

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

### **HOUSE JUDICIARY COMMITTEE**

#### **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**

CJI respectfully submits the following comments on the current version of the bill, as amended.

#### **Interim committee:**

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, with the goal of bettering Colorado's judicial merit system.

**Unnecessarily inflammatory language in legislative declaration and list of interim committee topics:**

The amended bill, like the initial version, contains unfortunate language that assumes the truth of yet-unproven misconduct and of allegations that the current system cannot address such alleged misconduct. Such language contradicts the stated goal of the bill – to help foster public confidence in the judicial system. CJI submits that such language should be framed in a more neutral tone or omitted altogether. Examples include:

- "Public confidence in the judicial department has been significantly undermined over the past two and one-half years by media reports describing alleged misconduct and improprieties . . ." (§ 1(c), p. 3).
- "Colorado's constitution, code of judicial conduct, and rules of judicial discipline do not now provide a fair and impartial system of judicial discipline . . ." (§ 1(d), pp. 3-4).
- The commission should not be "subject to improper influence exercised by those being overseen" (§ 1(h), p. 4).
- The interim committee's topics should include considering a system "independent of undue influence by the judiciary" and whether the system can "be effective and inspire public confidence while retaining judicial control of final decision-making authority over judicial discipline cases" (§§ 13-5.3-109 (7) (b), (c), p. 22).

If it would be helpful to the legislative process for CJI to submit more specific proposed language, we stand ready to do so.

**Timing of changes to judicial discipline system:**

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 do not reflect that reality. CJI does support the financial independence of the discipline commission.