

**2017-2018 #1**  
**Independent Ethics Commission**

SWARD 4:07 P.M.

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**Final Text**

**JUN 03 2016**

*Be it Enacted by the People of the State of Colorado:*

**SECTION 1.** In the constitution of the state of Colorado, section 5 of article XXIX, <sup>Colorado Secretary of State</sup>  
**amend** (3)(a) as follows:

(3)(a) Any person may file a written complaint with the independent ethics commission asking whether a public officer, member of the general assembly, local government official, or government employee has failed to comply with this article or any other standards of conduct or reporting requirements as provided by law within the preceding twelve months. PURSUANT TO SECTION 23 OF ARTICLE VI OF THE COLORADO CONSTITUTION, ANY PERSON MAY FILE A WRITTEN COMPLAINT WITH THE INDEPENDENT ETHICS COMMISSION ASKING WHETHER A JUSTICE OR JUDGE HAS FAILED TO COMPLY WITH THE CODE OF JUDICIAL CONDUCT OR WHETHER A JUSTICE OR JUDGE SHOULD BE RETIRED FOR DISABILITY. THE TWELVE MONTH STATUTE OF LIMITATIONS DOES NOT APPLY TO COMPLAINTS AGAINST A JUSTICE OR JUDGE.

**SECTION 2.** In the constitution of the state of Colorado, section 23 of article VI, **amend** (3) (a), (3) (b), (3) (c), (3) (d), (3) (e), (3) (f), (3) (g), (3) (h) and **add** (4) as follows:

~~(3)(a) There shall be a commission on judicial discipline. It shall consist of: Two judges of district courts and two judges of county courts, each selected by the supreme court; two citizens admitted to practice law in the courts of this state, neither of whom shall be a justice or judge, who shall have practiced in this state for at least ten years and who shall be appointed by the governor, with the consent of the senate; and four citizens, none of whom shall be a justice or judge, active or retired, nor admitted to practice law in the courts of this state, who shall be appointed by the governor, with the consent of the senate. THE INDEPENDENT ETHICS COMMISSION IS RESPONSIBLE FOR PROSECUTING JUDICIAL MISCONDUCT AND RECOMMENDING JUDICIAL DISCIPLINE.~~

~~(b) Each member shall be appointed to a four year term; except that one half of the initial membership in each category shall be appointed to two year terms, for the purpose of staggering terms. Whenever a commission membership prematurely terminates or a member no longer possesses the specific qualifications for the category from which he was selected, his position shall be deemed vacant, and his successor shall be appointed in the same manner as the original appointment for the remainder of his term. A member shall be deemed to have resigned if that member is absent from three consecutive commission meetings without the commission having entered an approval for additional absences upon its minutes. If any member of the commission is disqualified to act in any matter pending before the commission, the commission may appoint a special member to sit on the commission solely for the purpose of deciding that matter. THE INDEPENDENT ETHICS COMMISSION SHALL PROMULGATE PROCEDURAL RULES REGARDING JUDICIAL DISCIPLINE.~~

(c) No member of the INDEPENDENT ETHICS commission shall receive any compensation for his services but shall be allowed his necessary expenses for travel, board, and lodging and any other expenses incurred in the performance of his duties REGARDING THE PROSECUTION OF JUDICIAL MISCONDUCT AND THE RECOMMENDATION OF

JUDICIAL DISCIPLINE, to be paid by the supreme court from its budget to be appropriated by the general assembly.

