

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0764.03 Jerry Barry x4341

SENATE BILL 22-201

SENATE SPONSORSHIP

Lee and Gardner,

HOUSE SPONSORSHIP

Weissman,

Senate Committees

Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING INDEPENDENT OVERSIGHT OF MATTERS CONCERNING**
102 **JUDICIAL DISCIPLINE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

A commission on judicial discipline (commission) is established in current law pursuant to section 23 (3) of article VI of the state constitution. The bill implements the commission by:

- Specifying the duties of the commission;
- Establishing and specifying the duties of an office of judicial discipline (office) as an independent office within

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- the judicial department;
- Authorizing the commission to appoint an executive director of the office and specifying the duties of the executive director;
- Authorizing the commission to appoint and determine the duties of special counsel, which may include representing the people in formal proceedings;
- Establishing immunity for commissioners;
- Specifying when information should be shared among offices within the judicial department responsible for reviewing actions of current and potential judges and justices;
- Specifying duties of personnel within the judicial department when they become aware of potential issues of judicial discipline; and
- Establishing a special cash fund and specifying sources of money for the fund and uses of the money in the fund.

For rules, guidelines, and procedures relating to judicial discipline adopted by the supreme court, the bill requires the supreme court to:

- Provide the commission with notice and an opportunity to object and, if the commission objects, to engage with the commission in good-faith efforts to resolve differences; and
- Post notice of each rule, guideline, or procedure and allow for public comment, including an opportunity for the public to address the supreme court.

The bill creates the legislative interim committee on judicial discipline to study Colorado's system of judicial discipline and make recommendations for necessary changes to that system.

The bill clarifies that the disclosure of materials and information to the state auditor pursuant to an investigation based on an allegation of fraud by an employee or contracted individual does not cause the materials and information to lose their status as privileged or confidential based solely upon such disclosure.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) An independent, fair, competent, and impartial judiciary is
5 indispensable to our system of justice. A judiciary composed of persons

1 committed to the highest levels of integrity and who hold office as a
2 public trust is essential to maintaining public confidence in the legal
3 system.

4 (b) In order to maintain public confidence in the legal system; to
5 protect the public from judicial conduct that is improper, illegal, or
6 unethical; to ensure judicial conduct is not tainted by bias, prejudice, or
7 illegal discrimination; to avoid impropriety or the appearance of
8 impropriety; and to ensure the preservation of the principles of justice and
9 the rule of law, a commission on judicial discipline is needed that is
10 financially and functionally independent from the judicial department and
11 empowered to fairly and expeditiously address complaints about judicial
12 conduct;

13 (c) Public confidence in the judicial department has been
14 significantly undermined over the past two and one-half years by media
15 reports describing alleged misconduct and improprieties in the judicial
16 department resulting in multiple resignations of senior judicial department
17 leaders and the commencement of six investigations by the judicial
18 discipline commission, the Colorado state auditor, the office of attorney
19 regulation counsel, the federal bureau of investigation, and two
20 investigations by outside counsel commissioned by the judicial
21 department;

22 (d) To credibly investigate and address allegations of judicial
23 misconduct and thereby fulfill the requirement of accountability, it is
24 important to establish a commission on judicial discipline that is
25 independent from the judges and justices who are subject to the
26 commission's oversight. Colorado's constitution, code of judicial conduct,
27 and rules of judicial discipline do not now provide a fair and impartial

1 system of judicial discipline because the judges overseeing discipline of
2 other judges decide the rules to be applied, determine evidence to be
3 considered, rule on appeals, and allocate funds to the disciplinary
4 commission.

5 (e) The credibility of Colorado's judiciary is best served by a
6 system of judicial discipline that is overseen by an independent
7 commission on judicial discipline that includes perspectives from the
8 community, the bar, and the judiciary, rather than being ultimately
9 controlled by the judiciary. This design will achieve independent
10 oversight while also being informed by the perspective of the judiciary.

11 (f) Within the constitutional limitations on confidentiality, the
12 work of the commission on judicial discipline should be as transparent as
13 possible;

14 (g) To effectively perform its constitutional function, the
15 commission on judicial discipline needs unfettered access to all
16 information and documents available to the state judicial department that
17 are relevant to any allegation or investigation of judicial misconduct or
18 judicial disability; and

19 (h) The efficacy of the commission on judicial discipline also
20 depends upon the existence of conflict-free, secure, stable, and defined
21 funding that allows the commission to maintain independence and
22 respond to disciplinary issues without delay and without being subject to
23 improper influence exercised by those being overseen.

24 (2) To restore public confidence in the judiciary and achieve the
25 goal of an independent commission on judicial discipline, the general
26 assembly hereby adopts and enacts the provisions set forth in this act and
27 establishes a working group of judges, lawyers, members of the public,

1 and other interested parties to meet to review and examine the facts,
2 evaluate other states' models of judicial discipline, and make
3 recommendations to the general assembly for statutory or constitutional
4 reforms during the 2023 session.

5 **SECTION 2.** In Colorado Revised Statutes, **add** article 5.3 to title
6 13 as follows:

7 **ARTICLE 5.3**

8 **Commission on Judicial Discipline**

9 **13-5.3-101. Definitions.** AS USED IN THIS ARTICLE 5.3, UNLESS
10 THE CONTEXT OTHERWISE REQUIRES:

11 (1) "ATTORNEY" MEANS A PERSON ADMITTED TO PRACTICE LAW
12 BEFORE THE COURTS OF THIS STATE.

13 (2) "CODE" MEANS THE COLORADO CODE OF JUDICIAL CONDUCT.

14 (3) "COMMISSION" MEANS THE COMMISSION ON JUDICIAL
15 DISCIPLINE, ESTABLISHED PURSUANT TO SECTION 23 (3) OF ARTICLE VI OF
16 THE COLORADO CONSTITUTION.

17 (4) "COMMISSIONER" MEANS AN APPOINTED MEMBER OF THE
18 COMMISSION ON JUDICIAL DISCIPLINE OR A SPECIAL MEMBER APPOINTED
19 PURSUANT TO SECTION 23 (3)(a) OF ARTICLE VI OF THE COLORADO
20 CONSTITUTION.

