

COMMISSION ON JUDICIAL DISCIPLINE

CBA President's Diversity Council

April 13, 2022

Elizabeth Espinosa
Krupa
Chair

Merit Selection



Colorado's Judicial Merit Selection System:

**50 years of choosing
judges based on merit.
Not money. Not politics.**

In 1966, Colorado voters approved a merit selection system for judicial appointments. This citizen-involved process helps ensure that Colorado judges are highly-qualified, fair, and impartial. It is the gold standard that safeguards equal treatment for all Coloradans coming into court.

How does it work?



Oversight Entities

Discipline



Commission

Performance



Commissions

Nominating



Commissions

Commission on
Judicial
Discipline
Created in Art.
VI, Sec. 23(3)

4 Judicial
Members

2 Attorney
Members

4 Citizen
Members

Appointed
by Supreme
Court

Appointed by Gov / Sen

Serving a maximum of two terms of four years each

Judicial Members

Hon. Rachel Fresquez
Hon. Sara Garrido
Hon. Bonnie McLean
Hon. David Prince

Attorney Members

Elizabeth Espinosa Krupa
Mindy Sooter

Citizen Members

Jim Carpenter
Bruce A. Casias
Yolonda Lyons
Drucilla Pugh

Diversity of Commission

- **70% Female**
- **75% of Judges Female**
- **50% BPOC**
- **20% White Male**

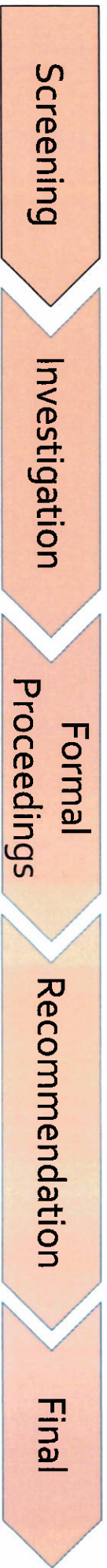
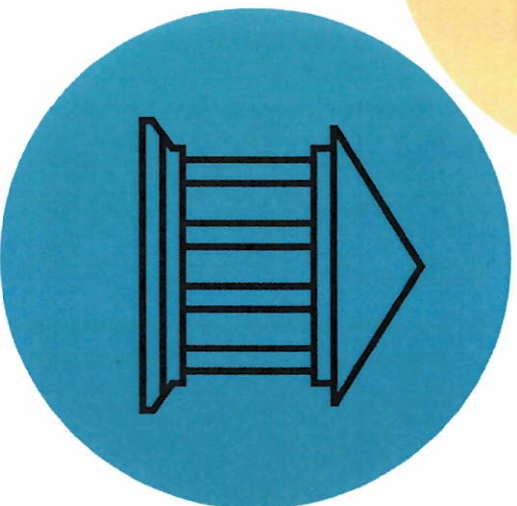
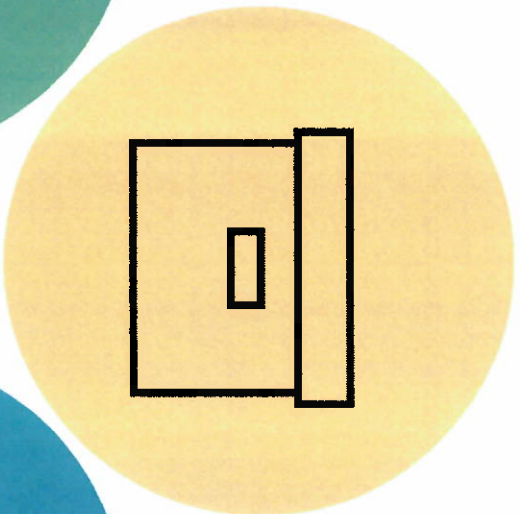
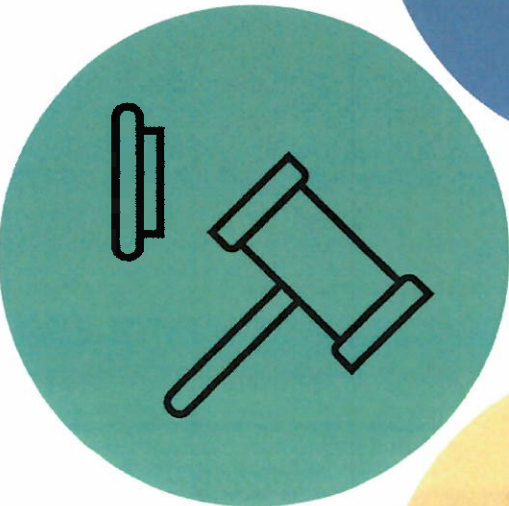
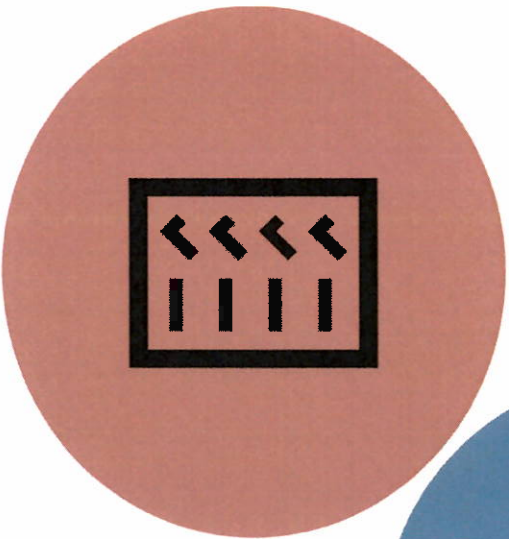
Race / Ethnicity	CO Population	% of Judges	# of Judges
American Indian / Alaska Native	1.6%	0.3%	1
Asian	3.5%	1.8%	6
Black / African American	4.6%	3.0%	10
Hispanic / Latino	21.8%	9.5%	32
White, not Hispanic or Latino	67.7%	84.6%	286
Two or More Races - Not Hispanic or Latino	3.1%	0.9%	3
		100.0%	338

