

Ten reasons why judicial term limits don't go far enough

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John Andrews says he will try again with judicial term limits, which this writer called a 5% solution last year. In reply, let me lay out the reasons that the system is ripe for real legal ethics reform, not just term limits.

1. The Supreme Court is the supervisory authority for both legal ethics and judicial ethics. No one supervises the Supreme Court. Because of this, the Supreme Court has come to believe that it is above the law. Andrews mentions recent examples, but he doesn't mention that the state court administrator [in the Manzanares case, see below] completely avoided an obstruction of justice investigation that might have reached the Chief Justice. He also forgets that the Court has routinely ignored the plain language of TABOR.
2. The Supreme Court has failed to standardize the court system. Other states require judges to undergo annual training. Ours does not.
3. The State Constitution has entrusted the Supreme Court with the power to discipline judges in secret, except that it must announce the final outcome. The Court's attitude toward this responsibility is best illustrated by the Larry Manzanares case. Manzanares was a former judge accused of stealing a court laptop, which he later used for pornography. The state court administrator attempted to derail the criminal prosecution into a process where the maximum penalty the former judge could get was a secret reprimand and no criminal record, not the several years in jail he might have gotten [had the disgraced man not taken his own life]. It is likely he wouldn't even have been disbarred.

Word has gotten down to district court judges that they won't be considered for serious punishment when they ignore their own ethics rules. A judge is clearly required to report lawyer misconduct by both court rules and ethics rules. Imagine a situation where after years of obvious misconduct a judge makes a comment about it in a ruling. Imagine also that the lawyer is eventually replaced and his replacement writes in his first court document that the lawyer he replaced had committed the worst misconduct imaginable. You would think that the judge would feel compelled to forward the issue to Attorney Regulation. You would be wrong.

4. The Attorney Regulation system designed and administered by the Supreme Court is a pure fraud on the public. It is designed so that no one has jurisdiction. More than 60% of its complaints are dismissed for lack of jurisdiction. The Supreme Court has given exclusive jurisdiction to the district court judges like the one above. In order to make a complaint, a citizen must pay a lawyer a few thousand dollars to write it with no guarantee that it will be forwarded by the judge. In fact, the odds are that it will not be forwarded.

Not long ago, two Supreme Court Justices and the Chief Justice's lawyer wrote an article for "The Colorado Lawyer" in which they assured Colorado Attorneys that they had little to fear from Attorney Regulation. You would think that a document written on government time by government officials would be available to the public. It is not. In fact, it is copyrighted, so we can't reproduce it here. The Supreme Court sees the Colorado Bar Association as its constituency, and in 2006, the CBA spent \$1.3 million to defeat Amendment 40-term limits.

5. One of the mechanisms that might protect the public from unethical judges is the Judicial Performance Commission in each of the 22 districts and one for statewide commission for appellate judges. Each commission has ten members, four of whom are lawyers. They are supposed to examine the performance of judges who are up for retention elections and make recommendations to the public. The Supreme Court is careful not to give these commissions written instructions which leaves its lawyer members firmly in charge. With the lawyers in charge, lawyer interests are protected above those of the public.

Recall the judge described in paragraph 3 above who can't bring himself to report attorney misconduct? It turns out that he was up for election in 2006 and 200 pages of court documents illustrating the situation were provided to the performance commission. The commission voted 8-0 not to inform the public of his multiple ethical misconducts including his failure to rule on a motion for two years, effectively stopping progress for that period. Upon inquiry, the chairwoman, Kit Roupe, wrote:

Clearly with Judge [Larry] Schwartz the Commission does believe he is an excellent judge that does contribute much to our community even in light of the material...submitted.

By 2007, Kit Roupe was unwilling to provide the identity of her fellow 2006 commission members. When directly asked she replied:

Regrettably, I currently do not have an accurate list of my commission members because of changes - resignations and expired terms.

Care to bet that one of the reasons the four attorneys on this commission think so highly of Judge Schwartz is that he adamantly refuses to forward the misconduct case to Attorney Regulation? Would they think so highly of him if he actually followed court rules and his own ethics rules?

