

## *SUPREME COURT APPROVES RULE CHANGES*

On March 27, the Arizona Supreme Court amended the Rules of Procedure for the Commission on Judicial Conduct following an extended period for review and comment from the bench. The court had previously amended the rules in 1990 when it simplified judicial disciplinary procedures and allowed greater public access to formal proceedings. The new rules, which become effective on June 1, build on this foundation and clarify the commission's jurisdiction over all judges and judicial officers in state and local courts.

Judges and others familiar with the existing rules will immediately notice a change in the structure and organization of the rules. The new rules begin with a simple preamble that explains that Arizona's system for regulating judicial conduct is comprised of the Supreme Court and the Commission on Judicial Conduct. The court is responsible for adopting the Code of Judicial Conduct, approving the commission's rules and reviewing its recommendations for formal discipline. The commission, on the other hand, is responsible for administering the judicial discipline system throughout the state. The new rules also establish a more explicit link between the code and the commission's rules.

One of the more significant changes in the rules is the inclusion of a definition for the term "judge." In both the code and the rules, a judge is now defined as "anyone, whether or not a lawyer, who is an officer of the judicial system and who performs judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, hearing officer, or referee." Under the new rules, complaints against court commissioners and other judicial officers will be processed in the same way as complaints against judges, except that recommendations for the discipline of such officers will be submitted to their respective chief or presiding judges rather than the Supreme Court.

Another major change is the adoption of a procedure that allows commission decisions to become final without further review by the Supreme Court, unless a respondent judge files a petition for that purpose. A recommendation for public censure, for example, could become final as early as 15 days after filing with the court if a judge takes no further action. A recommendation for suspension or removal could likewise become final 30 days later if the court decides

not to docket the matter for review.

The new rules also contain numerous changes relating to service of process, deadlines for filing responses, the temporary reassignment of a judge under investigation, and the definitions of sanctions available under informal discipline.

The commission will distribute advance copies of the new rules to the entire judiciary with this issue of the *Bulletin*. All formal proceedings initiated prior to June 1 will be resolved under the old rules.

## *LOOKING BACK ON 1994*

By all measures, 1994 was an extraordinary year for judicial ethics in Arizona. The Commission on Judicial Conduct received a record-breaking 1007 calls from citizens and others that resulted in 248 complaints, a 15 percent increase over the preceding year. Although the majority of complaints were dismissed following investigation, the commission issued ten reprimands, gave admonishments or advisory warnings in ten cases, and imposed monitoring or counseling in five other cases.

The Supreme Court also experienced a significant increase in decisions involving judicial ethics. During the year, the court issued eight opinions on judicial misconduct and, for the first time, removed two judges from office. It suspended five judges for periods ranging from 30 days to more than a year and imposed various combinations of monitoring, counseling and education programs designed to improve individual performance.

Last but not least, the Judicial Ethics Advisory Committee issued 17 formal opinions during the year, matching the record set in 1992. It also issued 11 informal opinions and responded to more than 60 telephone calls for quick, unofficial opinions, many of which came from candidates for judicial office.

*What About . . .*

### **Disability Proceedings**

*Question: Is a judge required to report a serious medical condition to the Commission on Judicial Conduct, and, if so, will the commission begin disability proceedings against the judge?*

**The Commission on Judicial Conduct publishes a brochure which gives an overview of the commission's purpose and procedures. For more information or to obtain free copies of the brochure, please write or call the commission's office.**

Answer: Under Article 6.1, § 4 of the Arizona Constitution, the Commission on Judicial Conduct may investigate and make recommendations concerning the disability of a judge. These investigations infrequently occur and typically take place only when a complaint alleging a serious disability is filed against a judge.

On occasion, a judge may have to undergo treatment requiring an extended period of recuperation. When this happens, the judge or the judge's supervisor should advise the commission of the treatment program and the anticipated time away from judicial duties. The commission will keep this information confidential and, providing the judge returns to duties as scheduled, will not open a file on the matter.

If a judge is unable to perform a substantial portion of his or her judicial duties for a period of more than three consecutive months, the commission will initiate an investigation and ask a physician to provide a report on the judge's health and prospects for recovery.