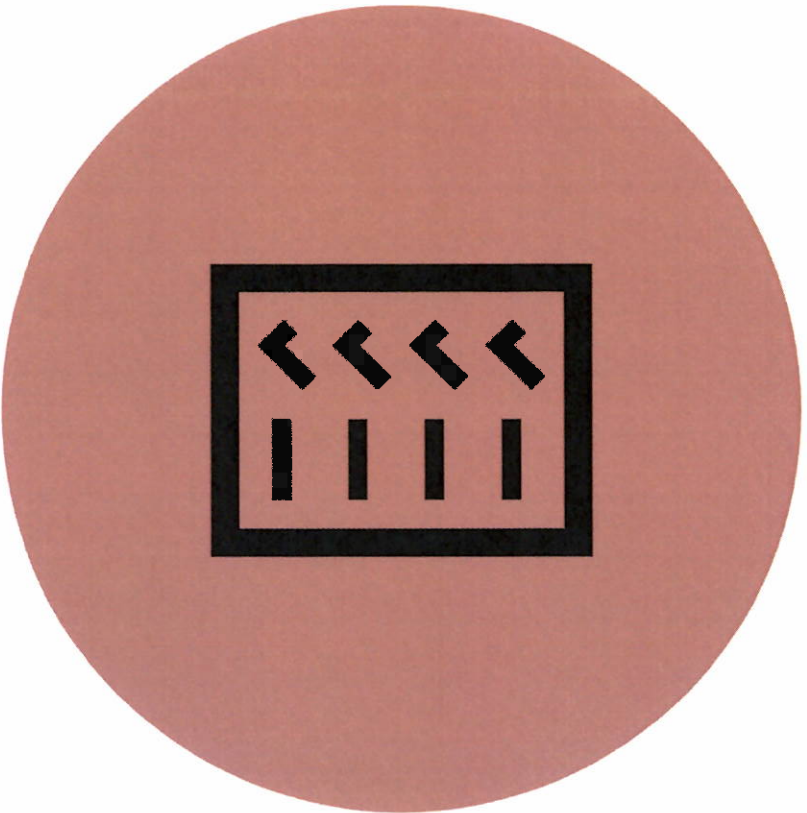
Race / Ethnicity	CO Population	% of Judges	# of Judges
Female	49.9%	40.8%	138
Male	50.1%	59.2%	200
			338