Members of the Colorado Supreme Court are up for retention votes this year. In 2007, a bill went before the legislature that would have reduced the number of members who are either regulated or who are directly appointed by the Chief Justice from six to four. Nine citizens testified for the bill and one against. The lone ranger was the CBA lobbyist. Guess who carried the day? Not the nine citizens. Is it any wonder that the Supreme Court would consider the CBA as its main constituency?

6. One of the ways that the CBA gets a direct payback is through another fraud. Suppose there were a car insurer in the state which provided comprehensive insurance for \$20 a year. Imagine that this is a powerful insurer, able to twist the outcome of court cases, indeed able to keep them from ever being heard. This insurer keeps its costs down by refusing to cover accidents unless

they occur on Feb 29th under a full moon with the driver driving northeast. When it does pay out, it writes a letter explaining that it is doing so out of the goodness of its heart and the payee should take or leave the settlement.

That is the exact situation that the Supreme Court has set up in Colorado for lawyers. In lieu of requiring lawyers to carry a responsible amount of errors and omissions insurance as all other professions are required to do, it charges them \$20/year as a contribution to a fund. The fund pays limited amounts to a very select class of victims of attorney misconduct.

7. For at least 15 years, the Supreme Court has completely prohibited lawsuits against attorneys who violate their ethics code. They put that prohibition directly in the code, itself. This year, they plan to make a change. They will give district court judges the “discretion” to allow lawsuits against attorneys who violate the code. They also loosened the rules to make lawsuits, if they are permitted, more difficult to prove.

While they want to provide the cynical illusion that they are making it easier for damaged citizens to sue lawyers, they are not. Think about the Judge Larry Schwartz’s who can’t screw up the courage to report attorney misconduct out of fear of what the lawyers on the judicial performance commission might say. How would you like to spend a few tens of thousands of dollars preparing for a lawsuit only to be assigned to him or one of his ilk who would dismiss the case on his discretion? It would be like making money evaporate.

8. Our favorite office in Colorado government is the Office of Attorney Regulation Counsel. It receives no public funding, so it is not accountable to the legislature. It’s funds come from the Bar Association, so it sees itself as accountable to it. It is the only “paperless office” in all of government. It has its own definition of that term. It almost never sends letters or emails and would prefer not to receive them. When it responds to complaints, an attorney schedules a phone call, ensuring that there is no hard record of what they did or even what the complaint was. Any investigation of that operation would require endless man hours to listen to and transcribe these taped conversations.

Last year, just before the election, Attorney Regulation scheduled a three-day ethics hearing for Republican District Attorney Carol Chambers. It was nothing more than a political show trial intended to impact the election. The results were released on the day after Christmas and no real penalties were assessed because of the weak evidence. It did cost the people of Arapahoe county \$100,000 and it probably did impact the election. At the very least, the timing was poor judgment. We think it was a gross abuse of the system, again by the Supreme Court.

Other than this kind of political prosecution, John Gleason, head of Attorney Regulation is happy to parrot his masters on the Supreme Court, telling attorneys that they have little to fear from his office.

9. Our favorite term is “judicial independence.” That, according to attorneys, judges, and their apologists is the gold standard. If anyone suggests that the public would be better off if these people actually were accountable, the Colorado Bar Association *screams* those magic words in

the hope that everyone will back off. The public pays a heavy price for unaccountable judges, and the CBA intends to keep it that way, if they can.

10. While the CBA is unwilling to allow its members to be disciplined or sued, it is quite happy to go to the legislature and ask that it be easier to sue home builders and doctors. Bill Ritter didn't much mind signing those bills. He and John Suthers will be the first two politicians to speak up for that old canard, judicial independence. Just Watch.

We could go on and on with this. How about the man who attempted to get the attention of Attorney Regulation for seven years? How about the lawyer husband of a judge who was awarded \$350 an hour attorneys fees by another judge when his normal fee was \$250 an hour? We wouldn't want to forget the man who made a complaint to Judicial Discipline about a judge failing to make a ruling for years and was told they had no jurisdiction. How about the man who was the victim of easily documentable perjury and sued only to be told by an appeals court in a non public ruling that he couldn't force the DA to press charges?

We don't think John Andrews will mind if we observe that term limits is mild medicine for a profession as determined to mess with the public as our Colorado legal system is. Too mild!

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