

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-20-0036
RULE 94, RULES OF THE SUPREME)
COURT) **FILED: 8/26/2020**
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_____)

**ORDER
ADOPTING A NEW RULE 94.1 OF
THE ARIZONA RULES OF THE SUPREME COURT**

A petition having been filed to adopt a new Rule 94.1 of the Arizona Rules of the Supreme Court and no comments having been received, upon consideration,

IT IS ORDERED adopting a new Rule 94.1 of the Arizona Rules of the Supreme Court in accordance with the attachment to this order, effective January 1, 2021.

DATED this 26th day of August, 2020.

_____/s/_____
ROBERT BRUTINEL
Chief Justice

Arizona Supreme Court No. R-20-0036

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TO:

Rule 28 Distribution List

David K. Byers

ATTACHMENT

ARIZONA RULES OF THE SUPREME COURT

Rule 94.1. Clerks of the Superior Court Conduct Board

(a) Purpose. The purpose of the Clerks of the Superior Court Conduct Board (“the board”) is to establish and maintain high standards of performance and ethical conduct for superior court clerks (“the clerks”) in administering justice and serving the public. Any remedies the board imposes or recommends must be sufficient to protect the public and to restore and maintain public confidence that the clerk will faithfully perform the duties of the office in the future.

The board may consider a complaint only if it alleges conduct occurring during the clerk’s campaign for office or term in office that rises to the level of ethical violations, significant office mismanagement, or operational problems that have continued after the clerk had been given an opportunity to address them.

(b) Scope of Authority. The board has authority over the elected clerk of court in each county established in Article 6, Section 23 of the Arizona Constitution and clerks appointed pursuant to A.R.S. § 16-230(A).

(c) Board Membership and Operations. The board shall be comprised of seven members appointed by the chief justice for three-year terms. Terms shall be staggered for initial appointments and members may be reappointed at the chief justice’s discretion. Membership shall include an incumbent superior court clerk; a retired superior court clerk; a retired, former, or current superior court presiding judge; the Administrative Director of the Administrative Office of the Courts (“the director”) or the director’s designee; one public member nominated with majority approval of the fifteen elected clerks and appointed by the chief justice; one public member appointed by the chief justice; and an additional member selected at the chief justice’s discretion of the chief justice. The chief justice shall designate the board chair.

(1) Meetings. The chair shall establish meeting and board hearing times, as necessary, to perform the board’s duties.

(2) Quorum. Four members of the board shall constitute a quorum for the transaction of the board’s duties.

(3) Expenses. Board members shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties.

(4) Disqualification. A board member shall disqualify himself or herself in any matter in which the member has a conflict of interest.

(d) Authorized Complainants. The director or the director’s designee, the superior court presiding judge in the county in which the clerk serves, and the county human resource

officer of the county in which the clerk serves are the only officials authorized to file complaints with the board.

(e) Prohibition Against Retaliation. A clerk against whom a complaint is filed shall not directly or indirectly engage in any act of retaliation against any person who files a complaint or cooperates with an investigation relevant to the complaint.

(f) Investigation of Allegations. The complainant shall have full responsibility for ensuring that the matters contained in a complaint are thoroughly investigated, accurate, and well documented before submitting a complaint to the board.

(g) Presentation of Information to the Board. The complainant or the complainant's designee shall file written allegations and supporting documentation with the human resources officer of the Administrative Office of the Courts ("the AOC"). The human resources officer shall send a copy of the complaint to the clerk named in the complaint. Pursuant to (h)(2), the clerk shall have the opportunity to respond to the allegations, which may be in person, in writing, or both in the board's discretion.

(h) Board Procedures.

(1) Initial Screening. The AOC staff shall conduct an initial review of complaints received and shall reject the complaint if the complainant is not one of the officials authorized to file a complaint.

(2) Request for Response from Clerk. If on review of a complaint the staff determines further action is warranted, the staff shall send a request to the clerk to respond to the complaint in writing. The clerk shall be allowed 10 workdays to file a response with the board. For good cause shown, the board's chair of the board may grant an extension of time to file a response to the complaint. The board may not initiate formal board proceedings without first having provided the clerk with such notice and an opportunity to respond.

(3) Board Interview. After reviewing the clerk's response, if the board determines an interview is required or requested, it shall schedule an interview. The interview shall be closed to the public.

(4) Findings. The board shall issue findings and take such action as it deems appropriate and authorized by these rules.

(5) Burden of Proof. The complainant has the burden to prove by a preponderance of the evidence that the complaint's allegations are true.

(6) Recordings of Proceedings. The proceedings of all meetings and interviews shall be recorded.

(i) Complaint Dispositions and Sanctions. The board may:

(1) dismiss a complaint that fails to allege the failure to perform a duty or an act of misconduct of the clerk;

- (2) dismiss a complaint of which the evidence does not support the allegations;
- (3) dismiss a complaint with confidential counseling regarding ethical obligations and recommending changes to behavior or procedures;
- (4) recommend mediation;
- (5) issue a warning letter alerting a clerk to the potential consequences of conduct that creates an appearance of impropriety or ethical misconduct;
- (6) issue an informal letter of reprimand for conduct that is unacceptable, but that is not serious enough to warrant a more formal sanction;
- (7) instruct a clerk to take specific action, attend specific educational programs on court management or clerk office operations, or participate in a mentoring program;
- (8) issue a formal public letter of censure;
- (9) refer the clerk complaint and board findings to the chief justice with a recommendation to limit the clerk's duties; or
- (10) refer the clerk to Speaker of the House of Representatives for impeachment.

(j) Notification of Board Action. The board shall provide written notification of the board's action to the complainant, the clerk, and the superior court presiding judge of the county in which the clerk serves. The notice of board action must include findings regarding the complaint's allegations and the disposition including all sanctions imposed.

(k) Review of Board Actions.

- (1) Informal actions taken by the board are not reviewable.
- (2) A letter of censure is reviewable by the director or the director's designee.
- (3) A referral to the chief justice with recommendation to limit the clerk from performing duties of the clerk's office is reviewable by the director or the director's designee.
- (4) A referral to the Speaker of the House of Representatives for impeachment is reviewable by the director or the director's designee.

(l) Compliance with the Board's Directives or the Chief Justice's Orders. Under the direction of the director or the director's designee, the AOC shall monitor compliance with the board's directives or the chief justice's orders.

(m) Administration. The AOC's human resources officer shall provide staff support for the board including maintenance and preservation of the board's records.

(n) Public Access and Confidentiality.

- (1) Generally, records of complaints against clerks of court shall be available to the public following, but not before, final disposition.

(A) Dismissed Cases. Only the complaint and the letter dismissing the complaint shall be public after all identifying information pertaining to the clerk, complainant, and court has been redacted.

(B) Other Informal or Formal Dispositions. The record of dispositions and sanctions described in subsections (i)(4) through (10) shall be public after the complainant, the clerk, and presiding judge of the county in which the clerk serves have been notified of the outcome.

(2) All board correspondence, draft documents, computer records, investigative reports and files, attorney work product, and board deliberations are confidential.

(o) Records and Files.

(1) Maintenance of Records. All the board's records shall be maintained, preserved, or purged by the AOC in accordance with standards established by the director.

(2) Closed Files. A closed file is one involving any prior complaint, inquiry, investigation, report, informal disposition, or formal proceeding received or initiated by the board that the board had officially closed.

(3) The board or a clerk may refer to and use closed files in connection with any later proceeding for the purpose of determining the severity of the sanction, a pattern of misconduct, or exoneration of the clerk.