

## STATEMENT OF THE COLORADO JUDICIAL INSTITUTE ON SB 22-201

### SENATE JUDICIARY COMMITTEE

APRIL 14, 2022

#### What CJI Is and Why We're Involved

The Colorado Judicial Institute (CJI) is a unique non-partisan non-profit, with non-attorney and attorney members from throughout Colorado, established in 1979. Our mission is to engender the public's trust that the judicial system will provide litigants their day in court with dignity and respect. We are committed to:

- protecting and defending the ability of the Colorado judiciary to decide cases fairly and impartially and free from partisan politics;
- furthering the public's understanding of Colorado's judicial system; and
- supporting the excellence of Colorado courts, including through outreach and the funding of judicial education.

SB 22-201's subject matter – Colorado's system for disciplining judges – is of critical importance to CJI.

#### Colorado's Merit System for Selecting, Evaluating, Retaining, and Disciplining Judges

An overview of Colorado's judicial merit system is in order to place the bill's issues in context. In 1966, Colorado's citizens adopted Colorado's merit judicial system, rejecting partisan judicial elections. Colorado is one of 30+ states that do not elect judges to the bench. Our system is a "four-legged stool," consisting of the following:

**Selection:** Bipartisan nominating commissions, made up of volunteer non-attorneys and attorneys, recommend qualified candidates to the governor for appointment.

**Performance Evaluation:** Bipartisan evaluation commissions, made up of volunteer non-attorneys and attorneys, review information about judges' performance from multiple sources and make recommendations to voters.

**Retention:** Judges stand for retention in general elections.

**Discipline:** The Colorado Commission on Judicial Discipline, created by Colorado's constitution Art. VI, § 23(3), made up of volunteer commissioners, non-attorneys, attorneys, and judges, address allegations of judicial misconduct.

Colorado's judicial merit system is widely admired and a model for those of other states.

#### CJI's Input on SB 22-201

## **Timing of Proposed Changes**

CJI supports the full, fair, and thorough investigation of recent allegations of judicial misconduct. Under our American system of justice, consistent with due process and the law, the investigatory process should follow the facts wherever they lead.

Allowing the investigatory process to move forward will enable fully-informed decisions about the allegations, the individuals involved, and potential improvements to our merit judicial system. But that process is not yet complete.

In the meantime, while no system is perfect, Colorado's decades-old judicial merit system has served the public well. Characterizations in the current bill that are unduly critical of the system, including various provisions in Section 1 – Legislative Declaration, and various proposed Legislative Interim Committee study issues, do not reflect that reality.

CJI supports a thoughtful look, with all relevant stakeholders at the table, at how the system can be bettered – once the facts are in.

## **Broad Reporting and Disclosure Requirements**

CJI is concerned about the breadth and lack of clarity of certain provisions in the bill. These provisions include reporting and disclosure requirements. While the intent may be to promote the bringing and investigation of judicial misconduct complaints, they could potentially create serious adverse consequences. They could at minimum create confusion and uncertainty about required actions. They could chill the intended reporting and resolution of potential misconduct. They might even deter talented individuals from wanting to become judges.

These provisions include required reporting of "complaints" by anyone in the judicial department, under proposed § 13-5.3-106. The scope of the provision is so broad that it could conceivably apply to anything said to anyone within the courts. It could deter any sort of less formal resolution of issues not meriting a full-blown investigation.

These provisions also include the information and document-sharing portions of proposed § 13-5.3-106. Such items could include attorney-client privileged communications, undefined "judicial deliberation" matters, personal information obtained in peer-to-peer mentorship settings, and even personally-identifiable health information. Such required disclosures could create all kinds of potential unforeseen problems.

CJI supports thoughtful consideration of what measures might be needed to improve the current system – including reporting and disclosure matters – based on the facts.

## **Interim Committee Including Stakeholders**

CJI supports a process of considering improvements to the current system, involving the relevant stakeholders – including bar associations and affinity bar associations, Colorado Women's Bar

Association, Institute for the Advancement of the American Legal System, and CJI, as well as other members of the public. The bill's language in § 13-5.3-109 does not indicate an intention to include such stakeholders as members of the interim committee. CJI suggests that it would be helpful to the process to include individuals with knowledge of the courts and of what judges do, again with the goal of bettering Colorado's judicial merit system.