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## The Confidentiality of Judicial Disciplinary Proceedings

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Since the mid-1960s, Colorado, as well as the other states and the District of Columbia, have established state judicial disciplinary commissions. The primary purpose of such commissions has been to oversee the ethical conduct and behavior of state justices and judges.

In Colorado, the purpose of the Commission on Judicial Discipline ("Commission") is to preserve the integrity of the judicial process by protecting the public from improper conduct or behavior on the part of judges. As a balancing force in Colorado's judicial merit selection and retention system, the Commission strives to maintain public confidence in the judiciary and attempts to create a greater awareness of proper judicial behavior. The Commission provides a forum for the expeditious and fair disposition of all complaints of judicial misconduct against state judges.

Currently, proceedings before the Commission are confidential. This confidentiality is lifted only if the Commission holds formal proceedings and makes a decision to file a recommendation with the Colorado Supreme Court for the public discipline or removal of a judge.

The purposes of this article are to: review the organization and responsibilities of the Commission; discuss the current confidentiality rules of the Commission; present arguments for retaining or changing the current confidentiality framework; and summarize the results of a survey completed recently by the Colorado Bar Association's ("CBA") Judiciary Section pertaining to the confidentiality issue. Also, it is hoped that this article will better inform members of the Bar about the confidentiality rule so they can offer comments to the CBA Board of Governors for its summer meeting discussion of this issue (*see box*).

**BACKGROUND AND ORGANIZATION**

Colorado's first disciplinary commission for judges was created in 1966 by constitutional amendment. Under that amendment, the voters of Colorado replaced the political process of electing judges with a system based on merit selection, appointment and retention. At the time it was created, only five other states had similar disciplinary commissions to supplement impeachment as the traditional method for removing judges.

The voters amended the Constitution again in 1982 and made some changes in the Commission's procedures and membership. The Commission now has ten members: two district court judges and two county court judges appointed by the Colorado Supreme Court; two lawyers, each having been licensed to practice law for at least ten years in Colorado, appointed by the Governor; and four citizens appointed by the Governor. All appointments made by the Governor must be approved by the Colorado Senate. Commission members are appointed to four-year terms.

The Commission's staff consists of a part-time executive director and a full-time administrative

secretary. The Commission also employs investigators and attorneys when needed to conduct investigations and participate in formal proceedings. While the Commission operates independently, it is considered to be part of the judicial branch of government. Its procedural rules must be approved

by the Colorado Supreme Court, and its operating budget is provided by the Colorado legislature.

## **THE JURISDICTION OF THE COMMISSION**

The Commission has jurisdiction over the conduct of approximately 280 justices, judges and senior judges who serve in the Colorado state court system. However, it does not have jurisdiction over county court judges in the City and County of Denver nor the more than 400 full- and part-time municipal judges located in cities and towns throughout the state. Although local municipalities approach judicial discipline in different ways, complaints against municipal judges, in most cities, must go to the city council or mayor.

## **THE ISSUE OF CONFIDENTIALITY**

At the time the state judicial disciplinary commissions were founded, there was widespread belief that the records and proceedings concerning the complaints of judicial misconduct against judges should be kept confidential.<sup>(fn1)</sup> However, the degree to which this so-called cloak of confidentiality should apply has been widely discussed and debated.

Today, all fifty states and the District of Columbia have enacted provisions governing confidentiality. Thirty-nine commissions derive authority to maintain confidentiality by state constitutional provision, and the remaining twelve commissions maintain confidentiality by state statute or court rule.<sup>(fn2)</sup>

The provisions governing confidentiality in judicial disciplinary proceedings are grouped into three general categories:

- 1) twenty-three states permit public disclosure when formal charges are filed against a judge and the commission begins a formal hearing concerning allegations of a judge's misconduct;
- 2) eighteen states permit public disclosure when, after a formal hearing has been held, a commission makes a recommendation of public discipline or removal to the state supreme court; and
- 3) nine states and the District of Columbia permit public disclosure only after a state supreme court orders a public disciplinary sanction or removal.<sup>(fn3)</sup>

Colorado falls in the second category.

