

CHAPTER 366

COURTS

HOUSE BILL 23-1019

BY REPRESENTATIVE(S) Weissman and Lynch, Bacon, Amabile, Bird, Boesenecker, deGruy Kennedy, Epps, Froelich, Garcia, Gonzales-Gutierrez, Hamrick, Jodeh, Joseph, Kipp, Lieder, Lindsay, Marshall, Martinez, Parenti, Sharbini, Sirota, Snyder, Soper, Story, McCluskie, English, Mauro, Michaelson Jenet, Ricks;
also SENATOR(S) Gardner and Gonzales, Moreno, Van Winkle, Buckner, Cutter, Exum, Hansen, Mullica, Priola, Roberts, Rodriguez.

AN ACT

CONCERNING JUDICIAL DISCIPLINE, AND, IN CONNECTION THEREWITH, ENSURING COMPLAINANT RIGHTS IN JUDICIAL DISCIPLINE PROCEEDINGS AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 13-5.3-101, **add** (9.5) and (13.5) as follows:

13-5.3-101. Definitions. As used in this article 5.3, unless the context otherwise requires:

(9.5) "JUDICIAL DISCIPLINE ADJUDICATIVE BOARD" MEANS THE JUDICIAL DISCIPLINE ADJUDICATIVE BOARD CREATED PURSUANT TO SECTION 23 (3) OF ARTICLE VI OF THE COLORADO CONSTITUTION TO CONDUCT FORMAL JUDICIAL DISCIPLINARY PROCEEDINGS.

(13.5) "PANEL" MEANS A THREE-MEMBER PANEL OF THE JUDICIAL DISCIPLINE ADJUDICATIVE BOARD CONSISTING OF ONE JUDGE, ONE ATTORNEY LICENSED TO PRACTICE IN COLORADO, AND ONE CITIZEN, CONVENED PURSUANT TO SECTION 23 (3) OF ARTICLE VI OF THE COLORADO CONSTITUTION UPON AN ORDER OF A FORMAL HEARING OR TO HEAR AN APPEAL OF AN ORDER OF INFORMAL REMEDIAL ACTION.

SECTION 2. In Colorado Revised Statutes, 13-5.3-102, **amend** (2) as follows:

13-5.3-102. Commission on judicial discipline - powers and duties.
(2) (a) Members of the commission are appointed and serve pursuant to section 23

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(3)(a) and (3)(b) of article VI of the Colorado constitution.

(b) (I) THE SUPREME COURT SHALL SELECT THE MEMBERS OF THE COMMISSION WHO ARE JUDGES OF THE DISTRICT COURTS AND JUDGES OF COUNTY COURTS FROM AMONG THE NOMINEE POOLS CREATED BY THE STATE COURT ADMINISTRATOR PURSUANT TO SUBSECTION (2)(b)(II) OF THIS SECTION; EXCEPT THAT WHEN MAKING ITS SELECTIONS, THE SUPREME COURT SHALL ENSURE THAT THE COMMISSION DOES NOT INCLUDE MORE THAN ONE DISTRICT JUDGE FROM ANY ONE JUDICIAL DISTRICT AND NOT MORE THAN ONE COUNTY JUDGE FROM ANY ONE COUNTY.

(II) (A) UPON A VACANCY OF A DISTRICT JUDGE MEMBER OF THE COMMISSION, THE STATE COURT ADMINISTRATOR SHALL CREATE A DISTRICT JUDGE NOMINEE POOL THAT CONSISTS OF TEN DISTRICT JUDGES RANDOMLY SELECTED BY THE STATE COURT ADMINISTRATOR, OR THE ADMINISTRATOR'S DESIGNEE, FROM AMONG ALL DISTRICT JUDGES OF THE STATE NOT CURRENTLY A MEMBER OF THE COMMISSION.

(B) UPON A VACANCY OF A COUNTY JUDGE MEMBER OF THE COMMISSION, THE STATE COURT ADMINISTRATOR SHALL CREATE A COUNTY JUDGE NOMINEE POOL THAT CONSISTS OF TEN COUNTY JUDGES RANDOMLY SELECTED BY THE STATE COURT ADMINISTRATOR, OR THE ADMINISTRATOR'S DESIGNEE, FROM AMONG ALL COUNTY JUDGES OF THE STATE NOT CURRENTLY A MEMBER OF THE COMMISSION.

