



H

Judicial Discipline Procedures and Confidentiality

Placed on the ballot by the legislature • Passes with 55 percent of the vote

Amendment H proposes amending the Colorado Constitution to:

- create an independent adjudicative board to preside over ethical misconduct hearings involving judges; and
- allow for increased public access to judicial discipline proceedings and records.

What Your Vote Means

YES A "yes" vote on Amendment H creates an independent adjudicative board made up of citizens, lawyers, and judges to conduct judicial misconduct hearings and impose disciplinary actions, and allows more information to be shared earlier with the public.

NO A "no" vote on Amendment H means that a select panel of judges will continue to conduct judicial misconduct hearings and recommend disciplinary actions, and cases remain confidential unless public sanctions are recommended at the end of the process.

Summary and Analysis of Amendment H

What is judicial misconduct and discipline?

Colorado judges must follow a code of conduct. Judicial misconduct occurs when a judge acts unethically or in ways that diminish public confidence in the integrity of the courts. Misconduct complaints may include improper demeanor, alcohol and drug use, dishonesty, retaliation, conflicts of interest, inappropriate communication, and mistreatment or harassment of staff. Any person may file a complaint, and judges found to have violated their ethical duties may be disciplined publicly or privately, depending upon the nature of the misconduct.

How are judicial discipline cases currently handled?

Pursuant to the Colorado Constitution, the Commission on Judicial Discipline (commission), an independent judicial agency charged with investigating allegations of misconduct against judges, screens and investigates complaints. Members of the commission are appointed by the Colorado Supreme Court and the Governor. The screening process eliminates complaints that are outside the commission's jurisdiction, such as those that ask to review a judge's rulings or order new trials. The commission further investigates complaints when there is sufficient evidence of misconduct.

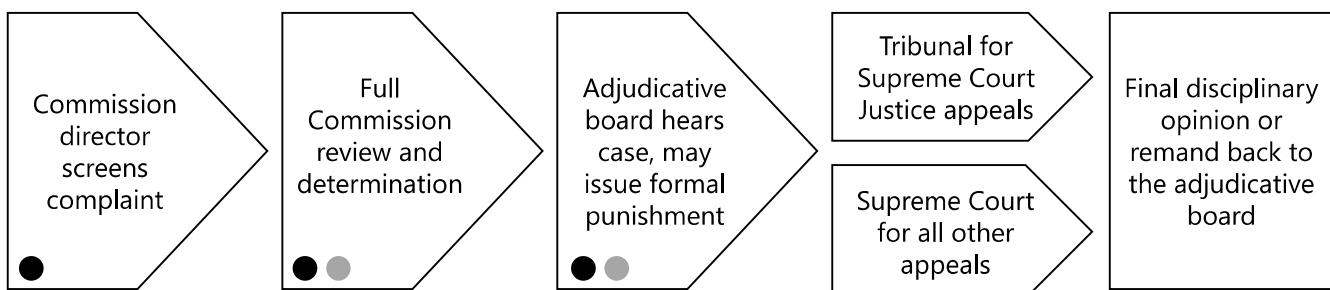
Thereafter, the commission can do one of the following: 1) dismiss the complaint; 2) impose private discipline; 3) hold an informal hearing; or 4) initiate formal hearings. Formal hearings are conducted by a panel of judges selected by the Colorado Supreme Court. When the hearing is over, the commission reviews the panel's findings and forwards disciplinary recommendations to the Colorado Supreme Court for a final determination. Misconduct cases are made public upon the commission filing its recommendations for public discipline. Complaints that result in informal punishments are not disclosed to the general public.

What changes does Amendment H make to the judicial discipline process?

Amendment H creates the Independent Judicial Discipline Adjudicative Board (adjudicative board), separate from the Colorado Supreme Court and commission, to preside over judicial discipline hearings and impose sanctions. The adjudicative board consists of four district court judges, four attorneys, and four citizens appointed by the Colorado Supreme Court and the Governor. The new board's decisions are considered final unless there is proof of a legal or factual error upon appeal to the Colorado Supreme Court. If an appeal involves a Colorado Supreme Court justice, it is heard by a tribunal made up of randomly selected appellate and district court judges. Formal disciplinary charges against judges are also made public at the beginning of the hearing.

