

SUPREME COURT OF COLORADO

OFFICE OF THE CHIEF JUSTICE

**Directive Concerning the Reporting of Internal Complaints of Judicial Misconduct Made
by an Employee, Volunteer, or Contractor for the Department.**

This policy is adopted to implement the provisions of Colorado Revised Statutes (C.R.S.) §13-5.3-106 concerning the requirement that the Judicial Department have procedures if a complaint of judicial misconduct is received from an employee, volunteer, or contractor for the Department, including interns and externs.

This policy addresses only internal complaints of judicial misconduct. The process for external complaints (made by anyone other than an employee, volunteer, or contractor for the Department) is addressed by local administrative orders of the courts and the State Court Administrator's Office.

I. *Definitions.*

In accordance with C.R.S. §13-5.3-101 the following definitions shall apply to this policy:

- A. **“Commission”** means the Commission on Judicial Discipline, established pursuant to Section 23(3) of Article VI of the Colorado constitution.
- B. **“Complaint”** means information in any form from any source that alleges or from which a reasonable inference can be drawn that a judge committed misconduct or is incapacitated.
- C. **“Department”** means the Colorado State Judicial Department and all its subparts such as the Office of the State Court Administrator's Office (SCAO); the Office of the Chief Justice of the Supreme Court; the Judicial Districts and their administrations, including Chief Judges and Court Executives; the Human Resources (HR) Division at the SCAO; and other administrative subparts.
- D. **“Judge”** means any justice or judge of any court of record of this state serving on a full-time, part-time, or senior basis; judge also includes any judge or justice who has retired within the jurisdictional limits for disciplinary proceedings established by Article 5.3 of Title 13, or the Colorado Supreme Court. Currently the jurisdictional limits are based on events that occurred while the Judge was an active or senior judge, if a request for evaluation of judicial conduct is received by the Commission (or a complaint is commenced on the Commission's motion):

1. during the Judge's term of office or within one year following the end of the judge's term of office or the effective date of the Judge's retirement or resignation, with respect to alleged misconduct or disability occurring during the Judge's term of office; or
2. during the Judge's service in the senior judge program or within one year following the end of the Judge's service in the senior judge program, with respect to alleged misconduct or disability occurring during the Judge's service in the senior judge program.

E. **“Misconduct”** means conduct by a judge that may reasonably constitute grounds for discipline under the Colorado Code of Judicial Conduct, the Colorado Rules of Judicial Discipline, or Section 23(3) of Article VI of the Colorado Constitution. Also encompassed in the term misconduct is a violation of the policies of Chief Justice Directive (CJD) 08-06, Directive Concerning Colorado Judicial Department Policies for Independent Contractors, Other Persons Conducting Business with the Judicial Department and Judicial Officers. This includes but is not limited to a violation of the anti-harassment policy or anti-violence in the workplace policy or, a violation of CJD 07-01, Directive Concerning the Colorado Judicial Department Electronic Communications Usage Policy: Technical, Security, And System Management Concerns.

F. **“Office”** means the Office of Judicial Discipline established pursuant to C.R.S., section 13-5.3-103.

II. *Process for reporting misconduct received by any member of the Department from an employee, volunteer, intern, extern or contractor for the Department.*

- A. Reports of alleged misconduct by a judge made by an employee, volunteer, intern or extern may be reported to:
- a. the person's own supervisor or any other supervisor; or
 - b. the Court Executive; or
 - c. the Chief Probation Officer; or
 - d. the Chief Judge of the District or court (unless the Chief Judge is the subject of the complaint); or
 - e. to the person's Division Director at the State Court Administrator's Office (SCAO); or
 - f. to the HR Director, or any HR Analyst of the State Court Administrator's Office.
- B. Reports of alleged misconduct by a judge made by a contractor for the Judicial Department may be reported to:

- a. the contracting authority such as the Court Executive, the Chief Probation Officer or the State Court Administrator; or
- b. the Chief Judge of the District (unless the Chief Judge is the subject of the complaint); or
- c. to the HR Director, or any HR Analyst of the State Court Administrator's Office.

C. **Form of the Report** – The initial report may be either written or verbal. Written reports should include the date, time, location, and a description of the event or behavior complained of, and the names of the parties involved and of any witnesses. A written report should be signed by the complaining party.

If the initial report is made to a supervisor who is not the Court Executive, Chief Probation Officer, Chief Judge, SCAO Director or HR director, the recipient of a report, written or verbal, must provide copies of, or a summary of the report (marked personal and confidential) to the Chief Judge (unless the Chief Judge is the subject of the complaint), or the Court Executive, or the Chief Probation Officer, or the Division Director at SCAO and a copy shall be provided to the HR Director.

D. **Documentation**—The HR Division shall document receipt of the complaint and the Department's handling of the complaint, including any investigation that may be conducted, and maintain such documentation for as long as the subject of the complaint is a judge, plus three calendar years.