Colorado law provides that all papers and pleadings filed with and proceedings before the Commission are confidential.<sup>(fn4)</sup> This confidentiality provision in all disciplinary matters involving Colorado state judges remains in effect until the Commission files a recommendation with the Colorado Supreme Court for the public removal, retirement, suspension, censure, reprimand or other discipline of a judge. At the time this action takes place, the recommendation, together with the supporting record of the proceeding, is no longer confidential.

"The current structure and application of confidentiality of Colorado's disciplinary process has both proponents and opponents."

This means that the parties to all disciplinary proceedings before the Colorado Commission are not allowed to discuss the nature of the complaint nor the outcome of a hearing with people outside of the proceeding except their attorneys. This confidentiality rule applies to members of the Commission, Commission staff, complainant, judge and any attorneys or witnesses involved in the proceedings.

Rule 6 of the Colorado Rules of Judicial Discipline ("CRJD") provides some exceptions to this blanket of confidentiality. For example, the Commission may release confidential information in a case involving widespread public concern if the judge signs a waiver for this purpose and it is deemed that the release of such information would benefit the judge and the public. Also, if a judge applies for another judicial position, the state nominating commissions or the Chief Justice of the Colorado Supreme Court may request a release of confidential information from the Commission.

Under the normal Commission disciplinary process, prior to the filing of a recommendation with the Colorado Supreme Court, the Commission will have held both a preliminary investigation phase and a formal proceeding phase involving a complaint against a judge. The preliminary investigation includes notice to the judge and the opportunity for the judge to respond to the complaint. The Commission then meets to consider and decide what action, if any, might be appropriate.

At the conclusion of this preliminary investigation phase, the Commission may take one of several steps: it may dismiss the complaint, privately discipline the judge or make a "probable cause" determination to proceed with a formal action against a judge. The Commission must conclude after a reasonable and prudent preliminary investigation that a cause for action exists against the judge and that it would benefit all concerned parties and the Commission for a formal hearing to be held.

## **THE DEBATE ABOUT CONFIDENTIALITY**

### ***Arguments "For" the Current Confidentiality Structure***

The current structure and application of confidentiality of Colorado's disciplinary process has both proponents and opponents. Proponents of the current application of confidentiality maintain that the present degree of confidentiality of Commission proceedings serves several positive functions.<sup>(fn5)</sup> Arguments "for" the current confidentiality structure include the following:

---Confidentiality encourages participation in the disciplinary process by allowing complainants to come forward with information regarding possible acts of judicial misconduct. Many argue that confidentiality is particularly vital in rural areas of Colorado and in jurisdictions where the accused judge may be the only individual in the area who hears and resolves legal disputes.

---Confidentiality reduces the possibility that persons other than complainants, such as witnesses, will refuse to come forward with information or perjure themselves if they fear retribution or harassment by the judge or supporters of the judge.

---Confidentiality protects the reputation of an innocent judge who may be wrongfully accused of misconduct. Many argue that even if a judge is eventually cleared of allegations of misconduct, the public would fail to note or remember that the judge was vindicated.

---Confidentiality assures some degree of ongoing effectiveness of an accused judge who remains on

the bench while undergoing formal Commission proceedings for alleged misconduct.

---Confidentiality maintains, rather than detracts from, public confidence in the judiciary by avoiding premature disclosure of alleged misconduct. Many argue that open proceedings would create a "media circus" atmosphere in which the public might conclude that if "this type of activity is going on with

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one judge, what are the rest of the judges doing?"

---Confidentiality tempers the expectation of complainants that every complaint they file will automatically become public. Many argue that complainants expect that regardless of what misconduct is alleged, such allegations of wrongdoing will automatically lead to the removal or public discipline of the accused judge. At the very least, complainants who are litigants expect the judge to be disqualified from hearing their court cases.

---Confidentiality encourages judges to resign rather than face long and costly formal hearings that may lead to a recommendation being filed with the Colorado Supreme Court for the judge's public discipline or removal. Many argue that a judge accused of misconduct serious enough potentially to warrant public discipline or removal may choose to resign rather than face embarrassing formal proceedings or, after undergoing such proceedings, resign prior to a recommendation being filed with the Colorado Supreme Court.

