

Changes in Commission Rules

New Rules for the Commission on Judicial Conduct went into effect on January 1, 2006. The new rules mark a significant change in the policy governing the confidentiality of complaints against judges and the outcome of disciplinary proceedings. All judges and other judicial officers are encouraged to become familiar with the amended rules.

Background

In the fall of 2004, the Maricopa County Attorney's Office petitioned the Arizona Supreme Court to make all complaints against judges and all forms of judicial discipline public. On June 9, 2005, after considering comments both for and against the petition, the court amended the rules to provide greater public disclosure of judicial disciplinary records beginning January 1, 2006.

As amended, the rules require the commission to disclose all complaints against judges. However, the amount of information disclosed varies according to the severity of the discipline imposed; the greater the discipline, the more detailed the information. For example, if the commission finds that a complaint against a judge is frivolous or unfounded on its face, it will dismiss the case and release copies of the complaint and the dismissal order to the public after redacting the names of the complainant and the judge and other personal information. Complainants and judges will only be identified by number. The same holds true for complaints that are dismissed for lack of jurisdiction or because the underlying issues are solely appellate in nature.

On the other hand, the identities of complainants and judges will be revealed in cases in which there is a specific finding of misconduct. In informal proceedings in which the commission issues a public reprimand, the complaint, the judge's response and the commission's decision will be released at the conclusion of the case with the names intact (addresses and telephone numbers will still be redacted). Advisory letters and admonitions are no longer available as disciplinary alternatives although complaints may be dismissed with comments.

No change was made in the rules governing disclosure in formal proceedings. Once formal charges are filed against a judge, the complaint, the judge's response and the pleadings will be posted on the commission's website, and formal hearings will be open to the public.

Dismissed complaints and orders of dismissal (redacted as required by the new rules) and reprimands will be posted on the commission's website after the deadlines for dealing with motions for reconsideration have passed. Furthermore, judges will no longer be notified by letter when a complaint is dismissed. Instead, they will receive copies of the complaint and the commission's final order.

Emergency Changes

Shortly after the amendments were adopted in June 2005, the commission began preparations to implement them at the beginning of the new year. By early fall, however, it became apparent that a few additional changes were needed to make the rules easier to apply, and the commission submitted a petition to amend the rules on an emergency basis on November 17, 2005. The proposed changes were modest in scope and designed to simplify the rules and clarify commission procedures.

The most significant proposal was to amend Rule 23(b), which governs the procedure for filing motions for reconsideration of commission decisions. Experience had shown that this rule was often abused in cases involving complaints that were unfounded or outside the commission's jurisdiction, thus prolonging the final resolution of frivolous matters. The court approved the changes on January 20, 2006, and invited interested parties to file comments on the petition with the clerk of the court on or before May 22, 2006.

A current version of the commission's rules, complete with all of the changes enacted through January 20, 2006, and its petition to amend the rules are posted on the commission's website. The new rules will govern the proceedings for all complaints filed after January 1, 2006. Complaints filed prior to this date will be processed under the old rules.

New Petition to Amend the Rules

On November 18, 2005, the Maricopa County Attorney's Office filed a petition to amend the Commission's Rules. Under the current rules, the disclosure of a judge's response is discretionary, and the commission has frequently declined to release responses in cases where further disclosure would serve no purpose other than to prolong the proceedings, especially in cases where complainants are seeking another venue to appeal their cases and there is no evidence of judicial misconduct.

Specifically, the county attorney is proposing a change in Rule 9(e) that would require the commission to disclose the judge's response to the complainant in every case in which the judge is asked to respond, except those portions of a response subject to a protective order. The complainant would then be allowed to file a reply to the judge's response. The county attorney also proposes that the judge's response be added to those documents made public following entry of an order of dismissal. Nothing in the proposal addresses redaction of the response.

The supreme court has asked that comments on the county attorney's petition be filed with the clerk of the court on or before May 22, 2006. A copy of the county attorney's petition is posted on the commission's website.

The Year in Review

The Commission on Judicial Conduct received 863 inquiries and 334 complaints in 2005. It dismissed 248 cases because the complaints were frivolous or unfounded, involved legal issues only, or the commission lacked jurisdiction. It resolved 21 cases with advisory letters and issued informal or private sanctions in 21 cases, four of which were public reprimands.

The commission filed one formal case with the supreme court during the year, resulting in the public censure of a justice of the peace, including mentoring of the judge for a one-year period. Another justice of the peace stipulated to resign from his judicial position just before the commission made a formal recommendation to the supreme court.

The Judicial Ethics Advisory Committee issued four formal opinions during 2005 and responded to 216 requests for informal advice on ethical issues.

By law, the commission is also responsible for staffing the Constable Ethics Committee, which investigates complaints against elected constables. The committee received six complaints against constables in 2005. The commission is supporting legislation this year to remove its responsibility for the committee.

2005 Advisory Opinions

The Judicial Ethics Advisory Committee issued four opinions in 2005. The opinions are summarized here. To read the full text of the opinions, go to www.supreme.state.az.us/ethics and click on Judicial Ethics Advisory Opinions.

Opinion 05-01 (February 9, 2005)

A judge may not hear cases involving a business co-owned by his friend, the chairman of his campaign committee. The judge may instruct his staff to issue a minute entry after an answer is filed that discloses the potential conflict and gives the parties an opportunity to object to the potential conflict on the record. Moreover, the judge may not sign default judgments in favor of the friend's business in cases where the defendants do not appear.

Opinion 05-02 (August 9, 2005)

Courts may *sua sponte* contact law enforcement agencies about the status of a missing or late original traffic citation if it is done as a routine accommodation, there is no intent to specifically aid the prosecution, and doing so has no substantive effect on the merits or outcome of the case.

Opinion 05-03 (October 26, 2005)

Judges subject to retention elections may campaign and raise money in the absence of active opposition, but are advised to consult with legal counsel or election authorities to determine the applicable law governing when they may organize a campaign committee and begin to raise funds.

Opinion 05-04 (October 27, 2005)

A court employee may not serve as a crisis worker in the county attorney's victim-witness program, as such participation is not compatible with the role of an employee of the judicial branch.

Membership Changes

Judge **Danna Hendrix** (Superior Court, Flagstaff) was appointed to the Judicial Ethics Advisory Committee, replacing Judge **Patricia Escher** (Superior Court, Tucson).