Discipline Commission's Constitutional Mandate

- **Protect the public**
- **Preserve integrity of judiciary**
- **Maintain public confidence in the judiciary**
- **Educate re proper judicial behavior**
- **Fair and expeditious disposition**

Colo. Rule Judicial Discipline ("RJD") 1(b)





Intake and Screening

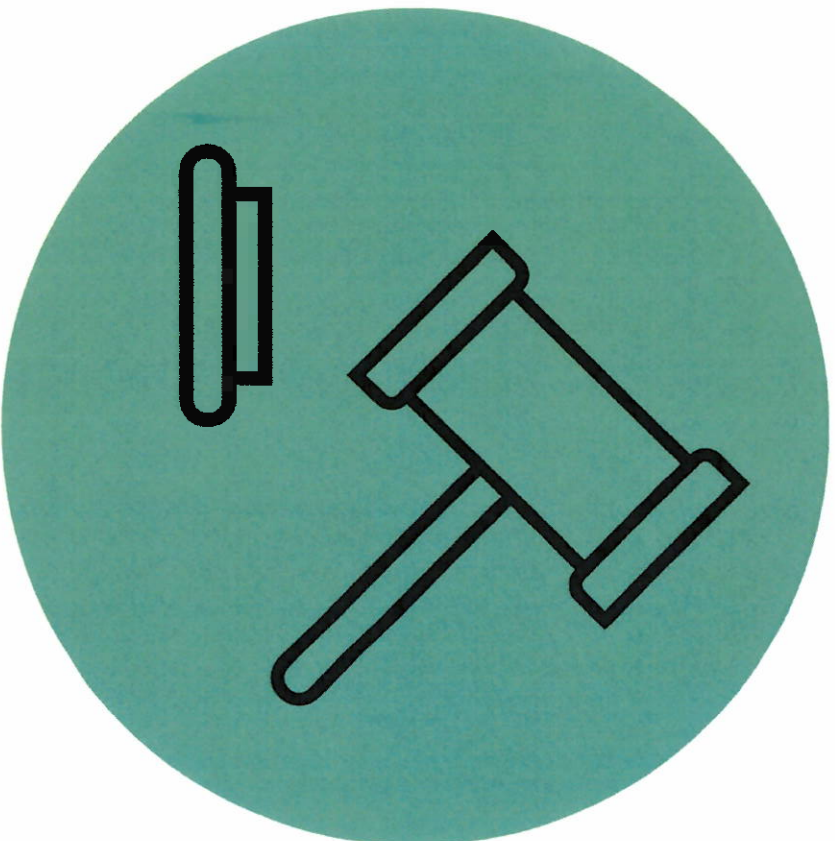
- Governed by RJD 13
- Exec Dir or

Commission may
immediately dismiss
if no reasonable
basis