21 (5) "COMPLAINT" MEANS INFORMATION IN ANY FORM FROM ANY
22 SOURCE THAT ALLEGES OR FROM WHICH A REASONABLE INFERENCE CAN
23 BE DRAWN THAT A JUDGE COMMITTED MISCONDUCT OR IS INCAPACITATED.

24 (6) "DEPARTMENT" MEANS THE COLORADO STATE JUDICIAL
25 DEPARTMENT AND ALL ITS SUBPARTS, SUCH AS THE OFFICE OF THE STATE
26 COURT ADMINISTRATOR; THE OFFICE OF THE CHIEF JUSTICE OF THE
27 SUPREME COURT; THE OFFICE OF ATTORNEY REGULATION COUNSEL; THE

1 JUDICIAL DISTRICTS AND THEIR ADMINISTRATIONS, INCLUDING CHIEF
2 JUDGES AND DISTRICT ADMINISTRATORS; THE HUMAN RESOURCES
3 DEPARTMENT; AND OTHER ADMINISTRATIVE SUBPARTS.

4 (7) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
5 THE OFFICE OF JUDICIAL DISCIPLINE APPOINTED PURSUANT TO SECTION
6 13-5.3-103.

7 (8) "FUND" MEANS THE COMMISSION ON JUDICIAL DISCIPLINE
8 SPECIAL CASH FUND, CREATED IN SECTION 13-5.3-104.

9 (9) (a) "JUDGE" MEANS ANY JUSTICE OR JUDGE OF ANY COURT OF
10 RECORD OF THIS STATE SERVING ON A FULL-TIME, PART-TIME, OR SENIOR
11 BASIS.

12 (b) "JUDGE" ALSO INCLUDES ANY JUSTICE OR JUDGE WHO HAS
13 RETIRED WITHIN THE JURISDICTIONAL LIMITS FOR DISCIPLINARY
14 PROCEEDINGS ESTABLISHED BY THIS ARTICLE 5.3, THE COMMISSION, OR
15 THE COLORADO SUPREME COURT.

16 (c) "JUDGE" DOES NOT INCLUDE MUNICIPAL JUDGES OR
17 MAGISTRATES, ADMINISTRATIVE LAW JUDGES, OR DENVER COUNTY COURT
18 JUDGES, WHO ARE SUBJECT TO DIFFERENT DISCIPLINARY AUTHORITIES.

19 (10) "JUSTICE" MEANS A JUSTICE SERVING ON THE SUPREME COURT
20 OF COLORADO ON EITHER A FULL-TIME OR SENIOR BASIS.

21 (11) "MISCONDUCT" MEANS CONDUCT BY A JUDGE THAT MAY
22 REASONABLY CONSTITUTE GROUNDS FOR DISCIPLINE UNDER THE CODE,
23 THE COLORADO RULES OF JUDICIAL DISCIPLINE, OR SECTION 23 (3) OF
24 ARTICLE VI OF THE COLORADO CONSTITUTION.

25 (12) "OFFICE" MEANS THE OFFICE OF JUDICIAL DISCIPLINE
26 ESTABLISHED IN SECTION 13-5.3-103.

27 (13) "OFFICE OF THE STATE COURT ADMINISTRATOR" MEANS THE

1 OFFICE CREATED PURSUANT TO SECTION 13-3-101 (1).

2 (14) "SUPREME COURT" MEANS THE SUPREME COURT OF THE STATE
3 OF COLORADO ESTABLISHED PURSUANT TO ARTICLE VI OF THE COLORADO
4 CONSTITUTION.

5 **13-5.3-102. Commission on judicial discipline - powers and**
6 **duties.** (1) PURSUANT TO SECTION 23 (3) OF ARTICLE VI OF THE
7 COLORADO CONSTITUTION, THE COLORADO COMMISSION ON JUDICIAL
8 DISCIPLINE IS ESTABLISHED AS AN INDEPENDENT COMMISSION HOUSED
9 WITHIN THE DEPARTMENT.

10 (2) MEMBERS OF THE COMMISSION ARE APPOINTED AND SERVE
11 PURSUANT TO SECTION 23 (3)(a) AND (3)(b) OF ARTICLE VI OF THE
12 COLORADO CONSTITUTION.

13 (3) THE COMMISSION SHALL:

14 (a) INVESTIGATE AND RESOLVE REQUESTS FOR EVALUATION OF
15 POTENTIAL JUDICIAL MISCONDUCT IN ACCORDANCE WITH THE COLORADO
16 CONSTITUTION, THE RULES OF JUDICIAL DISCIPLINE, AND THIS ARTICLE 5.3;

17 (b) APPOINT AN EXECUTIVE DIRECTOR OF THE OFFICE OF JUDICIAL
18 DISCIPLINE;

19 (c) ESTABLISH POSITIONS, ROLES, AND MINIMUM STARTING
20 SALARIES FOR EMPLOYEES OF THE OFFICE;

21 (d) HIRE EMPLOYEES OF THE OFFICE WHO SERVE AT THE PLEASURE
22 OF THE COMMISSION. EMPLOYEES OF THE OFFICE MAY INCLUDE CLERICAL
23 ASSISTANTS; STAFF ATTORNEYS, WHO MAY SERVE AS SPECIAL COUNSEL IF
24 SO APPOINTED BY THE COMMISSION; AND INVESTIGATORS.

25 (e) EMPLOY OR APPOINT SPECIAL COUNSEL, WHO SERVE AT THE
26 PLEASURE OF THE COMMISSION; ASSIGN DUTIES TO SPECIAL COUNSEL AT
27 THE DISCRETION OF THE COMMISSION, WHICH MAY INCLUDE SERVING AS

1 REPRESENTATIVES OF THE PEOPLE OF THE STATE OF COLORADO IN FORMAL
2 PROCEEDINGS; AND DETERMINE THE COMPENSATION OF SPECIAL COUNSEL;
3 AND

4 (f) APPROVE A BUDGET FOR THE COMMISSION AND THE OFFICE AND
5 ASSIST THE EXECUTIVE DIRECTOR IN MANAGING THE OFFICE AND
6 PROVIDING FISCAL OVERSIGHT OF THE OFFICE'S OPERATING BUDGET.

