Are we losing trust in courts?

Despite increasing population, civil court filings in Colorado’s district courts dramatically drop. Is it costing taxpayers millions?

Colorado is one of the ten fastest-growing states in the country according to U.S. Census estimates. But the civil caseload in Colorado’s district courts is not growing to match the population increase. In fact, the civil caseload continues to decrease.

According to the 2017 Colorado Judicial Branch Annual Report, the total number of civil cases filed statewide in district courts for fiscal year 2017 is 80,632. Comparing that with 2012, when 169,055 civil cases were filed, shows a 52.3% decrease.

During that same time period, Colorado’s population grew from 5,191,731 to 5,658,546 – an almost 9% increase.

What’s up?

According to a 2015 report from the National Center on State Courts, there is a nationwide decrease in tort (motor vehicle, medical malpractice, faulty products and other civil wrongs) cases. A July 2017 Wall Street Journal article stated that tort reforms are responsible for the reduction in tort cases.

The National Center on State Courts found a marked increase nationwide, however, in contract disputes including debt collection, foreclosure and landlord-tenant disputes. Colorado’s foreclosure rate has fallen, however, reducing the number of those cases. A WalletHub study has determined that Colorado has the lowest foreclosure rate in the nation. Indeed, according to Colorado’s Dept. of Local Affairs, in 2012, there were 28,579 foreclosure filings compared to 1,756 in 2017.

So a drop in foreclosures and tort reform appear to be contributors to the reduction in civil court filings in Colorado. But the Wall Street Journal notes that “the falling number of tort filings, coupled with the broader decline in civil jury trials, has some judges concerned that Americans with garden-variety cases no longer see courts as an affordable way to seek redress for their injuries.”

As the article notes, the financial risks of taking a case to court have grown. “The risks become even greater if the judges on the bench cannot be counted on to follow the law,” says Chris Forsyth, executive director of The Judicial Integrity Project.

“The number of people who choose to resolve their disputes in Colorado’s state courts is decreasing even though our population is growing,” says Forsyth. “Many factors are at play, but one of those factors is a lack of trust in the system. The numbers show we have a problem.”

And the reduction in filings is purportedly costing taxpayers millions. In 2008, the state court administrator promised legislators that no taxpayer dollars would be used to pay for the Ralph L. Carr Justice Center in downtown Denver. The promise was based in part on anticipated revenue the judicial branch would generate from court filings.

It’s not working. Taxpayers have annually contributed millions to pay for the building, and are on track to pay more than $100 million by the time the building is scheduled to be paid for in 2046.

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Over the past 6 years (2012-2017) in Colorado:

Population (Source: U.S. Census estimates) 8.9%
Civil court filings in district courts (Source: Colorado Judicial Branch 2017 Annual Report) 52.3%

The Ralph L. Carr Justice Center in downtown Denver. Lower revenue from court filings means more taxpayer dollars must be used to pay for the center.
State audit criticizes judicial branch – again.

It’s déjà vu as recent audit results in recommendations strikingly similar to those in 2006 audit.

According to audits from Colorado’s state auditor, the judicial branch hasn’t been doing a good job on probate cases for 11 years. At the request of former State Senator Laura Woods, an audit was performed this year regarding public administrators – people appointed by a judge to be a fiduciary regarding an estate or a protected person.

Concerned citizens who pushed for the audit allege that public administrators overbill and deplete estates of large sums of money. The audit states that the judicial branch failed to keep fundamental data to oversee the public administrator function and that it failed to provide guidance to administrators regarding information that should be reported for fees and costs.

The amount public administrators charge varies widely across the state – from $50 an hour to $350 an hour. The audit states, “When the courts do not receive sufficient information to assess the reasonableness of fees and costs in individual cases, the courts cannot identify instances in which a Public Administrator is charging unreasonable fees and unnecessarily depleting estates.”

Previously, in 2006, the state auditor performed an audit regarding the oversight of probate cases. The recommendations in that audit mirror those of the 2017 audit. And in both audits, the state auditor recommends that the judicial branch address the issues with rulemaking.

As a result, at a hearing regarding the 2017 audit, legislative audit committee members showed a reluctance to conclude that legislation is necessary, even though the judicial branch previously failed to follow up on the auditor’s recommendations.

Critics of the probate system allege that there is collusion between the judges who preside over such cases and the people who are appointed as conservators or guardians.

We now have 2 reports from the state auditor criticizing the judicial branch’s handling of probate cases.

The judicial branch has already shown it will not correct the issues with rulemaking. It’s time for the legislature to step in and make law to ensure that estates are not improperly depleted of assets.

Legislature again increases chief justice’s power.

The power of judicial performance commissions to recommend against retention was reduced during the 2017 legislative session. That’s because a new law passed, requiring judicial performance commission members to defer to a chief judge’s recommendation.

