

1999 ANNUAL REPORT

Last year, the Commission on Judicial Conduct received 260 complaints against judges and other judicial officers. Although this marked an 11 percent decrease over the preceding year, the number of complaints filed in 1999 was consistent with the trend over the last five years. From 1995 through 1999, the commission received an average of 249 cases per year, ranging from a low of 192 in 1995 to a high of 291 in 1998. While the commission's caseload peaked in 1998, the second highest year was in 1999.

Even though complaints dropped slightly, the total number of inquiries about judicial conduct reached an all time high in 1999. More than 1,000 people contacted the commission's office to discuss problems with judges and to request complaint forms. This is a significant statistic in light of the fact that the commission does not solicit complaints. It also indicates that approximately 75 percent of the people who contact the commission decide not to file complaints after talking with the staff.

In keeping with well-established trends, most of the complaints against judges in 1999 were dismissed following initial screening or after a preliminary investigation. The majority of complaints are filed by litigants who often take issue with judicial decisions which the commission has no authority to review. The remaining issues of judicial misconduct or violations of the Code of Judicial Conduct typically involve no more than 10 to 15 percent of the commission's workload. Last year, the commission resolved 31 of these complaints (about 12 percent of the total) through informal disciplinary actions. The commission issued 10 reprimands for unacceptable

conduct (which did not warrant formal proceedings), and 10 admonitions or warnings for conduct ranging from untoward behavior to failing to issue written orders. In addition, the commission issued 11 advisory letters or other adjustments aimed at helping judges avoid more serious problems.

Formal proceedings were down last year from 1998 but still consistent with long-term trends. Over the years, the commission has filed formal charges in less than two percent of its cases. Last year, two cases resulted in formal charges against judges. In one case, a justice of the peace stipulated to a public censure following a conviction for criminal damage and disorderly conduct. In the other case, a superior court judge was suspended for 18 months (12 without compensation) for repeatedly losing his temper, engaging in *ex parte* communications, and tampering with a court transcript.

As part of its ongoing effort to help judges avoid ethical problems, the commission continued to staff the Arizona Supreme Court's Judicial Ethics Advisory Committee, which responds to inquiries from judges on a variety of ethical issues. Last year, the staff assisted the committee in responding informally to more than 100 calls and letters from judges and others. The committee also issued five formal opinions that were distributed to all judges. (Summaries of the opinions appear in this bulletin.) The complete text of the committee's opinions can be found in the judicial ethics manual or on the commission's web site at—

www.supreme.state.az.us/cjc

Advisory Committee to Review Commission Rules

Last year, a Rule 28 petition was filed to repeal the commission's current rules of procedure and adopt the ABA Model Rules for Judicial Disciplinary Enforcement. The supreme court considered the petition in September and in February it established, by administrative order, an Advisory Committee on the Rules of Judicial Conduct to examine the current rules and structure of the commission and to recommend changes. The 18-member committee held its first meeting on February 7 during which time the members discussed several issues of concern. The committee's next meeting will be held on April 24. The committee is chaired by Jack Barker, an attorney in Pinetop.

Ethics Manual Update

A complete update of the judicial ethics manual accompanies the bulletin. The loose-leaf manual is provided at no charge to all full-time judges and judicial officers. In addition, reference copies are distributed to appellate and superior court clerks, court administrators, key public officials and major law libraries. Those who need copies should send a request to the commission's office.

This year's update contains a new version of the commission's handbook and revised versions of the Code of Judicial Conduct and the Code of Conduct for Judicial Employees. The new codes, which are fully indexed for the first time, are designed specifically for the ethics manual.

Disciplinary Highlights

While the details of investigations are confidential, the Commission on Judicial Conduct periodically publishes brief descriptions of informal sanctions it has imposed to give the

judiciary and the public a better understanding of what kind of conduct warrants discipline. Prior discipline is an aggravating factor when a judge persists in inappropriate conduct.

Reprimands

Private reprimands are issued to judges for unacceptable conduct that does not rise to the level of formal proceedings. The following reprimands were issued in 1999.

- A superior court judge demanded an attorney tell him whether his client was guilty; in another case, the judge threatened to change custody orders without cause.
- A superior court judge made sexually suggestive remarks toward a female acquaintance at a social gathering.
- A justice of the peace failed to allow an attorney to act as counsel and to appear as a witness in two different cases.
- A superior court commissioner made impatient comments toward a litigant in a domestic relations case.
- A pro tem justice of the peace capriciously denied attorneys fees on several occasions despite being advised that doing so violated applicable statutes mandating reasonable fees to the prevailing party.
- A municipal court judge distributed sexually graphic material in person and by e-mail to court employees.
- A municipal court judge made improper, sexually suggestive remarks toward female court employees.

