

HB16-1235

Exhibit Packet for the testimony of

Chris Forsyth

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Archive

Colorado Statutes

Title 13. COURTS AND COURT PROCEDURE

COURTS OF RECORD

Article 5.5. Commissions on Judicial Performance

Current through Chapter 54 of the 2016 Legislative Session

§ 13-5.5-101. Legislative declaration

- (1) The general assembly hereby finds and declares that it is in the public interest to establish a system of evaluating judicial performance to provide persons voting on the retention of justices and judges with fair, responsible, and constructive information about judicial performance and to provide justices and judges with useful information concerning their own performances. The general assembly further finds and declares that the evaluation of judicial performance should be conducted statewide and within each judicial district using uniform criteria and procedures pursuant to the provisions of this article.
- (2) The general assembly further finds and declares that it is in the public interest to establish an office of judicial performance evaluation within the judicial department of the state to implement the provisions of this article.

Cite as C.R.S. § 13-5.5-101

History. L. 88: Entire article added, p. 596, § 1, effective May 12. L. 97: Entire section amended, p. 1647, § 1, effective June 5. L. 2008: Entire section amended, p. 1271, § 1, effective July 1.

RULE CHANGE 2014(04)

CHAPTER 37

**RULES GOVERNING THE COMMISSIONS
ON JUDICIAL PERFORMANCE**

The State Commission on Judicial Performance
with the approval of the Supreme Court
Repeals and Readopts the following rules
pursuant to section 13-5.5-103(1)(o)(I), C.R.S.

ANALYSIS BY RULE

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Rule 1. Appointments.

(a) State and district commissioners shall be appointed to four-year terms, expiring on November 30 in odd-numbered years. A commissioner who resigns or moves out of the district or state shall advise the chair of the commission, the appointing authority, and the state commission. The chair of a commission shall advise the appointing authority and the state commission of any vacancy, and the date of the vacancy, if known. The executive director of the Office of Judicial Performance Evaluation shall within five days, in writing, advise the appropriate appointing authority of the vacancy, whether the vacancy must be filled with an attorney or a non-attorney, and that if no appointment is made within forty-five days of the vacancy, the state commission shall make the appointment.

(b) The executive director of the Office of Judicial Performance Evaluation shall cause to be published and posted at all times on the office's web site the names of the state and district commissioners and the name, address, telephone number, and e-mail address of the executive director of the Office of Judicial Performance Evaluation and each district administrator.

(c) The state commission may recommend to the appointing authority that a member of any commission be removed for cause pursuant to section 13-5.5-104, C.R.S. "Cause" means any malfeasance or nonfeasance in carrying out the commissioner's official duties and responsibilities, including improper disclosure of confidential information, failure to disclose any basis for recusal or to recuse when appropriate, advocating for or against the retention of any particular justice or judge, and failure to participate in three consecutive meetings.

Rule 2. Officers.

Commissions shall elect a chair and a vice-chair, one of whom should be an attorney, and one of whom should not be an attorney, to serve two-year terms. The terms of the chairs and vice-chairs of the commissions shall expire on November 30 of each even-numbered year.

Rule 3. Procedures.

(a) A majority of the total number of appointed members of a commission shall constitute a quorum. The procedures adopted by the state commission shall be used for the conduct of all meetings, evaluations, and other business, except as otherwise provided by these rules or statute.

(b) The state commission shall, prior to final promulgation of any proposed rule, post a notice of the proposed rule, allow for a period of public comment, and give the public an opportunity to address the commission concerning the proposed rule at a public hearing.

Rule 4. Meetings.

(a) Although judicial performance commissions are not subject to the Colorado open meetings law, section 24-6-402, C.R.S., they should attempt to comply as fully as practicable with the spirit of that law.

(b) The state commission should post a notice on its web site, including specific agenda information where possible, not less than twenty-four hours prior to the holding of any meeting at which a quorum of the state commission is expected to be in attendance.

(c) The state commission shall conduct all business publicly, unless it has decided to proceed in executive session in accordance with these rules. No adoption of any proposed policy, position, resolution, rule, regulation, or formal action shall occur at any executive session.

Rule 5. Executive Sessions.

A motion to go into executive session must be approved by a two-thirds vote of the commissioners, and for only the following purposes:

(a) Consideration of confidential materials as part of an evaluation of a justice or judge, including deliberations. Members of other commissions and staff may not be present during such consideration;

(b) Conferences with an attorney representing the commission concerning disputes involving the commission;

(c) Investigation of charges or complaints against an employee or consideration of dismissal, discipline, promotion, demotion, or compensation of the employee;

(d) Specialized details of security arrangements or investigations, including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law; or

(e) Any other matter required to be kept confidential by state or federal statutes or rules, including these rules.

Rule 6. Recusal.