---Confidentiality allows for the Commission to work expeditiously and humanely to persuade a judge suffering from a mental or physical disability to retire. In disability situations, where a judge may not be cognizant of his or her own misconduct, confidentiality allows for removal from the bench in a compassionate manner.

---Confidentiality allows the Commission to accomplish both prongs of the concept of "discipline": (1) to take remedial action to enforce the Colorado Code of Judicial Conduct; and (2) to instruct Colorado state judges in aspects of proper judicial conduct and behavior. Many argue that while the primary function of a disciplinary process is to penalize errant judges, an equally important function should be to rehabilitate judges so as to prevent future reoccurrences of misconduct. If disciplinary matters become public, the second prong may be diminished. The public tends to remember only the remedial action and not the judge's efforts at rehabilitation. Although a judge may have corrected errant behavior, the public may not consider this to be as important as punishing the judge for past acts of misconduct.

---Confidentiality protects Commission members from *ex parte* contacts or threats. It allows them to analyze and evaluate fully all the evidence in misconduct proceedings to reach a reasoned decision outside the harsh glare of adverse publicity. Many argue that the publicity surrounding open proceedings involving allegations of judicial misconduct are inherently stressful for all participants, including Commission members. In particular, citizen members of the Commission may be unaccustomed to a highly charged atmosphere that may occur when formal proceedings are made public. Therefore, Commission members might be reluctant to find probable cause to proceed with a formal hearing when the matter might just as easily be disposed of privately.

### ***Arguments "Against" The Current Confidentiality Structure***

Opponents of the current application of confidentiality of Commission proceedings maintain that permitting public disclosure when formal charges are filed against a judge and making formal proceedings public would more than offset the disadvantages.(fn6) Arguments "against" the current confidentiality structure include the following:

---Open proceedings are a fundamental part of a long-standing tradition in America of the "public's right to know." The public has a right to be fully informed about the activities and actions of an essential body of society's public decision-makers. Many argue that just because a person is a judge does not give that person a selective exclusion from openness in government. After all, other professionals charged with ethical misconduct in Colorado (with the exception of attorneys) must face the glare of publicity and generally open formal proceedings.(fn7)

---Open proceedings further the goals of the First Amendment. The U.S. Supreme Court has ruled that the First Amendment entitles the public to as much information as possible about the activities of public officials to allow the public to discuss freely governmental affairs and to scrutinize governmental officials and their actions.(fn8)

---Arguments run strong that the judiciary is not accountable to the public through either the current merit selection and retention process or the judicial disciplinary process. Proponents for a change in the Commission's confidentiality rules argue that open formal proceedings will improve accountability of judges and keep the current merit selection and retention process in place.

---Open proceedings not only give the public an ability to hold judges accountable, but also allow the public to evaluate fully the fairness and effectiveness of the Commission in the discharge of its duties and responsibilities. Many argue that the public does not have meaningful access to Commission activities. The question is: How can the public fully evaluate the effectiveness of a body that conducts its activities in secret?

---Open proceedings would enhance the reputation of the judiciary. In light of a national trend toward openness or "sunshine" in government, there is an inherent negative public perception concerning governmental activities that are conducted "secretly." The use of open proceedings could foster public confidence where nationally there has been some skepticism about how effectively such commissions are carrying out their duties and responsibilities. The idea that "the fox can guard the chicken coop" is an outdated, if not totally erroneous assumption, particularly with respect to such an important and vital governmental function as judicial disciplinary proceedings.

---Open proceedings provide the Governor and legislature with access to critical information they need to evaluate the effectiveness of their appointees to the Commission, as well as the cost-benefit derived from allocation of funds to support the Commission. Many argue that without openness, proper executive and legislative oversight responsibilities cannot be achieved with respect to the operation of the Commission.

---Even if there were open formal proceedings, they would occur with relatively little frequency. Each year, while the Commission hears and decides many allegations of judicial misconduct, the actual number of formal proceedings compared to the total number of complaints resolved is relatively small.