7 (4) COMMISSIONERS ARE IMMUNE FROM SUIT IN ANY ACTION, CIVIL
8 OR CRIMINAL, BASED UPON OFFICIAL ACTS PERFORMED IN GOOD FAITH AS
9 COMMISSIONERS CONSISTENT WITH THE "COLORADO GOVERNMENTAL
10 IMMUNITY ACT", ARTICLE 10 OF TITLE 24.

11 **13-5.3-103. Office of judicial discipline - created - executive**
12 **director - duties - oversight.** (1) (a) THE OFFICE OF JUDICIAL DISCIPLINE
13 IS ESTABLISHED AS AN INDEPENDENT OFFICE HOUSED WITHIN THE
14 DEPARTMENT. THE COMMISSION SHALL OVERSEE THE OFFICE.

15 (b) SUBJECT TO THE COMMISSION'S SUPERVISION, THE OFFICE
16 SHALL:

17 (I) STAFF AND SUPPORT THE COMMISSION'S OPERATIONS. THE
18 INITIAL STAFFING MAY INCLUDE THE EXECUTIVE DIRECTOR, A FULL-TIME
19 ADMINISTRATIVE SUPPORT PERSON, A STAFF ATTORNEY, AND AN
20 INVESTIGATOR.

21 (II) RECEIVE REQUESTS FOR EVALUATION INVOLVING JUSTICES
22 AND JUDGES;

23 (III) CONDUCT PUBLIC EDUCATION EFFORTS CONCERNING THE
24 JUDICIAL DISCIPLINE PROCESS AND THE RECOMMENDATIONS MADE BY THE
25 COMMISSION;

26 (IV) ENGAGE IN AND PROVIDE EDUCATIONAL BACKGROUND TO THE
27 PUBLIC, THE DEPARTMENT, JUDICIAL NOMINATING COMMISSIONS, AND

1 JUDICIAL PERFORMANCE COMMISSIONS REGARDING THE REQUIREMENTS OF
2 THE CODE AND THE COMMISSION; AND

3 (V) COMPLETE ANY OTHER DUTIES AS ASSIGNED BY THE
4 COMMISSION.

5 (2)(a) THE COMMISSION SHALL APPOINT AN EXECUTIVE DIRECTOR
6 OF THE OFFICE. THE EXECUTIVE DIRECTOR:

7 (I) SHALL BE ADMITTED TO PRACTICE LAW IN THE COURTS OF THIS
8 STATE AND HAVE PRACTICED LAW IN THIS STATE FOR AT LEAST TEN YEARS;

9 (II) SHALL NOT BE INVOLVED IN THE PRIVATE PRACTICE OF LAW
10 WHILE SERVING AS THE EXECUTIVE DIRECTOR; AND

11 (III) SHALL NOT APPEAR AS AN ATTORNEY BEFORE THE
12 COMMISSION FOR A PERIOD OF FIVE YEARS FOLLOWING SERVICE AS THE
13 EXECUTIVE DIRECTOR.

14 (b) THE EXECUTIVE DIRECTOR SERVES AT THE PLEASURE OF THE
15 COMMISSION. THE EXECUTIVE DIRECTOR'S COMPENSATION IS THE SAME AS
16 THE COMPENSATION THE GENERAL ASSEMBLY ESTABLISHES FOR DISTRICT
17 COURT JUDGES. THE EXECUTIVE DIRECTOR SHALL HIRE ADDITIONAL STAFF
18 FOR THE OFFICE AS NECESSARY AND AS APPROVED BY THE COMMISSION.

19 (c) THE EXECUTIVE DIRECTOR HAS THE FOLLOWING DUTIES:

20 (I) ESTABLISH AND MAINTAIN A PERMANENT OFFICE;

21 (II) RESPOND TO INQUIRIES ABOUT THE COMMISSION OR THE CODE;

22 (III) ADVISE THE COMMISSION ON THE APPLICATION AND
23 INTERPRETATION OF THE CODE AND THE RULES OF JUDICIAL DISCIPLINE;

24 (IV) PROCESS REQUESTS FOR EVALUATION OF JUDICIAL CONDUCT;

25 (V) CONDUCT OR SUPERVISE EVALUATIONS AND INVESTIGATIONS
26 AS DIRECTED BY THE COMMISSION;

27 (VI) ADVISE THE COMMISSION AS TO POTENTIAL DISPOSITIONAL

1 RECOMMENDATIONS AS MAY BE REQUESTED BY THE COMMISSION;

2 (VII) MAINTAIN COMMISSION RECORDS;

3 (VIII) MAINTAIN STATISTICS CONCERNING THE OPERATION OF THE

4 COMMISSION AND MAKE THEM AVAILABLE TO THE COMMISSION;

5 (IX) PREPARE THE COMMISSION'S BUDGET AND, ONCE APPROVED

6 BY THE COMMISSION, SUBMIT IT TO THE JOINT BUDGET COMMITTEE OF THE

7 GENERAL ASSEMBLY;

8 (X) ADMINISTER COMMISSION MONEY AND RESOURCES, INCLUDING

9 MONEY IN THE COMMISSION ON JUDICIAL DISCIPLINE SPECIAL CASH FUND;

10 (XI) SUPERVISE COMMISSION STAFF;

11 (XII) NOTIFY THE APPROPRIATE APPOINTING AUTHORITY OF

12 VACANCIES ON THE COMMISSION;

13 (XIII) ASSIST THE COMMISSION IN PREPARING AN ANNUAL REPORT

14 OF THE COMMISSION'S ACTIVITIES FOR PRESENTATION TO THE COMMISSION,

15 THE SUPREME COURT, AND THE PUBLIC;

16 (XIV) SUPERVISE SPECIAL COUNSEL, INVESTIGATORS, OTHER

17 EXPERTS, OR PERSONNEL AS DIRECTED BY THE COMMISSION, AS THEY

18 INVESTIGATE AND PROCESS MATTERS BEFORE THE COMMISSION AND

19 BEFORE THE SUPREME COURT; AND

20 (XV) PERFORM SUCH OTHER DUTIES AS REQUIRED BY THIS ARTICLE

21 5.3, THE RULES PROMULGATED BY THE COMMISSION, OR THE COMMISSION.

