

April 22, 2020

Arizona Supreme Court Task Force on Countering Disinformation  
David R. Fuller draft recommendations

**DRAFT RECOMMENDATION 3 (RRT):**

I. Abbreviated Recommendation:

The AOC should empanel a “rapid response team” to address situations where disinformation targeting a court or judge occurs and a comment to ACJC 2.10 should be published to provide guidance as to how and when such instances should be addressed.

II. Recommendation:

The definition of disinformation adopted by this task force reads as follows:

“False, inaccurate or misleading information that is deliberately spread to the public with the intent to undermine the democratic process, sow discord, profit financially, or create distrust of government institutions or public officials. Disinformation should not be confused with misinformation, which is false information shared by those who do not recognize it as such, or with legitimate criticism, protest or censure of government actions, institutions or processes.”

During the many Task Force meetings, there have been plentiful and robust discussions surrounding what would constitute “disinformation”. Much of that debate was mindful and protective of the cherished First Amendment protections of freedom of speech and of the press.

Judges are tasked with maintaining the dignity of the judiciary and their words and actions are essential to promoting public confidence. “A judge shall not be swayed by partisan interests, public clamor or fear of criticism.” *Arizona Code of Judicial Conduct, Rule 2.4*. For good reason, there is an historic and traditional reluctance by judges to respond to statements or publications of criticism. Criticism is inevitable and understandable in an adversarial system. However, “disinformation” is not criticism as defined above. In those instances that qualify as “disinformation” directed at a court or judge, there should be a method to respond.

It is noteworthy that, when related to a pending or impending case, Rule 2.10 of the ACJC specifically prohibits certain public statements by a judicial officer or others at her direction. Rule 2.10(E) of the ACJC does allow a judge to “respond directly or through a third party to allegations in the media or elsewhere concerning the judge’s conduct in a matter.” However many, if not most, judges are hesitant to respond in such a manner. Their reluctance may be based in history, tradition or it may just be an unfamiliarity with how to judiciously respond while staying within the four corners of the ACJC.

Allowing “disinformation” to cultivate can be destructive to the truth and reality. Whatever the reason that judges may decline to respond to “disinformation”, in those instances where a response is necessary, one should be disseminated.

When a response to disinformation is necessary, the size of a judge’s jurisdiction and the resources available may determine whether a proper response is possible. A smaller jurisdiction is unlikely to have communications department, a PIO or even a court administrator to coordinate a response.

It is recommended that, particularly for the benefit of smaller jurisdictions, the AOC empanel a “rapid response team” to address situations where disinformation targeting a court or judge occurs and a response is warranted. It is further recommended that a comment to ACJC 2.10 be published to provide guidance as to how and when such instances should be addressed.