

# BULLETIN

December 1991, No.1

## New Publications Announced

The Commission on Judicial Conduct and the Judicial Ethics Advisory Committee are pleased to announce two new publications designed exclusively for Arizona judges. The centerpiece of this joint effort is a new handbook entitled, *Judicial Conduct and Ethics: A Reference Manual for Arizona Judges*. Published in loose-leaf format, the manual contains the current version of the Code of Judicial Conduct, the commission's handbook, and all of the advisory committee's published opinions. The manual will be updated regularly and indexed annually.

To alert judges to new developments, the manual will be supplemented by the *Arizona Judicial Conduct and Ethics Bulletin* of which this is the inaugural issue. The *Bulletin* will contain timely information about disciplinary decisions, summaries of new advisory opinions, and articles or notices on topics of current concern. It will be published as an insert in *The Bench Press* and printed on three-hole paper for use in the reference manual. Judges and other users should retain the *Bulletins* in their copies of the reference manual.

The reference manual will be distributed to judges in January. Copies will also be sent to appellate and superior court clerks, court administrators in large courts, key elected officials, such as the Attorney General, and major law libraries throughout the state. Further distribution will be limited because of the cost of maintaining and distributing the publication. Judges who leave the bench are expected to pass the manual on to their successors in office. Local officials or others who are not on the regular distribution list may copy the manual for their own use.

## Commission Membership Approved by Senate

The Senate confirmed two public members during the closing weeks of the legislative session, bringing the Commission on Judicial Conduct to full strength. The members of the commission and their terms of office are:

### OFFICERS

**Bernardo P. Velasco**      **December 31, 1992**  
**Superior Court Judge**  
**Chairman**

**Allen G. Minker**      **December 31, 1992**  
**Superior Court Judge**  
**Vice Chairman**

**Christopher Skelly**      **December 31, 1994**  
**Attorney Member**  
**Secretary**

**Susan Arbuthnot**      **January 1, 1997**  
**Public Member**

**David B. Babbitt**      **December 31, 1994**  
**Justice of the Peace**

**L. Sam DeLong**      **January 20, 1997**  
**Public Member**

**Howard Kashman**      **December 31, 1992**  
**Attorney Member**

**Katherine Kenyon**      **January 16, 1995**  
**Public Member**

**Kathy McCoy**      **December 31, 1994**  
**Municipal Judge**

**Ruth McGregor**      **December 31, 1996**  
**Court of Appeals Judge**

**John Taylor**      **December 31, 1996**  
**Court of Appeals Judge**

## Advisory Committee Reorganized

Earlier this year, the Supreme Court approved a new rule reorganizing the Judicial Ethics Advisory Committee. Rule 82, which went into effect on May 1, 1991, provides that membership of the advisory committee be expanded from four to seven members comprised of six judges and one public member. The members of the reorganized committee and their terms are as follows:

### OFFICERS

**James D. Hathaway**      **April 30, 1994**  
**Court of Appeals, Div. II**  
**Chairman**

**Jefferson L. Lankford**      **April 30, 1993**  
**Court of Appeals, Div. I**  
**Vice-chairman**

**Robert Donfeld**      **April 30, 1992**  
**Justice of the Peace**

**Robert Bean**      **April 30, 1992**  
**Superior Court Judge**

**Laura Billings**      **April 30, 1994**  
**Municipal Judge**

**Selmer D. Lutey**      **April 30, 1994**  
**Attorney Member**

**Alice Truman**      **April 30, 1993**  
**Superior Court Judge**

Under the new rule, the commission and the committee have to share staff, and both organizations are located in the same offices. Records of the two organizations are kept separate, however. The new is contained in the Court's Administrative Order No. 91-15, and will be included in the reference manual.

## Advisory Opinion Procedures

Rule 82 of the Rules of the Supreme Court describes the procedures for requesting advisory opinions. Under the new rule, opinions may be requested by a judge or candidate for judicial office, by a court, by a court-related agency responsible for judicial administration, or by a member of the advisory committee.

A request for a formal advisory opinion must be submitted in writing to the committee office or to any member of the committee. After an initial screening by the staff, the chairman will assign the request to a committee member to research the ethical issues and prepare the first draft of the opinion. The other committee members are notified of the assignment and are given copies of the original request and any supporting memorandum submitted by the requester. As soon as it is ready, the draft opinion is circulated to all committee members for review and comment. Internal procedures require additional review and comment until the final opinion is approved by a majority of the committee. The new rule also provides a procedure for requesting reconsideration of the committee's opinion.

The person requesting the opinion, whose identity is not disclosed, will receive a copy of the opinion immediately upon its approval by the committee. A summary of the opinion will be published in the *Bulletin*, and the full opinion will be distributed to all judges as part of the update service for the judge's conduct and ethics manual. The full opinions will be published once or twice a year, depending on the volume, and indexed annually. Advance copies of advisory opinions can be obtained by calling or writing the committee's office.

Informal opinions, which do not require extensive analysis and do not carry the same weight as formal opinions, may be requested from any member of the committee. Depending on the circumstances, committee members are usually polled by telephone before informal opinions are issued. Although these opinions are recorded for purposes of internal consistency, they are not published or circulated to judges.

## 1991 Advisory Opinions

The Judicial Ethics Advisory Committee has issued seven advisory opinions so far this year. The issues addressed in the new opinions are summarized below. The full opinions will be published in the judge's reference manual.

### Opinion 91-1

A superior court judge is not required to take recusal in a situation where a defendant in a criminal case is also a defendant in an unrelated criminal case in federal court, and the spouse of the judge is a prosecutor employed by the U.S. Attorney's Office but is not involved in the prosecution of the defendant. To avoid the appearance of impropriety, however, the trial judge should state the situation for the record and offer recusal. Issued: April 22, 1991.

### Opinion 91-2

A judge serving as the president of a voluntary bar association may allow his or her name to be used in letters and pamphlets urging membership in the organization as long as he or she is not identified as a judge. The judge may also sign such letters as an officer of the association, and may encourage participation in bar activities that require the participants to pay, even though some portion of the funds may be used to support the organization. Issued: April 29, 1991.

### Opinion 91-3

The canon that prohibits a judge from practicing law also applies to the judge's law clerk. Both judge and staff must observe high standards of conduct upholding the integrity of the judiciary and must avoid conflicts of interest and the appearance of impropriety. Law clerks may engage in *pro bono* legal activities, but any activities permitted by the judge must be circumspectly considered so as to avoid controversy that could reflect adversely upon the court or the judge's impartiality. Issued: May 24, 1991.

### Opinion 91-4

A city magistrate may serve as a member of a community-wide project, funded by a federal grant, the goal of which is to reduce or eliminate the use of illegal drugs by the youth of the community. Issued: May 24, 1991.

### Opinion 91-5

A city magistrate may voluntarily appear and testify at a city judicial merit commission hearing on the performance of the presiding magistrate of the same court without a subpoena issued by the commission. Issued: October 10, 1991.

### Opinion 91-6

A judge should not accept a waiver of membership fees in order to join a private club. If a judge wants to join such a club, then the judge must pay whatever membership fee is required of ordinary members of the public. Issued: October 10, 1991.

### Opinion 91-7

A judge may not serve as personal representative of the estate of a close personal friend who was a member of the state bar, nor as the trustee of a testamentary trust provided for in the friend's will. Issued: November 4, 1991.

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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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