22 (3) THE DEPARTMENT SHALL PROVIDE THE COMMISSION AND THE

23 OFFICE WITH OFFICE SPACE IN THE RALPH L. CARR COLORADO JUDICIAL

24 CENTER, ACCOUNTING SUPPORT, INFORMATION TECHNOLOGY SUPPORT,

25 HUMAN RESOURCES AND PAYROLL SERVICES, AND SIMILAR SUPPORT

26 SERVICES TO THE SAME EXTENT, WITHOUT COST TO THE COMMISSION OR

27 THE OFFICE, AND ON THE SAME TERMS AS THE DEPARTMENT PROVIDES

1 SUCH SUPPORT TO THE COLORADO JUDICIAL PERFORMANCE COMMISSIONS.
2 THE PROVISION OF THESE ANCILLARY RESOURCES MUST BE FURTHER
3 DEFINED THROUGH A MEMORANDUM OF UNDERSTANDING BETWEEN THE
4 DEPARTMENT AND THE COMMISSION.

5 **13-5.3-104. Commission on judicial discipline special cash**
6 **fund - acceptance of federal funds - general appropriations.** (1) THE
7 COMMISSION IS AUTHORIZED TO ACCEPT ANY FEDERAL FUNDS MADE
8 AVAILABLE FOR ANY PURPOSE CONSISTENT WITH THE PROVISIONS OF THIS
9 ARTICLE 5.3.

10 (2) ANY MONEY RECEIVED PURSUANT TO THIS SECTION MUST BE
11 TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME
12 TO THE COMMISSION ON JUDICIAL DISCIPLINE SPECIAL CASH FUND, WHICH
13 IS CREATED IN THE STATE TREASURY.

14 (3) ANY EXPENSES, ATTORNEY FEES, OR COSTS RECOVERED
15 PURSUANT TO THIS ARTICLE 5.3 MUST BE TRANSMITTED TO THE STATE
16 TREASURER, WHO SHALL CREDIT THE SAME TO THE FUND.

17 (4) MONEY IN THE FUND IS CONTINUOUSLY APPROPRIATED TO THE
18 COMMISSION FOR THE PURPOSES SPECIFIED IN SUBSECTION (6) OF THIS
19 SECTION.

20 (5) ANY INTEREST DERIVED FROM THE DEPOSIT AND INVESTMENT
21 OF MONEY IN THE FUND IS CREDITED TO THE FUND. ANY UNEXPENDED AND
22 UNENCUMBERED MONEY REMAINING IN THE FUND AT THE END OF ANY
23 FISCAL YEAR REMAINS IN THE FUND AND IS NOT CREDITED OR
24 TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

25 (6) MONEY IN THE FUND MAY BE USED FOR PAYMENT OF THE
26 EXPENSES FOR EVALUATIONS, INVESTIGATIONS, FORMAL PROCEEDINGS, OR
27 SPECIAL PROJECTS THAT THE COMMISSION HAS DETERMINED ARE TO BE

1 UNDERTAKEN BY PERSONNEL OTHER THAN OR IN ADDITION TO THOSE
2 EMPLOYED BY THE OFFICE.

3 (7) FOR THE STATE FISCAL YEAR 2022-23, THE GENERAL
4 ASSEMBLY SHALL APPROPRIATE FROM THE GENERAL FUND TO THE FUND
5 FOUR HUNDRED THOUSAND DOLLARS. IN EACH SUBSEQUENT FISCAL YEAR,
6 THE GENERAL ASSEMBLY SHALL APPROPRIATE SUFFICIENT MONEY TO THE
7 FUND SO THAT IT BEGINS THE FISCAL YEAR WITH NOT LESS THAN FOUR
8 HUNDRED THOUSAND DOLLARS.

9 **13-5.3-105. Information-sharing with judicial oversight**
10 **entities - legislative declaration.** (1) THE GENERAL ASSEMBLY FINDS
11 AND DECLARES THAT:

12 (a) SEVERAL ENTITIES WITHIN THE DEPARTMENT SHARE A ROLE IN
13 THE OVERSIGHT OF THE JUDICIARY AND, AS A RESULT, OFTEN BECOME
14 AWARE OF AND INVOLVED IN INVESTIGATIONS THAT RELATE TO MATTERS
15 THAT MAY COME BEFORE THE COMMISSION, INCLUDING THE OFFICE OF
16 JUDICIAL PERFORMANCE EVALUATION, THE JUDICIAL NOMINATING
17 COMMISSIONS, THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE, AND
18 THE OFFICE OF ATTORNEY REGULATION COUNSEL, COLLECTIVELY
19 REFERRED TO IN THIS SECTION AS "JUDICIAL OVERSIGHT ENTITIES"; AND

20 (b) IN ORDER FOR THE COMMISSION AND THE JUDICIAL OVERSIGHT
21 ENTITIES TO PROPERLY PERFORM THEIR FUNCTIONS, THEY NEED TO BE
22 ABLE TO SHARE RELEVANT INFORMATION AND DOCUMENTS WHILE
23 MAINTAINING THEIR RESPECTIVE RULES OF CONFIDENTIALITY.

24 (2) WHEN REQUESTED BY A JUDICIAL OVERSIGHT ENTITY, THE
25 COMMISSION MAY PROVIDE THE DISCIPLINARY RECORD OF A JUDGE OR
26 JUSTICE TO THE REQUESTING ENTITY. THE JUDICIAL OVERSIGHT ENTITY
27 SHALL KEEP THE INFORMATION CONFIDENTIAL TO THE SAME EXTENT THAT

1 THE COMMISSION IS REQUIRED TO DO SO PURSUANT TO THE STATE
2 CONSTITUTION AND THE RULES OF JUDICIAL DISCIPLINE.

3 (3) WHEN A JUDICIAL OVERSIGHT ENTITY RECEIVES INFORMATION
4 INDICATING OR ALLEGING POTENTIAL JUDICIAL MISCONDUCT, THE ENTITY
5 SHALL SHARE ALL SUCH INFORMATION WITH THE COMMISSION WITHIN A
6 REASONABLE TIME. ANY INFORMATION OR MATERIALS RECEIVED FROM
7 THE ENTITY ARE SUBJECT TO THE COMMISSION'S RULES OF
8 CONFIDENTIALITY.