Who selects the chief judges across the state? The chief justice of the Supreme Court selects the chief judges. So the most recent change to the judicial performance commissions erodes the power to remove a bad judge from the bench.

The bill (HB17-1303) was a calamity of errors – from a misleading bill summary to being rushed through the Senate on the last day of session. The new law also requires commission members to defer to a matrix.

Nationwide search leads Supreme Court to hire insider as state court administrator.

No MBA necessary to oversee entire branch and huge budget.

The Supreme Court abruptly ended its nationwide search for a state court administrator in September and hired longtime employee, Christopher Ryan.

Ryan has a political science degree from CU. He started working for Colorado’s judicial branch as a bailiff in Denver District Court in 1990. Most recently, he served as the clerk for our Supreme Court and Court of Appeals.

Apparently a Master’s degree in Business Administration is not required to oversee the incredibly large judicial budget – which was $6.9 million in 2017. Yes, he’ll oversee a budget of more than a half billion dollars.

So all the resumes from other candidates with fancy post-graduate degrees from elite schools who showed that they had turned companies around, that they had saved companies millions, and that they were brilliant business managers . . . those resumes are now in the trash.

The most important requirement for the job was apparently that it be filled by an insider. And that’s exactly what Christopher Ryan is. He knows from his long tenure in Colorado’s judicial branch just what the judges want.

His functions as state court administrator will include contracting with retired judges so they can be assigned to certain cases. So if you ever see a retired judge on a case, Chris Ryan is responsible for hiring that certain judge for that certain case. He has the power to fix cases.

That way, the Supreme Court’s heart’s desires can be fulfilled without the Supreme Court ever having to rule. And the Supreme Court obviously watched The Wizard of Oz and learned that if you ever go looking for your heart’s desires, don’t look further than your own backyard.

None of our Supreme Court justices got on the bench for their business savvy. They should not be responsible for hiring the person who oversees such a ridiculously large budget.

The state court administrator should be an elected position. The legislature has the power to make the state court administrator an elected position, which would improve transparency and accountability in the judicial branch.

But Colorado’s judicial branch continually runs roughshod over the legislature. That’s why the Supreme Court gets to hire the state court administrator.
Judicial discipline? Almost all complaints dismissed.

Colorado judges can breathe a sigh of relief. The 97% dismissal rate of Colorado’s Commission on Judicial Discipline continues.

According to the 2016 annual report for the discipline commission, the commission once again dismissed almost all complaints against judges – 152 complaints received and 148 dismissals. That’s a 97.3% dismissal rate for 2016, which means the overall average dismissal rate since 1993 continues to be 97%.

The annual report attempts to make the commission look like it did what it is supposed to do: discipline judges. The report details the formal proceedings regarding an El Paso County Court judge named Jonathan Walker. But the case ended with a stipulation – the charges were dismissed if the judge retired.

There were multiple violations alleged, including dishonest acts such as changing the terms of plea agreements after they had been signed. Yet the case was completely dismissed because the judge left the bench.

He now works at Gasper Law Group in Colorado Springs where they tout him as “Retired Judge Jonathan L. Walker.”

In 2016, 2 judges were put on diversion plans. One plan required periodic docket management reports to improve the judge’s diligence. The other plan required the judge to seek medical care and counseling to deal with stress management.

Also in 2016, there was a private reprimand for a judge’s 18-month delay in ruling on a motion for post-conviction relief. And there was a private censure for a judge who did not act impartially.

And thanks to Colorado’s confidentiality requirement regarding judicial discipline proceedings, we’re all left to wonder who those judges are. Are they on your case right now? Will they be on the ballot for the 2018 election? Who knows?

Judicial discipline matters should not be private. The American Bar Association and The American Judicature Society recommend public judicial discipline proceedings. 35 states have public judicial discipline proceedings. But thanks to antiquated constitutional language, Colorado is dark.

Darkness plus a 97% dismissal rate . . . Colorado needs to improve its judicial discipline system.

Watch a judge lie.

Courtroom cameras catch Colorado Court of Appeals Judge Karen Ashby telling a whopper from the bench. The two judges beside her also know that what she says is false. And they don’t say a word.

More than 1,000 people have already viewed the oral argument video. You can see it along with the explanation regarding the lie – and why it’s important – on the ‘SIGNs’ page at www.judicialintegrity.org. You can also see it, along with comments, on The Judicial Integrity Project’s Facebook post dated July 29, 2017.

Who are the victims? Injured worker Michael Sanchez . . . and you. If anyone walks into court and lies, they’re usually in big trouble. But not Colorado judges. And they can spin their lies into statewide public policy. Just like they do in Michael Sanchez’s workers’ compensation case.

The lie happens between the 3 and 4 minute marks on the video. Will you be able spot it? Probably not without some background information that you’ll find on our website.