(a) A commissioner shall:

(i) Disclose to the commission any professional or personal relationship or interest with respect to a justice or judge that may affect an unbiased evaluation of the justice or judge, including any litigation involving the justice or judge and the commissioner, the commissioner's family, or the commissioner's financial interest. A commission may require recusal of one of its members on account of such relationship upon a two-thirds vote of the other commissioners;

(ii) Recuse himself or herself from any evaluation of the person who appointed the commissioner;

(iii) Recuse himself or herself from participating in the consideration and vote on any matter involving the evaluation of a justice or judge for failure of a commissioner to meet the training, courtroom observation, interview, or opinion review responsibilities provided by these rules, unless excused by a two-thirds vote of the other commissioners;

(iv) Once recused, not be present during any part of the evaluation of the justice or judge.

(b) An attorney serving as a commissioner shall not request that a justice or judge being evaluated by the commission be recused from hearing a case in which the attorney appears as counsel of record, or request permission to withdraw from a case pending before a justice or judge being evaluated, solely on the basis that the attorney is serving as a judicial performance commissioner.

(c) An attorney who appears in a matter where opposing counsel or a witness serves as a member of a judicial performance commission which is evaluating the justice or judge before

whom the matter is set, may not seek withdrawal of the attorney, exclusion of the witness, or recusal of the justice or judge solely on the basis that the opposing counsel or witness is serving as a judicial performance commissioner.

(d) A justice or judge being evaluated by a judicial performance commission may not recuse himself or herself from a case in which an attorney, party, or witness is a judicial performance commissioner, nor should a justice or judge grant an attorney's request to withdraw from a case, solely on the basis that the attorney, party, or witness is serving as a judicial performance commissioner.

Rule 7. Staff.

The executive director of the Office of Judicial Performance Evaluation, district administrators, and their staffs shall assist their respective commissions in the performance of their duties, including meeting and interview arrangements, obtaining and distributing information, and posting notices. Staff shall not participate in interviews or deliberations conducted by the commission concerning the evaluation of any justice or judge nor the drafting of narratives.

Rule 8. Chief Justice or Chief Judge.

Prior to beginning any evaluations, each commission shall meet with the chief justice or chief judge of the court for which there is a justice or judge to be evaluated that year. The meeting is to allow the chief justice or chief judge to provide an overview of the court, and shall not concern the evaluation of any justice or judge's performance, unless the commission had previously made a recommendation for improvement for a justice or judge being evaluated that year.

Rule 9. Training.

The state commission shall provide training bi-annually that is reasonably accessible and convenient to all commissioners. Each commissioner shall attend one training session, or an appropriate alternative as determined by the state commission, each year in which the commissioner is to evaluate a justice or judge.

Rule 10. Trial Judge Evaluations.

(a) The state commission shall develop three separate survey questionnaires: one shall be for appellate judges and justices concerning each trial judge being evaluated; one shall be for attorneys, including prosecutors, public defenders, and private attorneys, who have appeared before the trial judge; and one shall be for non-attorneys, including jurors, litigants, law enforcement personnel, employees of the court, court interpreters, employees of probation offices, employees of local departments of social services, and victims of crimes, who have appeared before each trial judge being evaluated. Surveys shall be conducted on a continuing basis, and results provided to the district commission and the trial judge. To ensure the anonymity of respondents, a district commission shall not receive completed questionnaires, and all reports of the results shall be based on aggregate data. Comments shall be separated from completed questionnaires before the comments are forwarded to the trial judge being evaluated.

(b) The district commission shall ensure that each trial judge being evaluated receives adequate observation.

(c) The district administrator shall provide the district commission with information concerning the caseload, case types, open case reports, and case aging reports for each trial judge during the current term, to the extent possible.

(d) The state commission shall develop self-evaluation forms that shall be completed by each trial judge being evaluated.

(e) Each district judge shall submit to the district commission not less than three decisions he or she issued, including, if applicable, one of which was reversed on appeal, together with the reversing opinion, if applicable. Each county judge shall submit to the district commission transcripts of three findings of fact, conclusions of law, and orders, one of which was reversed on appeal, together with the reversing decision, if applicable. Each district commission shall review the three decisions or transcripts and any others authored by the trial judge that the commission in its discretion may select for compliance with the statutory criteria for legal knowledge, thoroughness of findings, clarity of expression, logical reasoning, and application of the law to the facts presented. All decisions and opinions submitted or reviewed shall have been issued during the judge's current term.

