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Fiscal Note

Drafting Number: LLS 23-0150 **Date:** January 25, 2023
Prime Sponsors: Rep. Weissman; Lynch **Bill Status:** House Judiciary
 Sen. Gardner; Gonzales **Fiscal Analyst:** Aaron Carpenter | 303-866-4918
 aaron.carpenter@coleg.gov

Bill Topic: JUDICIAL DISCIPLINE PROCEDURES & CONFIDENTIALITY

Summary of Fiscal Impact:

<input type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill submits a ballot question to voters in the 2024 general election to create a new independent Judicial Discipline Adjudicative Board, change rules regarding confidentiality, and create a Rulemaking Committee. Conditional upon voter approval, the bill increases state expenditures on an ongoing basis starting in FY 2024-25.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: The fiscal note reflects the introduced resolution, which was recommended by the Legislative Interim Committee on Judicial Discipline.

Table 1
State Fiscal Impacts Under HCR 23-1001

		Budget Year FY 2023-24	Out Year FY 2024-25	Out Year FY 2025-26
Revenue		-	-	-
Expenditures	General Fund	-	\$55,754	\$41,507
Transfers		-	-	-
Other Budget	General Fund Reserve	-	\$8,363	\$6,226

Summary of Legislation

This concurrent resolution refers a question to the 2024 general election ballot to ask voters to amend the constitution to change how disciplinary hearings for judges are handled.

Judicial Discipline Adjudicative Board. The resolution creates the Independent Judicial Discipline Adjudicative Board to conduct disciplinary hearings and to hear appeals of informal remedial action orders from the Commission on Judicial Discipline. The board consists of an equal number of district judges without any disciplinary history, attorneys without any disciplinary history, and citizens. When the Commission on Judicial Discipline orders a formal hearing to discipline a justice or judge or a justice or judge wants to appeal an order for informal remedial action from the commission, a panel of the Judicial Discipline Adjudicative Board, which includes one judge, one attorney, and one citizen of the board randomly selected by the State Court Administrator will convene to conduct the hearing. After the hearing, the panel may dismiss the charges, or take any informal or formal disciplinary action.

Appeals of disciplinary orders. The resolution allows a justice or judge or the Commission on Judicial Discipline to appeal a Judicial Discipline Adjudicative Board's disciplinary order or dismissal to the Supreme Court or a tribunal if the disciplinary action involves a Supreme Court Justice. The Supreme Court must review the records of the proceedings on the law and facts and must review the matters of law *de novo*. If the Supreme Court determines that a sanction is unlawful, the Supreme Court must remand the proceedings to the panel that imposed the sanction with directions that the court deems necessary. If the case requires a tribunal, the tribunal will consist of seven Court of Appeals judges randomly selected by the State Court Administrator to review the case.

Confidentiality. The resolution allows the Commission on Judicial Discipline to release information about the status of an evaluation, investigation, or proceeding to the victim of misconduct or the complainant; release information about a complaint that resulted in discipline to specified government agencies; and to make aggregate information publically available. The resolution also clarifies that a person is immune to any action for defamation based on papers filed or testimony given during any discipline process.

Rulemaking Committee. Finally, the resolution creates the 10-member Rulemaking Committee to propose rules for the Commission on Judicial Discipline. The Rulemaking Committee must propose rules that include the standards and degree of proof to be applied by the commission, confidential reporting procedures, and complainant rights. The Supreme Court must approve or reject each rule proposed by the committee and the court may promulgate specific rules governing proceedings before the Judicial Discipline Adjudicative Board.

Assumptions

The fiscal note assumes that any compensation, reimbursement, or training for the Judicial Discipline Adjudicative Board will be paid by the Commission on Judicial Discipline.

State Expenditures

Conditional upon voter approval, the bill increases state General Fund expenditures in the newly created the Commission on Judicial Discipline by \$55,754 in FY 2024-25 and \$41,507 per year thereafter. The bill also increases workload in the Judicial Department. Expenditures are shown in Table 2 and detailed below.

Table 2
Expenditures Under HCR 23-1001

Cost Components	FY 2023-24	FY 2024-25	FY 2025-26
Commission on Judicial Discipline			
Board Compensation	-	\$12,254	\$24,507
Board Travel	-	\$6,000	\$12,000
Board Training	-	\$35,000	-
Rulemaking Committee Travel	-	\$2,500	\$5,000
Total	-	\$55,754	\$41,507

Commission on Judicial Discipline. Starting midway through FY 2024-25, expenditures in the Commission on Judicial Discipline will increase to provide compensation and travel reimbursement to board members, to provide training to non-judge board members, and to provide travel reimbursement to members of the Rulemaking Committee. Administrative support is assumed to be absorbable between the Commission and the Judicial Department.

- **Board member compensation and travel reimbursement.** Starting in FY 2024-25, expenditures will increase to provide compensation for non-judge members of the board and to reimburse travel expenses for all panel members. The fiscal note assume that non-judge members will receive a similar pay rate to judge members, at about \$613 a day, and that travel reimbursement will be about \$200 per day. In addition, the fiscal note assumes there will be 4 weeks of hearings in one year. Costs in FY 2024-25 are prorated for a January 1 start date.
- **Board member training.** In FY 2024-25, the expenditures will increase to train non-judge members of the board to know how to apply rules of civil procedure and evidence in proceedings. The fiscal note assumes this will be a one-time training when members are appointed to the board.
- **Rulemaking Committee.** Starting in FY 2024-25, expenditures will increase to reimburse members of the Rulemaking Committee for travel. The fiscal note estimates that travel reimbursement for the committee will cost \$5,000 per year. Costs in FY 2024-25 are prorated for a January 1 start date.

In addition to travel, expenditures may increase to contract with an outside party to review proposed rules and request changes. Because the resolution does not require a review by an outside party, the fiscal note does not include these costs, but the General Assembly may appropriate additional funds for this purpose if it chooses. An estimate on a review is not available at this time but the note will be revised to reflect estimates once they are received.

Judicial Department. Starting in FY 2024-25, the resolution will impact workload within the Judicial Department. First, workload to judges will decrease to no longer serve as special masters. However, workload will increase for certain judges who serve on the newly created board. Overall, the fiscal note assumes any change in workload to be minimal and no change in appropriations is required. In addition, currently, when a special master is assigned to hear a disciplinary case, the judges presiding utilize their court room and staff during the hearing. The fiscal note assumes that this practice will continue with the board and that the judge sitting on the disciplinary panel will utilize their court room and staff to support the panel during the discipline hearing. If courtroom space is not available, the fiscal note assumes that the Commission or the Judicial Department will request additional resources through the annual budget process.

Election expenditure impact — existing appropriations. This bill includes a referred measure that will appear before voters at the November 2024 general election. While no additional appropriation is required, certain election costs are incurred by the state when ballot measures are referred. These include reimbursing counties for certain election costs; publishing the text and title of the measure in newspapers across the state; and preparing and mailing the ballot information booklet.

Governor's Office. Workload will minimally increase for the Governor's Office of Boards and Commissions to make the required appointment under the bill. This work can be accomplished within existing appropriations.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Effective Date

If approved by voters at the 2024 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Commission on Judicial Discipline

Governor

Judicial