Admonitions

Private admonitions remind judges of their ethical responsibilities and warn them to avoid inappropriate conduct. The following admonitions were issued in 1999.

- A superior court judge made insensitive remarks and was impatient toward an attorney.
- A justice of the peace became too involved in a dispute between litigants by pressuring the plaintiff into settlement after conceding that the plaintiff was entitled to a favorable judgment.
- A municipal court judge made untoward remarks to a teenaged girl seeking an order prohibiting harassment against a male schoolmate.
- A superior court judge was insolent and overbearing toward a litigant.
- A pro tem justice of the peace made inappropriate remarks in the workplace.
- A pro tem municipal court judge acted improperly by holding a defendant in contempt too quickly and in telling the defendant to "shut up."
- A superior court judge told a defendant to find another attorney because the one he had hired was banned from his court.
- A justice of the peace exaggerated his educational and legal qualifications during his judicial campaign.
- A superior court special master failed to issue written orders and then failed to respond to written inquires about his oral

decisions.

Judicial Code Changes

Following an extensive review process, the Arizona Supreme Court approved two amendments to the Code of Judicial Conduct in 1999. The first change stemmed from the court's interest in making sure that judges are aware of the Code of Conduct for Judicial Employees adopted by the court in 1997. With the addition of Canon 3C(5) to the code, all judges now have a duty to assure that judicial employees under their direction and control comply with the provisions of the employee code, which parallels the judicial code.

The court also amended Canon 3E(1)(b), which now permits a judge to participate in a case in which a lawyer with whom the judge was once associated with appears as counsel, so long as that association was concluded more than 7 years prior to such participation. As the court noted in the new commentary to this section, the prior rule required automatic disqualification without time limitation in situations that did not necessarily promote the public interest. The new rule assists judges in making proper disqualification decisions. Copies of older versions of the codes should be discarded.

Committee Rule Amended

In response to a request from the Judicial Ethics Advisory Committee, the Supreme Court amended Rule 82 by expanding the membership of the committee and authorizing the committee to issue advisory opinions on the Code of Conduct for Judicial Employees.

On June 1, 1999, the membership increased from seven to nine members and the chief justice was given greater flexibility in appointing members at large. The two new positions were filled by **Colin F. Campbell**, a superior court judge in Maricopa County, and **David Withey**, chief legal counsel with the Administrative Office of the Courts.

The expansion in membership coincides with a change in the committee's authority to issue advisory opinions to judges and judicial employees. Now all judicial staff may seek advisory opinions on ethical issues from the same body. Committee members serve staggered three-year terms and may not serve more than two consecutive terms.

New Advisory Opinions

The Judicial Ethics Advisory Committee issued five opinions in 1999, summaries of which appear below. The full text of the opinions and revised indices covering all opinions were mailed to judges with this issue of the *Bulletin*. This information should be retained in the *Judicial Conduct and Ethics Manual* previously distributed to judges and other court officials.

Opinion 99-1 (April 6, 1999)

A judge seeking higher office may not solicit, personally or through an intermediary, reference letters of support or other forms of support (such as making phone calls or personal contacts) from attorneys who are appearing before the judge in a pending case. A part-time or pro tem judge is subject to the same ethical standards.

Opinion 99-2 (July 27, 1999)

A judge who formerly worked as a certified police officer before taking judicial office may not retain his or her law enforcement certification or reserve status. Occasional participation in a police drive-along may be appropriate for educational purposes, providing that the judge does not hear any matters that were cited during the ride-along.

Opinion 99-3 (July 23, 1999)

It is not ethically improper for a judge to review information contained in a police report or release questionnaire in determining pretrial conditions of release or appointing a public defender.

Opinion 99-4 (September 21, 1999)

A judge may officiate at private and public high school sporting events after regular court hours and receive compensation for these activities from a school's general fund or from gate and concession receipts. A judge may officiate in playoff games and receive compensation from the Arizona Interscholastic Association, and may officiate at sporting events for private youth and adult leagues for compensation.

Opinion 99-5 (October 22, 1999)

An Arizona superior court judge may not simultaneously hold the office of juvenile tribal judge for a federally recognized Native American tribe.

Policy on Disclosure

The Commission on Judicial Conduct recently approved a new policy governing the disclosure of prior disciplinary actions to appointing authorities or nominating commissions. Under Rule 5(c)(2) of its rules of procedure, the commission had long been permitted to disclose confidential information to an appointment authority or a state or federal agency authorized to conduct investigations in connection with the selection or appointment of judges.