(C) WHEN CREATING THE NOMINEE POOL, THE STATE COURT ADMINISTRATOR OR THE ADMINISTRATOR'S DESIGNEE SHALL ONLY INCLUDE JUDGES WHO DO NOT HAVE A CURRENT DISCIPLINARY INVESTIGATION OR PROCEEDING PENDING BEFORE THE COMMISSION OR JUDICIAL DISCIPLINE ADJUDICATIVE BOARD; HAVE NOT RECEIVED A DISCIPLINARY SANCTION FROM THE COMMISSION, JUDICIAL DISCIPLINE ADJUDICATIVE BOARD, OR SUPREME COURT; AND ARE NOT OTHERWISE REQUIRED BY LAW, COURT RULE, OR JUDICIAL CANON TO RECUSE THEMSELVES FROM THE COMMISSION. THE RANDOM SELECTION OF JUDGES TO A NOMINEE POOL IS A PURELY ADMINISTRATIVE FUNCTION.

SECTION 3. In Colorado Revised Statutes, 13-5.3-105, **amend** (3) as follows:

13-5.3-105. Information-sharing with judicial oversight entities - legislative declaration. (3) (a) When a judicial oversight entity receives information indicating or alleging potential judicial misconduct, the entity shall share the portion of the complaint alleging judicial misconduct with the commission within a reasonable time. Thereafter, the commission may request further material or information that the oversight entity holds relating to the allegation of judicial misconduct. THE JUDICIAL OVERSIGHT ENTITY SHALL PROVIDE THE REQUESTED MATERIAL OR INFORMATION TO THE COMMISSION WITHIN FOURTEEN CALENDAR DAYS AFTER THE COMMISSION'S REQUEST. A JUDICIAL OVERSIGHT ENTITY MAY NOT WITHHOLD REQUESTED MATERIAL OR INFORMATION THROUGH A CLAIM OF PRIVILEGE OR CONFIDENTIALITY THAT IT HOLDS. Any information or materials received from the entity are subject to the commission's rules of confidentiality.

(b) A PROVISION IN A CONTRACT, INCLUDING IN A NONDISCLOSURE AGREEMENT, ENTERED INTO AFTER THE EFFECTIVE DATE OF THIS ACT THAT PROHIBITS A JUDICIAL OVERSIGHT ENTITY FROM DISCLOSING TO THE COMMISSION INFORMATION DESCRIBED IN THIS SUBSECTION (3) IS VOID AS AGAINST PUBLIC POLICY AND IS UNENFORCEABLE.

SECTION 4. In Colorado Revised Statutes, **amend** 13-5.3-107 as follows:

13-5.3-107. Rule-making. (1) Section 23 ~~(3)(h)~~ (3) of article VI of the Colorado constitution ~~directs the supreme court to provide by rule for procedures before the commission, the masters, and the supreme court~~ ESTABLISHES A RULE-MAKING COMMITTEE TO PROPOSE RULES FOR THE COMMISSION AND THE JUDICIAL DISCIPLINE ADJUDICATIVE BOARD. In exercising its ~~rulemaking~~ authority, the ~~supreme court~~ RULE-MAKING COMMITTEE shall provide the commission AND THE JUDICIAL DISCIPLINE ADJUDICATIVE BOARD reasonable notice ~~and an opportunity to object before enacting~~ PROPOSING any new rule or amendment. ~~as it pertains to judicial discipline. If the commission objects to any rule or amendment, representatives of the supreme court shall meet with representatives of the commission and engage in good-faith efforts to resolve their differences.~~

(2) ~~Whenever the supreme court proposes a rule, guideline, or procedure related to judicial discipline, the supreme court shall post notice of the proposed rule, guideline, or procedure; allow for a period for public comment; and give the public an opportunity to address the supreme court concerning the proposed rule, guideline, or procedure at a public hearing.~~ WHENEVER THE RULE-MAKING COMMITTEE PROPOSES A RULE, THE COMMITTEE SHALL POST NOTICE OF THE PROPOSED RULE, ALLOW FOR A PERIOD FOR PUBLIC COMMENT, AND GIVE THE PUBLIC AN OPPORTUNITY TO ADDRESS THE COMMITTEE CONCERNING THE PROPOSED RULE AT A PUBLIC HEARING.

