

ARIZONA
COMMISSION ON
JUDICIAL CONDUCT

ADMINISTRATIVE
POLICIES

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ADMINISTRATIVE POLICIES

The Commission on Judicial Conduct has adopted the following administrative policies in accordance with Rule 4(d) of the commission's rules.

1. Commencement of investigation without written complaint

When the conduct of a judge is brought to the attention of the commission by the news media or some other public source, and the conduct appears to be within the jurisdiction of the commission, the executive director may ask the chair for authorization to open a file and commence an investigation without a written complaint.

2. Assignment of complaints involving the same judge

When a complaint is received on a judge who is already the subject of a pending investigation, the executive director should assign the new matter to the same member who is reporting on the pending case.

3. Complaints against multiple judges

The executive director may use the following guidelines to determine when to separate or consolidate complaints involving multiple judges.

- (a) If a complaint names more than one judge and alleges facts that apply to all of the judges (e.g., "every judge involved in the underlying litigation was biased"), the complaint may be processed as a single case.
- (b) If a complaint names more than one judge but alleges different or unrelated facts that apply to the individual judges (e.g., "the first judge was biased and the second failed to rule promptly"), separate files may be opened and the cases processed separately.
- (c) Conversely, related complaints against one or more judges may be consolidated for administrative and statistical purposes when any of the following conditions exist:
 - (1) A complainant files separate complaints against different judges but repeats essentially the same facts in each complaint;
 - (2) A complainant repeatedly files the same complaint after each stage of the underlying litigation, creating what amounts to a serial complaint; or
 - (3) Different complainants file separate complaints against the same judge but investigation reveals that they are all parties, friends of parties, or witnesses who observed the same incident.

4. Investigation of old complaints

As a general rule, the commission will not investigate complaints involving allegations of misconduct that occurred more than three years prior to the date of the complaint, unless the allegations involve a long-term pattern of misconduct. It is difficult and unfair to require a judge to respond to a complaint involving conduct that occurred so far in the past that neither the judge nor the witnesses, if any still exist, would be able to accurately remember the incident. This is especially true if the alleged misconduct took place during a court proceeding for which records may no longer exist.

5. Time for commencing investigation of disabilities

Article 6.1, section 4 of the state constitution gives the commission jurisdiction to recommend to the Supreme Court that a judge be retired for a disability that seriously interferes with the performance of his or her duties when the disability is or is likely to become permanent. Under this provision, the commission may initiate an investigation of a potential disability at any time; however, in the absence of any statutory guidelines governing judicial disabilities, it is the policy of this commission to initiate such an investigation whenever a judge is unable to perform a substantial portion of his or her judicial duties for a period of more than three consecutive months. It is also the policy of the commission to encourage judges to report any illness that may affect their performance on the bench for an extended period of time.

6. Withdrawn complaints

A complaint that is frivolous, unfounded, solely appellate in nature, or outside the commission's jurisdiction may be withdrawn at the request of the complainant and the judge will not be notified of the complaint. A complaint that merits preliminary investigation or one in which the judge has already been notified may be withdrawn only at the discretion of the commission. When a complaint is withdrawn, the case file and the related record in the commission's management information system shall be marked with an appropriate notice, and neither the commission nor the judge shall be required to disclose the complaint in any future inquiry or proceeding.

7. Record Retention Guidelines

The following guidelines govern the preservation of all commission records. As a general principle, the maintenance of commission records in digital format is preferred.

Records Relating to Complaints Against Judges

The commission authorizes the destruction of physical complaint records according to the following guidelines subject to material information having been entered into the commission's case tracking database.

