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Judges' conduct: A veil of secrecy

Critics say public deserves access to complaint process

By Ivan Moreno, Rocky Mountain News
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One judge sexually harassed an employee. Another pleaded guilty to drinking and driving. And a part-time judge heard a case involving a client of his firm.

Those are some of the examples of misconduct cited by Colorado's Commission on Judicial Discipline.

But the commission won't reveal the identity of judges accused of misconduct or what happens to complaints against them unless they reach the most serious level - a recommendation to the state Supreme Court to discipline a judge. That hasn't happened in Colorado since 1986, when William L. Jones, a district judge, was publicly reprimanded for delaying a decision on a case.

The cloak of secrecy under which the disciplinary system operates puts Colorado in the minority - along with just 14 other states and the District of Columbia.

"There is a 'trust me and stop asking questions' attitude," said John Andrews, former president of the Colorado Senate and one of the most outspoken critics of the state's judicial system.

"Trust me and shut up. That's sort of the message that lawyers and judges send to the public."

Colorado's Commission on Judicial Discipline was set up in 1966 to police the district court level of the judiciary and below. Citizens, judges and attorneys sit on the 10-member panel.

No judge removed

But in 41 years, the commission has never recommended to the state Supreme Court that a judge be removed because of misconduct. Instead, judges often choose to retire or resign when there's an investigation pending against them. Once judges leave, the commission loses its power to discipline them, and the record of their misconduct remains private.

Rick Wehmhoefer, executive director and general counsel for the commission, said the fact that cases rarely rise to the level of a public reprimand is a good reflection on Colorado judges.

So does the decision to leave, he said. In other states, judges often fight allegations against them instead of resigning or retiring.

"The nice thing about Colorado is that the judges choose to go away if they misbehave," he said.

In all states, the initial investigation into a complaint remains confidential. But, judicial commissions in 34 states make their findings public once a charge is filed. Oregon does it when its commission holds a hearing.

The Chicago-based American Judicature Society, which studies judicial discipline commissions nationwide, has advocated an open system since 1996, saying "confidentiality can undermine the public confidence in the judicial discipline process."

Wehmhoefer said part of the reason complaints remain confidential in Colorado is that the majority of them are unfounded. Of the 179 complaints reviewed last year, most were from people who disagreed with a judge's ruling, the commission said in a report.

"Far and away, most of the complaints I get are from people sitting in jail," Wehmhoefer said.

In 2006, 81 percent of complaints were from inmates, and 95 percent of all complaints reflect unhappiness with a judge's legal ruling, which is for an appellate court to resolve.

A lot of times, Wehmhoefer said, people are simply looking for an excuse to get a judge in trouble.

"Some (people) say to me, 'Rick, what do I have to say the judge did to make your commission investigate?'"

Colorado's commission operates under rules established by the Colorado Constitution. To loosen the confidentiality policy, voters would have to rewrite the law.

Which is what Andrews wanted them to do. In 2004, as a member of the legislature, he failed to persuade his colleagues to put a

measure on the ballot. Among other things, it would have made all complaints against judges public and posted online.

Andrews, now a fellow at the Claremont Institute, a California think tank, said opening up the judicial complaint process to "more sunshine" would boost confidence in the courts.

On the other side of the bench, Colorado lawyers are already subject to closer public scrutiny. Since 1998, disciplinary hearings against lawyers are open to the public.

John Lebsack, chairman of the Ethics Committee of the Colorado Bar Association, said the same transparency should apply to judges.

Though Lebsack said a confidential process may be aimed to prevent embarrassment or protect reputations from groundless complaints, he maintains an open system would be best.

"Openness would allow people to see that these complaints are taken seriously," he said.

Range of behaviors

A review of cases in other states last year shows a range of questionable behavior.

Two years ago, a Florida judge ordered 11 people jailed for failing to show up in court, even though he knew they had been directed to the wrong courtroom by bailiffs, according to the American Judicature Society.

A New York judge was removed from the bench for soliciting money for his legal expense fund from lawyers who appeared in his court.

A New Mexico judge tested positive for cocaine and was found guilty of seeking preferential treatment for a woman he had a relationship with.

The cases Colorado's commission has handled pale in comparison, according to the examples in its annual report. Still, the details of those cases remain private.

The commission notes, however, that it issued two private letters of reprimand to judges it investigated last year, and two other judges retired while cases against them were pending.

The details of those cases will never be known.

By the numbers

179 complaints reviewed by the commission in 2006

155 complaints arising from criminal cases

163 district court judges were targets of most complaints

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