is inaccurate for two reasons. First, the board is not independent of the Colorado Supreme Court. The Supreme Court selects members of the adjudicative board. The state court administrator, who is hired by and works for the Supreme Court, picks the members of an adjudicative panel from the entire board, and the Supreme Court maintains appellate functions over the adjudicative board. Although the resolution passed by the General Assembly which resulted in Amendment H uses the word “independent,” it is nothing more than a catchphrase or a marketing term and Legislative Council should not be using the word in its analysis of the measure.

Second, what Amendment H really does is create a separate panel from the Colorado Commission on Judicial Discipline to preside over judicial discipline hearings. Lines 2 and 3 of page one of the draft analysis are not correct and mislead the public.

In addition, it must also be noted that a separate panel to adjudicate judicial discipline is nothing new. Under current law, the discipline commission can ask the Supreme Court to appoint three special masters to hear a judicial discipline case. All Amendment H does is require a separate

panel if a case actually proceeds to formal proceedings. And Amendment H changes the makeup of the panel. Amendment H also makes the findings of the panel final unless appealed. Under the current system, the findings of the panel aren't final and are a recommendation to the Supreme Court.

In the second bullet under the title, the vagueness of the writing oversells what the measure really does. If formal proceedings are initiated, which historically has happened in less than one percent of cases handled by the commission, the proceedings become public. At present such proceedings are not public unless the proceeding concludes with a finding of misconduct and that recommendation for discipline is submitted to the Supreme Court. It would be much more clear to simply state exactly what Amendment H does: if a judicial misconduct case goes to a formal proceeding, such proceeding shall be public.

The second section

In the “yes” position, it states “creating an independent board.” What does independent mean? The board is not independent of the Colorado Supreme Court as the paragraph implies. The Supreme Court selects members of the adjudicative board. Although the referendum uses the word “independent” in its language, the word is nothing more than a catchphrase or marketing copy. It is inaccurate because the board is not independent of the Supreme Court.

What the referendum does is create a separate – as opposed to independent – panel to hear and decide judicial discipline cases. The current system can have the prosecution and adjudicative functions in the same office if the Commission does not request a panel of special masters. Amendment H changes that by requiring a separate panel.

Under Amendment H, the Supreme Court still selects members of the panel that hears cases. Therefore, the adjudicatory board does not reduce the Supreme Court's role in judicial discipline hearings. So, the “yes” position is inaccurate.

What a “yes” vote does is require a separate adjudicative panel to preside over judicial discipline proceedings. In regard to transparency, the measure will provide more information to the public only if a case proceeds to formal proceedings which, historically, happens in fewer than one percent of complaints with the commission. This statistic comes from the annual reports of the Colorado Commission on Judicial Discipline.

The “no” position is also inaccurate. If Amendment H is adopted, and in the current system, the Colorado Supreme Court selects judges who preside over judicial discipline hearings. Amendment H does not change that. Amendment H allows the governor to appoint some members of the adjudicatory board who end up on a hearing panel. A “no” vote means a separate adjudicatory panel will only be provided if the Commission requests one. The statement regarding confidentiality is also incorrect. Confidentiality currently ceases when the Commission recommends discipline to the Supreme Court. As it reads, the paragraph state discipline does not become public until the Supreme Court issues discipline. This is not correct.

Under the Summary and Analysis of Amendment H

What is judicial misconduct and discipline?

Lines 25-26 are too vague to be helpful to a voter. Judges can be disciplined if they violate the Code of judicial Conduct. What may seem unethical or what may seem to most people as something that discredits the courts may not actually be a violation of the Code. Line 30 is inaccurate and should be removed. The section should end on line 29 with a period after “privately.” The phrase “depending upon the seriousness of the misconduct” is not an accurate description of the law.

How are judicial discipline cases currently handled?

In line 33, the phrase “independent state agency” is used. It is inaccurate and should not be used by Legislative Council in its analysis. What does “independent” mean? It is misleading. The commission is not independent of the Supreme Court in any way, shape, or form. The Supreme Court selects judges to be on the Commission, writes the rules for the Commission, and ultimately what, if any, discipline is issued. The word “independent” should be removed.

Line 35 on page 1 through line 4 on page 2 are misleading therefore very problematic. The description of the screening process is inaccurate. The Colorado Constitution does not provide for the screening of complaints as alleged in lines 32-34. Screening is created by a rule promulgated by the Supreme Court. A lot of complaints are dismissed in the controversial screening process of the commission. Often the complaints are dismissed by the executive director without involvement of the entire commission. And the basis used to dismiss complaints in the screening process are much more numerous than those stated. The statement regarding merit in line 36 is also misleading. A complaint can have merit, but if it's in a complaint related to an order or an action in court that could be appealed, it will be dismissed in the screening process. Likewise, the description regarding what the commission does is inaccurate and misleading. Private discipline can take different forms. And the description about what the commission does is grossly inaccurate, especially considering that this is what Amendment H is about. The pertinent section in the constitution reads as follows:

The commission may, after such investigation as it deems necessary, order informal remedial action; 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.

Colo. Const., Art. IV, Sec. 23. Para (3)(e).

The same procedure in Amendment H, with a separate adjudicatory panel, can happen under present law. Current law says either the commission can proceed to a formal hearing and make its own ruling, or a separate panel can have a hearing and make the ruling if requested by the

commission. In both instances, the Supreme Court appoints members to the adjudicatory panel. Under current law, the determination after hearing, if it recommends discipline, becomes a recommendation to the Supreme Court. Under Amendment H, the determination becomes final unless it is appealed to the Supreme Court. So how different is Amendment H from current law? It simply requires the separate panel, changes the membership of the panel, and requires an appeal to get to the Supreme Court. It's essentially the same system.

The statement that the forwarded cases are reviewed further and tried by judges appointed by the Colorado Supreme Court, on lines 1 and 2 of page 2, is simply not correct. It can happen that way under the current system, but it doesn't always happen that way. At this point, the Colorado Supreme Court can basically do whatever it wants, including dismiss the case. The last sentence of this section is also misleading. Current law is that until the commission files a recommendation with the Supreme Court, the proceedings are confidential. The statement written in the draft on lines 3 and 4 of page 2 is very misleading because it is vague and implies judges receive discipline. The phrase "when judges are publicly punished" is not correct. If it reads in this manner, which it should not, it should read "if" judges are publicly punished. The paragraph as written is very confusing and incorrect.

What changes does Amendment H make to the judicial discipline process?

Lines 6-16 on page 2 are incorrect, misleading, and need to be changed. Again, the word "independent" is used on lines 6, 8, 10, and in the chart in line 16. The word "independent" is a catchphrase or marketing term. The board is not independent of the Supreme Court, which is the improper selling tactic that is being attempted. The word "independent" should be removed from the draft analysis. It is not helpful. Amendment H replaces the current three special masters with an adjudicatory board. Lines 10-11 are incorrect because the Supreme Court reviews legal issues de novo.