(d) A justice or judge of any court of record of this state, in accordance with the procedure set forth in this subsection (3), may be removed or disciplined for ~~willful misconduct in office, willful or persistent failure to perform his duties, intemperance, or~~ violation of any canon OR RULE of the Colorado code of judicial conduct, or he may be retired for disability interfering with the performance of his duties which is, or is likely to become, of a permanent character. AS SET FORTH IN THIS SECTION, THE INDEPENDENT ETHICS COMMISSION HAS SOLE JURISDICTION OVER WHETHER A JUSTICE OR JUDGE HAS VIOLATED A CANON OR RULE OF THE COLORADO CODE OF JUDICIAL CONDUCT OR WHETHER A JUSTICE OR JUDGE MAY BE RETIRED FOR DISABILITY. A JUSTICE OR JUDGE MAY BE DISCIPLINED FOR CONDUCT THAT MAY BE OTHERWISE SUBJECT TO APPELLATE REVIEW BECAUSE THE PURPOSES OF DISCIPLINE ARE SEPARATE AND DISTINCT FROM THE PURPOSES OF AN APPEAL. THE PURPOSES OF DISCIPLINE ARE THE PREVENTION OF FUTURE MISCONDUCT AND THE PROTECTION OF THE PUBLIC. A JUSTICE OR JUDGE MUST POSSESS THE CONFIDENCE OF THE COMMUNITY AND THEREFORE BE INDEPENDENT AND HONEST. JUSTICE MUST NOT ONLY BE DONE, IT MUST BE SEEN TO BE DONE. THERE MUST BE THE APPEARANCE OF JUSTICE AS WELL AS THE FACT OF JUSTICE, OR RESPECT FOR THE JUDICIARY WILL VANISH. THEREFORE, IF THE CODE OF JUDICIAL CONDUCT IS VIOLATED IN AN ORDER OR BY ACTIONS THAT ARE OTHERWISE SUBJECT TO APPELLATE REVIEW, A JUSTICE OR JUDGE MAY BE DISCIPLINED. IN REACHING ITS RECOMMENDATION, THE INDEPENDENT ETHICS COMMISSION IS NOT BOUND BY THE FINDINGS OF AN APPELLATE COURT REGARDING SUCH CONDUCT AND OWES NO DEFERENCE TO THE FINDINGS OF AN APPELLATE COURT. FURTHERMORE, A JUSTICE OR JUDGE MAY BE DISCIPLINED FOR CONDUCT OR ACTIONS THAT WERE NOT APPEALED OR FOR CONDUCT OR ACTIONS THAT WERE NOT OTHERWISE SUBJECT TO APPELLATE REVIEW.

(e) ~~The commission may, after such investigation as it deems necessary, order informal remedial action; order a formal hearing to be held before it concerning the removal, retirement, suspension, censure, reprimand, or other discipline of a justice or a judge; or request the supreme court to appoint three special masters, who shall be justices or judges of courts of record, to hear and take evidence in any such matter and to report thereon to the commission.~~ WHENEVER THE INDEPENDENT ETHICS COMMISSION RECEIVES A COMPLAINT AGAINST A JUSTICE OR JUDGE, OR OTHERWISE HAS REASON TO BELIEVE THAT A JUSTICE OR JUDGE SHOULD BE ADMONISHED, REPRIMANDED, CENSURED, SUSPENDED, REMOVED, OR RETIRED, THE COMMISSION SHALL FIRST INVESTIGATE THE COMPLAINT OR BELIEF AND THEN CONDUCT INITIAL PROCEEDINGS FOR THE PURPOSE OF DETERMINING WHETHER PROBABLE CAUSE EXISTS FOR CONDUCTING A PUBLIC HEARING OR HEARINGS TO DEAL WITH THE COMPLAINT OR BELIEF. WHENEVER THE COMMISSION CONCLUDES, BASED ON

AN INITIAL PROCEEDING, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A JUSTICE OR JUDGE HAS VIOLATED A CANON OR RULE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, THE COMMISSION SHALL CONDUCT A PUBLIC HEARING OR HEARINGS. After a formal SUCH hearing OR HEARINGS or after considering the record and report of the masters, if the commission finds good cause therefor FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT A JUSTICE OR JUDGE HAS VIOLATED THE CODE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, it may take informal remedial action, or it may recommend to the supreme court the removal, retirement, suspension, censure, reprimand, or discipline, as the case may be, of the justice or judge. The commission may also recommend that the costs of its investigation and hearing be assessed against such justice or judge.

(f) Following receipt of a recommendation from the INDEPENDENT ETHICS commission, the supreme court shall review the record of the proceedings on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal, retirement, suspension, censure, reprimand, or discipline, as it finds just and proper, or wholly reject the recommendation. IF THE RECOMMENDATION OF THE COMMISSION IS SUPPORTED BY SUBSTANTIAL EVIDENCE, THE SUPREME COURT SHALL ACCEPT THE RECOMMENDATION OF THE COMMISSION. Upon an order for retirement, the justice or judge shall thereby be retired with the same rights and privileges as if he retired pursuant to statute. Upon an order for removal, the justice or judge shall thereby be removed from office, and his salary shall cease from the date of such order. On the entry of an order for retirement or for removal of a judge, his office shall be deemed vacant.