## **Membership Changes**

### **COMMISSION ON JUDICIAL CONDUCT**

Bernardo P. Velasco Superior Court Judge Chair December 31, 1998	Louraine Arkfeld Municipal Judge December 31, 2000
Ruth V. McGregor Court of Appeals Judge Vice Chair December 31, 1996	Tom Bowen Public Member January 1, 1997
Gerald J. Strick Attorney Member Secretary December 31, 2000	William Druke Court of Appeals Judge December 31, 1996
Susan Arbuthnot Public Member January 16, 1997	Charles Dunlap III Public Member February 28, 2001
Gary R. Arend Justice of the Peace December 31, 2000	Howard Kashman Attorney Member December 31, 1998
	Maurice Portley Superior Court Judge December 31, 1998

### **JUDICIAL ETHICS ADVISORY COMMITTEE**

Jefferson L. Lankford Court of Appeals Judge Chair April 30, 1997	Robert W. Kuebler, Jr. Justice of the Peace April 30, 1998
Allen Minker Vice Chair Superior Court Judge April 30, 1996	Joseph M. Livermore Court of Appeals Judge April 30, 1998
Stephen Gerst Superior Court Judge April 30, 1998	Selmer D. Lutey Attorney Member April 30, 1997
	Roxanne Song Ong Municipal Judge April 30, 1997

In December, Governor Symington appointed **Tom Bowen** from Tucson as a public member of the **Commission on Judicial Conduct** to replace L. Sam DeLong, who resigned from her position for personal reasons last summer. The governor also appointed **Charles Dunlap III** of Phoenix to succeed Kate Kenyon, whose term expired in January. Mr. Bowen and Mr. Dunlap were confirmed by the Senate in April. The State Bar's Board of Governors reappointed Phoenix attorney **Gerald Strick** to a second term in September. In December, the Supreme Court appointed **Gary Arend**, justice of the peace in Bullhead City, and **Louraine Arkfeld**, presiding municipal court judge in Tempe, to fill the expired terms of David Babbitt, justice of the peace in Lake Havasu City, and Kathy McCoy, municipal court judge in Kingman.

In April, the Chief Justice appointed judge **Joseph M. Livermore** of the Court of Appeals to succeed **James D. Hathaway** on the **Judicial Ethics Advisory Committee**. Judge Hathaway served on the committee since 1987. He also appointed judge **Stephen A. Gerst** of the superior court in March to succeed Barry Silverman, who served for two years on the Advisory Committee until he became a federal magistrate earlier this year. More recently, the Chief Justice appointed justice of the peace **Robert W. Kuebler, Jr.** from Prescott to replace Robert Donfeld, who was appointed to the superior court in Tucson.

## **New Advisory Opinions**

This issue of the *Bulletin* accompanies a mailing of advisory opinions previously issued by the Judicial Ethics Advisory Committee and new indices of opinions. The opinions in today's mailing, which are summarized below, should be retained in the *Judicial Conduct and Ethics Manual* along with the updated indices.

### **Opinion 94-15** (December 14, 1994)

A court administrator may not use court letterhead to promote a payroll deduction plan for charities. The information may be circulated as long as the administrator and the judges refrain from endorsing the program.

### **Opinion 94-16** (December 15, 1994)

Judges may participate in education activities conducted by the Arizona Lawyers' Committee on Violence as long as they do not endorse or support the legislative or litigious objectives of the group.

### **Opinion 94-17** (December 16, 1994)

A judge cannot serve on the editorial board of a medi-

cal magazine.

**Opinion 95-1** (February 7, 1995)

A judge may serve on the nominating committee of a non-profit homeowners association.

**Opinion 95-2** (March 17, 1995)

While membership in a criminal defense organization is prohibited, judges may join a chamber of commerce as long as they avoid political or fund-raising activities.

**Opinion 95-3** (March 20, 1995)

Under Canon 4G of the Code of Judicial Conduct, a full-time judge cannot practice law. A judge may hear a case in which the defendant was a client of the public defender's office where the judge worked only if both sides agree to waive the conflict.

**Opinion 95-4** (March 21, 1995)

Judges may write newspaper articles about their reasoning process in a particular case only if the case has been fully resolved and no appeals are pending.

**Opinion 95-5** (March 22, 1995)

Judges may accept appointments to the board of directors of a non-governmental community council.

**Opinion 95-6** (March 31, 1995)

Generally, it is permissible for a spouse of a city council member to serve as a civil traffic hearing officer in the same city.

**Opinion 95-7** (April 19, 1995)

Candidates for judicial office may indicate their political party affiliation when campaigning.

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The *Bulletin* is published periodically by the Commission on Judicial Conduct and the Judicial Ethics Advisory Committee as a service to the Arizona Judiciary. For more information write the commission or committee staff at 1501 W. Washington Street, Suite 229, Phoenix, Arizona 85007; or call (602) 542-5200.

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