(f) A district commission may interview district court judges, and county court judges, and other interested persons. The commission shall agree to meet with a representative of the District Attorney and a representative of the Public Defender when a request is made, provided that the request is made no later than the first day of April of the relevant retention year. The commission shall provide adequate notice and work with the representatives to schedule a convenient date and time for the meeting. In addition, the commission shall accept information and documentation from any interested person, provided the person (i) submits his or her name and address, and (ii) submits the information and/or documentation to the commission by the first day of April of the relevant retention year. The district commission shall provide the trial judge with a written summary of any oral information, and a copy of any written information, no later than ten days prior to the interview with the commission. The trial judge also may submit additional written information to the commission prior to or after the interview.

(g) The district commission shall interview each trial judge being evaluated following its initial review of information.

Rule 11. Appellate Judge and Justice Evaluations.

(a) The state commission shall develop three separate survey questionnaires: one shall be for trial judges concerning each appellate judge or justice being evaluated; one shall be for attorneys, including prosecutors, public defenders, and private attorneys, who have appeared before the appellate judge or justice; and one shall be for other appellate judges and justices, and staff attorneys. Surveys shall be conducted on a continuing basis, and results provided to the state commission and the appellate judge or justice. To ensure the anonymity of respondents, the state commission shall not receive completed questionnaires, and all reports of the results shall be based on aggregate data. Comments shall be separated from completed questionnaires before the comments are forwarded to the appellate judge or justice.

A. 4/3/2016 1:49:31 PM
Limited review

The only decisions the commissions have to review are the three decisions submitted by the judge. The commissions do not have to review any other decisions.

This is not fair, responsible or constructive for voters. The judge is controlling the review and therefore does not receive useful information regarding his or her performance.

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by each trial judge being evaluated.

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(f) A district commission may interview district court judges, and county court judges, and other interested persons. The commission shall agree to meet with a representative of the

B. 4/3/2016 1:48:59 PM
No right for public to be heard

The only individuals the commissions have to talk with are the judge and a representative of the D.A. or Public Defender. The commissions aren't required to listen to anyone else.

This is not fair, responsible or constructive for voters. It fails to consider information that could be useful for the judge.

Public Defender when a request is made, provided day of April of the relevant retention year. The work with the representatives to schedule a addition, the commission shall accept information, provided the person (i) submits his or her name and/or documentation to the commission by the . The district commission shall provide the trial information, and a copy of any written information, no he commission. The trial judge also may submit on prior to or after the interview.

(g) The district commission shall interview each trial judge being evaluated following its initial review of information.

Rule 11. Appellate Judge and Justice Evaluations.

(a) The state commission shall develop three separate survey questionnaires: one shall be for trial judges concerning each appellate judge or justice being evaluated; one shall be for attorneys, including prosecutors, public defenders, and private attorneys, who have appeared before the appellate judge or justice; and one shall be for other appellate judges and justices and staff attorneys. Surveys shall be conducted on a continuing basis, and results provided to the state commission and the appellate judge or justice. To ensure the anonymity of respondents, the state commission shall not receive completed

C. 4/3/2016 1:48:37 PM
Unfair rules generally

Rules stacked in favor of the judge are not providing voters fair, responsible or constructive information about judicial performance. And such rules prohibit useful information from which the judge could learn.

D. 4/3/2016 1:48:17 PM
Limited surveys

No surveys are given to litigants or the public for appellate court judges. Only lawyers and judges get such surveys.

This is not fair, responsible, or as constructive as it should be for voters. The public should be heard. And it fails to provide the judge useful information from which the judge could learn.

(b) The state commission shall ensure that each appellate judge or justice being evaluated receives adequate observation through visits to the courtroom.

(c) The clerk of the supreme court and the court of appeals shall provide the state commission with information concerning opinions authored, including concurrences and dissents, and cases on desk reports, excluding case names, for each appellate judge or justice during the current term, to the extent possible.

(d) The state commission shall develop self-evaluation forms that shall be completed by each appellate judge or justice being evaluated.

(e) Each appellate judge or justice shall submit to the state commission five opinions he or she authored, including both civil and criminal cases. These opinions shall include, if applicable, at least one separate concurrence or dissent, at least one unpublished opinion, and at least one opinion which was reversed on appeal, together with the reversing opinion. The state commission shall review the five opinions and any others authored by the appellate judge or justice that the commission in its discretion may select for compliance with the statutory criteria for legal knowledge, adherence to the record, clarity of expression, logical reasoning, and application of the law to the facts presented. All opinions submitted or reviewed shall have been issued during the appellate judge or justice's current term.

(f) The state commission may interview other persons, including judges and justices and accept information and documentation from interested persons, if the person provides his or her name and address. The state commission shall provide the appellate judge or justice with a written summary of any oral information, and a copy of any written information, no later than ten days prior to the interview with the commission. The appellate judge or justice also may submit additional written information to the commission prior to or after the interview.

(g) The state commission shall interview each appellate judge or justice being evaluated following its initial review of information.

Rule 12. Recommendations.