This section is also confusing because it fails to describe the two appellate paths. In most instances an appeal of the adjudicatory panel's decision will be heard by the Colorado Supreme Court. If a complaint relates to a Supreme Court Justice, however, then an appeal is heard by a special tribunal comprised of six district court judges and a Court of Appeals judge.

The chart is misleading because it fails to show where the changes are in the system. Furthermore, the first two sections of the chart, from left to right, are not created for or provided for by Amendment H. Those two sections are created by current rules. If it is insisted that this particular chart be used, it should contain a separate circle, possibly half filled, to show that this is the way the system currently works. So, the first figure regarding screening would have a half-filled circle showing that this is currently the process. The second figure regarding full commission review would also have a half-circle. Under both Amendment H and current law the executive director can dismiss cases on his own without full involvement of the commission. The chart is misleading.

The third figure regarding the "independent" board is also allowed under current law. As stated above, the word "independent" should be removed. This third figure should also contain a half-circle. Amendment H requires, as opposed to allows, the separate panel and changes the

membership of the panel which is not reflected in the chart. The figures in the 4th column, going left to right, are also misleading. The top box should be the Supreme Court for appeals. Below should be a box relating that a tribunal hears appeals that relate in any way to a Supreme Court Justice. The fifth column again improperly uses the word “independent.” The word should be removed and replaced with “adjudicatory.” Furthermore, the entire board does not hear an appeal. Only the panel of three would hear an appeal.

The current system works as this chart, only the Supreme Court would not remand a case back to a panel under current law. This chart is not helpful. It is misleading because it implies the current system does not work this way.

Page 3

The table on page three is problematic. What is missing from the beginning of this page is glaring. If comparing the current judicial discipline proceedings to Amendment H in this manner, it needs to be stated that complaints are still filed with the Commission on Judicial Discipline where they can be dismissed. Amendment H only changes judicial discipline if there are formal proceedings. **Historically, formal proceedings have happened in less than one percent of cases filed with the commission. Actually, it's a fraction of that one percent. So, it needs to be made clear that Amendment H will affect very, very few cases.** This should be stated in the first paragraph in this section.

Under the current first paragraph, “Formal Disciplinary Hearings” the Supreme Court appoints judges both currently and under Amendment H. Amendment H simply adds a lawyer and citizen appointed by the governor to a three-person panel. The three-person panel is selected from the entire adjudicatory board. The state court administrator, who is hired by and reports to the Supreme Court, puts the adjudicatory panel together for each case. This section is misleading because it makes it look like the Supreme Court isn't involved in the adjudicatory board or panel when the Supreme Court is still very much involved. The state court administrator is hired by and works for the Supreme Court.

The current second paragraph, “Discipline Cases Involving Colorado Supreme Court Justices” is also confusing and misleading. Under Amendment H the word “independent” is again used. As stated previously, that word is not helpful to voters and is misleading. Therefore, Legislative Council should refrain from using it for the language that ends up in the ballot book. Furthermore, a Supreme Court justice does not have to be the respondent in the judicial discipline hearing for this special tribunal to be used.

The current third paragraph, “Colorado Supreme Court Role,” is misleading and oversells Amendment H. The Colorado Supreme Court's role both currently and under Amendment H is limited to appeals. Under the current system, a judge can accept discipline at any time. Historically 97% of cases against judges are completely dismissed. This statistic is calculated from the annual reports of the Colorado Commission on Judicial Discipline. Of the remaining 3%, private discipline is most often issued which does not involve the Supreme Court. In other words, the current Commission issues discipline without Supreme Court involvement. Judges accept private and public discipline without the involvement of the Supreme Court.

Under current law, only if there are formal proceedings (the accused judge and the commission don't agree on discipline) which result in a recommendation of discipline does the matter get to the Supreme Court. Stating the Supreme Court is the "final arbiter" makes the Supreme Court sound much more involved in individual cases than it is. The Supreme Court's role under Amendment H is very similar. It has the ability to overturn the commission's finding both currently and under Amendment H. Saying the rules under Amendment H are established by an "independent body" is misleading. The Supreme Court appoints members of the rulemaking board. Again, the word "independent" should not be used. It is not helpful.

The "Public Access to Information" is also incorrect. Under current law, the proceedings become public when a recommendation is filed with the Supreme Court for discipline. Under Amendment H, the proceedings become public when formal disciplinary proceedings are commenced.

Why is Amendment H on the ballot?

This section should not be in the draft analysis. If it is included, it should relate the judicial scandal wherein a state court administrator and chief justice offered a contract to a former employee who was angry she was passed over for the state court administrator position. The employee threatened to expose acts of judges that should have been disciplined. The contract was offered as a way to shut her up. This was exposed and made news all around the state. The legislature felt forced to do something. But unfortunately, the legislature worked closely with the judicial branch. Supreme Court justices actively spoke out to ensure any changes would not harm them. The judicial branch, where judges are not term-limited like legislators, is very skilled and took advantage of legislators. The result is Amendment H along with other measures passed by the General Assembly. That's why H is on the ballot. What is written in the draft analysis does not explain why H is on the ballot, nor is it helpful in understanding what Amendment H does or whether voters should vote for it.

Furthermore, understanding the state court administrator's role as the impetus for Amendment H shows how Amendment H is truly a bad policy. Amendment H puts the state court administrator in control of who is on the adjudicatory panel to determine judicial discipline. The very position that was used corruptly is given more power in the judicial discipline process under Amendment H.

Argument For Amendment H

This paragraph is wrong, misleading, and not fair. It oversells Amendment H with its misleading language. The first sentence improperly leads the reader to believe H removes the direct influence of judges over the discipline process. It does not. It cannot even be argued that it does remove such influence. The Supreme Court appoints judges to the adjudicative board. The Supreme Court appoints members of the rulemaking committee. The Supreme Court appoints judges to the discipline commission. The argument that states what Amendment H aims to do is irrelevant and misleading because Amendment H fails to do what it allegedly aims to do – miserably. There is absolutely nothing in this paragraph related to what Amendment H actually

does. It is irrelevant mumbo jumbo. The argument in the paragraph needs to state why the proposals in Amendment H should be adopted. The argument for should be revised to specifically address why the minimal changes proposed in Amendment H are worthy of a constitutional amendment.

Argument Against Amendment H

The current paragraph is not acceptable and is insulting to attorneys and citizens. The nomination and retention process is irrelevant to Amendment H. This paragraph is written to make people vote for Amendment H.