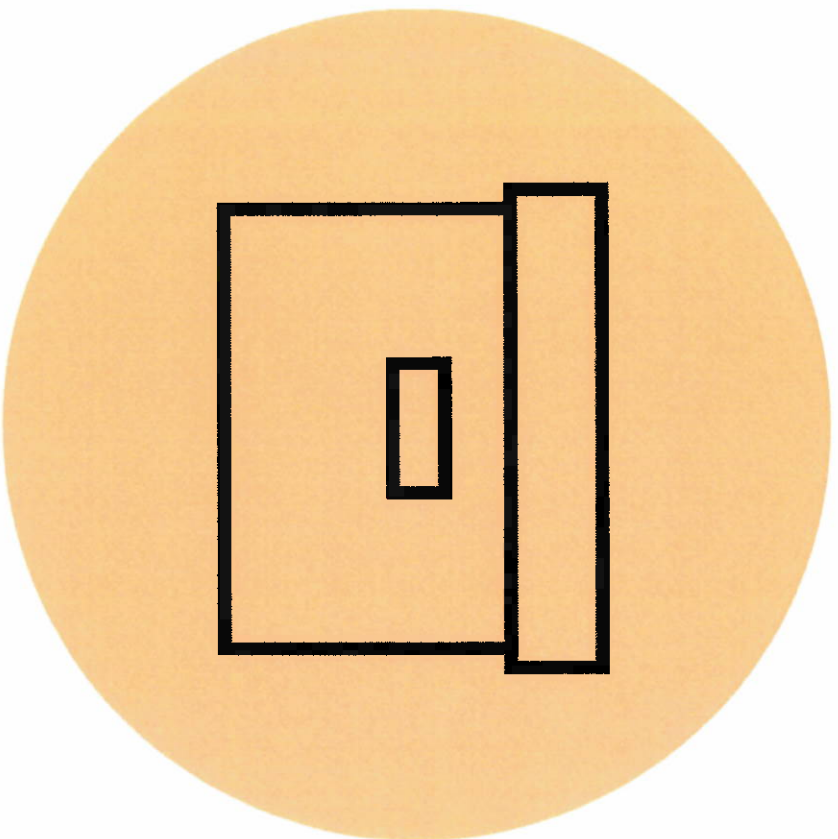
Complaint Investigation

- Analogous to Grand Jury Role
- Governed by RJD 14
- Develop Factual Evidence
- May Use Investigators and Special Counsel
- Advances only if preponderance of evidence std. met



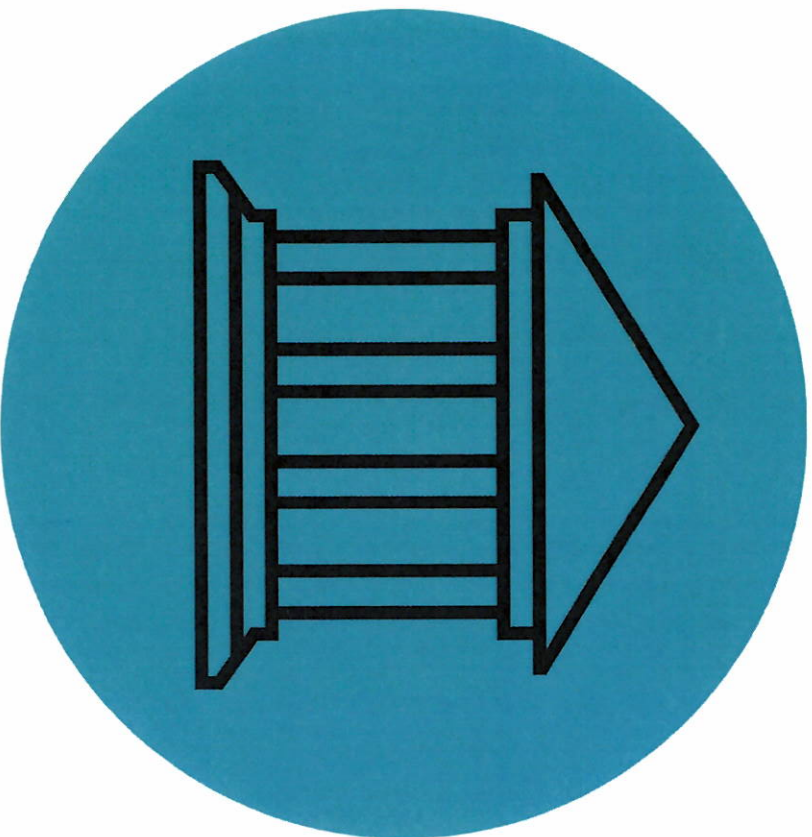
Formal Proceedings

- Trial Phase
- Special Counsel
"prosecutes"
- Hearing conducted either by Commission itself or through special masters
- Standard of proof is clear and convincing