(a) Following the evaluation based upon the survey data, courtroom observations, case information, self-evaluations, review of decisions, interviews, and any other written or oral information received, a commission shall prepare a recommendation regarding the retention of each justice or judge. The recommendation shall be "retain," "do not retain," or "no opinion." The recommendation of "no opinion" shall be given only when the commission is equally divided, and as such shall not be counted for or against retention. Individual commissioners may not vote "no opinion," but shall vote to retain, or to not retain, or shall recuse themselves.

(b) A commission shall consider a recommendation of "retain" for any justice or judge who receives an average of at least 3.0 on a 4.0 scale for the questionnaire responses, and issued no decision or opinion more than 180 days after a matter was briefed, argued, or otherwise submitted to the court for decision, whichever is latest, unless the other evaluation information indicates a significant performance problem, such as poor judicial temperament.

(c) A commission shall consider a recommendation of "do not retain" for any justice or judge who receives less than an average of 3.0 on a 4.0 scale for the questionnaire responses, unless:

E.

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Limited review

The only decisions the commission has to review are the five opinions submitted by the judge. The commission does not have to review any other decisions.

This is not fair, responsible or constructive for voters. The judge is controlling the review and therefore does not receive useful information regarding his or her performance.

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(d) The state commission shall develop self-evaluation forms that shall be completed by each appellate judge or justice being evaluated.

(e) Each appellate judge or justice shall submit to the state commission five opinions he or she authored, including both civil and criminal cases. These opinions shall include, if applicable, at least one separate concurrence or dissent, at least one unpublished opinion, and at least one opinion which was reversed on appeal, together with the reversing opinion. The state commission shall review the five opinions and any others authored by the appellate judge or justice that the commission in its discretion may select for compliance with the statutory criteria for legal knowledge, adherence to the record, clarity of expression, logical reasoning, and application of the law to the facts presented. All opinions submitted or reviewed shall have been for justice's current term.

F.

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No right to be heard whatsoever

Only the judge at issue has the right to be heard. There's absolutely no constructive criticism that will happen in this instance.

This is not fair, responsible or constructive for voters. It fails to consider information that could be useful to the judge.

may interview other persons, including judges and justices, and may obtain information from interested persons, if the person provides his or her contact information. The commission shall provide the appellate judge or justice with a copy of the information, and a copy of any written information, no later than ten days after the information is received by the commission. The appellate judge or justice also may submit information to the commission prior to or after the interview. The commission shall interview each appellate judge or justice being evaluated and shall provide the judge or justice with a copy of the information.

Rule 12. Recommendations.

(a) Following the evaluation based upon the survey data, courtroom observations, case information, self-evaluations, review of decisions, interviews, and any other written or oral information received, a commission shall prepare a recommendation regarding the retention of each justice or judge. The recommendation shall be "retain," "do not retain," or "no opinion." The recommendation of "no opinion" shall be given only when the commission is equally divided, and as such shall not be counted for or against retention. Individual commissioners may not vote "no opinion," but shall vote to retain, or to not retain, or shall recuse themselves.

(b) A commission shall consider a recommendation of "retain" for any justice or judge who receives an average of at least 3.0 on a 4.0 scale for the questionnaire responses, and issued no decision or opinion more than 180 days after a matter was briefed, argued, or otherwise submitted to the court for decision, whichever is latest, unless the other evaluation information

G.

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Over-reliance on aggregate survey results

Relying on aggregate totals in surveys improperly protects a Jekyll and Hyde judge. A judge could get a "0" on one out of every four surveys and as long as he or she received a "4" on the rest, retention - as opposed to "do not retain" - was the rule. As Martin Luther King Jr. said, "Injustice anywhere is a threat to justice everywhere." Yet Colorado operated under this rule for many years. It's so bad, however, that after a draft of HB16-1235 was revealed even the state commission realized the rule was indefensible and recently changed it. But rules can change. And this rule is still the one posted on the commission's web site. Absent the adoption of HB16-1235, this rule can easily come back. The rule is unfair and irresponsible and shows the state commission's long-standing disregard for its legislative mandate.

(i) The nature or high number of cases of a justice or judge's docket or caseload is such that it cannot appropriately be managed in a timely manner. This may be particularly true for a provisional justice or judge, who when appointed may inherit a significantly high number of cases that cannot be managed quickly; or

(ii) The commission believes that with additional experience on the bench and a commitment to improve his or her judicial skills, the justice or judge should be given more time to develop his or her judicial skills. The justice or judge must agree to the recommendations contained in a performance plan that identifies areas of significantly poor performance and makes specific recommendations for improvement.

Rule 13. Narratives.