We propose the following argument against:

Amendment H makes minimal changes to the judicial discipline process when much more substantial change is needed. Having judges in roles on the discipline commission, on adjudicatory panels, and on the rulemaking board leaves too many conflicts of interest in the process. The current judicial discipline process does not work, and Amendment H will not make it work. History shows that the procedures in Amendment H affect less than one percent of complaints against judges and are not worthy of a constitutional amendment. If Amendment H passes, it will be almost impossible to obtain necessary reforms because legislators will allege they did the job with Amendment H. Empowering the state court administrator with a role in the judicial discipline process is a mistake.

Conclusion

Thank you for allowing us to comment regarding Amendment H. The draft analysis is so problematic, we are submitting our own analysis which is a rewrite of the draft analysis. It more clearly explains the current process and the effect Amendment H has on the process.

If you have any questions, please feel free to contact me.

Sincerely,



Chris Forsyth, Esq.
Executive Director
Phone: 303-892-3894
Email: cforsyth@judicialintegrity.org

Proposed draft analysis

Amendment H: Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature . Passes with 55 percent of the vote

Amendment H proposes Amending the Colorado Constitution to:

- require a separate panel from the Colorado Commission on Judicial Discipline to preside over ethical misconduct hearings involving judges: and
- make proceedings public if a judicial misconduct case goes to a formal proceeding.

What Your Vote Means

YES

A “yes” vote on Amendment H requires judicial discipline cases that proceed to a formal proceeding be decided by a panel separate from the Colorado Commission on Judicial Discipline. The Supreme Court and the governor select members of an adjudicatory board of judges, attorneys, and citizens from which three members are selected to hear a judicial discipline case. Formal proceedings in judicial discipline proceedings become public when they are commenced.

NO

A “no” vote on Amendment H means that the current system remains in place where the Colorado Commission on Judicial Discipline can preside over formal proceedings in a judicial discipline case or upon the commission’s request, the Supreme Court can select three special masters to determine a judicial discipline case. Formal proceedings in judicial discipline proceedings remain confidential unless a case is referred to the Supreme Court with a discipline recommendation.

Summary and Analysis of Amendment H

What is judicial misconduct and discipline?

Colorado judges must follow the Code of Judicial Conduct which is adopted by the Supreme Court. Judicial misconduct occurs when a judge violates the code. Any person may file a complaint with the Colorado Commission on Judicial Discipline alleging a judge violated the code. If a violation is found by the commission, the commission may recommend private or public discipline to which the accused judge may agree. If the judge does not agree, then the matter may proceed to formal proceedings.

How are judicial discipline cases currently handled?

The Colorado Commission on Judicial Discipline receives complaints regarding judicial misconduct. Members of the commission are appointed by the Colorado Supreme Court and the governor. Pursuant to rule, a screening process is used to dismiss complaints for various

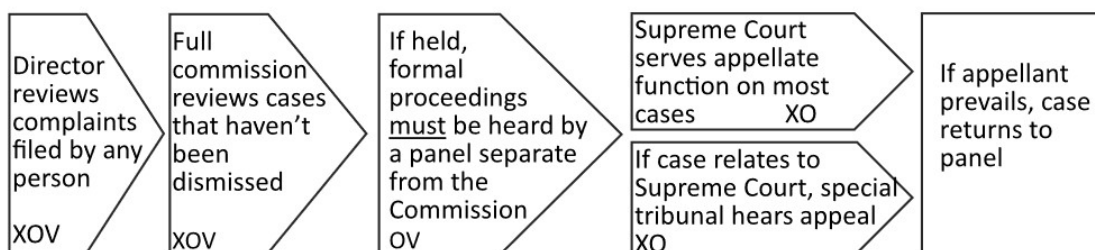
reasons. If a case proceeds to the full commission, the commission may dismiss the complaint or proceed with an investigation. The Commission may issue private discipline. If a judge disagrees with the Commission’s stance regarding discipline, the matter may proceed to formal proceedings. Historically, this happens in less than one percent of cases filed with the Commission. The Commission may preside over formal proceedings or request that the Colorado Supreme Court select three special masters to preside over the case. If formal proceedings result in a finding of discipline, the matter is referred to the Supreme Court with a recommendation for discipline. Once a matter is referred to the Supreme Court, it becomes public. Only the supreme Court can discipline a judge against the judge’s will.

What changes does Amendment H make to the judicial discipline process?

If a judicial discipline case proceeds to formal proceedings, Amendment H requires the case to be heard by a panel separate from the Colorado Commission on Judicial Discipline. The Commission will only prosecute the case. The three-member panel that hears a case is selected by the state court administrator from an adjudicative board comprised of four district court judges appointed by the Supreme Court, and four attorneys and four citizens appointed by the governor. The three-member panel will consist of one judge, one attorney, and one citizen. The determination by the panel is considered final unless an appeal is filed. The Colorado Supreme Court would hear most appeals. If a case relates to a Supreme Court Justice, however, an appeal will be heard by a tribunal comprised of six district court judges, each from a different judicial district, and one Court of Appeals judge. If a judge does not appeal a panel’s determination, then the judge can be disciplined against the judge’s will without Supreme Court involvement.

The flow chart below summarizes how the discipline process would work if Amendment H passes.

**Figure 1
Judicial Discipline Proceedings Under Amendment H**



- X – This is the same procedure as current law
- O – complaint can be dismissed at these stages
- V – informal punishment can issue at these stages

Table 1

Current Judicial Discipline Proceedings Compared to Amendment H

Current Judicial Discipline	Judicial Discipline Under Amendment H
Prior to Any Formal Disciplinary Hearing	
<p>Amendment H does not change the procedure before a formal disciplinary hearing. As shown by the annual reports of the Colorado Commission on Judicial Discipline, the vast majority of complaints (97%) filed with the Commission are dismissed by the Commission either through a screening process or through a vote of the entire commission. Of the remaining 3% of cases, most are resolved with private discipline. Less than one percent of cases filed with the Commission get to the point of formal proceedings. The procedures provided in Amendment H only apply if a case proceeds to formal proceedings.</p>	
Formal Disciplinary Hearings	
<p>Either the Commission on Judicial Discipline or a panel of three special masters selected by the Colorado Supreme Court preside over formal disciplinary hearings. If discipline is recommended, the recommendation is provided to the Supreme Court and the recommendation can be accepted, modified, or rejected.</p>	<p>A panel of three members (one judge, one lawyer, one citizen) preside over formal disciplinary hearings. The decision is final unless an appeal is filed. Most appeals will be heard by the Supreme Court. If a case relates to a Supreme Court justice, however, a tribunal of six district court judges and one Court of Appeals judge hear the appeal.</p>
Public Access to Information	
<p>Judicial discipline proceedings are confidential until a recommendation for discipline is filed with the Supreme Court. Cases sometimes, however, can become public before this point. No publication of papers filed with or proceedings before the commission are privileged in any action for defamation except that the record filed by the Commission in the Supreme Court continues to be privileged.</p>	<p>Judicial discipline proceedings are confidential until the commencement of formal proceedings. Cases sometimes, however, can become public before this point. A person is immune from defamation based on papers filed or testimony given, but no other publication, such as a newspaper, has absolute immunity in any action for defamation filed by a judge.</p>
Appointments	
<p>Commission members are appointed by the Colorado Supreme Court and the governor with consent of the Senate. Colorado Supreme Court appoints special master judges to hear discipline cases. The state court administrator selects judges for the panel that hears cases relating to Supreme Court justices.</p>	<p>Commission members and adjudicative board are appointed by the Colorado Supreme Court and the governor with Senate confirmation. The state court administrator selects from adjudicative board the panel members to hear cases. The state court administrator selects judges who serve on appeal panel if case relates to Supreme Court justice.</p>

Rules	
Supreme Court makes the rules regarding judicial discipline.	A rulemaking committee comprised of four members appointed by the Supreme Court, four members appointed by the adjudicative board, four members appointed by the Commission, and one victim's advocate appointed by the governor determine the rules regarding judicial discipline.