E. **Reporting to the Commission through the Office of Judicial Discipline**—Within not more than thirty-five days after receipt of the complaint, the HR Director or designee shall notify the Office of Judicial Discipline of the complaint and provide the office with all information within the custody or control of the Department related to the complaint. This shall include:

1. Identification of potential witnesses;
2. A list of evidence held or known;
3. All evidence, including administrative files, digital data, digital or paper case files, recordings and transcripts, communications and metadata;
4. Any Department investigative materials that may exist, including any investigative or action plans.

F. **Notification**—As set forth in **Attachment A**, the following information shall be provided to any person supplying information concerning a complaint, and any witness interviewed:

1. The Commission on Judicial Discipline is a constitutionally created independent entity that has the authority to investigate allegations that a judge is not properly performing his or her official duties because of willful misconduct, ethical

violations, or a permanent disabling health condition. The commission has the authority to investigate any of the following acts:

- a. willful misconduct by a judge, including misconduct which, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice;
 - b. willful or persistent failure of a judge to perform judicial duties, including the incompetent performance of judicial duties;
 - c. intemperance, including extreme or immoderate personal conduct, recurring loss of temper or control, abuse of alcohol, or the use of illegal narcotics or dangerous drugs;
 - d. any conduct on the part of a judge that constitutes a violation of the Colorado Code of Judicial Conduct; or
 - e. a disability, which is or is likely to become permanent, that interferes with the performance of judicial duties.
2. Communications may also be made directly to the Commission or as outlined in this policy.
 3. Information given to the Commission is confidential unless and until a recommendation for public discipline is made to the Supreme Court. Information is provided to the judge who is the subject of the complaint if the Commission seeks a response from the judge.
 4. Rule 2.16(B) of the Code of Judicial Conduct prohibits retaliation by a judge, against any person assisting the Commission.
 5. The Department has a duty to disclose all information related to potential judicial misconduct to the Commission.
 6. The Department is prohibited from discouraging a person from sharing information with the Commission, including entering into a nondisclosure agreement that would have that effect.

III. *Continuing Obligations.*

- A. The duties to document and disclose potential, judicial misconduct reported by an employee, volunteer, intern, extern or, contractor for the Department and related information continue when the Department receives additional information.

- B. The Department shall cooperate with any request from the Commission for information related to evaluating a complaint and supply requested information or materials within a reasonable time of not more than thirty-five days after the date of the request.

IV. *Process for when a judge has knowledge or receives information that another judge has engaged in misconduct.*

- A. Pursuant to the Code of Judicial Conduct (C.J.C.) Rule 2.15(A) and Comment 2, a judge who has knowledge that another judge has engaged in misconduct that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge must report to the Commission through the Office.
- B. Pursuant to C.J.C. Rule 2.15(C) and Comments 1 and 3, a judge who receives information indicating a substantial likelihood that another judge has committed a violation of the C.J.C. shall take appropriate action, which may include reporting the violation to the Commission through the Office.
- C. If a judge receives a complaint of judicial misconduct made by an employee, volunteer, intern, extern or, contractor for the Department, that involves another judge, the procedures set forth in this policy must be followed in addition to the judge's own obligation to report the misconduct to the Commission through the Office.

V. *Education.*

The Department shall educate personnel about the duties imposed pursuant to §13-5.3-106 and this policy.

Done at Denver, Colorado this 8th day of November, 2022.

Effective upon signature.

_____/s/_____

Brian D. Boatright, Chief Justice

ATTACHMENT A

Information to be provided to employees, volunteers, interns, externs, witnesses interviewed or, contractors for the Department following a complaint of judicial misconduct.

1. The Commission on Judicial Discipline is a constitutionally created, independent entity that has the authority to investigate allegations that a judge is not properly performing his or her official duties because of willful misconduct, ethical violations, or a permanent disabling health condition. The commission has the authority to investigate any of the following acts:
 - a. willful misconduct by a judge, including misconduct which, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice;
 - b. willful or persistent failure of a judge to perform judicial duties, including the incompetent performance of judicial duties;
 - c. intemperance, including extreme or immoderate personal conduct, recurring loss of temper or control, abuse of alcohol, or the use of illegal narcotics or dangerous drugs;
 - d. any conduct on the part of a judge that constitutes a violation of the Colorado Code of Judicial Conduct; or
 - e. a disability, which is or is likely to become permanent, that interferes with the performance of judicial duties.
2. Communications may be made directly to the Commission or as outlined in this policy.
3. Information given to the Commission is confidential unless and until a recommendation is made to the Supreme Court. However, information will be provided to the subject judge if disciplinary action is brought by the Commission.
4. Rule 2.16(B) of the Code of Judicial Conduct prohibits retaliation by a judge, against any person assisting the Commission.
5. The Department has a duty to disclose all information related to potential judicial misconduct to the Commission.
6. The Department is prohibited from discouraging a person from sharing information with the Commission, including entering into a nondisclosure agreement that would have that effect.