

Arizona Judicial Ethics Bulletin

CHANGE IN COMMISSION STAFF

Commission Executive Director Retires

After 22 years, E. Keith Stott, Jr. retired as the executive director of the Arizona Commission on Judicial Conduct and officially completed his work on July 7, 2011. In addition to his work for the commission, Mr. Stott was also the staff director of the Arizona Supreme Court's Judicial Ethics Advisory Committee for 20 years. During his tenure on the commission, he was the staff director for the court's working group that recommended a revision of the Arizona Code of Judicial Conduct in 1992 (based on the American Bar Association's (ABA) 1990 Model Code of Judicial Conduct), and the court's Task Force on the Code of Judicial Conduct that resulted in a new code based on the ABA's 2007 Model Code of Judicial Conduct. Mr. Stott served as the deputy director of the Administrative Office of the Courts (AOC) with the Arizona Supreme Court for three years before becoming the first full-time executive director for the Arizona Commission on Judicial Conduct.

Mr. Stott has participated as a speaker or instructor at many national and state conferences on judicial conduct and ethics. He has also written articles and edited publications on subjects that reflect his interests in court administration and judicial ethics. Mr. Stott is an emeritus member of the board of directors of the Association of Judicial Disciplinary Counsel and a long-time member of the advisory board of the American Judicature Society's Center for Judicial Conduct Organizations.

Commission Hires New Executive Director

Following a competitive recruitment process, a committee made up of six commission members and two staff members selected George A. Riemer as the new executive director. Mr. Riemer comes to the commission with extensive experience involving legal ethics and lawyer regulation issues and has been a frequent speaker and author on these topics.

Mr. Riemer is admitted to the practice of law in Arizona, Oregon, and Washington. He served as general counsel of the Oregon State Bar for over twenty-five years. During the last ten years of his tenure with that organization, he also served as deputy executive director. Upon moving to Arizona in 2006, Mr. Riemer served as a civil deputy city attorney for the City of Surprise for a short period of time. He subsequently accepted a

position with the State Bar of California as director of educational standards in the state bar's Office of Admissions. In that capacity, he developed and administered the rules and regulations for the accreditation and registration of more than forty law schools under the regulatory jurisdiction of the California Committee of Bar Examiners. Most recently, Mr. Riemer taught Professional Responsibility as an adjunct professor at Phoenix School of Law.

Mr. Riemer is a past secretary and treasurer of the National Council of Lawyer Disciplinary Boards, Inc., and represented the Oregon State Bar in the American Bar Association's House of Delegates between 1994 and 2000. He has served as a volunteer lawyer hearing panel member in Arizona's new lawyer disciplinary process and was recently appointed to the Arizona Supreme Court's new Attorney Regulation Advisory Committee.

Mr. Riemer began work as the new executive director of the Arizona Commission on Judicial Conduct on July 11, 2011. He will also serve as the staff director of the Judicial Ethics Advisory Committee.

Changes Affecting Code of Judicial Conduct

Rule 4.1(A)(4) of the Arizona Code of Judicial Conduct provides that a judge or a judicial candidate shall not “. . . make contributions to any candidate or political organization in excess of the amounts permitted by law, or make total contributions in excess of fifty percent of the cumulative total permitted by law. See, e.g., A.R.S. § 16-905.”

The Arizona Secretary of State has recently updated the applicable campaign contribution limits pursuant to A.R.S. § 16-905(H). A list of the revised limits may be accessed at the following link:

http://www.azsos.gov/election/2012/Info/Campaign_Contribution_Limits.htm.