And as you can see on the front page, court filings are down in Colorado. That includes the Court of Appeals where filings are down 16% from 2012. So why is a retired judge necessary for the case?

Please take a little time and review the video along with the case facts that include a greedy water company, an injured worker who spent his 20th work anniversary fighting for benefits, retired judges, lying judges and your constitutional rights. Yes, this case involves your constitutional rights.

There’s no question that what the judge says is false. But why does she lie?

Think about it:

How are judges learning to be ethical in Colorado?

Attorney discipline proceedings in Colorado are public. And there’s a strong reason why. A published case regarding lawyer discipline – whether the lawyer is punished or not – provides guidance to other lawyers on what to do in a similar situation. Lawyers are constantly learning.

Colorado judges, on the other hand, aren’t learning anything because judicial discipline cases are confidential and not published. Judges are public servants, yet judicial discipline proceedings are private. It makes no sense, especially when the discipline proceedings for private lawyers are public.

A vigorous system that enforces ethics does more than discipline the individual at issue; It teaches others how to act in the same situation. But when the discipline decisions are not published or shared, the knowledge is lost. Colorado’s dark judicial discipline system benefits no one. Judicial discipline proceedings should be public in Colorado.
Kudos to the 6th Judicial District Nominating Commission!

The 6th Judicial District (Archuleta, La Plata and San Juan Counties) scores for creating accountability and transparency in its nominating process. Although state law doesn’t require it, the commission wrote its own rule requiring a public hearing in the judicial nominating process.

Before the 6th Judicial District Nominating Commission selects the nominees to provide to the governor for appointment, the commission holds a public hearing to obtain public input on potential nominees.

Colorado has 3 commissions that govern judges: nominating commissions, performance commissions and the judicial discipline commission. And there are no public hearings required for any of the commissions. State law doesn’t require a single public hearing.

Congrats to the 6th Judicial District for bucking the trend! Let’s hope what they’ve done catches on. Sunshine is a good thing.

CBA’s “refocus” turns away from members.

The Colorado Bar Association (CBA) has been working on a lot of changes over the past couple of years, and continues to work on changes. In Colorado, membership in the bar association is not mandatory for lawyers. Colorado is the only state west of the Mississippi that has a voluntary bar association which means not all attorneys belong to the organization.

One important change so far has been to change the mission statement of the bar. Although the oath lawyers take requires them to use their knowledge to improve the legal system, improving the legal or justice system has been removed from the CBA’s mission statement. Now the mission of the CBA includes the phrase “supports the justice system.”

From public reports of former CBA President Loren Brown, it would appear that the new mission statement means that the CBA must support what judges want. Brown is also on the board of the Colorado Judicial Institute, another organization that includes judges.

Another important change has been the increase in power of the executive council which is appointed as opposed to the Board of Governors which is elected. The executive council can expel a member of the CBA for any reason and without refunding any dues.

Real eclipse takes place in Colorado courts.

What’s the big deal about the total eclipse? You didn’t have to go to Wyoming to see it.

Colorado is dark all the time regarding judicial discipline proceedings. They’re confidential; not public. We’re like only 14 other states – the same number that the total solar eclipse touched.

Not even the judicial performance commissions that advise you whether to retain a judge know whether a judge has been disciplined.

And because Colorado’s Commission on Judicial Discipline dismisses complaints against judges at a rate of 97%, it’s really a double total eclipse.

Make that a triple. Colorado’s Open Records Act doesn’t apply to judicial. Judges write their own rules regarding disclosure of all their records in Colorado.

Want to experience a total eclipse? Just visit a Colorado court. It’s dark 24/7, 365 days a year.

Are you safer in a Colorado cab than in a Colorado court?

A Colorado cab company proudly touts that its drivers are state background checked and certified. Shouldn’t we be able to say the same about Colorado judges?

The cab company, which just wants to take you from here to there, wants you to trust its drivers. Colorado’s judicial branch can take your property and your life. What’s it doing to earn your trust?

There are no required background checks for judges as there are for cab drivers, who have background checks done every 5 years. It’s more difficult to obtain information about judges than any other public official in Colorado. In fact, it’s almost impossible. And any Colorado judge could have even been disciplined and you wouldn’t know anything about it.

Knowing all this, would you feel safer in the back seat of a cab or sitting in a courtroom?

Don’t you think judges should be at least as thoroughly checked out as cab drivers? Shouldn’t we be able to easily obtain information about judges? And shouldn’t judicial discipline proceedings be public in Colorado like they are in 35 other states?

The Judicial Integrity Project is a nonpartisan nonprofit focused on improving the justice system by removing conflicts of interest, increasing transparency and enhancing accountability.

We’re the only organization in Colorado focused on following the lawyer’s oath to improve the legal system. But we have non-lawyers involved in the process as well.

Please contact us with any questions, concerns or if you want to get involved.

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