(a) Physical Case Records

i. **Dismissals:** Where the commission has dismissed the case, the complaint (but not any attachments to the complaint); the judge's response, if any (but not any attachments to the response); the motion for reconsideration, if any (but not any attachments to the motion for reconsideration); the letter denying the motion for reconsideration, if any; the most recent version of the case summary; the dispositional order; and the dismissal with comments letter, if any, shall be preserved for two years following the final disposition date. (Revised May 6, 2016; November 4, 2016)

ii. **Informal Sanctions:** Where the commission has imposed an informal sanction, the complaint, including attachments; the judge's response, including attachments; the motion for reconsideration, if any, and attachments; the response to the motion for reconsideration, if any, and attachments; the most recent version of the case summary; the order granting/denying the motion for reconsideration; final dispositional order; reprimand notification letter to the complainant and/or judge; and the reprimand notification letter to the presiding judge, shall be preserved for three years following the final disposition date. This section shall also govern the retention of records in those cases in which the commission may have initially imposed

an informal sanction, but through the motion for reconsideration process, that sanction was rescinded. (Revised November 4, 2016)

iii. **Formal Case Files:** In any case in which the commission files formal charges against a judge, regardless of the ultimate disposition, the initial complaint and any attachments; the judge's initial response and any attachments; case summaries, investigative memos, if any; and all pleadings, exhibits, substantive case-related correspondence, and memos produced during the pendency of the formal matter shall be preserved for five years.

(b) **Digital Case Records:** The commission shall permanently maintain digital copies of the records described above and staff shall not destroy the physical case records until verification that the digital records are preserved.

Financial, Administrative, and Membership Records

(a) **Commission Financial and Administrative Records:** Commission staff shall maintain physical copies of documents related to commission finances and the administration of staff operations for two years. Digital copies of such records shall be maintained for a minimum of five years, and may be purged at the executive director's discretion thereafter. Personnel records shall be maintained as set forth in the commission's human resources manual.

(b) **Commission Membership Records:** Commission staff shall maintain physical copies of documents related to the appointment and terms of members for the duration of each member's active term. Digital copies of such records shall be maintained after the destruction of the physical copies and may be purged when the executive director deems them to no longer have on-going reference value.

(c) **Commission Meeting Minutes.** Commission staff shall permanently maintain digital copies of commission meeting minutes.

Records Relating to General Commission Correspondence

Non-case-related correspondence, including digital correspondence, need only be preserved by commission staff to the extent the executive director deems them to have on-going reference value.

Miscellaneous Records

Records not otherwise governed by the guidelines set forth above may be maintained, physically or digitally, to the extent the executive director deems them to have on-going reference value.

(Revised August 13, 2014; May 6, 2016).

8. Response to judge's inquiry

Upon inquiry, the executive director may inform a judge that a complaint has been filed, that the matter is under investigation, and that the commission has or has not yet determined if the complaint has any substance. The executive director may also explain that the judge will be notified, given a copy of the complaint, and asked to respond to the complaint in writing if a response is needed in order to resolve the matter. As a general rule, however, the identity of the complainant will not be disclosed to the inquiring judge until the judge is asked to respond.

9. Disclosure of confidential information

As of January 20, 2006, all complaints against judges must be made public but with varying degrees of disclosure. Rule 9(c)(2) also permits the commission to disclose confidential information in response to official requests from agencies and other organizations involved in criminal prosecutions, bar discipline, or selection and retention proceedings. Cases filed prior to that date are governed by the policy then in effect, which permits disclosure of only those disciplinary actions that reflect on a judge's ability, character or fitness for public office.

(Revised May 6, 2016)

10. Responsibilities of absent members

Members who cannot attend a commission meeting should notify the executive director as soon as possible and submit summaries of and recommendations for the cases they are assigned to review. The executive director will present the absent members' reports at the meeting.

11. Press releases

Press releases shall be issued by commission staff within a reasonable period of time after the following events:

- (1) After a judge files an answer to formal charges.
- (2) After a hearing date has been set to hear the charges set forth in a statement of charges (including hearings requested to contest a public reprimand).
- (3) After the Arizona Supreme Court has approved recommended discipline by consent.
- (4) After the Arizona Supreme Court has issued a decision in a case heard by a hearing panel or hearing officer.

The complainant, respondent judge, or counsel if represented, and the commission will be provided a copy of the press release.

(Amended August 7, 2015)

12. Judicial Ethics Advisory Committee

The commission's office may be used as the mailing address for the Judicial Ethics Advisory Committee and requests for advisory opinions may be processed by the commission's staff pursuant to Rule 82 of the Rules of the Supreme Court.