Arguments For Amendment H

Requiring a separate panel from the discipline commission to decide judicial discipline cases is an important change even though such process is allowed by current law. Allowing an attorney and a citizen to be on an adjudicatory panel along with a judge is an important change. Making the proceedings public when formal proceedings are commenced provides additional and sufficient transparency in the process. Amendment H is approved by the judicial branch and that is important because judges must approve their disciplinary process. The state court administrator should have an important role regarding the selection of who is placed on an adjudicatory panel. Judges should be involved in making the rules for the judicial discipline system.

Arguments Against Amendment H

Amendment H makes minimal changes to the judicial discipline process when much more substantial change is needed. Having judges in roles on the discipline commission, on adjudicatory panels, and on the rulemaking board leaves too many conflicts of interest in the process. The current judicial discipline process does not work, and Amendment H will not make it work. History shows that the procedures in Amendment H affect less than one percent of complaints against judges and are not worthy of a constitutional amendment. If Amendment H passes, it will be almost impossible to obtain necessary reforms because legislators will allege they did the job with Amendment H. Empowering the state court administrator with a role in the judicial discipline process is a mistake.

3rd Draft

Amendment H: Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature • Passes with 55 percent of the vote

1 Amendment H proposes amending the Colorado Constitution to:

- 2 • reduce the Colorado Supreme Court’s role and control over Colorado’s judicial discipline system;
- 23 • create an independent adjudicative board to preside over ethical misconduct
- 34 hearings involving judges; and
- 45 • allow for increased public access to judicial discipline proceedings and records.

56 What Your Vote Means

6 YES

7 A “yes” vote on Amendment H creates an
 8 independent adjudicative board made up
 9 of citizens, lawyers, and judges to conduct
 10 judicial misconduct hearings and impose
 11 disciplinary actions, reduces the Colorado
 Supreme Court’s role in judicial discipline,
 and allows more
 12 information to be shared earlier with the
 13 public.

14 NO

15 A “no” vote on Amendment H means that
 16 a select panel of judges will continue to
 17 conduct judicial misconduct hearings and
 18 recommend disciplinary actions, and cases
 19 remain confidential unless public
 20 sanctions are ~~issued~~ recommended at the
 end of the
 21 process.

Commented [CG1]: As reflected in the first draft of this Blue Book statement, the structural changes of Amendment H in reducing the Colorado Supreme Court’s ultimate control of the judicial discipline process and other aspects of it (i.e. absolute authority to appoint members of the Commission on Judicial Discipline and to conduct *de novo* review of disciplinary recommendations) is a critical part of what Amendment H does. Adding this bullet point seems essential to inform voters of the purpose of Amendment H.

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22 Summary and Analysis of Amendment H

23 What is judicial misconduct and discipline?

24 Colorado judges must follow a code of conduct. Judicial misconduct occurs when a judge
 25 acts unethically or in ways that diminish public confidence in the integrity of the courts.
 Misconduct
 26 complaints may include failure to perform judicial duties competently and diligently, abuse of the
 prestige of judicial office, improper demeanor, alcohol and drug use, conflicts of interest,
 27 inappropriate communication, ~~and~~ mistreatment or harassment of staff, criminal or other
 unlawful conduct, dishonesty, and retaliation. Judges are prohibited from engaging in actual
 impropriety or even conduct that creates appearances of impropriety. Any person may file
 28 a complaint, and judges found to have violated their ethical duties may be disciplined
 29 publicly or privately, depending upon the nature of the misconduct.

Commented [CG2]: The additional suggested language (also suggested as to the second draft) is important. Under the Code of Judicial Conduct, judges are held to a higher standard (i.e. preventing even appearances of impropriety) that is critical to understanding the meaning of “judicial misconduct.” Much of the public criticism raised during the Interim Committee process related to perceptions that judicial discipline should apply to judges’ decision making. In reality, the Code does allow for enforcement of misconduct that compromises a judge’s decisions (i.e. the judge’s failure to perform duties competently and diligently or retaliation that occurs against parties/attorneys).

3rd Draft

30 **How are judicial discipline cases currently handled?**

31 Pursuant to the Colorado Constitution, the Commission on Judicial Discipline (commission),
32 an independent judicial agency charged with investigating allegations of misconduct against
33 judges, screens and investigates complaints. Members of the commission are appointed by
34 the Colorado Supreme Court and the Governor. The screening process eliminates complaints
35 that are outside the commission's jurisdiction, such as those that ask to review a judge's
36 rulings or order new trials. The commission further investigates complaints when there is
37 sufficient evidence of misconduct.

3rd Draft

1 Thereafter, the commission can: dismiss the complaint, impose private discipline, hold an
 2 informal hearing, or ~~recommend-initiate~~ formal ~~hearings/proceedings~~. The ~~f~~Formal hearings are
 conducted by a
 3 panel of judges selected by the Colorado Supreme Court. When the hearing is over, the
 4 commission reviews the panel's findings and forwards disciplinary recommendations to the
 5 Colorado Supreme Court for a final determination. Misconduct cases are made public ~~only if~~
 65 ~~a judge receives a public punishment order at the end of the process upon the commission~~
~~filing its recommendation for public discipline and its record of proceedings~~. Complaints
~~and that result in~~
 76 ~~informal punishments may not beare not shared with the persons who filed the complaints~~
~~ordisclosed to~~ the
 87 general public.

Commented [CG3]: This statement is inaccurate. By recommending a public sanction, the commission currently determines whether discipline is made public (regardless of whether the Colorado Supreme Court ultimately rejects the commission's recommendation).