## **SURVEY ON CONFIDENTIALITY OF PROCEEDINGS**

In September 1987, at the Colorado Mock Constitution Convention meeting in Denver, Colorado Supreme Court Chief Justice Joseph R. Quinn stated that, in his opinion, Commission formal

proceedings should be open. Chief Justice Quinn suggested that confidentiality in Colorado's disciplinary process should be lifted when formal charges are filed against a judge. His comments received widespread media attention.(fn9)

Several favorable editorials suggested that public hearings would give the public a better understanding of, and insight

into, this disciplinary process. Editors noted that not only would judges potentially be more accountable, but that the Commission itself could be evaluated better for its effectiveness in discharging its duties and responsibilities.

In light of this widespread attention, the Executive Council of the CBA Judiciary Section decided to study the issue. It mailed out a survey to its membership and other interested parties in October 1987 to ascertain attitudes regarding revisions to the confidentiality rules affecting Colorado's disciplinary process.

After receiving and analyzing the survey responses, the CBA Executive Council submitted the survey results to its Board of Governors for further discussion. At its April 1988 meeting, the Board decided to turn this confidentiality issue over to the local bar associations for discussion prior to making a formal decision of what position the CBA should take regarding whether any changes should be made to the current Commission confidentiality rules.

### ***Summary of Results***

The survey (see questions and percentage results in Appendix) was distributed to approximately 600 individuals. This was not a random sampling of the CBA membership. Rather, the survey was directed toward those individuals who had some direct knowledge of, and participation with, the current judicial disciplinary process in Colorado. Included in this total were all Colorado justices, judges and senior judges; members of the CBA Judiciary Section; and members of Colorado's Bench-Bar Relations Committees.

Of those surveyed, the CBA received 303 fully completed questionnaires, representing a 51 percent response rate. This response rate is statistically significant; that is, the statistics reported could vary within five percentage points from the sample data if the total population of 600 persons receiving surveys had responded.

A substantial proportion of the respondents (91 percent or 277 out of 303) indicated that they were familiar with the Commission on Judicial Discipline. This indicates that nearly all respondents presented their opinions about the issue of Commission confidentiality based on some degree of knowledge.

Of those indicating a familiarity with the Commission, 34 percent (51 of 171) of the judges stated they had been respondent judges before the Commission. An additional 33 percent stated they had learned about the Commission as a result of exposure at a seminar or other educational setting. Of the attorneys, 25 percent (22 of 89) stated they had learned about the Commission as a result of exposure at a seminar or other educational setting. An additional 30 percent of attorneys had heard about the Commission through the media. Finally, the majority of citizen respondents learned about the Commission through media reports or other word-of-mouth information (65 percent or 13 of 20).

A statistically significant percentage of the 303 respondents either agree or strongly agree that the current Commission structure and confidentiality should be left as it is. Of all respondents, nearly 6 out of 10 (58 percent) fell into this category. Only 28 percent indicated disagreement with the current structure. Fifteen percent of the respondents were undecided.

Even though a majority of respondents felt that the current structure and confidentiality should remain intact, their views on rolling back confidentiality were divided, with the sample evenly split on whether or not confidentiality should be lifted after the Commission determined there was "probable cause" to go to formal proceedings against a justice or judge.

While 45 percent of respondents (137 of 303) either agreed or strongly agreed that confidentiality should be rolled back, 42 percent of respondents (128 of 303) either disagreed or strongly disagreed.

Another alternative proposed to allow the judge and Commission to decide jointly if confidentiality should be waived at the point in a proceeding in which there, has been a "probable cause" determination to go to formal proceedings against a justice or judge.

Again, when examining the total sample of 303 respondents, the sample is split on whether or not this option is viable. While 45 percent of respondents (137 of 303) either agreed or strongly agreed, 42 percent (128 of 303) disagreed or strongly disagreed with the option of letting the judge and Commission decide jointly.