(a) Within ten days following the interview, a commission shall provide the justice or judge a complete written draft of the narrative supporting the recommendation. A narrative shall consist of four short paragraphs totaling not more than 500 words, as follows:

(i) The retention recommendation, including the number of commissioners who voted for and against retention;

(ii) Undergraduate and law schools attended, previous substantial legal or public employment, relevant professional activities or awards, and volunteer or other community work;

(iii) Evaluation methods used by the commission, whether any of the groups surveyed had an insufficient response rate, and the percentages of responses from each surveyed group recommending that a justice or judge be retained or not be retained, or making no recommendation that a justice or judge be retained; and

(iv) A description of the performance of the justice or judge over the past term, including any areas of notably strong or weak performance with respect to the judicial performance criteria contained in 13-5.5-105.5(1) and (2), any deficiencies reflected in the interim evaluation, the extent to which such deficiency has been satisfactorily addressed, and any additional information that the commission believes may be of assistance to the public in making an informed voting decision;

(b) The justice or judge being evaluated may respond in writing to the draft narrative, and request an additional interview, within ten days of receipt of the draft. Any additional interview shall be held within ten days of the request. The commission may revise the draft narrative, and shall provide the justice or judge with the final narrative within ten days following the additional interview.

(c) Any commission issuing a "do not retain" or "no opinion" recommendation shall, at the justice or judge's request, include a response from the justice or judge of not more than 100 words. The commission may then change its vote count or revise the draft narrative, and shall provide the justice or judge with the final narrative within ten days following the receipt of the response.

(d) If the commission has identified one or more areas of significantly poor performance, it may recommend to the chief justice or chief judge that the justice or judge be placed on an improvement plan.

Rule 14. Confidentiality.

(a) All comments in survey reports, self-evaluations, personal information protected under section 24-72-204(3)(a)(II), C.R.S., additional oral or written information under rules 10(f) and 11(f), content of improvement plans, any matter discussed in executive session under rule 5, and complaints, responses and decisions under rule 16, shall remain confidential except as otherwise specifically provided in these rules. Information from comments in survey reports, self-evaluations, and additional oral or written information under rules 10(f) and (g) and 11(f) and (g), may be summarized for use in a narrative. No commissioner may publicly discuss the substance of the evaluation of any particular justice or judge. Each commission may designate a sole or primary spokesperson to publicly discuss, between July 1 and December 31 of an election year, the process of evaluating the justices and judges.

(b) All recommendations, narratives, and survey reports are confidential until released to the public on the first day following the deadline for judges to declare their intent to stand for retention. Any comments included in the report shall be made available only to commissioners, the justice or judge being evaluated, and the chief justice or chief judge.

(c) Otherwise confidential information may be released only under the following circumstances:

(i) To the supreme court attorney regulation committee, if an allegation is made against a justice or judge in the course of the evaluation process which, if true, would constitute a violation of the Colorado rules of professional conduct, on the same basis as that body provides confidential information to the state commission;

(ii) To the commission on judicial discipline, if an allegation is made against a justice or judge in the course of the evaluation process, which, if true, would constitute a violation of the code of judicial conduct, or which would constitute extra-judicial conduct that reflects adversely on the judiciary, on the same basis as that body provides confidential information to the state commission; or

(iii) With the consent of the justice or judge. A justice or judge disclosing otherwise confidential information shall be deemed to have consented to the release of related confidential information.

Rule 15. Records.

Upon completing its required recommendations and narratives, each commission shall collect all documents and other information, including all copies, received regarding the justices or judges evaluated. Each commission shall forward the documents and other information, including all copies, to the state commission within 30 days following submission of their recommendations and narratives to the state commission. The state commission shall establish guidelines regarding retention of evaluation information, which shall be made available to commissions in subsequent judicial performance evaluation cycles.

Rule 16. Complaints.

(a) Any commissioner, justice or judge may file a written complaint with the state commission regarding any alleged violation of these rules or the statutes governing judicial performance commissions. The state commission shall provide a copy to the chair of the

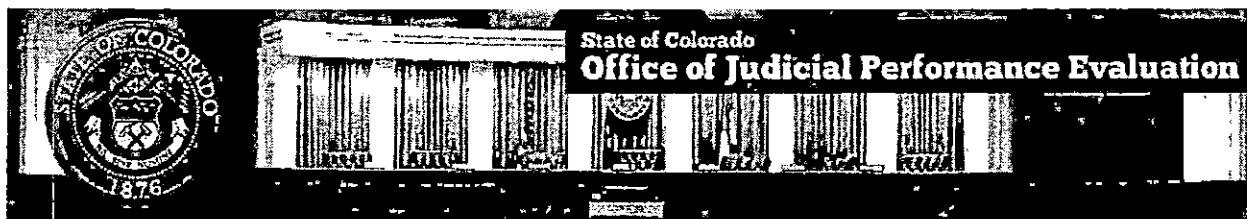
particular district commission, who shall provide a written response. The state commission shall make an independent review and provide its decision to the district commission along with any remedial instructions. The state commission may not reverse any retention recommendation, but may cause a rebuttal to be published with the district commission's recommendation or direct a district commission to revise a narrative within ten days. Should the district commission fail to satisfactorily comply, the state commission may, in its discretion, rewrite the narrative.