13. Staff leave repealed. See Policy 20.

14. Education assistance repealed. See Policy 20.

15. Photocopy charges

The commission may impose a fee for preparing copies of pleadings, opinions, or other public records that are not confidential. The fee shall be the same as that charged by the clerk of the Supreme Court, which is fifty cents per page as of January 1, 2002. The fee may be waived for single copies or small orders that require minimal time to process.

16. Sole source procurement of outside counsel

From time to time, the commission may hire outside counsel to assist its staff attorney in the prosecution of complex cases in formal proceedings. Since the commission's budget for legal services is severely limited, outside attorneys are usually hired on fixed price contracts that require the pro bono contribution of any services that exceed a certain amount. In light of this provision, the executive director or the commission chair may solicit and enter into contracts directly with potential candidates without competitive bidding in accordance with Rule 40 of the Procurement Rules for the Judicial Branch adopted by the Arizona Supreme Court.

(Revised May 6, 2016)

17. Request for judge's response

Requests for the release of a judge's response shall be considered by the commission under the standard set forth in Rule 9(c)(1).

(Revised May 6, 2016).

18. Complaints against commission members

Complaints against commission members shall be processed in the same manner as other complaints. They shall not be considered by the commission in the presence of the member under investigation. If a case involves confidential information, a complaint shall be listed on the agenda without revealing the identity of the complainant, and the executive director or the disciplinary counsel shall make a confidential report to the commission.

(Revised May 6, 2016)

19. Disciplinary Alternatives

The following guidelines shall apply when issuing dispositions and sanctions pursuant to Rules 16, 17 and 18 of the commission's rules.

- (a) Rule 16(a) allows the commission to dismiss a complaint that fails to allege an act of judicial misconduct, lacks sufficient evidence to support an investigation, is solely appellate in nature, or is otherwise frivolous, unfounded or outside the commission's jurisdiction. A dismissal shall be in the form of a notice or order indicating the reason for the commission's action.
- (b) Rule 16(b) also allows the commission to dismiss a complaint with comments reminding a judge of ethical obligations or recommending changes in the judge's behavior or procedures. A dismissal with comments shall be in the form of a notice or order indicating the reason for the commission's action, supplemented with a confidential letter to the judge in one of the following forms:
 - (1) An advisory letter explaining that even though the judge's conduct did not technically violate the code, it suggested an appearance of impropriety that could be avoided in the future if the judge is willing to modify his or her behavior or court procedures as recommended by the commission;
 - (2) A warning letter that draws the judge's attention to the potential consequences of persistent behavior that does not rise to the level of

judicial misconduct but nonetheless creates an appearance of impropriety;
or;

- (3) Any other appropriate written communication that conveys the commission's concerns about the conduct of the judge.
- (c) Rule 16(c) allows the commission to recommend additional forms of discipline in conjunction with informal and formal sanctions including, but not limited to, professional counseling, judicial education, mentoring, or other similar activities such as addiction recovery or rehabilitation programs.
- (d) Rule 16(c) allows the commission to confer confidentially with a judge at any time to discuss disciplinary alternatives including voluntary retirement or resignation. The commission may invite a judge to meet privately with the full commission or it may delegate this responsibility to one or more members of the commission or its staff.
- (e) Rule 17(a) allows the commission to reprimand a judge without a formal hearing for conduct that is unacceptable, under one of the grounds for judicial discipline, but not so serious as to warrant formal proceedings or further discipline by the Supreme Court. A reprimand is a public rebuke for conduct that usually, but not always, involves an isolated incident or easily-corrected behavior.
- (f) Rule 18(a) allows the commission to recommend to the Supreme Court that a judge be censured for misconduct. From the commission's perspective, a censure is a stern public rebuke for serious misconduct that may have occurred only once or infrequently but is too offensive to ignore or to resolve informally. A censure may also serve as a public warning to other judges.
- (g) Rule 18(a) also allows the commission to recommend to the Supreme Court that a judge be suspended for misconduct. From the commission's perspective, suspension is a temporary sanction involving the suspension of judicial privileges and compensation for egregious or repetitive misconduct that does not require removal from judicial office.
- (h) Rule 18(a) further allows the commission to recommend to the Supreme Court that a judge be removed for misconduct in office. From the commission's perspective, removal is appropriate for extreme or gross misconduct involving a judge's integrity, fitness for office, substantial harm to public confidence and trust, damage to the reputation of the judiciary, or the ability to perform judicial duties.