9 **13-5.3-106. Information-sharing within the judicial
10 department - legislative declaration.** (1) THE GENERAL ASSEMBLY
11 FINDS AND DECLARES THAT:

12 (a) OFFICES OR PERSONNEL WITHIN THE DEPARTMENT ARE OFTEN
13 THE FIRST TO RECEIVE COMPLAINTS;

14 (b) THE DEPARTMENT OFTEN HOLDS EVIDENTIARY MATERIALS
15 RELATING TO POTENTIAL MISCONDUCT AND OFTEN DEVELOPS EVIDENCE,
16 THROUGH INVESTIGATIONS OR OTHERWISE, RELATING TO SUCH POTENTIAL
17 MISCONDUCT;

18 (c) THE COMMISSION CANNOT FULLY PURSUE ITS CONSTITUTIONAL
19 MANDATE UNLESS ALL INFORMATION RELEVANT TO A COMPLAINT
20 AVAILABLE TO THE DEPARTMENT IS FREELY AND PROMPTLY SHARED WITH
21 THE COMMISSION; AND

22 (d) THE CREDIBILITY OF THE JUDICIARY AND JUDICIAL DISCIPLINE
23 ARE BEST SERVED BY THE DEPARTMENT PROMPTLY SHARING WITH THE
24 COMMISSION ALL INFORMATION AND MATERIALS AVAILABLE TO THE
25 DEPARTMENT RELEVANT TO A COMPLAINT OR POTENTIAL MISCONDUCT.

26 (2) THE DEPARTMENT SHALL ENSURE THAT IF ANY MEMBER OF THE
27 DEPARTMENT, INCLUDING MEMBERS OF THE OFFICE OF THE STATE COURT

1 ADMINISTRATOR, THE OFFICE OF THE CHIEF JUSTICE, CHIEF JUDGES,
2 DISTRICT ADMINISTRATORS, THE HUMAN RESOURCES DEPARTMENT,
3 ADMINISTRATIVE PERSONNEL, JUDICIAL DISTRICTS, CLERKS OF COURT, THE
4 OFFICE OF ATTORNEY REGULATION COUNSEL, AND OTHERS, RECEIVES A
5 COMPLAINT OR LEARNS OF FACTS COMPRISING POTENTIAL MISCONDUCT OF
6 A JUDGE OR JUSTICE, THE PERSON OR OFFICE RECEIVING THE INFORMATION
7 SHALL:

8 (a) DOCUMENT BOTH THE RECEIPT OF THE COMPLAINT AND THE
9 DEPARTMENT'S HANDLING OF THE COMPLAINT, INCLUDING ANY
10 INVESTIGATION THAT MAY BE CONDUCTED, AND MAINTAIN SUCH
11 DOCUMENTATION FOR AS LONG AS THE SUBJECT OF THE COMPLAINT IS A
12 JUDGE, PLUS THREE CALENDAR YEARS;

13 (b) WITHIN NOT MORE THAN THIRTY-FIVE DAYS AFTER RECEIPT OF
14 THE COMPLAINT, NOTIFY THE OFFICE OF THE COMPLAINT AND PROVIDE THE
15 OFFICE WITH ALL INFORMATION WITHIN THE CUSTODY OR CONTROL OF THE
16 DEPARTMENT RELATED TO THE COMPLAINT, INCLUDING:

17 (I) IDENTIFICATION OF POTENTIAL WITNESSES;
18 (II) A LIST OF ANY EVIDENCE HELD OR KNOWN;
19 (III) ACCESS TO ALL EVIDENCE, INCLUDING ADMINISTRATIVE FILES,
20 DIGITAL DATA, DIGITAL OR PAPER CASE FILES, RECORDINGS AND
21 TRANSCRIPTS, COMMUNICATIONS, AND METADATA, WITHOUT CHARGE;
22 AND

23 (IV) ANY DEPARTMENT INVESTIGATIVE MATERIALS THAT MAY
24 EXIST, INCLUDING ANY INVESTIGATIVE OR ACTION PLANS; AND

25 (c) NOTIFY ANY PERSON SUPPLYING ANY INFORMATION
26 CONCERNING A COMPLAINT, AND ANY WITNESS INTERVIEWED, OF THE
27 FOLLOWING:

3 (II) THAT INFORMATION GIVEN TO THE COMMISSION IS
4 CONFIDENTIAL UNLESS AND UNTIL A RECOMMENDATION IS MADE TO THE
5 SUPREME COURT;

6 (III) RULE 2.16 (B) OF THE CODE PROHIBITING RETALIATION
7 AGAINST ANY PERSON ASSISTING THE COMMISSION;

11 (V) THAT THE DEPARTMENT IS PROHIBITED FROM DISCOURAGING
12 A PERSON FROM SHARING INFORMATION WITH THE COMMISSION,
13 INCLUDING ENTERING INTO A NONDISCLOSURE AGREEMENT THAT WOULD
14 HAVE THAT EFFECT.

15 (3) THE DEPARTMENT'S DUTIES OF DISCLOSURE ARISE WHEN THE
16 DEPARTMENT RECEIVES A COMPLAINT.

17 (4) THE DUTIES TO DOCUMENT AND DISCLOSE POTENTIAL JUDICIAL
18 MISCONDUCT AND RELATED INFORMATION CONTINUE WHEN THE
19 DEPARTMENT RECEIVES ADDITIONAL INFORMATION.

20 (5) (a) THE DEPARTMENT SHALL:

(b) THE DEPARTMENT SHALL NOT:

(I) ADOPT ANY POLICY OR ENTER INTO ANY CONTRACT THAT
DRAFTS TO IMPEDE DISCLOSURE OF INFORMATION RELATED TO
POTENTIAL JUDICIAL MISCONDUCT TO THE COMMISSION. THE DEPARTMENT
SHALL NOT DISCOURAGE ANY PERSON OR ENTITY FROM COOPERATING
WITH THE COMMISSION OR DISCLOSING INFORMATION TO THE COMMISSION.

