

## **ARTICLE VI JUDICIAL DEPARTMENT**

### **Section 23. Retirement and removal of justices and judges.**

(1) On attaining the age of seventy-two a justice or judge of a court of record shall retire and his judicial office shall be vacant, except as otherwise provided in section 20 (2).

(2) Whenever a justice or judge of any court of this state has been convicted in any court of this state or of the United States or of any state, of a felony or other offense involving moral turpitude, the supreme court shall, of its own motion or upon petition filed by any person, and upon finding that such a conviction was had, enter its order suspending said justice or judge from office until such time as said judgment of conviction becomes final, and the payment of salary of said justice or judge shall also be suspended from the date of such order. If said judgment of conviction becomes final, the supreme court shall enter its order removing said justice or judge from office and declaring his office vacant and his right to salary shall cease from the date of the order of suspension. If said judgment of conviction is reversed with directions to enter a judgment of acquittal or if reversed for a new trial which subsequently results in a judgment of dismissal or acquittal, the supreme court shall enter its order terminating the suspension of said justice or judge and said justice or judge shall be entitled to his salary for the period of suspension. A plea of guilty or nolo contendere to such a charge shall be equivalent to a final conviction for the purpose of this section.

(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.

(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.

(c) No member of the 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, 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 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.

(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. After a formal hearing or after considering the record and report of the masters, if the commission finds good cause therefor, 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 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. 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.

(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 commission or supreme court shall not participate in any proceedings involving his own removal or retirement.

(i) Nothing contained in this subsection (3) shall be construed to have any effect on article XIII of this constitution.

(j) Repealed.

**Source: L. 61:** Entire article R&RE, effective January 12, 1965, see **L. 63**, p. 1055. **Initiated 66:** Entire section amended, effective January 17, 1967, see **L. 67**, p. 7 of the supplement to the 1967 Session Laws. **L. 82:** (3) R&RE, p. 687, effective July 1, 1983, see **L. 83**, p. 1674. **L. 2002:** (3)(j) repealed, p. 3095, effective upon proclamation of the Governor, **L. 2003**, p. 3611, December 20, 2002.

**Editor's note:** This section is similar to § 31 as it existed prior to 1961.

**Cross references:** For rules concerning the functions, responsibilities, and proceedings of the commission on judicial discipline, see C.R.J.D. 1 to 40.

#### ANNOTATIONS

**Law reviews.** For article, "A Report from the Judiciary Committee", see 26 Dicta 139 (1949). For article, "Colorado and Minimum Judicial Standards", see 28 Dicta 1 (1951). For article, "Constitutional Amendment No. 1 Needs Support of the Bar", see 29 Dicta 338 (1952). For note, "A Study of the Colorado Commission on Judicial Qualifications", see 47 Den. L.J. 491 (1970).

**All of the justices and judges of the judicial department are accountable to the people.** Hamm v. Scott, 426 F. Supp. 950 (D. Colo. 1977).

**District courts do not have subject matter jurisdiction to compel the commission on judicial discipline or its executive director to investigate a complaint alleging judicial misconduct.** The trial court properly dismissed plaintiff's motion brought under C.R.C.P. 106 (a). Higgins v. Owens, 13 P.3d 837 (Colo. App. 2000).

**Applied** in In re Mann, 655 P.2d 814 (Colo. 1982).