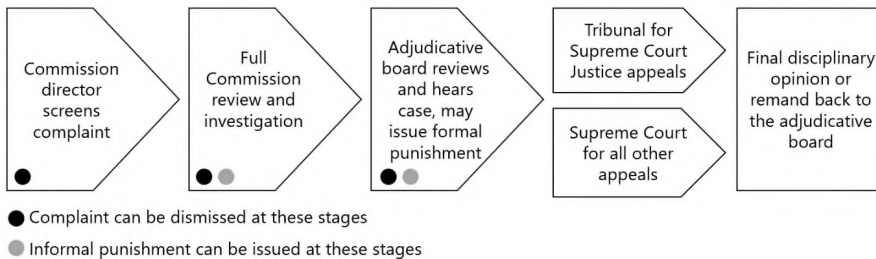
98 **What changes does Amendment H make to the judicial discipline process?**

109 Amendment H creates the Independent Judicial Discipline Adjudicative Board (adjudicative
 110 board) to preside over judicial discipline hearings and impose sanctions. The adjudicative
 1211 board consists of four district court judges, four attorneys, and four citizens appointed by
 1312 the Colorado Supreme Court and the Governor. The new board's decisions are considered
 1413 final unless there is proof of a legal or factual error upon appeal to the Colorado Supreme
 1514 Court. If an appeal involves a Colorado Supreme Court justice, it is heard by a tribunal made
 16 up of randomly selected appellate and district court judges. Formal disciplinary charges
 against judges will become public upon filing with the disciplinary hearing and other
proceedings also open to the public.
 1715 ~~are also made public at the beginning of the hearing.~~

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1816 Figure 1 below summarizes the new discipline process.

1917 **Figure 1**
 2018 **Judicial Discipline Flow Chart**



Commented [CG4]: "reviews" should be stricken from the third arrow. The adjudicatory panel (like a trial court) will hear the disciplinary case. The Colorado Supreme Court or the Special Tribunal will "review" the adjudicatory panel's decision on appeal. It is probably simpler to combine the arrows for the CSC / ST appellate review, too. I suggest: "Appellate review by Supreme Court or Special Tribunal"

2119 Table 1 compares current practices with those proposed in Amendment H.

3rd Draft

1
2

Table 1
Current Judicial Discipline Proceedings Compared to Amendment H

Current Judicial Discipline	Judicial Discipline Under Amendment H
Formal Disciplinary Hearings	
Judges selected by the Colorado Supreme Court hear cases and make disciplinary recommendations to the Colorado Supreme Court for final discipline ruling.	The independent adjudicative board, made up of an equal number of attorneys, judges, and citizens, conducts judicial discipline hearings and makes <u>the</u> final discipline ruling.
Independent Tribunals	
In cases involving a Colorado Supreme Court justice, their family members, or staff, the entire Colorado Supreme Court must disqualify themselves and be replaced with a tribunal composed of seven randomly selected Colorado Court of Appeals judges. The tribunal hears the case and is the final decision-maker on sanctions.	The tribunal is composed of randomly selected District and Appeal Court judges representing different districts and only hears Colorado Supreme Court justice-related appeals.
Colorado Supreme Court Role	
The Colorado Supreme Court is the final arbiter of cases after receiving disciplinary recommendations and makes rules about the process.	Colorado Supreme Court role is limited to appointments and appeals. Rules for the process are established by an independent committee.
Public Access to Information	
Formal judicial disciplinary hearings are held privately until the commission files a formal recommendation for public sanctions with the Colorado Supreme Court.	The proceedings against a judge and the related record become public when formal charges are filed.
Appointments	
Commission members are appointed by the Colorado Supreme Court and the Governor with Senate confirmation. Colorado Supreme Court appoints special master judges to hear discipline cases. The State Court Administrator randomly selects judges for the tribunal in cases where the Colorado Supreme Court is disqualified.	Commission members and the new adjudicative board are appointed by the Colorado Supreme Court and the Governor with Senate confirmation. The State Court Administrator randomly selects Court of Appeals and District Court judges for the tribunal to hear Colorado Supreme Court related appeals.

3 **Why is Amendment H on the ballot?**

4 Following passage of Senate Bill 22-201, the bi-partisan Interim Committee on Judicial Discipline held a series of public hearings to evaluate and propose reforms to Colorado's judicial disciplinary system. The hearings included extensive engagement with experts,

3rd Draft

~~stakeholders, and the general public. After extensive hearings about the judicial discipline~~
~~With recommendations and draft legislation from the Interim Committee process, the Colorado~~
legislature

5 passed three bipartisan bills in 2023 that change judicial discipline procedures and

Commented [CG5]: The thoroughness and deliberation that occurred through the 2022 Legislative Interim Committee on Judicial Discipline is perhaps the strongest argument for why Amendment H is good legislation and reflects sincere engagement with the public / voters to improve Colorado's governmental systems/structure.

3rd Draft

1 workplace culture, including Amendment H. Because this amendment would change
2 Colorado’s constitutional provisions on judicial discipline, it requires voter approval to
3 become law. The other two bills address confidentiality, complaint filing and reporting, and
4 data collection, as well as creating a new office to assist judicial employees with workplace
5 and other complaints.

For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2024, election, go to the Colorado Secretary of State’s elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/InitiativesHome.html>

6 **Argument For Amendment H**

7 1) Colorado judges should not have direct influence and oversight over the discipline of
8 their colleagues. Amendment H is an important change that aims to enhance the
9 transparency, integrity, and independence of the judicial discipline process. Historically,
10 judicial discipline has largely been self-regulated, facing challenges in oversight and
11 self-protection. This amendment serves to enhance public confidence and trust in the
12 courts. Finally, this measure is a compromise recommended ~~by nearly all members~~
~~of~~ unanimously by the
13 General Assembly and formally by the Judicial Branch.

Commented [CG6]: It is critical to emphasize that HCR 23-1001 passed both Houses unanimously on its Third Reading. I am unaware of other constitutional amendments with similar universal support.

14 **Argument Against Amendment H**

15 1) The current system works. Judges understand how to review cases, hold hearings, and
16 make impartial and hard decisions. As a result, they are well suited to hear judicial
17 discipline cases. The amendment transfers this authority to attorneys and citizens, who
18 cannot fully understand judicial ethics and the unique challenges of being a judge. The
19 judiciary’s existing system of checks and balances, such as nomination and retention
20 elections, ensures only the best become and remain judges.

21 **Fiscal Impact of Amendment H**

22 **State spending.** The measure will increase state costs by about \$50,000 per year. This
23 funding provides compensation and training to members of the newly created judicial
24 discipline board and rulemaking committee.

3rd Draft

Amendment H: Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature • Passes with 55 percent of the vote

1 **Amendment H proposes amending the Colorado Constitution to:**

- 2 • create an independent adjudicative board to preside over ethical misconduct
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- 4 • allow for increased public access to judicial discipline proceedings and records.

5 **What Your Vote Means**

6 **YES**

7 A “yes” vote on Amendment H creates an
8 independent adjudicative board made up
9 of citizens, lawyers, and judges to conduct
10 judicial misconduct hearings and impose
11 disciplinary actions, and allows more
12 information to be shared earlier with the
13 public.