Membership Updates

Commission on Judicial Conduct

The following is a list of the current members of the commission, including three new members appointed earlier this year, beginning with the commission officers: Judge **Louis Frank Dominguez**, Chair (Municipal Court, Phoenix); Judge **Lawrence F. Winthrop**, Vice-Chair (Court of Appeals, Div. 1, Phoenix); **Angela H. Sifuentes**, Secretary (public member, Casa Grande); **Colleen E. Concannon** (public member, Tucson); Judge **Peter J. Eckerstrom** (Court of Appeals, Div. 2, Tucson)(new member); Judge **George H. Foster, Jr.** (Superior Court, Phoenix)(new member); Judge **Sherry L. Geisler** (Justice of the Peace, Springerville); Judge **Michael O. Miller** (Superior Court,

Tucson); **Catherine M. Stewart** (attorney member, Tucson); and **J. Tyrrell Taber** (attorney member, Phoenix)(new member).

Judicial Ethics Advisory Committee

The following is a list of the current members of the Judicial Ethics Advisory Committee: Judge **Timothy B. Dickerson** (Justice of the Peace, Sierra Vista); Judge **Margaret H. Downie**, Chair (Court of Appeals, Div. 1, Phoenix); Judge **Karl C. Eppich** (Municipal Court, Mesa); Judge **Virginia C. Kelly** (Court of Appeals, Div. 2, Tucson); Judge **Joseph C. Creamer** (Superior Court, Phoenix); Judge **John S. Leonardo** (Superior Court, Tucson); Judge **Mark R. Moran** (Superior Court, Flagstaff); **Walter B. Nash, III** (attorney member, Tucson); and **David Withey** (attorney member, AOC, Phoenix).

Annual report of the commission

In 2010, the Commission on Judicial Conduct received over 400 inquiries and 362 complaints. It dismissed 28 cases with confidential advisory comments and issued 14 private warnings reminding judges of ethical obligations or recommending changes in behavior or procedures. The commission imposed six public reprimands and filed two formal recommendations for public censure with the Arizona Supreme Court during the year. The first formal case involved a municipal court judge who repeatedly engaged in ex parte communications and conducted an independent, factual investigation in a pending case. The second formal case involved a superior court judge who used undignified and discourteous language during a settlement conference. The full text of the stipulated agreements to accept censures in both cases can be viewed on the commission's website at www.azcourts.gov/ethics by selecting Commission on Judicial Conduct, Judicial Complaints, 2010-099 and 2010-131.

The Arizona Supreme Court's Judicial Ethics Advisory Committee, which is staffed by the commission, issued six formal opinions during the year and responded to 270 requests for informal advice on ethical issues.

2009 and 2010 Advisory Opinions

The Judicial Ethics Advisory Committee issued three opinions in 2009 and six in 2010. The opinions are briefly summarized here. The full text of the opinions may be accessed at www.azcourts.gov/ethics by selecting Judicial Ethics Advisory Opinions, the year, and the specific opinion.

Opinion 09-01 - Accepting Nominal Gifts From Conference Sponsors (September 17, 2009)

Judges or judicial employees attending trade association and similar conferences may accept food, refreshments, or gifts from sponsors and vendors so long as they are of nominal value and so long as their receipt does not call into question the court's or its employees' impartiality. Specific circumstances regarding a sponsor or vendor of an event may require a judge or court employee to avoid accepting anything from the sponsor or vendor.

Opinion 09-02 - Training on Equipment Used In Law Enforcement (September 18, 2009)

Judges or judicial employees may not attend court-only demonstrations or training offered by vendors of new technology or equipment, such as photo enforcement equipment. Equipment used in law enforcement may become the subject of litigation, and it would be inappropriate for the judge or judicial staff to have received prior court-only training on the use and reliability of such equipment. Under limited circumstances, judges and judicial employees may participate in demonstrations of and training on new technology used by law enforcement to understand how to process cases that involve that technology.

Opinion 10-01 - Participation in Political Campaigns in Other States and Contributions to Political Candidates (October 22, 2010)

Arizona judges may not actively participate in judicial campaigns in other states, or in campaigns of candidates for national public office, but they may contribute to political or judicial candidates outside of Arizona as long as they follow applicable federal and state requirements.