Figure 1 below summarizes the new discipline process.

Figure 1
Judicial Discipline Flow Chart



● Complaint can be dismissed at these stages

● Informal punishment can be issued at these stages

Table 1 compares current practices with those proposed in Amendment H.

Table 1
Current Judicial Discipline Proceedings Compared to Amendment H

Current Judicial Discipline	Judicial Discipline Under Amendment H
Formal Disciplinary Hearings	
Judges selected by the Colorado Supreme Court hear cases and make disciplinary recommendations to the commission, who in turn makes recommendations to the Colorado Supreme Court for a final discipline ruling.	The independent adjudicative board, made up of an equal number of attorneys, judges, and citizens, conducts judicial discipline hearings and makes the final discipline ruling.
Independent Tribunals	
In cases involving a Colorado Supreme Court justice, their family members, or staff, the entire Colorado Supreme Court must disqualify themselves and be replaced with a tribunal composed of seven randomly selected Colorado Court of Appeals judges. The tribunal hears the case and is the final decision-maker on sanctions.	The tribunal is composed of randomly selected District and Appeal Court judges representing different districts and only hears cases that involve Colorado Supreme Court justices, their staff or family members, or any other case where two justices have recused themselves. A tribunal will also hear appeals from the independent adjudicative board.
Colorado Supreme Court Role	
The Colorado Supreme Court is the final arbiter of cases after receiving disciplinary recommendations and makes rules about the process.	Colorado Supreme Court role is limited to appointments and appeals. Rules for the process are established by an independent committee.
Public Access to Information	
Formal judicial disciplinary hearings are held privately until the commission files a formal recommendation for public sanctions with the Colorado Supreme Court.	The proceedings against a judge and the related record become public when formal charges are filed.
Appointments	
Commission members are appointed by the Colorado Supreme Court and the Governor with Senate confirmation. Colorado Supreme Court appoints special master judges to hear discipline cases. The State Court Administrator randomly selects judges for the tribunal in cases where the Colorado Supreme Court is disqualified.	Commission members and the new adjudicative board are appointed by the Colorado Supreme Court and the Governor with Senate confirmation. The State Court Administrator randomly selects Court of Appeals and District Court judges for the tribunal to hear Colorado Supreme Court related appeals.

Why is Amendment H on the ballot?

After extensive hearings involving experts, stakeholders, and the public, the Colorado legislature passed three bipartisan bills in 2023 that change judicial discipline procedures and workplace culture, including Amendment H. Because this amendment would change Colorado's constitutional provisions on judicial discipline, it requires voter approval to become law. The other two bills address confidentiality, complaint filing and reporting, and data collection, as well as creating a new office to assist judicial employees with workplace and other complaints.

For information on those issue committees that support or oppose the measures on the ballot at the November 5, 2024, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://coloradosos.gov/pubs/elections/Initiatives/InitiativesHome.html>

Argument For Amendment H

- 1) Colorado judges should not have direct influence and oversight over the discipline of their colleagues. Amendment H is an important change that aims to enhance the transparency, integrity, and independence of the judicial discipline process. Historically, judicial discipline has largely been self-regulated, facing challenges in oversight and self-protection. This amendment serves to enhance public confidence and trust in the courts. Finally, this measure is a compromise recommended by nearly all members of the General Assembly and formally by the Judicial Branch.

Argument Against Amendment H

- 1) The current system works. Judges understand how to review cases, hold hearings, and make impartial and hard decisions. As a result, they have the experience to hear judicial discipline cases. The amendment transfers this authority to attorneys and citizens, who cannot fully understand judicial ethics and the unique challenges of being a judge. The judiciary's existing system of checks and balances, such as nomination and retention elections, ensures only the best become and remain judges.

Fiscal Impact of Amendment H

State spending. The measure will increase state costs by about \$50,000 per year. This funding provides compensation and training to members of the newly created judicial discipline board and rulemaking committee.