14 **NO**

15 A “no” vote on Amendment H means that
16 a select panel of judges will continue to
17 conduct judicial misconduct hearings and
18 recommend disciplinary actions, and cases
19 remain confidential unless public
20 sanctions are issued at the end of the
21 process.

22 **Summary and Analysis of Amendment H**

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24 Colorado judges must follow a code of conduct. Judicial misconduct occurs when a judge
25 acts unethically or in ways that diminish public confidence in the courts. Misconduct
26 complaints may include improper demeanor, alcohol and drug use, conflicts of interest,
27 inappropriate communication, and mistreatment or harassment of staff. Any person may file
28 a complaint, and judges found to have violated their ethical duties may be disciplined
29 publicly or privately, depending upon the nature of the misconduct.

30 **How are judicial discipline cases currently handled?**

31 Pursuant to the Colorado Constitution, the Commission on Judicial Discipline (commission),
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33 judges, screens and investigates complaints. Members of the commission are appointed by
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36 rulings or order new trials. The commission further investigates complaints when there is
37 sufficient evidence of misconduct.

3rd Draft

1 Thereafter, the commission can: dismiss the complaint, impose private discipline, hold an
 2 informal hearing, or recommend formal hearings. The formal hearings are conducted by a
 3 panel of judges selected by the Colorado Supreme Court. When the hearing is over, the
 4 commission reviews the panel's findings and forwards disciplinary recommendations to the
 5 Colorado Supreme Court for a final determination. Misconduct cases are made public only if
 6 a judge receives a public punishment order at the end of the process. Complaints and
 7 informal punishments may not be shared with the persons who filed the complaints or the
 8 general public.

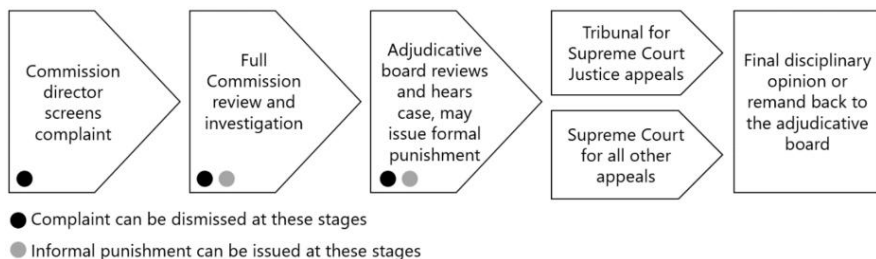
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 11 board) to preside over judicial discipline hearings and impose sanctions. The adjudicative
 12 board consists of four district court judges, four attorneys, and four citizens appointed by
 13 the Colorado Supreme Court and the Governor. The new board's decisions are considered
 14 final unless there is proof of a legal or factual error upon appeal to the Colorado Supreme
 15 Court. If an appeal involves a Colorado Supreme Court justice, it is heard by a tribunal made
 16 up of randomly selected appellate and district court judges. Formal charges against judges
 17 are also made public at the beginning of the hearing.

18 Figure 1 below summarizes the new discipline process.

19
 20

Figure 1
Judicial Discipline Flow Chart



21 Table 1 compares current practices with those proposed in Amendment H.

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**Table 1
Current Judicial Discipline Proceedings Compared to Amendment H**

Current Judicial Discipline	Judicial Discipline Under Amendment H
Formal Disciplinary Hearings	
Judges selected by the Colorado Supreme Court hear cases and make disciplinary recommendations to the Colorado Supreme Court for final discipline ruling.	The independent adjudicative board, made up of an equal number of attorneys, judges, and citizens, conducts judicial discipline hearings and makes final discipline ruling.
Independent Tribunals	
In cases involving a Colorado Supreme Court justice, their family members, or staff, the entire Colorado Supreme Court must disqualify themselves and be replaced with a tribunal composed of seven randomly selected Colorado Court of Appeals judges. The tribunal hears the case and is the final decision-maker on sanctions.	The tribunal is composed of randomly selected District and Appeal Court judges representing different districts and only hears Colorado Supreme Court justice-related appeals.
Colorado Supreme Court Role	
The Colorado Supreme Court is the final arbiter of cases after receiving disciplinary recommendations and makes rules about the process.	Colorado Supreme Court role is limited to appointments and appeals. Rules for the process are established by an independent committee.
Public Access to Information	
Formal judicial disciplinary hearings are held privately until the commission files a formal recommendation for public sanctions with the Colorado Supreme Court.	The proceedings against a judge and the related record become public when formal charges are filed.
Appointments	
Commission members are appointed by the Colorado Supreme Court and the Governor with Senate confirmation. Colorado Supreme Court appoints special master judges to hear discipline cases. The State Court Administrator randomly selects judges for the tribunal in cases where the Colorado Supreme Court is disqualified.	Commission members and the new adjudicative board are appointed by the Colorado Supreme Court and the Governor with Senate confirmation. The State Court Administrator randomly selects Court of Appeals and District Court judges for the tribunal to hear Colorado Supreme Court related appeals.

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Why is Amendment H on the ballot?

After extensive hearings about the judicial discipline process, the Colorado legislature passed three bipartisan bills in 2023 that change judicial discipline procedures and

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- 1 workplace culture, including Amendment H. Because this amendment would change
 2 Colorado's constitutional provisions on judicial discipline, it requires voter approval to
 3 become law. The other two bills address confidentiality, complaint filing and reporting, and
 4 data collection, as well as creating a new office to assist judicial employees with workplace
 5 and other complaints.

For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2024, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/InitiativesHome.html>

6 Argument For Amendment H

- 7 1) ~~Colorado judges should not have direct influence and oversight over the discipline of~~
~~8 their colleagues.~~ Amendment H is an important change that aims to enhance the
 9 transparency, integrity, and independence of the judicial discipline process by creating an
independent adjudicative board to preside over judicial discipline proceedings and increasing
~~10 information available to the public about judicial discipline proceedings. Historically,~~
~~11 judicial discipline has largely been self-regulated, facing challenges in oversight and~~
~~12 self-protection.~~ This amendment serves to enhance public confidence and trust in the
 12 courts. Finally, this measure is a compromise recommended by nearly all members of the
 13 General Assembly and formally by the Judicial Branch.

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14 Argument Against Amendment H

- 15 1) ~~The current system works.~~ Judges ~~understand how to~~ have experience in reviewing cases,
 holding hearings, and
 16 making impartial and hard decisions. As a result, they ~~are well-suited~~ have the experience
needed to hear judicial
 17 discipline cases. The amendment transfers this authority to attorneys and citizens, ~~who~~
~~18 cannot fully understand judicial ethics and the unique challenges of being a judge.~~ The
 19 judiciary's existing system of checks and balances, such as nomination and retention
 20 elections, ~~ensures only the best governs who~~ becomes and remains judges. The system
has been in place for a long time and is based on the Colorado Constitution. Changing the
Constitution is a complex process and cannot easily be undone if the new process does not work as
intended.

