

Help Make Judicial Complaints Matter.

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The Colorado Supreme Court has the power to make rules for the judicial discipline commission, writes Chris Forsyth.

Ninety-seven percent. That's the dismissal rate of complaints against judges in Colorado. The rate hit 97 percent in 1993, and has averaged that ever since.

What is being alleged in all those dismissed complaints? We can't find out because the language in the Colorado Constitution requires their content to be kept "confidential." And the language in the state constitution is also why the dismissal rate of complaints against judges is so high.

The constitution also requires judges to comply with the Code of Judicial Conduct, which is supposed to ensure they are fair and to protect citizens from the bad things that judges can do.

To enforce the code, however, the section created a judicial discipline commission with four judges on it. It also gave the Colorado Supreme Court the power to make rules for the commission.

With that power, the Supreme Court created an executive director who reports not only to the commission, but to the Supreme Court as well. Then, although the constitution gave the commission the power to discipline for "violation of any canon of the Code of Judicial Conduct," the Supreme Court wrote rules requiring the executive director to dismiss complaints for a broad array of reasons, including all complaints regarding any ruling that could be appealed.

The constitutional "violation of any canon" standard was effectively erased. And thousands of complaints have been dismissed.

That's why the dismissal rate is 97 percent, which is a much higher rate than that of our previous judicial qualifications commission, which was replaced in 1983. Colorado doesn't fare well when compared with other states, either. Only two have publicly disciplined fewer judges than Colorado since 1986.

To correct this problem, we must edit the state constitution. The Honest Judge Amendment is a proposed initiative to do just that.

It would transfer the power to discipline judges — including the power to make rules regarding judicial discipline — to the Independent Ethics Commission, which already exists, has no direct ties to the Supreme Court, and disciplines members of our legislative and executive branches. The expense of judicial discipline would continue to be the Supreme Court's responsibility, so the Independent Ethics Commission would receive the necessary funding.

Transparency would be created by making judicial discipline proceedings public upon a finding of probable cause — a responsible and reasonable standard used in other states. At present, it's literally a crime in Colorado to disclose the contents of complaints filed with the discipline commission. So examples of misconduct are elusive.

Ironically, the statute that currently makes such an act a misdemeanor is in Colorado's Open Records Act (CORA). And a new rule by our Supreme Court regarding CORA shows just how important it is to enforce the Code of Judicial Conduct.

The new rule allows the judicial branch to withhold documents from public view if the release “could compromise the safety and security of a judicial branch employee.” Although CORA specifically addresses judicial branch records, the Supreme Court previously ruled that CORA does not apply to the judicial branch, paving the way for its new rule.

CORA makes government documents public unless release is contrary to law or “would be contrary to the public interest.” Instead of using the public interest standard created by the legislature, the focus of the Supreme Court's rule is on themselves, the judicial branch employees.

Another rule, and another conflict of interest. Do the actions of the Supreme Court have an appearance of impropriety? Do they affect your confidence in the judiciary? These questions are addressed by the Code of Judicial Conduct, which the discipline commission is supposed to enforce. According to the code, judges aren't supposed to use their power to help themselves.

But with four judges on the discipline commission, the executive director of the commission reporting to the Supreme Court, and the Supreme Court making the rules for the commission, neither the Supreme Court nor any other judge has to worry much about the code being enforced.

Here's proof: There is only one published case of judicial discipline in Colorado since 1986.

It's time to edit the constitution with the Honest Judge Amendment. It would remove conflicts of interest, add a dose of sunshine, and create a system you can trust.

But it has to get on the ballot first. And it's not easy to get on the ballot unless you have a lot of money. The Honest Judge Amendment doesn't cater to a particular partisan or monetary interest.

You can help, however. Go to www.judicialintegrity.org. Navigate to the “petitions” page. Download and print a petition. Obtain up to 24 signatures. Get it notarized and mail it in.

Help make the Honest Judge Amendment a reality.

Chris Forsyth is executive director of The Judicial Integrity Project.

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