SECTION 5. In Colorado Revised Statutes, 13-5.3-108, **amend** (1); and **add** (3) as follows:

13-5.3-108. Reporting requirements - "State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act" report - annual report. (1) The commission shall gather and maintain annual data and statistics on THE FOLLOWING INFORMATION:

(a) The number of requests for evaluation received, THE NUMBER OF OTHER ALLEGATIONS OF JUDICIAL MISCONDUCT RECEIVED REGARDLESS OF FORM, AND THE NUMBER OF REQUESTS FOR EVALUATION THAT THE COMMISSION DISMISSED BECAUSE IT LACKS JURISDICTION OVER THE JUDGE OR CONDUCT THAT IS THE SUBJECT OF THE COMPLAINT;

(b) The number of JUDICIAL MISCONDUCT investigations performed, THE TYPES OF COMPLAINTS INVESTIGATED, AND THE RESULTS OF THE INVESTIGATIONS;

(c) THE TYPES OF JUDICIAL MISCONDUCT COMPLAINTS REVIEWED BY THE COMMISSION FOLLOWING AN INVESTIGATION, THE NUMBER OF REVIEWED COMPLAINTS THAT WERE SUBSTANTIATED, AND THE NUMBER OF REVIEWED COMPLAINTS THAT WERE NOT SUBSTANTIATED;

~~(c)~~ (d) The number of formal proceedings pursued;

~~(d)~~ The types and relative volume of misconduct allegations received;

~~(e)~~ The type and relative volume of incidents of judicial misconduct identified;

~~(f)~~ (e) The number and types of dispositions entered, INCLUDING THE TYPE OF ANY DISCIPLINE IMPOSED OR RECOMMENDED; and

~~(g)~~ (f) The demographics, including the gender, age, race, ethnicity, or disability, of judges under discipline or investigation and those directly affected by the potential misconduct.

(3) (a) THE COMMISSION SHALL MAKE THE INFORMATION DESCRIBED IN SUBSECTION (1) OF THIS SECTION AVAILABLE ONLINE IN A SEARCHABLE FORMAT AND INCLUDE THE INFORMATION IN ITS ANNUAL REPORT. THE COMMISSION SHALL REPORT AND MAKE THE INFORMATION AVAILABLE IN AGGREGATE FORM AND WITHOUT INDIVIDUALLY IDENTIFIABLE INFORMATION CONCERNING A JUDGE, COMPLAINANT, OR WITNESS.

(b) NOTHING IN THIS SUBSECTION (3) REQUIRES THE COMMISSION TO MAKE PUBLICLY AVAILABLE ANY INFORMATION IT IS REQUIRED TO KEEP CONFIDENTIAL PURSUANT TO THE COLORADO CONSTITUTION OR LAW.

SECTION 6. In Colorado Revised Statutes, **repeal** 13-5.3-110.

SECTION 7. In Colorado Revised Statutes, **add** 13-5.3-111 as follows:

13-5.3-111. Requests for evaluation - manner - confidential requests. (1) IN ADDITION TO ANY OTHER METHOD PERMITTED BY THE COMMISSION OR OFFICE, A PERSON MAY SUBMIT A REQUEST FOR EVALUATION BY MAIL OR ONLINE. THE OFFICE SHALL DEVELOP AN ONLINE REQUEST FOR EVALUATION FORM THAT IS ACCESSIBLE FROM THE COMMISSION'S PUBLIC WEBSITE.

(2) THE COMMISSION AND OFFICE SHALL PERMIT A PERSON TO SUBMIT A CONFIDENTIAL OR ANONYMOUS REQUEST FOR EVALUATION.

SECTION 8. In Colorado Revised Statutes, **add** 13-5.3-112 as follows:

13-5.3-112. Complainant notification - point of contact. (1) UPON RECEIPT OF A COMPLAINT, THE OFFICE SHALL EXPLAIN TO THE COMPLAINANT THE JUDICIAL DISCIPLINE PROCESS, INCLUDING THE STEPS IN THE PROCESS, THE AVAILABILITY OF CONFIDENTIAL REPORTING, AND CONFIDENTIALITY REQUIREMENTS DURING EACH STEP OF THE PROCESS.

(2) THE OFFICE SHALL DESIGNATE A POINT OF CONTACT TO KEEP COMPLAINANTS APPRISED OF THE STATUS OF THE COMPLAINANT'S COMPLAINT, INCLUDING PERIODIC UPDATES RELATED TO THE COMPLAINT AND TIMELY NOTICE OF THE OUTCOME OF THE INVESTIGATION OF THE COMPLAINT AND THE DISCIPLINARY OR ADJUDICATIVE PROCESS. UPDATES MUST INCLUDE, BUT ARE NOT LIMITED TO, INFORMATION ABOUT THE FOLLOWING:

(a) DISMISSAL OF A COMPLAINT;

(b) COMPLETION OF AN INVESTIGATION;

(c) SCHEDULING OF ANY HEARINGS;

- (d) RESULTS OF ANY HEARINGS;
- (e) IMPOSITION OF ANY REMEDIAL MEASURES OR SANCTIONS; AND
- (f) APPEAL OF ANY REMEDIAL MEASURES OR SANCTIONS.