Commented [MC1]: This recommended change goes back to the primary features of Amendment H – creating an independent adjudicative board and increasing information available to the public.

21 Fiscal Impact of Amendment H

- 22 **State spending.** The measure will increase state costs by about \$50,000 per year. This
 23 funding provides compensation and training to members of the newly created judicial
 24 discipline board and rulemaking committee.

Commented [MC2]: The recommended language emphasizes that voters are being asked to change the Colorado Constitution, which should be thoughtfully undertaken.

Amendment H
Judicial Discipline Procedures and Confidentiality
Contact List

Interested Party	Organization Name	Email Address
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Amendment H
Judicial Discipline Procedures and Confidentiality
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Amendment H
Judicial Discipline Procedures and Confidentiality
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Amendment H Judicial Discipline Procedures and Confidentiality

1 **Ballot Title:**

2 Shall there be an amendment to the Colorado constitution concerning judicial discipline, and, in connection
3 therewith, establishing an independent judicial discipline adjudicative board, setting standards for judicial review
4 of a discipline case, and clarifying when discipline proceedings become public?

5 **Text of Measure:**

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

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

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

12 **Section 23. Retirement and removal of justices and judges.** (3) (a) There shall be a commission on judicial
13 discipline. It shall consist of: Two judges of district courts and two judges of county courts, each selected by the
14 supreme court, AS PROVIDED BY LAW; two citizens admitted to practice law in the courts of this state, neither of
15 whom shall be a justice or judge, who shall have practiced in this state for at least ten years and who shall be
16 appointed by the governor, with the consent of the senate; and four citizens, none of whom shall be a justice or
17 judge, active or retired, nor admitted to practice law in the courts of this state, who shall be appointed by the
18 governor, with the consent of the senate. AN APPOINTING AUTHORITY SHALL NOT APPOINT A MEMBER OF THE INDEPENDENT
19 JUDICIAL DISCIPLINE ADJUDICATIVE BOARD ESTABLISHED IN SUBSECTION (3)(c.5) OF THIS SECTION TO THE COMMISSION.

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

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

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

46 (II) After a formal hearing, ~~or after considering the record and report of the masters, if the commission finds good~~
47 ~~cause therefor, it~~ THE ADJUDICATIVE PANEL may DISMISS THE CHARGES BEFORE IT; take informal remedial action; or ~~it may~~
48 ~~recommend to the supreme court~~ ORDER the removal, retirement, suspension, censure, reprimand, or OTHER
49 discipline, as the case may be, of the justice or judge. The ~~commission~~ ADJUDICATIVE PANEL may also ~~recommend~~
50 ORDER that the costs of ~~its~~ THE investigation and hearing be assessed against such justice or judge. THE JUSTICE OR
51 JUDGE MAY APPEAL AN ADJUDICATIVE PANEL'S DISCIPLINARY ORDER, AND THE COMMISSION MAY APPEAL AN ADJUDICATIVE PANEL'S
52 DISMISSAL OR DISCIPLINARY ORDER, TO THE SUPREME COURT OR, WHEN THE CIRCUMSTANCES DESCRIBED IN SUBSECTION (3)(f)(II) OF
53 THIS SECTION ARE PRESENT, TO THE TRIBUNAL DESCRIBED IN SUBSECTION (3)(f)(II) OF THIS SECTION.

54 (f) (I) ~~Following receipt of a recommendation from the commission, the supreme court shall review the record of~~
55 ~~the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and~~
56 ~~shall order~~ ON APPEAL OF AN ADJUDICATIVE PANEL'S ORDER FOR removal, retirement, suspension, censure, reprimand, or
57 OTHER discipline, ~~as it finds just and proper, or wholly reject the recommendation~~ OR A PANEL'S DISMISSAL OF CHARGES,
58 THE SUPREME COURT, OR THE TRIBUNAL DESCRIBED IN SUBSECTION (3)(f)(II) OF THIS SECTION IF THE TRIBUNAL IS HEARING THE APPEAL,
59 SHALL REVIEW THE RECORD OF THE PROCEEDINGS ON THE LAW AND FACTS. WHEN REVIEWING THE ADJUDICATIVE PANEL'S DECISION, THE
60 SUPREME COURT SHALL REVIEW MATTERS OF LAW DE NOVO, REVIEW FACTUAL MATTERS TO DETERMINE WHETHER THE ADJUDICATIVE
61 PANEL'S DETERMINATION IS CLEARLY ERRONEOUS, AND REVIEW ANY SANCTIONS IMPOSED BY THE ADJUDICATIVE PANEL FOR ABUSE OF
62 DISCRETION. ~~Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and~~
63 ~~privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be~~
64 ~~removed from office, and his salary shall cease from the date of such order. On the entry of an order for~~
65 ~~retirement or for removal of a judge, his office shall be deemed vacant.~~

66 (II) IN PROCEEDINGS IN WHICH THE CIRCUMSTANCES DESCRIBED IN THIS SUBSECTION (3)(f)(II) ARE PRESENT, A TRIBUNAL COMPRISED OF
67 SEVEN JUDGES OF THE COURT OF APPEALS AND DISTRICT COURT SHALL REVIEW THE DECISION OF THE ADJUDICATIVE PANEL OR HEAR ANY
68 OTHER APPEAL IN THE SAME MANNER AND USE THE SAME STANDARDS OF REVIEW AS THE SUPREME COURT WHEN IT REVIEWS DECISIONS
69 AND HEARS APPEALS AS DESCRIBED IN SUBSECTION (3)(f)(I) OF THIS SECTION. THE STATE COURT ADMINISTRATOR, OR THE
70 ADMINISTRATOR'S DESIGNEE, SHALL RANDOMLY SELECT MEMBERS OF THE TRIBUNAL FROM AMONG ALL DISTRICT JUDGES AND COURT OF
71 APPEALS JUDGES WHO DO NOT HAVE A CURRENT DISCIPLINARY INVESTIGATION OR PROCEEDING PENDING BEFORE THE COMMISSION OR
72 ADJUDICATIVE BOARD; HAVE NOT RECEIVED A DISCIPLINARY SANCTION FROM THE COMMISSION, ADJUDICATIVE BOARD, OR SUPREME
73 COURT; AND ARE NOT OTHERWISE REQUIRED BY LAW, COURT RULE, OR JUDICIAL CANON TO RECUSE THEMSELVES FROM THE TRIBUNAL. A
74 TRIBUNAL MUST NOT INCLUDE MORE THAN ONE MEMBER WHO IS A COURT OF APPEALS JUDGE AND NOT MORE THAN ONE DISTRICT JUDGE
75 FROM ANY ONE JUDICIAL DISTRICT. THE RANDOM SELECTION OF TRIBUNAL MEMBERS IS A PURELY ADMINISTRATIVE FUNCTION. THE
76 TRIBUNAL SHALL REVIEW DECISIONS AND HEAR ANY OTHER APPEALS IN THE FOLLOWING CIRCUMSTANCES:

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

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

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

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

82 (E) WHEN ANY OTHER CIRCUMSTANCES EXIST DUE TO WHICH MORE THAN TWO COLORADO SUPREME COURT JUSTICES HAVE RECUSED
83 THEMSELVES FROM THE PROCEEDING,

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

87 (IV) UPON AN ORDER FOR RETIREMENT, THE JUSTICE OR JUDGE IS RETIRED WITH THE SAME RIGHTS AND PRIVILEGES AS IF THE JUSTICE OR
88 JUDGE RETIRED PURSUANT TO STATUTE. UPON AN ORDER FOR REMOVAL, THE JUSTICE OR JUDGE IS REMOVED FROM OFFICE AND THE
89 JUSTICE'S OR JUDGE'S SALARY CEASES FROM THE DATE OF THE ORDER. ON THE ENTRY OF AN ORDER FOR RETIREMENT OR FOR REMOVAL OF
90 A JUSTICE OR JUDGE, THE JUSTICE'S OR JUDGE'S OFFICE IS DEEMED VACANT.

91 (g) (I) ~~Prior to the filing of a recommendation to the supreme court by the commission~~ COMMENCEMENT OF FORMAL
92 DISCIPLINARY PROCEEDINGS against any justice or judge, all papers filed with and proceedings before the commission
93 on judicial discipline ~~or masters appointed by the supreme court, pursuant to this subsection (3), shall be~~ ARE
94 confidential, ~~and the filing of papers with and the giving of testimony before the commission or the masters shall~~
95 ~~be privileged; but no other publication of such papers or proceedings shall be privileged in any action for~~
96 ~~defamation; except that the record filed by the commission in the supreme court continues privileged~~ IS
97 CONFIDENTIAL. A PERSON IS ABSOLUTELY IMMUNE FROM ANY ACTION FOR DEFAMATION BASED ON PAPERS FILED WITH OR TESTIMONY
98 BEFORE THE COMMISSION, THE ADJUDICATIVE BOARD, THE SUPREME COURT, OR THE TRIBUNAL, BUT NO OTHER PUBLICATION OF THE
99 PAPERS OR PROCEEDINGS HAS ABSOLUTE IMMUNITY IN ANY ACTION FOR DEFAMATION and a writing ~~which~~ THAT was privileged
100 prior to its filing with the commission ~~or the masters~~ does not lose such privilege by such filing.

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

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

104 (B) RELEASE INFORMATION ABOUT A COMPLAINT THAT RESULTED IN INFORMAL REMEDIAL ACTION OR PUBLIC DISCIPLINE OF A JUDGE OR
105 JUSTICE TO THE STATE COURT ADMINISTRATOR AS NECESSARY FOR THE SELECTION OF A TRIBUNAL PURSUANT TO SUBSECTION (3)(f)(II) OF
106 THIS SECTION; ANY RELEVANT COMMISSION ON JUDICIAL PERFORMANCE OR JUDICIAL NOMINATING COMMISSION, THE OFFICE OF
107 ATTORNEY REGULATION COUNSEL, AND THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE, OR SUCCESSORS TO EACH COMMISSION OR
108 OFFICE; THE OFFICE OF THE GOVERNOR, FOR THE PURPOSE OF JUDICIAL APPOINTMENTS; THE JUDICIAL DEPARTMENT, FOR THE PURPOSE OF
109 REVIEWING APPLICANTS FOR THE SENIOR JUDGE PROGRAM AND APPOINTMENTS TO THE ADJUDICATIVE BOARD PURSUANT TO SUBSECTION
110 (3)(c.5)(I) OF THIS SECTION; AND OTHER LIMITED RECIPIENTS CONSISTENT WITH THE PURPOSES OF THIS SECTION ALLOWED BY RULE; AND

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

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

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

117 (h) ~~The supreme court shall by rule provide for procedures before the commission on judicial discipline, the~~
118 ~~masters, and the supreme court. The rules shall also provide the standards and degree of proof to be applied by~~

119 ~~the commission in its proceedings.~~ A justice or judge who is a member of the ~~commission~~ COMMISSION,
120 ADJUDICATIVE BOARD, TRIBUNAL, or supreme court shall not participate in any proceedings involving ~~his~~ THE JUSTICE'S OR
121 JUDGE'S own removal or retirement.

122 (k) (I) THERE IS CREATED A RULE-MAKING COMMITTEE TO ADOPT RULES FOR THE JUDICIAL DISCIPLINE PROCESS. THE RULE-MAKING
123 COMMITTEE CONSISTS OF FOUR MEMBERS APPOINTED BY THE SUPREME COURT; FOUR MEMBERS APPOINTED BY THE ADJUDICATIVE BOARD;
124 FOUR MEMBERS APPOINTED BY THE COMMISSION; AND ONE VICTIM'S ADVOCATE, AS DEFINED IN LAW, APPOINTED BY THE GOVERNOR.
125 MEMBERS SERVE AT THE PLEASURE OF THEIR APPOINTING AUTHORITY. THE RULE-MAKING COMMITTEE SHALL ELECT A CHAIR WHO IS A
126 MEMBER OF THE COMMITTEE. THE RULES MUST INCLUDE THE STANDARDS AND DEGREE OF PROOF TO BE APPLIED IN JUDICIAL DISCIPLINE
127 PROCEEDINGS; CONFIDENTIAL REPORTING PROCEDURES; AND COMPLAINANT RIGHTS DURING THE EVALUATION, INVESTIGATION, AND
128 HEARING PROCESS. THE GENERAL ASSEMBLY MAY PROVIDE BY LAW FOR CONFIDENTIAL REPORTING AND COMPLAINANT RIGHTS.

129 (II) THE RULE-MAKING COMMITTEE MAY PROMULGATE SPECIFIC RULES GOVERNING PROCEEDINGS BEFORE A PANEL OF THE ADJUDICATIVE
130 BOARD. THE COLORADO RULES OF EVIDENCE AND COLORADO RULES OF CIVIL PROCEDURE, AS AMENDED, APPLY TO PROCEEDINGS BEFORE
131 A PANEL OF THE ADJUDICATIVE BOARD UNTIL AND UNLESS THE RULE-MAKING COMMITTEE PROMULGATES RULES GOVERNING PANEL
132 PROCEEDINGS. RULES PROMULGATED PURSUANT TO THIS SUBSECTION (3)(k)(II) APPLY TO FORMAL PROCEEDINGS INITIATED ON OR AFTER
133 APRIL 1, 2025.

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

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