This option may already exist, given the Colorado Supreme Court's finding in *Inquiry Concerning Alvin D. Lichtenstein*.<sup>(fn10)</sup> In this case, the court noted that there are several unanswered questions relating to the scope and direction of the confidentiality and privilege applicable

to proceedings before the Commission. The court went on to state:

We need not concern ourselves with these questions in this case, however, for two reasons. First, the Commission and Judge Lichtenstein have expressly waived any confidentiality and privilege pertaining to the formal hearing before the Commission and have requested that the record and recommendation of the Commission be made public. Second, the hearing before the Commission was based on stipulated facts that do not involve the identity of any third party complainant or witness who otherwise might have an interest in preserving confidentiality.<sup>(fn11)</sup>

Thus, even though Colorado law specifically addresses confidentiality,<sup>(fn12)</sup> it would appear that a judge and the Commission might expressly waive any confidentiality and privilege pertaining to a formal hearing before the Commission so long as the conditions noted by the court are present.

In general, those respondents who opposed changing the current status on confidentiality feel that: (1) the system was not faulty; (2) if proceedings were open, it may shake public confidence in the judiciary and harm a judge's career even if the judge were cleared; and (3) a "probable cause" determination was not of a threshold to merit a lifting of confidentiality.

Supporters of a change seemed to indicate that openness of Commission proceedings: (1) was a "public right to know"; (2) it would foster confidence in the judiciary; and (3) it would dispel negative perceptions about proceedings held in "secret."

## CONCLUSION

The debate about confidentiality of judicial disciplinary proceedings is clearly one that will continue. All fifty states and the District of Columbia have enacted provisions requiring some degree of confidentiality of judicial disciplinary proceedings. However, the concept of "confidentiality" appears to conflict with a prevailing public view that there should be openness in governmental activities, including disciplinary proceedings against judges.

The Colorado survey results show that there is clearly strong sentiment for keeping the present confidentiality structure intact. However, there also is strong interest in altering the current confidentiality structure to permit public disclosure and to open formal hearings to the public when the Commission files formal charges against a judge. Therefore, although the respondents were strongly in favor of leaving the present structure and confidentiality requirements in place,(fn13) especially among the judges and attorneys, the respondents were evenly split as to rolling back the rule to the point at which the Commission would make a probable cause determination to go to formal proceedings. They were also split as to whether or not it should be up to the judge and the Commission to decide jointly if confidentiality should be waived at the point when there has been a probable cause determination to go to formal proceedings.

The CBA Judiciary Section Executive Council urges readers to discuss their opinions regarding this confidentiality issue directly with members of the CBA Board of Governors or to send their written comments to the CBA Judiciary Section at the CBA offices in Denver by July 1.

## NOTES

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Footnotes:

1. *See*, Shaman and Begue, "Silence Isn't Always Golden: Reassessing Confidentiality in the Judicial Disciplinary Process," 58 *Temple Law Quarterly* 755, 756 (1985).

2. *Id.* at 756. *See also*, Tesitor and Sinks, *Judicial Conduct Organizations* 19-27 (Table 2) (2d ed. 1980).

3. Frankel, *Occasional Paper #1: Provisions Regarding Confidentiality and Waiver of Confidentiality by Judge at Hearing Stage* (California Commission on Judicial Performance, March 29, 1988).

4. *See*, Colo. Const., Art. VI, § 23(3)(g); CRS §§ 24-72-401 and 402; and Rule 6 of the Colorado Rules of Judicial Discipline.

5. For a detailed discussion of some of the proponent's arguments, see, note 1, *supra* at 760-766.

6. For a detailed discussion of some of these opposing arguments, see, note 1, *supra* at 766-795.

7. Telephone conversation with Linda L. Siderius, Assistant Attorney General, State of Colo. (May 18, 1988). Siderius prosecutes disciplinary and professional misconduct cases for a number of medical regulatory agencies in Colorado.

8. *Landmark Communications v. Virginia*, 435 U.S. 829 (1978). Confidentiality of disciplinary

proceedings might conflict with the goals of the First Amendment in some instances. *Landmark* arose when a Virginia newspaper publisher, Landmark Communications, Inc., printed a truthful account of a pending judicial disciplinary proceeding before the Virginia Judicial Inquiry and Review Commission, including the name of the judge under investigation. After the newspaper was charged and convicted with violating a Virginia criminal statute forbidding such action, Landmark appealed a Virginia Supreme Court decision upholding the conviction to the U.S. Supreme Court.