Recommendations

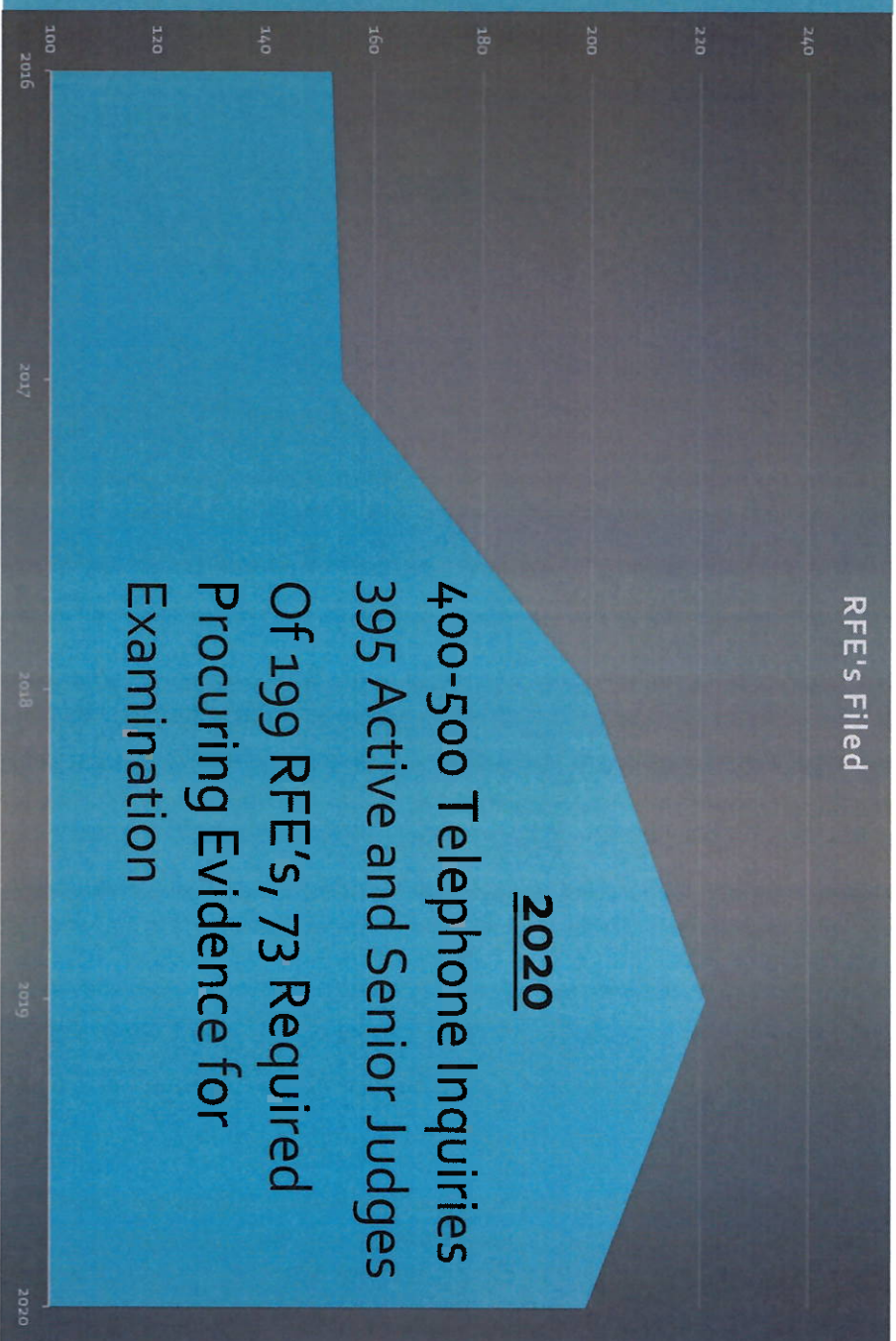
- **Commission prepares and transmits recommendations to Supreme Court for discipline along with record of proceedings.**
- **Special Counsel may also make recommendations**
- **If used, special master recommendations included**
- **Proceedings confidential until recommendations filed**



Supreme Ct Proceedings

- SC may conduct further proceedings and expand record, RJD 39
- SC may adopt, reject, modify, or remand Commission recommendations
- SC makes final decision, RJD 40
- Decision published unless decide to keep confidential