(II) WITHHOLD FROM THE COMMISSION DISCLOSURE OF MATERIALS
FORMATION FOR ANY OF THE FOLLOWING REASONS:

(A) A CLAIM OF PRIVILEGE, INCLUDING ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT, JUDICIAL DELIBERATION, OR OTHER CLAIM OF PRIVILEGE;

(B) A CLAIM OF CONFIDENTIALITY; OR

(C) A CLAIM OF CONTRACTUAL RIGHT OR OBLIGATION NOT TO
LOSE INFORMATION, INCLUDING A NONDISCLOSURE AGREEMENT;

(III) RETALIATE, DIRECTLY OR INDIRECTLY, AGAINST ANY PERSON UNICATING WITH THE COMMISSION REGARDING POTENTIAL JUDICIAL INDUCT OR ITS EXAMINATION, ANY PERSON SEEKING TO COMPLY THE DOCUMENTATION AND DISCLOSURE OBLIGATIONS OF THIS ON, OR ANY PERSON OTHERWISE ASSISTING OR SUSPECTED OF TING THE COMMISSION TO FULFILL ITS CONSTITUTIONAL MANDATE OR LE IN JUDICIAL OVERSIGHT; OR

(IV) USE THE DEPARTMENT'S AUTHORITY TO ACCESS AND REVIEW DATA OF USERS OF THE DEPARTMENT'S COMPUTER NETWORK AND CMS TO ACCESS OTHERWISE CONFIDENTIAL INTERNAL DIGITAL FILES COMMUNICATIONS OF THE COMMISSION.

(c) THE TIMELY DISCLOSURE TO THE COMMISSION OF INFORMATION MATERIALS PURSUANT TO THIS SECTION BY THE DEPARTMENT DOES

1 NOT, BY ITSELF, WAIVE ANY OTHERWISE VALID CLAIM OF PRIVILEGE OR
2 CONFIDENTIALITY HELD BY THE DEPARTMENT.

3 **13-5.3-107. Rulemaking.** (1) SECTION 23 (3)(h) OF ARTICLE VI
4 OF THE COLORADO CONSTITUTION DIRECTS THE SUPREME COURT TO
5 PROVIDE BY RULE FOR PROCEDURES BEFORE THE COMMISSION, THE
6 MASTERS, AND THE SUPREME COURT. IN EXERCISING ITS RULEMAKING
7 AUTHORITY, THE SUPREME COURT SHALL PROVIDE THE COMMISSION
8 REASONABLE NOTICE AND AN OPPORTUNITY TO OBJECT BEFORE ENACTING
9 ANY NEW RULE OR AMENDMENT AS IT PERTAINS TO JUDICIAL DISCIPLINE.
10 IF THE COMMISSION OBJECTS TO ANY RULE OR AMENDMENT,
11 REPRESENTATIVES OF THE SUPREME COURT SHALL MEET WITH
12 REPRESENTATIVES OF THE COMMISSION AND ENGAGE IN GOOD-FAITH
13 EFFORTS TO RESOLVE THEIR DIFFERENCES.

14 (2) WHENEVER THE SUPREME COURT PROPOSES A RULE,
15 GUIDELINE, OR PROCEDURE RELATED TO JUDICIAL DISCIPLINE, THE
16 SUPREME COURT SHALL POST NOTICE OF THE PROPOSED RULE, GUIDELINE,
17 OR PROCEDURE; ALLOW FOR A PERIOD FOR PUBLIC COMMENT; AND GIVE
18 THE PUBLIC AN OPPORTUNITY TO ADDRESS THE SUPREME COURT
19 CONCERNING THE PROPOSED RULE, GUIDELINE, OR PROCEDURE AT A
20 PUBLIC HEARING.

21 **13-5.3-108. Reporting requirements - "State Measurement for
22 Accountable, Responsive, and Transparent (SMART) Government
23 Act" report.** (1) THE COMMISSION SHALL GATHER AND MAINTAIN
24 ANNUAL DATA AND STATISTICS ON:

25 (a) THE NUMBER OF REQUESTS FOR EVALUATION RECEIVED;
26 (b) THE NUMBER OF INVESTIGATIONS PERFORMED;
27 (c) THE NUMBER OF FORMAL PROCEEDINGS PURSUED;

1 (d) THE TYPES AND RELATIVE VOLUME OF MISCONDUCT
2 ALLEGATIONS RECEIVED;

3 (e) THE TYPE AND RELATIVE VOLUME OF INCIDENTS OF JUDICIAL
4 MISCONDUCT IDENTIFIED;

5 (f) THE NUMBER AND TYPES OF DISPOSITIONS ENTERED; AND

6 (g) THE DEMOGRAPHICS, INCLUDING THE GENDER, AGE, RACE,
7 ETHNICITY, OR DISABILITY, OF JUDGES UNDER DISCIPLINE OR
8 INVESTIGATION AND THOSE DIRECTLY AFFECTED BY THE POTENTIAL
9 MISCONDUCT.

13-5.3-109. Legislative interim committee on judicial discipline

17 **- creation - repeal.** (1) NOTWITHSTANDING SECTION 2-3-303.3, THERE IS
18 CREATED THE LEGISLATIVE INTERIM COMMITTEE ON JUDICIAL DISCIPLINE,
19 REFERRED TO IN THIS SECTION AS THE "INTERIM COMMITTEE", TO STUDY
20 THE ISSUES DESCRIBED IN SUBSECTION (7) OF THIS SECTION. THE INTERIM
21 COMMITTEE SHALL MEET DURING THE INTERIM BETWEEN THE 2022 AND
22 2023 LEGISLATIVE SESSIONS. THE INTERIM COMMITTEE CONSISTS OF:

23 (a) FOUR MEMBERS OF THE SENATE, WITH TWO MEMBERS
24 APPOINTED BY THE MAJORITY LEADER OF THE SENATE AND TWO MEMBERS
25 APPOINTED BY THE MINORITY LEADER OF THE SENATE; AND

26 (b) FOUR MEMBERS OF THE HOUSE OF REPRESENTATIVES, WITH
27 TWO MEMBERS APPOINTED BY THE SPEAKER OF THE HOUSE OF

1 REPRESENTATIVES AND TWO MEMBERS APPOINTED BY THE MINORITY
2 LEADER OF THE HOUSE OF REPRESENTATIVES.

3 (2) (a) THE APPOINTING AUTHORITIES SHALL APPOINT THE
4 MEMBERS OF THE INTERIM COMMITTEE AS SOON AS POSSIBLE AFTER THE
5 EFFECTIVE DATE OF THIS SECTION BUT NOT LATER THAN FIFTEEN DAYS
6 AFTER THE EFFECTIVE DATE OF THIS SECTION. IF A VACANCY ARISES ON
7 THE INTERIM COMMITTEE, THE APPROPRIATE APPOINTING AUTHORITY
8 SHALL APPOINT A MEMBER TO FILL THE VACANCY AS SOON AS POSSIBLE.