Information about permissible political contributions in Arizona under A.R.S. § 16-905 can be found on the Arizona Secretary of State's website (<http://www.azsos.gov>), and information regarding contributions to national candidates, political organizations, and political parties is available at the Federal Election Commission's website (<http://www.fec.gov>).

"Contributions to Arizona state and county political parties (as defined by A.R.S. § 16-901(21)) are treated differently from contributions to individual candidates under state law. See A.R.S. § 16-905(E) ("Contributions to political parties and contributions to independent expenditure committees are exempt from the limitations of this subsection.")"

Opinion 10-02 - Using Judicial Titles and Robes in Election Campaigns (Revised December 2, 2010)

During a campaign for elected judicial office, incumbent judges running for the office currently held may use the title “judge”.

The opinion goes to explain the precise limitations on the use of a judicial title and robes in an election campaign, including:

“A sitting judge running for election to another judicial position or a full-time pro tem judge running for election may use the title “judge” in campaign material only if the information provided clearly informs the public of the candidate’s current position.”

“A former judge may not use the title “judge” except in the limited way set forth in Rule 4.3(D), which involves placement of the words “elect,” “vote,” or “for” in relation to a candidate’s name and the use of prominent lettering.”

“The committee believes that use of a photograph or other depiction of a non-incumbent candidate wearing a judicial robe is prohibited under paragraphs (A) and (F) of Rule 4.3 just as the use of the title “judge” is prohibited under paragraph(D), because the public is likely to conclude the candidate is the incumbent.”

“An incumbent judge, a judge running for election to a different judicial position, and a former judge, may all use photographs showing themselves in robes, even if taken in the courtroom, if the photographs were taken by a newspaper or the media as a part of a news program and not staged for campaign purposes. A candidate who wants to use photographs or video clips should obtain permission from the source in compliance with copyright law and make sure the photographs do not mislead voters about the candidate’s current position. The source and context of the photograph must be clearly disclosed to avoid the impression that the candidate used court facilities for campaign purposes, and it should be made clear that the photographs were not taken in connection with the candidate’s campaign.”

Opinion 10-03 - Disqualification Requirements When Judge Is Related to Local Sheriff (November 18, 2010)

A justice of the peace is subject to disqualification in any proceeding involving the sheriff’s department when the judge’s brother is the sheriff in the county in which the judge serves. The judge may, however, disclose on the record the basis of his disqualification and ask the parties to consider whether to waive disqualification.

A waiver of disqualification may not be available in certain circumstances, including “when the judge has actual bias or prejudice; when there is no opportunity for disclosure prior to judicial involvement; when the process results in repeated, unreasonable delay; when public confidence in the court’s independence, integrity or impartiality is compromised or appears to be compromised; and when there are so few judicial officers in the jurisdiction that the disclosure/waiver process creates a coercive atmosphere and therefore the appearance of impropriety.”

The rule of necessity may override disqualification in rare circumstances.

Opinion 10-04 - Disqualification Considerations When Spouse Works As Secretary for Public Defender (December 3, 2010)

A justice of the peace whose spouse works as a secretary in the local public defender’s office is not automatically required to disqualify him or herself in a criminal case in which the defendant is represented by the public defender’s office, but disqualification may be advisable in certain circumstances.

Opinion 10-05 - Sending Letter to a Sentencing Judge (December 20, 2010)

Judges may not send a letter to a sentencing judge within Arizona on behalf of a family member. A judge may, however, send a letter to an out-of-state judge on behalf of a family member, provided the letter makes no reference to the writer’s status as a judicial officer.

Opinion 10-06 - Representation of Spouse in Negotiations with Insurance Company (December 21, 2010)

A judge who is a former personal injury attorney may not represent the judge’s spouse in negotiations with an insurance company.

The *Arizona Judicial Ethics Bulletin* is published periodically by the Arizona Commission on Judicial Conduct and the Judicial Ethics Advisory Committee as a service to the Arizona Judiciary. For more information, contact the the editor at 1501 W. Washington Street, Suite 229, Phoenix, Arizona 85007, or call 602-452-3200.