The U.S. Supreme Court reversed the conviction, holding that the First Amendment prohibits criminal punishment of a newspaper for publishing truthful information concerning the confidential proceedings of a judicial conduct commission. However, the Court went on to note that confidentiality rules prohibiting open access by the media or public to disciplinary commission files adequately protects state interests, including protecting the reputation of individual judges by shielding them from publicity derived from frivolous complaints; protects public confidence in the judicial system by preventing premature disclosure of complaints against judges until it is determined that the charges are well-founded; protects witnesses and complainants from possible recrimination by prohibiting public disclosure of their identity before a determination that the complaint was meritorious; and confidentiality allows commissions the flexibility of informal resolutions of instances of misconduct---a flexibility that would not be possible if the proceedings were open to public scrutiny. *Id.* at 835-36. *See also*, note 1, *supra* at 766-769.

9. *See, e.g.*, Miller, "State's Top Jurist Would Open Probes of Judges to Public," *The Denver Post* (Sept. 13, 1987); Morson, "Chief Justice Proposes Open Hearings for Judges," *Rocky Mountain News* (Sept. 13, 1987); "Sunshine for the Bench," *Grand Junction Daily Sentinel* (Sept. 14, 1987) (editorial); "Open Hearings Have Potential to Build Credibility of the System," *Rocky Mountain News* (Sept. 16, 1987) (editorial); and "Open Hearings for Credibility," *The Denver Post* (Sept. 21, 1987) (editorial).

10. 685 P.2d 204 (Colo. 1984).

11. *Id.* at 208.

12. Colo. Const., Art. VI, § 23(3)(g); CRS §§ 24-72-401 and 402.

13. The results of this Colorado survey parallel rather closely the results of a survey of 345 judges by the National Conference of State Trial Judges, conducted in 1982. This national study revealed that 24 percent of the judges recommended that disciplinary proceedings be made public only after the disciplinary commission determines that probable cause exists as to the validity of the claim; 35 percent urged that the matter not be made public until after the disciplinary board has made a finding of probable cause to proceed further *and* has filed formal charges; 40 percent maintained that the proceedings not be made public until after the highest court of the state decides the matter; and just one percent replied that the proceedings should never be made public. *See*, Wicker, "Are Judges Receiving Due Process in Disciplinary Hearings?" *22 Judges Journal* 35, 36 (Spring 1983).

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### **CBA Board of Governors Requests Comments from Local Bar Members**

*The CBA Board of Governors has requested that CBA members discuss the issue of confidentiality at local bar association meetings so that the Board can get some feedback for its July 1988 meeting. At this*

*meeting, the Board will decide what changes, if any, should be made to the current Commission confidentiality rules. The CBA would then make its recommendation to the Colorado legislature. Please send comments or call any member of the CBA Board of Governors or the CBA Judiciary Section by July 1.*

## APPENDIX

Of the 303 individuals responding to the CBA Judiciary Section survey, the following details the findings regarding each question asked:

**Question 1:** Are you familiar with the Commission on Judicial Discipline?

Yes. 277 91%

No. 26 9%

**Question 2:** In what context do you know about the Commission?

Not familiar with the Commission. 23 8%

Studied about the Commission in school. 32 10%

Filed a complaint with the Commission. 5 2%

Been a respondent judge. 51 17%

Been a witness before the Commission. 8 3%

Attended a seminar about the Commission. 58 19%

Member of the Commission. 8 3%

Heard about the Commission through the media. 52 17%

Other. 66 21%

**Question 3:** Do you agree with the present confidentiality rules pertaining to the Commission? In other words, should the Commission, its structures, and requirements remain the same? Please circle the statement that best describes your attitude.