9 (b) THE MAJORITY LEADER OF THE SENATE SHALL APPOINT THE
10 CHAIR OF THE INTERIM COMMITTEE AND THE MINORITY LEADER OF THE
11 HOUSE OF REPRESENTATIVES SHALL APPOINT THE VICE-CHAIR OF THE
12 INTERIM COMMITTEE. IN THE CASE OF A TIE VOTE, THE CHAIR OF THE
13 INTERIM COMMITTEE SHALL CAST AN ADDITIONAL DECIDING VOTE.

14 (3) THE CHAIR OF THE INTERIM COMMITTEE SHALL SCHEDULE THE
15 FIRST MEETING OF THE INTERIM COMMITTEE TO BE HELD NOT LATER THAN
16 THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION. THE INTERIM
17 COMMITTEE MAY MEET UP TO FIVE TIMES DURING THE INTERIM BETWEEN
18 THE 2022 AND 2023 LEGISLATIVE SESSIONS.

19 (4) THE DIRECTOR OF RESEARCH OF THE LEGISLATIVE COUNCIL
20 AND THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL
21 PROVIDE STAFF ASSISTANCE TO THE INTERIM COMMITTEE.

22 (5) THE INTERIM COMMITTEE MAY INTRODUCE UP TO A TOTAL OF
23 THREE BILLS, JOINT RESOLUTIONS, AND CONCURRENT RESOLUTIONS IN THE
24 2023 LEGISLATIVE SESSION. BILLS THAT THE INTERIM COMMITTEE
25 INTRODUCES ARE EXEMPT FROM THE FIVE-BILL LIMITATION SPECIFIED IN
26 RULE 24 (b)(1)(A) OF THE JOINT RULES OF THE SENATE AND THE HOUSE OF
27 REPRESENTATIVES. JOINT RESOLUTIONS AND CONCURRENT RESOLUTIONS

1 THAT THE INTERIM COMMITTEE INTRODUCES ARE EXEMPT FROM THE
2 LIMITATIONS SET OUT IN RULE 26 (g) OF THE RULES OF THE HOUSE OF
3 REPRESENTATIVES AND RULE 30 (f) OF THE RULES OF THE SENATE. THE
4 INTERIM COMMITTEE IS EXEMPT FROM THE REQUIREMENT TO REPORT BILLS
5 OR OTHER MEASURES TO THE LEGISLATIVE COUNCIL AS SPECIFIED IN RULE
6 24 (b)(1)(D) AND RULE 24A (d)(8) OF THE JOINT RULES OF THE SENATE
7 AND THE HOUSE OF REPRESENTATIVES AND IN SECTION 2-3-303 (1)(f). THE
8 INTERIM COMMITTEE IS SUBJECT TO RULE 24A OF THE JOINT RULES OF THE
9 SENATE AND HOUSE OF REPRESENTATIVES, EXCEPT TO THE EXTENT THAT
10 THE RULE MAY CONFLICT WITH THIS SECTION. BILLS RECOMMENDED BY
11 THE INTERIM COMMITTEE MUST BE INTRODUCED BY THE INTRODUCTION
12 DEADLINE FOR HOUSE BILLS SPECIFIED IN RULE 23 (a)(1) OF THE JOINT
13 RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES. THE CHAIR AND
14 VICE-CHAIR SHALL JOINTLY ESTABLISH THE LAST DATE FOR THE SINGLE
15 MEETING AT WHICH THE INTERIM COMMITTEE MAY APPROVE BILL
16 REQUESTS, THE LAST DATE BY WHICH INTERIM COMMITTEE MEMBERS MUST
17 FINALIZE BILL DRAFTS OR BY WHICH BILL DRAFTS WILL BE DEEMED
18 FINALIZED FOR FISCAL NOTE PURPOSES, AND THE LAST DATE BY WHICH THE
19 INTERIM COMMITTEE WILL CONSIDER AND TAKE FINAL ACTION ON BILL
20 DRAFTS, WHICH MUST BE NO LATER THAN SEPTEMBER 1, 2022.

21 (6) ALL EXPENDITURES THAT THE INTERIM COMMITTEE MAKES ARE
22 SUBJECT TO APPROVAL BY THE CHAIR OF THE INTERIM COMMITTEE AND, IF
23 APPROVED, SHALL BE PAID BY VOUCHERS AND WARRANTS DRAWN AS
24 PROVIDED BY LAW FROM APPROPRIATIONS MADE BY THE GENERAL
25 ASSEMBLY FOR THE PURPOSES OF THIS SECTION.

26 (7) AT A MINIMUM, THE INTERIM COMMITTEE SHALL STUDY THE
27 FOLLOWING ISSUES:

4 (b) HOW TO ACHIEVE A SYSTEM OF JUDICIAL DISCIPLINE IN WHICH
5 INDIVIDUAL CASES ARE INVESTIGATED AND DETERMINED INDEPENDENT OF
6 UNDUE INFLUENCE BY THE JUDICIARY, TO BE OVERSEEN BY THE
7 COMMUNITY, THE BAR, AND THE JUDICIARY;

8 (c) WHETHER A SYSTEM OF JUDICIAL DISCIPLINE CAN BE EFFECTIVE
9 AND INSPIRE PUBLIC CONFIDENCE WHILE RETAINING JUDICIAL CONTROL OF
10 FINAL DECISION-MAKING AUTHORITY OVER JUDICIAL DISCIPLINE CASES;

