

II.

REPORT OF THE COMMITTEE ON MAGISTRATES IN THE CIVIL JUSTICE SYSTEM

A. BACKGROUND

In recent years, Colorado has seen a disproportionate increase in magistrate positions when compared to newly created judgeships. In the past 20 years, the total number of case filings in our courts increased 82 percent. In this same time period, the number of all judicial officers - that is, district and county court judges and magistrates - increased by 32 percent. The number of district court judges increased from 105 to 118 (just 12 percent), and the number of county court judges rose from 95 to 119 (only 10 percent). By contrast, the number of magistrate positions rose from 13 to 59, or 353 percent. See EXHIBIT 2 of this Report for charts that illustrate these increases.

The substantial expansion of new magistrate positions, when compared to the modest increase in the number of district and county court judges, creates a concern that too many cases are being decided by non-appointed judicial officers rather than by constitutionally appointed judges. The Committee believes that, while magistrates are an essential component of Colorado's court system, the interests of justice are best served by limiting the growth in additional magistrate positions and increasing the number of new "Article VI judges"¹ available to serve the public.

The differences in qualifications, selection, and removal of an Article VI judge are significant when compared to a magistrate. Judges are selected through a non-partisan, constitutional process on the basis of experience, skill, and knowledge. Once selected, a judge remains subject to retention and removal by the electorate. On the other hand, magistrates serve as at-will employees of the Colorado State Judicial Department under the supervision and direction of the chief judge for each of Colorado's 22 judicial districts. Because judges are chosen on the basis of their background and experience and are accountable to the people directly affected by judicial decisions, the Committee believes that judges — and not magistrates — should be the primary officers trying cases and handling other significant court matters.

The Committee recognizes that magistrates contribute substantially to the efficient and effective resolution of civil disputes. Unlike Article VI judges, however, magistrates do not have the constitutional authority to conduct jury trials and dispose of civil cases. Thus, while recognizing the individual dedication and significant contribution to the judicial system by magistrates, the Committee concludes that our system of civil justice will be better served by the creation of additional district and county court judge positions rather than continuing to expand the use of magistrates. The cost of creating new judgeships can be partly defrayed by limiting the growth in new magistrate positions.

B. CONSTITUTIONAL AND STATUTORY BASES OF THE MAGISTRATE'S AUTHORITY

The State's Judicial Department is established by Article VI of the Colorado Constitution. Section 5 of that article allows the Colorado Supreme Court to "appoint a court administrator and such other personnel as the court may deem necessary to aid the administration of the courts." To this end, Section 13-3-105 of the Colorado Revised Statutes creates the Colorado Judicial System Personnel System. All magistrates are classified in the professional services occupational group of the Personnel System and are at-will employees hired on annual contracts. Their salary is to be no higher than 90 percent of that of a county court judge. The chief judge of a judicial district, with the approval of the Chief Justice of the Supreme Court, has hiring authority; the chief judge may also remove a magistrate. The Colorado Rules for Magistrates require that a magistrate be a licensed Colorado attorney with at least five years of experience, except that in some rural counties, the chief judge may appoint a qualified licensed attorney with less than five years experience.

In general, magistrates' duties are set forth in the statutes pertaining to specific areas of law. In some instances, however, the statutes authorize the Supreme Court to determine by rule the matters that are appropriate for magistrates. The Colorado Rules for Magistrates reflect the requirements of the applicable statutes and define and delimit the authority and duties of magistrates in areas where the statutes are not specific. The Committee concludes that imposing statewide uniform duties on magistrates would not only fail to advance the judiciary's effort to meet the public's expectation of prompt and reliable civil justice but might in some instances thwart it. On the other hand, the Committee finds that the limitations on duties of magistrates that are contained in the newly revised Colorado Rules for Magistrates provide a comprehensive, thoughtful, and practical framework within which to guide and control the services of magistrates.

While magistrates perform various adjudicatory functions, the exercise of their authority is subject to review by Article VI judges who are fully empowered to reverse or countermand orders they may enter.² At all times, magistrates are subject to the direction and supervision of the chief judge³ or the presiding county court judge,⁴ as the case may be, of the judicial districts in which they serve.

Attached to this Report as EXHIBIT 2.5 is a compilation of the constitutional and statutory provisions relating to magistrates, as well as the Colorado Rules for Magistrates.