This information typically included a brief description of all formal and informal disciplinary sanctions imposed on a judge throughout his or her career on the bench. While formal actions are already public, informal sanctions include private reprimands, admonitions, advisory letters and other forms of discipline that may or may not be relevant in determining the fitness of a judge for reappointment. To clarify when such otherwise confidential information will be disclosed, the commission adopted the following policy earlier this year:

Upon inquiry by an appointment authority or a state or federal investigative agency, as described in Rule 5(c)(2) of the commission rules of procedure, the commission will disclose only those reprimands or other discipline imposed on a judge which the commission finds reflects on the judge's ability, character or fitness for public office. This information will be disclosed upon written request of the official appointment authority, e.g., the chief justice, the mayor, or the chair of a judicial selection committee, or the government official in charge of the agency authorized to conduct investigations.

Under the new policy, the commission will not disclose admonitions or advisory letters that are designed to help judges improve their conduct or to correct minor problems that do not involve serious code violations.

Reporting Judicial Disabilities

The Commission on Judicial Conduct investigates complaints about judicial disabilities and requires judges to report to the commission serious medical conditions that may temporarily or permanently prevent them from performing judicial duties. The commission prefers to hear about these problems directly from judges so that complaints can be anticipated and even avoided.

The commission is required to investigate all complaints against judges and may commence an initial investigation on its own motion, if it discovers that a judge has been absent from the bench for an extended period of time. If the judge contacts the commission before complaints are filed, however, the commission can work with the judge confidentially to resolve the situation.

An unexplained absence from the bench for more than three consecutive months could trigger an investigation. Therefore, judges should contact the commission if they expect to be away from work for longer than 90 days.

On occasion, a judge may have to undergo medical treatment requiring an extended period of recuperation. When this happens, the judge or the court's presiding judge should advise the commission of the treatment program and the anticipated time away from judicial duties. The commission will keep the information confidential and monitor the judge's progress until he or she returns to active service.

Are Your Family Members

Involved in Politics?

It comes as no surprise in an election year that calls to the Judicial Ethics Advisory Committee increase dramatically. This year is no exception, and we have received several calls asking about the ethical standards governing the political activities by the members of a judge's family.

The last comprehensive opinion on this subject was issued more than 20 years ago, and the committee is considering a new opinion on political activities of family members. Until the new opinion is published, we offer the following excerpt from a paper written by Cynthia Gray, the director of the American Judicature Society's Center for Judicial Conduct Organizations, entitled "Political Activity by Members of a Judge's Family." The summary from that article is reprinted here with the author's permission.

Summary of national opinions

Under Canon 7B(1)(a) of the 1972 model code, a judge or judicial candidate was required to "encourage members of his family to adhere to the same standards of political conduct that apply to him." However, the 1990 model code eliminated that duty, except with respect to a judicial candidate's own campaign.

Judicial ethics advisory committees and case law provide guidance for judges and their family members when the family members are involved in political activity. Advisory committees permit judges to engage in behind-the-scenes campaign activities for relatives who are running for public office, for example, stuffing envelopes, participating in voter registration drives, placing ads, writing speeches, and building yard signs.

However, public activities in support of a family member's campaign are considered an inappropriate public endorsement. Examples of prohibited activity include:

- Handing out campaign literature;
- Signing letters;
- Soliciting persons to display campaign signs in their yards, delivering or erecting those signs, or handing out campaign signs or posters;
- Acting or appearing to act as a political advisor;
- Driving a car on which there is a bumper sticker supporting the candidate; and
- Soliciting votes or contributions.

There is a divergence of advice on several issues regarding involvement by a judge in a family member's campaign. Those issues include:

- Whether a home jointly owned by the judge and the candidate-spouse may be used for campaign activities;

- Whether a judge may be referred to by name and identified by title in campaign literature;
- Whether a judge can escort his or her spouse to political gatherings; and
- Whether a judge can make a financial contribution to a spouse's campaign.

A judge's spouse or other family member may work in the campaign of a candidate for elective office, including endorsing the candidate, soliciting funds, serving as campaign manager, and displaying election signs or holding fund-raisers at the spouse's office. Again, there is a division of authority on the use of the marital home when a spouse is involved in a non-relative's campaign for office and whether a judge may escort a spouse to political events. However, provided contributions are made from the spouse's separate funds, a judge's spouse may make financial contributions to candidates for political office.

Finally, the advisory opinions indicate that a judge's spouse or other family member may be a member or officer in a political party or organization.

Where to go for advice

Given the dearth of current state published information on this issue, judges or candidates for judicial office who have questions about campaign conduct are encouraged to write the Judicial Ethics Advisory Committee for interim guidance. The committee's staff can be reached at the office listed below.

The *Bulletin* is published periodically by the Commission on Judicial Conduct and the Judicial Ethics Committee as a service to the Arizona Judiciary. For more information, write the commission or committee staff at 1501 W. Washington, Suite 229, Phoenix, AZ 85007, or call (602) 542-5200.