11 (d) WHETHER THE EXISTING COMMISSION SHOULD BE AUTHORIZED
12 TO MAKE INITIAL DECISIONS ON DISCIPLINE CASES FOR PUBLIC AND
13 PRIVATE DISCIPLINE THAT ARE THEN SUBJECT TO APPELLATE REVIEW
14 BEFORE A SEPARATE REVIEW BOARD THAT IS INDEPENDENT OF THE
15 JUDICIARY;

16 (e) THE BEST METHOD OF ASSIGNING RULEMAKING AUTHORITY
17 OVER THE JUDICIAL DISCIPLINE SYSTEM TO ACHIEVE EFFECTIVENESS AND
18 INDEPENDENCE WHILE INSPIRING PUBLIC CONFIDENCE;

19 (f) HOW TO ADDRESS JUDICIAL DISCIPLINE EFFECTIVELY AND
20 CREDIBLY WHEN MEMBERS, ACTIONS, OR DECISIONS OF THE SUPREME
21 COURT ARE BEING EVALUATED FOR POTENTIAL JUDICIAL MISCONDUCT;

22 (g) WHETHER THE SUPREME COURT SHOULD CONTINUE TO
23 CONTROL THE APPOINTMENT OF THE FOUR JUDGE MEMBERS OF THE
24 COMMISSION;

25 (h) THE APPROPRIATE METHOD FOR DEFINING A CONSISTENT AND
26 CLEAR SET OF DISQUALIFICATION STANDARDS FOR EACH OF THE DECISION
27 MAKERS IN THE JUDICIAL DISCIPLINE SYSTEM, INCLUDING SUPREME COURT

1 JUSTICES, COMMISSION MEMBERS, SPECIAL COUNSEL, AND SPECIAL
2 MASTERS, AND FOR DETERMINING DISQUALIFICATION ISSUES;

3 (i) THE BEST METHOD OF BALANCING THE VALUES OF
4 CONFIDENTIALITY AND TRANSPARENCY FOR JUDICIAL DISCIPLINE
5 MATTERS;

6 (j) HOW TO ENSURE THAT THE COMMISSION CAN OBTAIN
7 UNFETTERED ACCESS TO INFORMATION AND FILES IN THE CUSTODY OR
8 CONTROL OF THE DEPARTMENT RELEVANT TO JUDICIAL MISCONDUCT
9 COMPLAINTS;

10 (k) WHETHER RULE 13 OF THE RULES ON JUDICIAL DISCIPLINE,
11 WHICH ASSIGNS THE ROLE OF SCREENING MISCONDUCT COMPLAINTS,
12 SHOULD BE MODIFIED TO AUTHORIZE THE DEPARTMENT TO PRE-SCREEN
13 JUDICIAL MISCONDUCT COMPLAINTS BEFORE REPORTING THEM TO THE
14 COMMISSION;

15 (l) AN EFFECTIVE ENFORCEMENT MECHANISM FOR ANY
16 DISCLOSURE OBLIGATION RELATED TO JUDICIAL DISCIPLINE;

17 (m) HOW BEST TO FUND THE SYSTEM FOR JUDICIAL DISCIPLINE;

18 (n) THE RELATIVE BENEFITS OF THE MODELS FOR ACHIEVING
19 INDEPENDENT JUDICIAL DISCIPLINE ADOPTED BY ILLINOIS AND THE
20 AMERICAN BAR ASSOCIATION'S MODEL RULES FOR JUDICIAL DISCIPLINARY
21 ENFORCEMENT OR ANY OTHER MODEL ADDRESSING THE FINAL
22 DECISION-MAKER CONFLICT THAT AROSE IN COLORADO IN 2021;

23 (o) RECOMMENDATIONS FROM THE DEPARTMENT, THE
24 COMMISSION, AND ANY OTHER STAKEHOLDERS THE INTERIM COMMITTEE
25 DEEMS APPROPRIATE; AND

26 (p) WHAT AMENDMENTS TO CONSTITUTIONAL, STATUTORY, OR
27 RULE-BASED LAW ARE ADVISABLE TO ADDRESS THE INTERIM COMMITTEE'S

1 FINDINGS.

2 **SECTION 3.** In Colorado Revised Statutes, 2-3-110.5, **add**
3 (1)(g.5) and (3)(d) as follows:

4 **2-3-110.5. Fraud hotline - investigations - confidentiality -**
5 **access to records - definitions.** (1) As used in this section, unless the
6 context otherwise requires:

7 (g.5) "MATERIALS OR INFORMATION" INCLUDES ANY WRITING
8 PREPARED OR MAINTAINED BY A STATE AGENCY OR VERBAL RESPONSE
9 PROVIDED BY A STATE AGENCY REPRESENTATIVE IN RESPONSE TO ANY
10 QUESTION POSED BY THE STATE AUDITOR THAT IS RELATED TO THE SCOPE
11 OF THE INVESTIGATION.

12 (3)(d) THE DISCLOSURE TO THE STATE AUDITOR OF MATERIALS OR
13 INFORMATION PURSUANT TO THIS SECTION DOES NOT, BY ITSELF, WAIVE
14 ANY OTHERWISE VALID CLAIM OF PRIVILEGE, CONFIDENTIALITY, OR OTHER
15 PROTECTION HELD BY THE ENTITY MAKING THE DISCLOSURE, INCLUDING
16 CLAIMS OF ATTORNEY-CLIENT PRIVILEGE, ATTORNEY WORK PRODUCT
17 CONFIDENTIALITY, COMMON INTEREST PRIVILEGE, DELIBERATIVE PROCESS
18 PRIVILEGE, AND ANY EXEMPTIONS FROM PUBLIC DISCLOSURE PURSUANT TO
19 LAW OR RULE.

20 **SECTION 4.** In Colorado Revised Statutes, 24-75-402, **add**
21 (5)(vv) as follows:

22 **24-75-402. Cash funds - limit on uncommitted reserves -**
23 **reduction in the amount of fees - exclusions - repeal.**

24 (5) Notwithstanding any provision of this section to the contrary, the
25 following cash funds are excluded from the limitations specified in this
26 section:

27 (vv) THE COMMISSION ON JUDICIAL DISCIPLINE SPECIAL CASH FUND

1 CREATED IN SECTION 13-5.3-105.

2 **SECTION 5. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, or safety.