

## **COURT ADOPTS NEW COMMISSION RULES**

Last fall, the Arizona Supreme Court adopted new rules for the Commission on Judicial Conduct that became effective on January 1, 2002. The new rules, which can be found in the revised handbook distributed with this bulletin, contain significant changes, including revamped procedures for screening and investigating cases, greater delineation of staff responsibilities, and a rule that allows complainants and judges to file motions asking the commission to reconsider its decisions.

Under the new rules, a serious case that could result in formal charges against a judge is initially assigned to a three-member panel that oversees investigation of the allegations. The other eight commission members are insulated from the investigative process so that they can serve on a hearing panel when needed. At the conclusion of the investigation, the investigative panel may dismiss the case, refer the case to the full commission for informal resolution, or instruct disciplinary counsel to file formal charges with the hearing panel, which will then hear the case and file recommendations with the supreme court.

The new rules provide more disciplinary options by distinguishing between "preliminary measures" and

various disciplinary "sanctions." The new category includes a broad range of measures, such as advisory letters, diversion programs and counseling, which, if successfully completed, do not need to be reported to boards or committees that evaluate judges for higher judicial office or reappointment. The other two categories include the standard private and public sanctions that have long been available to the commission and the supreme court.

In addition, the new rules include a list of mitigating and aggravating factors to consider in determining appropriate discipline, a specific rule on discovery, detailed instructions for conducting hearings, and a new section that covers discipline by consent, interim reassignment, medical examination, and incapacity and compliance proceedings.

All complaints filed after January 1 will be processed under the new rules, and judges and other judicial officers are encouraged to become familiar with the rules before responding to complaints. Older versions of the rules and commission handbooks should be discarded. The new rules can be accessed by visiting the commission's website.

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## **2001 Report on Commission Activities**

In 2001, the Commission on Judicial Conduct received 329 complaints, issued 42 informal sanctions, and conducted two formal proceedings against a justice of the peace. The commission recommended to the supreme court that the judge be removed from office, and the judge resigned just before the commission filed its recommendations with the court. In the second formal case, the commission again recommended removal, and the court permanently barred the judge from seeking judicial office in this state and imposed more than \$35,000 in attorney's fees and costs upon him.

During the year, the commission issued 25 advisory letters reminding judges of their ethical obligations for such problems as failing to rule on matters promptly, making improper remarks about a specific procedure, using sarcasm to criticize a litigant, failing to explain duties to staff properly, and giving legal advice from the bench. Advisory letters were also issued to several judges who self-reported minor violations and voluntarily corrected problems.

Private admonitions are used to warn judges about conduct that appears improper, even if it meets minimum

standards, and to serve as reminders of ethical responsibilities and the need to avoid questionable conduct or practices. Last year, the commission admonished judges six times for, among other things, failing to disclose relationships with parties, improperly rerouting traffic citations from a justice court to a municipal court, and demonstrating bias and intemperance toward litigants.

Private reprimands are used to rebuke judges for conduct that is clearly unacceptable but not so serious as to require formal proceedings. Last year, the commission issued reprimands to 11 judges for being coercive and discourteous toward a victim of domestic violence; engaging in *ex parte* communications with a prosecutor; delaying ruling on matters beyond 60 days; being arrested for a DUI; using a court computer to access pornography over the Internet; deciding a case on the basis of the judge's feelings rather than the evidence and the law; ruling on a matter outside of the court's jurisdiction; and becoming involved in a domestic violence altercation at a time when the judge was hearing similar kinds of cases.

## Looking Back Over 30 Years

The commission was created in 1970 by a constitutional amendment, and it opened its doors for business in February of the next year. Growth in the commission's workload was slow but steady in the early years with significant increases in the last decade.

As the following chart indicates, 143 complaints were filed against judges during the first 10 years of the commission's operation. These complaints resulted in 9 informal sanctions and 2 formal cases that were filed with the supreme court. Over the next decade, the caseload more than quadrupled with the filing of 745 complaints, resulting in 80 informal sanctions and 15 formal cases.

**Complaints Filed by Decade**

Years	Total Complaints	Total Informal	Total Formal
1971-1980	143	9	2
1981-1990	745	80	15
1991-2000	2347	254	25

The most dramatic growth occurred in the last decade when 2,347 complaints were filed against judges, with 254 informal sanctions and 25 formal cases. On average, more than 300 complaints are now filed each year against judges and other judicial officers. In 2000, the commission received 319 complaints that resulted in 46 informal sanctions and 3 formal cases, one leading to the removal of a judge, and the others resulting in censure of two justices of the peace. Although it would appear that the commission's caseload continues to increase, the number of complaints has remained fairly constant over the last two years when multiple complaints against the same judges are taken into account.

## New Advisory Opinions

The Judicial Ethics Advisory Committee issued two opinions in 2001, summaries of which appear below. The complete opinions (and those of the preceding year) were distributed to all judges in the judicial ethics manual revisions mailed with this bulletin. The full text of the opinions and a subject index are also available at our web site.

### **Opinion 01-01** (October 15, 2001)

A trial judge may initiate contact with or speak personally to a discharged jury following the return of a verdict and may give jurors certificates in recognition of their service.

### **Opinion 01-02** (December 31, 2001)

Law clerks must inform judges of law-related job applications, interviews, and offers, and judges are re-

quired to screen law clerks from cases involving a law firm, public agency or other entity with whom the clerk obtains future employment. Depending on the circumstances, judges may have to disqualify themselves in cases involving the future employers of their law clerks.

## Center for Judicial Ethics

The American Judicature Society recently changed the name of its Center for Judicial Conduct Organizations to the **Center for Judicial Ethics**. The society's board of directors concluded that the new name better reflects the center's work in judicial ethics education, as well as its continuing support for state judicial conduct organizations. The mission of the center remains unchanged, and more information about the center and its activities is available on the Internet at [www.ajs.org](http://www.ajs.org). The Arizona Commission on Judicial Conduct is a subscribing member of the center.

## Membership Changes

The newest members of the **Commission on Judicial Conduct** are **Douglas Stanley** (Yuma municipal court), **Larry Imus** (Kingman justice court), **Harold Watkins**, a Flagstaff attorney, and **John Gemmill** (court of appeals in Phoenix) who replaced **Rebecca Berch** when the governor appointed her to the supreme court earlier this year. New members serve six-year terms except for those filling unexpired terms.

The current officers of the commission are **Philip Espinosa**, (court of appeals, Tucson) chair, and **Barbara Mundell** (superior court, Maricopa County) as vice-chair. Public member **Tom Bowen** (Tucson) was elected to a second term as secretary. Officers serve two-year terms.

**Linda Starks** joined the commission staff as administrative assistant in May 2001, and **Gerald A. Williams** signed on as staff attorney in February 2002.

New members on the **Judicial Ethics Advisory Committee** are **Margaret Downie** (superior court, Maricopa County), **Patricia Escher** (superior court, Pima County), **Manuel Figueroa** (Yuma justice court), **George Logan** (Phoenix municipal court), and **Wallace Hoggatt** (superior court, Cochise County). The chairman of the committee is **John Pelander** (court of appeals, Tucson).

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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, please contact the commission or committee at 1501 W. Washington, Suite 229, Phoenix, AZ 85007, or call (602) 542-5200, or visit our website at [www.supreme.state.az.us/cjc](http://www.supreme.state.az.us/cjc).

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