Strongly agree. 112 37%

Just agree. 59 20%

Undecided. 46 15%

Just disagree. 62 20%

Strongly disagree. 24 8%

**Question 4:** Do you agree with the suggestion to modify the confidentiality requirement, that is, rolling confidentiality back to the point at which the Commission determines there is "probable cause" to go to formal proceedings against a justice or judge? Please circle the statement that best describes your attitude.

Strongly agree. 51 17%

Just agree. 86 28%

Undecided. 38 13%

Just disagree. 49 16%

Strongly disagree. 79 26%

**Question 5:** Others have suggested that it be up to the Commission and the judge to decide jointly if confidentiality should be waived at the point in a proceeding in which there has been a "probable cause" determination to go to formal proceedings against a justice or judge. That is, if a case causes considerable public concern, the Commission and judge, deciding jointly, might agree to waive confidentiality in order that the public might have access to these formal proceedings. Do you agree with this suggestion? Please circle the statement that best describes your attitude.

Strongly agree. 51 17%

Just agree. 86 28%

Undecided. 38 13%

Just disagree. 49 16%

Strongly disagree. 79 26%

**Question 6:** Would you please describe the reasons why you have the stated attitudes and preferences that you have just indicated in questions 3, 4 and 5 above?\*

If it isn't broken, don't fix it. 26 9%

Probable cause is not a high enough threshold to open proceedings. 15 5%

Opening proceedings could turn into a media circus and shake public confidence in the judiciary. 29 10%

Opening hearings would foster confidence in the judiciary. 54 18%

Publicity could ruin a judge's career even if the judge were to be cleared of charges. 34 11%

\*This was an open-ended question with responses placed into the following categories.

Public proceedings could dispel public

perceptions about secret proceedings. 25 8%

Publicity might place undue pressure on the judge in carrying out the judge's other ongoing duties while the Commission proceeding goes forward. 8 3%

Like waiver of confidentiality. 3 1%

Dislike waiver of confidentiality. 5 2%

No reason given. 46 15%

Don't know. 7 2%

Other comments. 51 16%

**Question 7:** Would you support a different type of modification that has not been suggested in the questions above? If so, what suggestion might you offer?\*

No suggestion offered. 244 81%

Misconduct should be distinguished from a physical or medical disability. 8 3%

Commission should be structured like the

Supreme Court Grievance Committee. 5 2%

Let the judge decide on his or her own if confidentiality should be waived. 5 2%

Current Commission configuration is fine---no changes needed. 3 1%

Other, non-related comments. 38 11%

**Question 8:** Are you a(n):

Attorney. 89 29%

Supreme Court justice. 4 1%

Colorado Court of Appeals judge. 7 2%

District court judge. 73 24%

Full-time county court judge. 33 11%

Part-time county court judge. 28 9%

|                  |    |    |
|------------------|----|----|
| Senior judge.    | 17 | 6% |
| Retired judge.   | 9  | 3% |
| Citizen.         | 20 | 7% |
| Municipal judge. | 3  | 1% |
| Referee.         | 13 | 4% |
| Other.           | 7  | 3% |

**Question 9:** Optional. Do you have any other comments or suggestions for the CBA Judiciary Section Council to consider concerning this confidentiality matter as it pertains to Commission on Judicial Discipline proceedings?\*

|                              |     |     |
|------------------------------|-----|-----|
| No other comments offered.   | 262 | 87% |
| Leave structure as it is.    | 4   | 1%  |
| Other, non-related comments. | 37  | 12% |

**Question 10:** Optional. The Judiciary Section Council may hold a special meeting(s) to discuss this proposal. Would you be willing to attend such a meeting and offer your opinions or suggestions? If so, please complete the following:

|                |     |     |
|----------------|-----|-----|
| No name given. | 210 | 69% |
| Name given.    | 93  | 31% |

\*This was an open-ended question with responses placed into the following categories.

### Concerned Lawyer Meetings

Concerned Lawyers, an independent peer support group for recovering alcoholic attorneys and judges, reminds the CBA membership that they have regular meetings. The group does not police, discipline or threaten career or reputation. The purpose of this group is to prevent a damaged career or reputation by giving timely assistance. Anonymity is a major guideline in the group. For information, call Paul Puckett at 831-6012.

### Feature

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