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**IN THE SUPREME COURT  
STATE OF ARIZONA**

In the Matter of:

**PETITION TO AMEND RULE 81,  
RULES OF THE SUPREME  
COURT**

Supreme Court No. R-19-0043

**Comment of the Arizona  
Commission on Judicial Conduct**

The Arizona Commission on Judicial Conduct (“Commission”) files this comment in support of the Maricopa County Justice Courts’ petition to amend the “Application” section of the Arizona Code of Judicial Conduct.

Small claims hearing officers and civil traffic hearing officers have traditionally been considered “Part C” judges under the Code because their appointments are not typically made pursuant to the Arizona Constitution or municipal charter or ordinance. For the reasons identified in the pending petition, this leads to the anomalous result that unpaid hearing officers have more significant restrictions on their conduct in certain respects – particularly when it comes to community/civic activities – than paid judges *pro tempore*.

The Commission has been unable to ascertain the underlying policy rationale, if any, for this distinction and supports placing small claims hearing officers and civil traffic hearing officers appointed pursuant to state statute on the same ethical footing as part-time judges appointed pursuant to the Arizona Constitution or municipal charter/ordinance. If the proposed changes are adopted, the Commission will determine whether “Part C” has any continuing viability (i.e., whether any category of judicial officer remains subject to it) and may present a future Rule 28 petition to further refine this section of the Code.

RESPECTFULLY SUBMITTED this 13th day of March, 2020.

/s/ Margaret H. Downie  
Executive Director  
Commission on Judicial Conduct

Electronic copy filed this 13th day of March,  
2020.

by: Margaret H. Downie

## Appendix

### PART D. Pro Tempore Part-Time Judge.

A pro tempore part-time judge is a person appointed pursuant to Article 6, § 31 of the Arizona Constitution, **state statute**, or municipal charter or ordinance, who serves or expects to serve repeatedly on a less than full-time basis, but under a separate appointment by a presiding judge for each limited period of service or for each matter.

- (1) A pro tempore part-time judge is not required to comply:
  - (a) except while serving as a judge with Rules 1.2 (promoting confidence in the judiciary), 2.4 (external influences on judicial conduct), 2.10 (judicial statements on pending and impending cases), 3.2 (appearance before governmental bodies and consultation with government officials), 3.3 (acting as a character witness); or
  - (b) at any time with Rules 3.4 (appointments to governmental positions), 3.7 (participation in educational, religious, charitable, fraternal, or civic organizations and activities), 3.8 appointments to fiduciary positions), 3.9 (service as arbitrator or mediator), 3.10 (practice of law), 3.11 (financial, business, or remunerative activities), 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value), 3.15 (reporting requirements), 4.1 (political and campaign activities of judges and judicial candidates in general), and 4.5 (activities of judges who become candidates for nonjudicial office).
- (2) A person who has been a pro tempore part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Arizona Rules of Professional Conduct.
- (3) A pro tempore part-time judge who serves once or only sporadically in a specialized division of a court or in a court without specialized divisions may appear as a lawyer in such specialized division or court during such service.
- (4) A pro tempore part-time judge who serves repeatedly on a continuing scheduled basis in a specialized division of a court or in a court without specialized divisions shall not appear as a lawyer in such specialized division or court during such service.
- (5) A part-time pro tempore judge who is appointed to perform judicial functions of a nonappealable nature on a continuing scheduled basis shall not appear as a lawyer in other proceedings involving the function of the court in which the service was performed, but may appear as a lawyer in all other areas of practice before the court.