(b) The state commission may, following the redaction of confidential information, publically disclose a complaint, response, and the state commission's decision.

Amended and Adopted by the Court, En Banc, March 17, 2014, effective immediately.

By the Court:

**Nancy E. Rice
Chief Justice, Colorado Supreme Court**



Heather R. Hanneman

Attorney member, appointed by the Speaker of the House in 2010. Managing Shareholder at Recht & Kornfeld, P.C. where her practice focuses on torts, business disputes, and corporate internal investigations, particularly those involving fraud and other criminal conduct. Has extensive appellate litigation experience, representing numerous clients in the Colorado Court of Appeals and the Colorado Supreme Court.



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Heather Hanneman has over twenty-three years of experience in complex civil litigation, representing clients in federal and state courts, arbitrations, mediations, and before boards of contract appeals. Her areas of practice include commercial contracts and other business disputes, fraud, government contracts, securities litigation, unfair competition, trade secrets, professional licensure, defamation, and corporate internal investigations. In addition to her trial court practice, she also has extensive appellate litigation experience, representing numerous clients in the Colorado Court of Appeals, the Colorado Supreme Court, and the United States Court of Appeals for the Tenth Circuit.

Heather was selected by her peers to be included in the 2013 and 2014 editions of Best Lawyers in America® in the area of Appellate Practice.

Heather graduated with high distinction from the University of Iowa College of Law, where she was an articles editor for the Iowa Law Review. She is a member of the Colorado Bar and admitted to practice before the United States District Court for the District of Colorado and the United States Court of Appeals for the Tenth Circuit.

Heather serves as a Commissioner on the Colorado State Board On Judicial Performance which evaluates the performance of Colorado Supreme Court justices and Court of Appeals judges. She also has served as a Continuing Legal Education instructor on the Colorado Consumer Protection Act. Heather has been active in pro bono and professional service activities, including work on behalf of the ACLU of Colorado, Colorado Legal Services, and the Denver County Permanent Restraining Order Project.

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<p>SUPREME COURT OF COLORADO 2 East 14th Ave. Denver, CO 80203</p>	
<p>Original Proceeding Pursuant to Colo. Rev. Stat. § 1-40-107(2) Appeal from the Ballot Title Board</p>	
<p>In the Matter of the Title, Ballot Title, and Submission Clause for Proposed Initiative 2013-2014 #94 (“Duties of the Independent Ethics Commission”)</p> <p>Petitioner: STACY CARPENTER v. Respondents: CHRIS FORSYTH AND LAURIE FORSYTH</p> <p>and</p> <p>Title Board: SUZANNE STAIERT; DANIEL DOMENICO; and JASON GELENDER</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Petitioner: Mark G. Grueskin, #14621 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1000 Denver, CO 80202 Phone: 303-573-1900 Facsimile: 303-446-9400 Email: mark@rechtkornfeld.com</p>	<p>Case No. 2014SA102</p>
<p>OPENING BRIEF 2013-2014 #94</p>	

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Be it Enacted by the People of the State of Colorado:

Colorado Secretary of State

SECTION 1. In the constitution of the state of Colorado, section 5 of article XXIX, amend (3)(a) as follows:

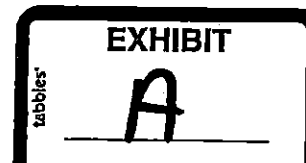
(3)(a) Any person may file a written complaint with the independent ethics commission asking whether a public officer, member of the general assembly, local government official, or government employee has failed to comply with this article or any other standards of conduct or reporting requirements as provided by law within the preceding twelve months. PURSUANT TO SECTION 23 OF ARTICLE VI OF THE COLORADO CONSTITUTION, ANY PERSON MAY FILE A WRITTEN COMPLAINT WITH THE INDEPENDENT ETHICS COMMISSION ASKING WHETHER A JUSTICE OR JUDGE HAS FAILED TO COMPLY WITH THE CODE OF JUDICIAL CONDUCT OR WHETHER A JUSTICE OR JUDGE SHOULD BE RETIRED FOR DISABILITY. THE TWELVE MONTH STATUTE OF LIMITATIONS DOES NOT APPLY TO COMPLAINTS AGAINST A JUSTICE OR JUDGE.