Annual RFE Volume



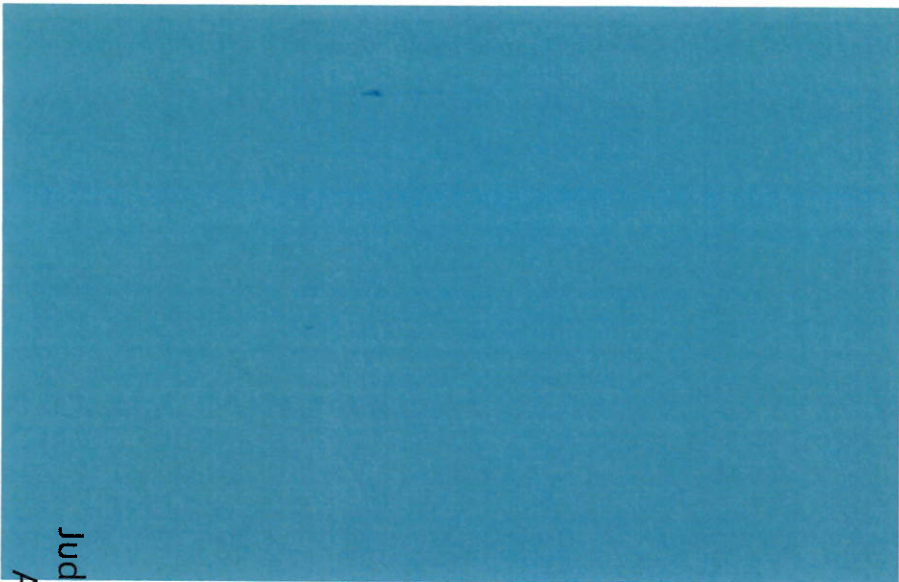
Public Discipline Cases (6 Cases Since 2014)

<u>Judges Disciplined (6)</u> ¹	
Number	Percent
Male	3 50%
Female	3 50%
White	5 83%
BIPOC	1 (4) 7%

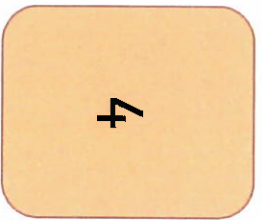
- 1 2014, to Present
- 2 Litigants, attorneys, other groups affected cannot be quantified and are excluded, only a person that was the individual target of the misconduct is included.
- 3 Listed as white if race/ethnicity not known.
- 4 Discipline process was after Judge had already resigned facing criminal proceedings.

Types of Conduct Resulting in Public Discipline

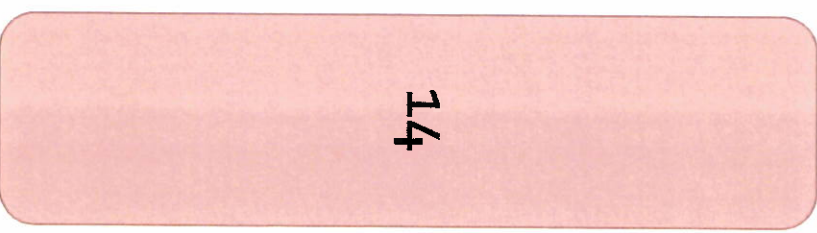
- Behavior Abusive of Others, Usually Discriminatory—four cases
- Criminal Proceedings/Convictions—three cases
 - Felony is mandatory removal, RJD 36.5
- Multiple Incidents—all but one case
 - Aggravating components in single incident case



Judges Disciplined For
Abusive Conduct



Individuals Targeted
by Abusive Judicial
Conduct



Uncomfortable appearing in
front of him
Can't risk angering him,
clients in precarious positions