(Revised May 6, 2016)

20. HR Manual and Code of Conduct for Judicial Employees

Commission administrative policies 13 (staff leave) and 14 (education assistance) are repealed.

The Commission adopts the *Human Resources Policies and Procedures of the Arizona Commission on Judicial Conduct*, effective January 1, 2013.

HR Policy and Procedure 6.18 (Tuition Reimbursement) is suspended until such time as the Supreme Court reinstates its tuition reimbursement policy.

Effective January 1, 2013, Commission staff shall comply with the *Code of Conduct for Judicial Employees* as it may be amended from time to time, subject to the following modifications:

1. Rules that refer to a “court” or “the courts” shall be interpreted to refer to the Commission. Rule 2.6, for example, refers to providing litigants’ assistance related to “the court’s resources and procedures” and should be interpreted to reference the Commission’s resources and procedures.
2. The executive director, disciplinary counsel, and administrator shall not be considered “court managers” as that term is used in the *Code* as their conduct cannot reasonably be interpreted as official acts or positions of the judiciary.
3. Rule 2.9 shall only apply in the context of formal judicial discipline and disability proceedings and the reference to “judge” in the rule shall be interpreted to mean Commission members.
4. Rule 2.11(C) shall require a member of the Commission staff to inform the executive director and Commission chair of any potential conflict of interest, involvement, or activity of the staff member in a complaint or case pending before the Commission as otherwise required pursuant to the text of that rule.
5. The Commission chair may authorize staff members, notwithstanding the terms of Rule 3.1, to engage in volunteer activities sponsored by organizations or governmental entities that concern the law, the legal system, or the administration of justice. For example, the executive director has and continues to be authorized to serve as a member of the Arizona Supreme Court’s Attorney Regulation Advisory Committee and as a volunteer attorney hearing panel member in the lawyer discipline process.

(Adopted August 10, 2012; effective January 1, 2013).

21. Executive Director Assistance to Disciplinary Counsel; Limitation as to Assistance to Hearing Panels

Nothing in the Commission Rules shall be interpreted to prevent the executive director from participating fully in the investigative and prosecutorial functions of the Commission, including formal proceedings.

The executive director may not advise a hearing panel of the Commission convened for a formal disciplinary proceeding as to any matter in which the executive director has participated in the investigative and prosecutorial functions of that matter.

(Adopted May 16, 2013).

22. Authority of Executive Director to Close Commission Office

The executive director has discretion to close the office for purposes of special staff events (for example, a holiday lunch event) and in cases where no member of the staff is available to keep the office open.

(Adopted November 15, 2013).

23. Cases in Which a Judge Files a Motion to Reconsider a Reprimand

In an effort to balance the informal nature of reprimand cases with the commission's recognition of the seriousness of such cases and due process requirements, the staff will follow the following procedures beyond those set forth in the Commission Rules.

- a. Where a judge receives a reprimand and challenges the sanction through a written motion for reconsideration, the Commission Chair or his or her representative will direct Disciplinary Counsel to file a written response to the motion.
- b. Disciplinary Counsel shall file the response with the commission and provide a copy to the judge or his or her attorney.
- c. Disciplinary Counsel and commission members shall not have any substantive ex parte communications regarding the motion or response, and the matter shall be set for review during the commission's next available meeting.
- d. During the members' discussion or deliberation of the case, Disciplinary Counsel shall recuse from participation.
- e. If the matter still results in a public reprimand, commission staff shall prepare a formal denial order for the judge and complainant. The motion for reconsideration, response, and denial order shall be made part of the record that is posted to the commission's website with the other public documents (the complaint, response, and reprimand order).

(Adopted August 2014).