C. SUGGESTIONS FOR REFORM

1. *Clarify the Role of Magistrates*

The primary purpose of the magistrate system in Colorado is to relieve trial judges of some of their less weighty and consequential duties in order that they may devote more time to activities of greater judicial and public significance. Magistrate duties include the following: management of discovery issues in civil cases; providing relief to litigants in domestic relations cases where there is a need for speedy initial, temporary orders to give the parties guidance before entry of permanent orders; and conducting preliminary proceedings in paternity cases. In addition to their duties in civil cases, magistrates may serve in

delinquency, truancy, and certain juvenile crime cases. Due to the varied needs of judicial districts (urban versus rural; high-crime versus low-crime; specialized dockets versus mixed dockets; large civil dockets versus small civil dockets; high-dollar, complex business litigation versus moderate-dollar civil disputes; etc.), the Committee concludes that the chief judge of each judicial district should retain the power to determine the most appropriate uses of magistrates. This will allow courts to maximize the effectiveness of a magistrate's service and to ensure that no duty is assigned outside the boundaries of their lawful authority. Indeed, this is the current approach utilized in Colorado, and the Committee has heard few, if any, complaints about the exercise of this authority by the various chief district court judges.

The Committee recognizes that magistrates have become an essential arm of busy courts attempting to keep pace with growing case dockets. It also recognizes the public has a right to expect the prompt initial handling of complaints and grievances brought into the courts. Therefore, the wholesale reassignment of duties that are now regularly undertaken by magistrates in Colorado to Article VI judges would have negative consequences to litigants and to the administration of justice in Colorado. The ends of justice could not be accomplished if the system were to rely only on the current number of trial level judges. The cases are too many; the judges are too few. Moreover, the Committee believes that even with an increase in the number of district and county court judges, magistrates still will be needed to ensure that certain administrative and judicial functions are performed efficiently.

2. Appoint Additional Article VI Judges

While recognizing the integral role magistrates play in the judicial system, the Committee believes that the recent increase in the number of magistrates in Colorado is due in part to perceived funding problems related to the authorization of new judgeships. Magistrate positions have been approved in the past on the basis of the relative ease of funding such a position as opposed to the difficulty of funding a new judgeship. Although there is some disparity between the cost of funding a new judicial officer and a magistrate, the Committee concludes the difference in actual cost is outweighed by the more significant public services available through the appointment of additional Article VI judges than through the hiring of additional magistrates.⁵

While comparatively more expensive, judges deliver greater value to the judicial system – “more bang for the buck” – than comparatively less qualified magistrates who are not directly accountable to the public, and whose duties are sharply limited by law.

The Committee recommends that legislative, executive, and judicial priorities and efforts be directed toward the appointment of new Article VI judges rather than the continued expansion in the number of magistrates in the Colorado judicial system. Appointing new Article VI judges in lieu of additional magistrates will continue to ensure, first, that most significant judicial decisions in Colorado will be made by those who have been selected through a constitutionally established, bipartisan process on the basis of their experience, skill, and knowledge; and, second, that the appointees are subject to constitutionally created retention and removal processes. This will guarantee that the liberty and property interests of Colorado citizens are being protected and considered by judicial officers who have met the highest qualifications for office and who have sworn to uphold the highest standards of conduct in the performance of their duties.

D. CONCLUSION

The dramatic growth in the number of magistrate positions in the Colorado courts may be coming at the expense of new judges chosen by the Colorado constitution's merit-selection process and directly accountable to the people. Magistrates play an important role in our civil justice system, but they cannot and must not take the place of judges. As Colorado's population continues to impose new demands on our courts, the General Assembly and the Governor should seriously consider limiting the growth of additional magistrates while creating more new judgeships to better serve the public.

¹"Article VI judges" are judges who are appointed pursuant to the provisions of Article VI of the Colorado Constitution (1876), establishing the Judicial Department of State Government. See the discussion at Section II.B of this Report.

² Though questions have been raised in other forums concerning the validity of orders entered by magistrates who are not themselves constitutionally created judicial officers, the Committee concludes that such challenges can best be resolved on a case-by-case basis, and that the appropriate forum for the resolution of such controversies is in the Colorado Supreme Court or a Federal court of appropriate jurisdiction. Because of the many assorted duties of magistrates serving in Colorado, it is beyond the task of the Committee to assess the constitutionality of the wide range of duties undertaken by magistrates in their multifarious roles and assignments. The Federal courts have considered these questions in a number of cases arising in other jurisdictions. *See generally*, *Geras v. Lafayette Display Fixtures, Inc.*, 742 F.2d 1037 (7th Cir. 1984); *Pacemaker Diagnostic Clinic of A., Inc. v. Instromedix, Inc.*, 712 F.2d 1305 (9th Cir. 1983), *rev'd en banc*, 725 F.2d 537 (9th Cir), *cert den.* 469 U.S. 824 (1984); *see also*, Comment, *The Boundaries of Article III: Delegation of Final Decision-Making Authority to Magistrates*, 52 U.Chi.L.Rev. 1032 (1985)

³Rule 7, Review of District Court Magistrate Orders or Judgments, Colorado Rules for Magistrates.

⁴Rule 9, Review of County Court and Small Claims Court Magistrate Orders or Judgments, Colorado Rules for Magistrates.

⁵According to the Colorado State Court Administrator's Office, the comparative salaries, staff, and operating expenses for a district court judge cost approximately \$130,000 more than for a magistrate in the first year of a position and \$70,000 more each year thereafter.