Terrified

Afraid would get fired if told administration about this

Judge might retaliate and felt job was on the line

Tears

Threatened

Felt angry Wanted to get out of the division

Appalled

Did not want to report to administration

Afraid of retaliation

Sweating, nervous, terrified, wanted to get out

Made [me] feel nauseated and scared

Scared to death might get fired, then angry

Not want to tell anyone just wait for a
transfer

A stab through my

Uncomfortable

Shocked heart each time

Had to put up with it, could
not hurt my clients



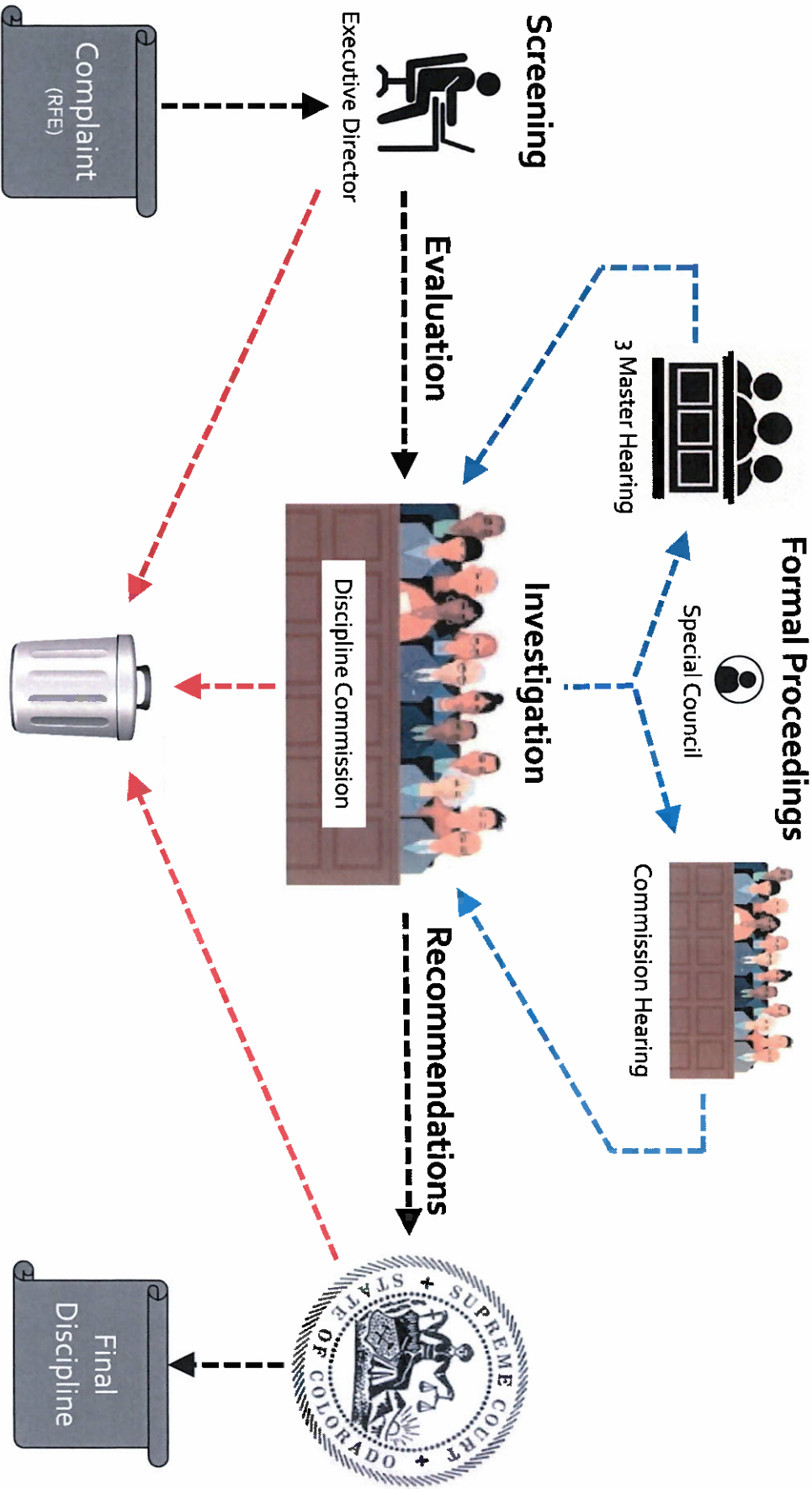
Importance of
Credible Ethics
Oversight

The primary purpose of [judicial discipline] systems is not to punish judges but to maintain and restore public confidence in the integrity, independence, and impartiality of judges and the judicial system ...

Handbook for Members of Judicial Conduct Commissions
(NCSC Center for Judicial Ethics)

Confidentiality

- Confidentiality is set by the Constitution, Art. VI, Sec. 23(3)(g)
- The Disciplinary Commission's examination of misconduct allegations is confidential unless and until it files recommendations with the Colorado Supreme Court.
- While individual investigations are confidential, the Disciplinary Commission can discuss how it operates and how its processes are working. See, e.g., RJD 6.5(h)
- RJD 6.5(d)(i) authorizes the Commission to make disclosures as needed to fulfill the Commission's mandate.