SECTION 2. In the constitution of the state of Colorado, section 23 of article VI, amend (3) (a), (3) (b), (3) (c), (3) (d), (3) (e), (3) (f), (3) (g) and (3) (h) as follows:

~~(3)(a) There shall be a commission on judicial discipline. It shall consist of: Two judges of district courts and two judges of county courts, each selected by the supreme court; two citizens admitted to practice law in the courts of this state, neither of whom shall be a justice or judge, who shall have practiced in this state for at least ten years and who shall be appointed by the governor, with the consent of the senate; and four citizens, none of whom shall be a justice or judge, active or retired, nor admitted to practice law in the courts of this state, who shall be appointed by the governor, with the consent of the senate.~~ THE INDEPENDENT ETHICS COMMISSION IS RESPONSIBLE FOR PROSECUTING JUDICIAL MISCONDUCT AND RECOMMENDING JUDICIAL DISCIPLINE.

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

(c) No member of the INDEPENDENT ETHICS commission shall receive any compensation for his services but shall be allowed his necessary expenses for travel, board, and lodging and any other expenses incurred in the performance of his duties REGARDING THE PROSECUTION OF JUDICIAL MISCONDUCT AND THE RECOMMENDATION OF



JUDICIAL DISCIPLINE, to be paid by the supreme court from its budget to be appropriated by the general assembly.

(d) A justice or judge of any court of record of this state, in accordance with the procedure set forth in this subsection (3), may be removed or disciplined for ~~willful misconduct in office, willful or persistent failure to perform his duties, intemperance, or~~ violation of any canon OR RULE of the Colorado code of judicial conduct, or he may be retired for disability interfering with the performance of his duties which is, or is likely to become, of a permanent character. AS SET FORTH IN THIS SECTION, THE INDEPENDENT ETHICS COMMISSION HAS SOLE JURISDICTION OVER WHETHER A JUSTICE OR JUDGE HAS VIOLATED A CANON OR RULE OF THE COLORADO CODE OF JUDICIAL CONDUCT OR WHETHER A JUSTICE OR JUDGE MAY BE RETIRED FOR DISABILITY. A JUSTICE OR JUDGE MAY BE DISCIPLINED FOR CONDUCT THAT MAY BE OTHERWISE SUBJECT TO APPELLATE REVIEW BECAUSE THE PURPOSES OF DISCIPLINE ARE SEPARATE AND DISTINCT FROM THE PURPOSES OF AN APPEAL. THE PURPOSES OF DISCIPLINE ARE THE PREVENTION OF FUTURE MISCONDUCT AND THE PROTECTION OF THE PUBLIC. A JUSTICE OR JUDGE MUST POSSESS THE CONFIDENCE OF THE COMMUNITY AND THEREFORE BE INDEPENDENT AND HONEST. JUSTICE MUST NOT ONLY BE DONE, IT MUST BE SEEN TO BE DONE. THERE MUST BE THE APPEARANCE OF JUSTICE AS WELL AS THE FACT OF JUSTICE, OR RESPECT FOR THE JUDICIARY WILL VANISH. THEREFORE, IF THE CODE OF JUDICIAL CONDUCT IS VIOLATED IN AN ORDER OR BY ACTIONS THAT ARE OTHERWISE SUBJECT TO APPELLATE REVIEW, A JUSTICE OR JUDGE MAY BE DISCIPLINED. IN REACHING ITS RECOMMENDATION, THE INDEPENDENT ETHICS COMMISSION IS NOT BOUND BY THE FINDINGS OF AN APPELLATE COURT REGARDING SUCH CONDUCT AND OWES NO DEFERENCE TO THE FINDINGS OF AN APPELLATE COURT. FURTHERMORE, A JUSTICE OR JUDGE MAY BE DISCIPLINED FOR CONDUCT OR ACTIONS THAT WERE NOT APPEALED OR FOR CONDUCT OR ACTIONS THAT WERE NOT OTHERWISE SUBJECT TO APPELLATE REVIEW.

(e) ~~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.~~ WHENEVER THE INDEPENDENT ETHICS COMMISSION RECEIVES A COMPLAINT AGAINST A JUSTICE OR JUDGE, OR OTHERWISE HAS REASON TO BELIEVE THAT A JUSTICE OR JUDGE SHOULD BE ADMONISHED, REPRIMANDED, CENSURED, SUSPENDED, REMOVED, OR RETIRED, THE COMMISSION SHALL FIRST INVESTIGATE THE COMPLAINT OR BELIEF AND THEN CONDUCT INITIAL PROCEEDINGS FOR THE PURPOSE OF DETERMINING WHETHER PROBABLE CAUSE EXISTS FOR CONDUCTING A PUBLIC HEARING OR HEARINGS TO DEAL WITH THE COMPLAINT OR BELIEF. WHENEVER THE COMMISSION CONCLUDES, BASED ON

AN INITIAL PROCEEDING, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A JUSTICE OR JUDGE HAS VIOLATED A CANON OR RULE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, THE COMMISSION SHALL CONDUCT A PUBLIC HEARING OR HEARINGS. After a formal SUCH hearing OR HEARINGS ~~or after considering the record and report of the masters,~~ if the commission ~~finds good cause therefor~~ FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT A JUSTICE OR JUDGE HAS VIOLATED THE CODE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, it may take informal remedial action, or it may recommend to the supreme court the removal, retirement, suspension, censure, reprimand, or discipline, as the case may be, of the justice or judge. The commission may also recommend that the costs of its investigation and hearing be assessed against such justice or judge.