(g) ~~Prior to the filing of a recommendation to the supreme court by the commission against any justice or judge, all papers filed with and proceedings before the commission on judicial discipline or masters appointed by the supreme court, pursuant to this subsection (3), shall be confidential, and the filing of papers with and the giving of testimony before the commission or the masters shall be privileged; but no other publication of such papers or proceedings shall be privileged in any action for defamation; except that the record filed by the commission in the supreme court continues privileged and a writing which was privileged prior to its filing with the commission or the masters does not lose such privilege by such filing.~~ WHENEVER THE COMMISSION CONCLUDES, BASED ON AN INITIAL PROCEEDING, THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A JUSTICE OR JUDGE HAS VIOLATED THE CODE OF JUDICIAL CONDUCT OR THAT THE JUSTICE OR JUDGE SUFFERS FROM A DISABILITY WHICH IS PERMANENT OR LIKELY TO BECOME PERMANENT AND WHICH SERIOUSLY INTERFERES WITH THE PERFORMANCE OF JUDICIAL DUTIES, THE COMMISSION SHALL MAKE PUBLIC ALL THOSE RECORDS OF ITS INVESTIGATION THAT PROVIDE THE BASIS FOR ITS ACTION. SUBSEQUENT ACTIONS BY THE COMMISSION OR SUBSEQUENT HEARINGS IN THE DISCIPLINARY PROCESS SHALL BE PUBLIC.

(h) ~~The supreme court shall by rule provide for procedures before the commission on judicial discipline, the masters, and the supreme court. The rules shall also provide the standards and degree of proof to be applied by the commission in its proceedings. A justice or judge who is a member of the INDEPENDENT ETHICS commission or supreme court shall not participate in any proceedings involving his own removal or retirement.~~

(4) TO PROMOTE AN EQUAL AMOUNT OF PUBLIC CONFIDENCE IN THE JUDICIAL BRANCH AS CURRENTLY EXISTS IN OTHER BRANCHES OF GOVERNMENT, THE JURISDICTION OVER JUDICIAL DISCIPLINE BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE SHALL CEASE ON DECEMBER 31, 2018, AND BE ASSUMED BY THE INDEPENDENT ETHICS COMMISSION ON JANUARY 1, 2019. THE INDEPENDENT ETHICS COMMISSION SHALL TAKE OVER ANY ONGOING INVESTIGATION AND ALL COMPLAINTS REGARDING JUDICIAL DISCIPLINE AS OF JANUARY 1, 2019. THE INDEPENDENT ETHICS COMMISSION HAS JURISDICTION OVER CONDUCT THAT OCCURRED PRIOR TO JANUARY 1, 2019, AS WELL AS CONDUCT THAT OCCURS AFTER JANUARY 1, 2019. THE INDEPENDENT ETHICS COMMISSION IS NOT BOUND BY ANY PRIOR DISMISSALS OF COMPLAINTS ISSUED BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE. THE INDEPENDENT ETHICS COMMISSION MAY INVESTIGATE AND PURSUE DISCIPLINE BASED ON COMPLAINTS THAT WERE PREVIOUSLY DISMISSED BY THE COLORADO COMMISSION ON JUDICIAL DISCIPLINE.

**SECTION 3.** In the Colorado Revised Statutes, **repeal** § 24-72-401 as follows:

~~The record of an investigation conducted by the commission on judicial discipline or by masters appointed by the supreme court at the request of the commission shall contain all papers filed with and all proceedings before the commission or the masters. The record shall be confidential and shall remain confidential after filing with the supreme court. A recommendation of the commission for the removal or retirement of a justice or judge shall not be confidential after it is filed with the supreme court.~~

**SECTION 4.** In the Colorado Revised Statutes, **repeal** § 24-72-402 as follows:

~~Any member of the commission, any master appointed by the supreme court, or anyone providing assistance to such commission or such masters who willfully and knowingly discloses the contents of any paper filed with, or any proceeding before, such commission or such masters, or willfully and knowingly discloses the contents of any recommendation of the commission before such recommendation is filed with the supreme court is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars. This section shall not apply to any necessary communication between the members of the commission or the masters appointed by the supreme court or anyone employed to aid such commission or such masters in the filing or documentation of any paper filed with, or any proceedings before, such commission or such masters or the preparation of the recommendation of such commission.~~

**SECTION 5. Effective date - applicability.** These voter-enacted provisions shall take effect on January 1, 2019.