Existing Staffing

- 1.5 FTE Internal (Exec Dir and Asst)
- Borrow Investigators and Attorneys from Supreme Court's Office of Attorney Regulation Counsel

System Design Challenges Illustrated in 2021

- **Access to Judicial Dept. Records/Information**
 - **2010 Access MoU**
- **Lack of Ability to Coordinate Among Oversight Entities**
- **Conflict/Disqualification System**
 - **Patchwork, incomplete, inconsistent, ambiguous**
 - **Does not provide for process when Supreme Court allegations/conduct at issue**

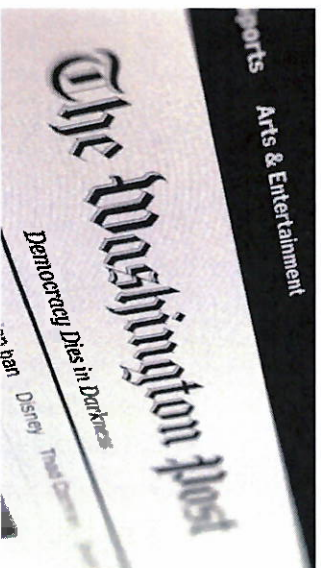
System Design Challenges Illustrated in 2021

- **Resources**
 - **Vulnerable to pressure**
- **Special Counsel**
 - **Control of Engagement, Scope, and Direction**
- **Discovery Tools for Complaint Investigation Phase**
 - **Implementation Process**

System Design Challenges Illustrated in 2021

- **Special Master Selection**
 - **Ambiguous Process**
 - **Vulnerable to conflicts**
- **Rulemaking Authority**
 - **Distinction from Performance Comm'ns**
- **Confidentiality Rules**
 - **Contradictory**
 - **Conflict with constitution**
 - **Lack VRA Equivalent**

While Colorado's challenges are unique, they are not unusual nor are they as serious as other jurisdictions



Colorado

Former judiciary workers urge Congress to protect court employees from discrimination and harassment

By Amy E. Margolin
November 11, 2019 at 10:48 a.m. EST

With judges judging judges, rogues on the bench have little to fear

REUTERS

The National Bar Association for Judges



Secretive and cozy judicial oversight systems enable judges to subvert accountability in many states. Exhibit A: Oklahoma, where not a single judge was publicly disciplined in 14 years. When the state finally did charge a judge with wrongdoing he was allowed to resign, his record pristine and his pension intact.

By MICHELLE KAPLAN and JOHN SHAFER in OKLAHOMA

District Court Judge Curtis Hedgip was removed for the harassment of a former Oklahoma state judge. Hedgip's name came to court a few seconds late, but to the surprise of many, he was quickly and quietly removed from the bench.

For almost a dozen years, the state's courts were known for their

Draft Bill

- Addresses Topics Permitted by Supreme Court
- Change Funding Source
 - Statutory recognition of office in support of Commission required to get funding
 - Funds annual budget as well as creates a fund for contingencies
 - Replaces OARC stable of investigators/attorneys with staff investigator and staff attorney
- Judicial Dept. Disclosure Duty
 - Nonwaiver of Privilege/Confidentiality
- Rulemaking Public and Consultation
- Creates Interim Committee to Study Remaining Issues
- Define statistics to be reported, including demographics

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David Prince
Vice-Chair

References

- ABA Model Rules of Judicial Disciplinary Enforcement, www.americanbar.org/groups/professional_responsibility/model_rules_judicial_disciplinary_enforcement/contents/
- Handbook for Members of Judicial Conduct Commissions, NCSC Center for Judicial Ethics
- Reuters, Teflon Robe Series, www.reuters.com/investigates/section/usa-judges/
- www.washingtonpost.com/politics/2022/03/17/court-workers-harassment-discrimination/
- IAALS Judicial Discipline Recommendations, [18-IAALS-104 Judicial Discipline Report R2.indd \(du.edu\)](http://18-IAALS-104.JudicialDisciplineReportR2.indd(du.edu))