(f) Following receipt of a recommendation from the INDEPENDENT ETHICS commission, the supreme court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal, retirement, suspension, censure, reprimand, or discipline, as it finds just and proper, or wholly reject the recommendation. IF THE RECOMMENDATION OF THE COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE, THE SUPREME COURT SHALL ACCEPT THE RECOMMENDATION OF THE COMMISSION. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order. On the entry of an order for retirement or for removal of a judge, his office shall be deemed vacant.

(g) ~~Prior to the filing of a recommendation to the supreme court by the commission against any justice or judge, all papers filed with and proceedings before the commission on judicial discipline or masters appointed by the supreme court, pursuant to this subsection (3), shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation; except that the record filed by the commission in the supreme court continues privileged and a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing.~~ WHENEVER THE COMMISSION CONCLUDES, BASED ON AN INITIAL PROCEEDING, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A JUSTICE OR JUDGE HAS VIOLATED THE CODE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, THE COMMISSION SHALL MAKE PUBLIC ALL THOSE RECORDS OF ITS INVESTIGATION THAT PROVIDE THE BASIS FOR ITS ACTION. SUBSEQUENT ACTIONS BY THE COMMISSION OR SUBSEQUENT HEARINGS IN THE DISCIPLINARY PROCESS SHALL BE PUBLIC.

(h) ~~The supreme court shall by rule provide for procedures before the commission on judicial discipline, the masters, and the supreme court. The rules shall also provide the standards and degree of proof to be applied by the commission in its proceedings.~~ A justice or judge who is a member of the INDEPENDENT ETHICS commission or supreme court shall not participate in any proceedings involving his own removal or retirement.

SECTION 3. In the constitution of the state of Colorado, section 23 of article VI, **add** (4) as follows:

(4) TO PROMOTE AN EQUAL AMOUNT OF PUBLIC CONFIDENCE IN THE JUDICIAL BRANCH AS CURRENTLY EXISTS IN OTHER BRANCHES OF GOVERNMENT, THE JURISDICTION OVER JUDICIAL DISCIPLINE BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE SHALL CEASE ON DECEMBER 31, 2014, AND BE ASSUMED BY THE INDEPENDENT ETHICS COMMISSION ON JANUARY 1, 2015. THE INDEPENDENT ETHICS COMMISSION SHALL TAKE OVER ANY ONGOING INVESTIGATION AND ALL COMPLAINTS REGARDING JUDICIAL DISCIPLINE AS OF JANUARY 1, 2015. THE INDEPENDENT ETHICS COMMISSION HAS JURISDICTION OVER CONDUCT THAT OCCURRED PRIOR TO JANUARY 1, 2015, AS WELL AS CONDUCT THAT OCCURS AFTER JANUARY 1, 2015. THE INDEPENDENT ETHICS COMMISSION IS NOT BOUND BY ANY PRIOR DISMISSALS OF COMPLAINTS ISSUED BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE. THE INDEPENDENT ETHICS COMMISSION MAY INVESTIGATE AND PURSUE DISCIPLINE BASED ON COMPLAINTS THAT WERE PREVIOUSLY DISMISSED BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE.

SECTION 4. Effective date - applicability. These voter-enacted provisions shall take effect on January 1, 2015.

§ 23. Retirement and removal of justices and judges.

CONSTITUTION OF THE STATE OF COLORADO

Article VI. Judicial Department

Miscellaneous

Current through November 3, 2015 Election

§ 23. Retirement and removal of justices and judges

- (3) (g) Prior to the filing of a recommendation to the supreme court by the commission against any justice or judge, all papers filed with and proceedings before the commission on judicial discipline or masters appointed by the supreme court, pursuant to this subsection (3), shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation; except that the record filed by the commission in the supreme court continues privileged and a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing.

Source:

L. 61: Entire article R&RE, effective January 12, 1965, see L. 63, p. 1055. **Initiated 66:** Entire section amended, effective January 17, 1967, see L. 67, p. 7 of the supplement to the 1967 Session Laws. **L. 82:** (3) R&RE, p. 687, effective upon proclamation of the Governor, L. 83, p. 1674, July 1, 1983. **L. 2002:** (3)(j) repealed, p. 3095, effective upon proclamation of the Governor, L. 2003, p. 3611, December 20, 2002.