(3) IF A COMPLAINT IS DISMISSED BECAUSE IT IS OUTSIDE THE COMMISSION'S JURISDICTION, THE OFFICE SHALL PROVIDE AN EXPLANATION OF THE DISMISSAL TO THE COMPLAINANT.

SECTION 9. In Colorado Revised Statutes, **add** 13-5.3-113 as follows:

13-5.3-113. Judicial discipline adjudicative board - administrative support.

WHEN A PANEL OF THE JUDICIAL DISCIPLINE ADJUDICATIVE BOARD CONVENES PURSUANT TO SECTION 23 (3) OF ARTICLE VI OF THE COLORADO CONSTITUTION, THE JUDGE MEMBER OF THE PANEL IS RESPONSIBLE FOR PROVIDING ADMINISTRATIVE SUPPORT NECESSARY TO FACILITATE THE PANEL'S HEARINGS. WITH ANY NECESSARY APPROVAL FROM THE CHIEF JUDGE OF A DISTRICT COURT, THE PANEL JUDGE MAY USE THE JUDGE'S OWN STAFF TO PROVIDE THE ADMINISTRATIVE SUPPORT OR, IF NECESSARY, STAFF OF OTHER JUDGES IN THE JUDGE'S DISTRICT OR ANOTHER DISTRICT MAY PROVIDE THE SUPPORT. STAFF FROM THE SAME DISTRICT AS THE RESPONDENT JUDGE IN THE PROCEEDING SHALL NOT PROVIDE ADMINISTRATIVE SUPPORT TO THE PANEL.

SECTION 10. In Colorado Revised Statutes, **repeal** 24-72-401 as follows:

~~**24-72-401. Commission on judicial discipline - confidentiality of records and procedures.** The record of an investigation conducted by the commission on judicial discipline or by masters appointed by the supreme court at the request of the commission shall contain all papers filed with and all proceedings before the commission or the masters. The record shall be confidential and shall remain confidential after filing with the supreme court. A recommendation of the commission for the removal or retirement of a justice or judge shall not be confidential after it is filed with the supreme court.~~

SECTION 11. In Colorado Revised Statutes, **repeal** 24-72-402 as follows:

~~**24-72-402. Violation - penalty.** Any member of the commission, any master appointed by the supreme court, or anyone providing assistance to such commission or such masters who willfully and knowingly discloses the contents of any paper filed with, or any proceeding before, such commission or such masters, or willfully and knowingly discloses the contents of any recommendation of the commission before such recommendation is filed with the supreme court is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars. This section shall not apply to any necessary communication between the members of the commission or the masters appointed by the supreme court or anyone employed to aid such commission or such masters in the filing or documentation of any paper filed with, or any proceedings before, such commission or such masters or the preparation of the recommendation of such commission.~~

SECTION 12. In Colorado Revised Statutes, 42-4-1301, **amend** (6)(c)(IV) as follows:

42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - definitions - penalties. (6) (c) (IV) The department of public health and environment may release nonpersonal identifying information from the database in accordance with sections 24-72-101 to ~~24-72-402~~, **C.R.S. 24-72-309.**

SECTION 13. Appropriation. For the 2023-24 state fiscal year, \$126,986 is appropriated to the judicial department for use by the commission on judicial discipline. This appropriation is from the general fund and is based on an assumption that the commission will require an additional 0.8 FTE. To implement this act, the commission may use this appropriation for the office of judicial discipline.

SECTION 14. Act subject to petition - effective date. (1) Except as provided in subsection (2) of this section, this act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) Sections 1, 2, 4, and 9 of this act take effect only if House Concurrent Resolution 23-1001 is approved by the people at the general election to be held November 2024 and will take effect on the date of the official declaration of the vote on said Concurrent Resolution 23-1001 by the governor; except that, if a referendum petition is filed pursuant to subsection (1) of this section against this act or sections 1, 2, 4, and 9 of this act, then the act or section will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 5, 2023