

**JEAC LAUNCHES STUDY OF ETHICS CODES**

The Judicial Ethics Advisory Committee has announced the start of a year-long project to review the Arizona Code of Judicial Conduct and the corresponding Code of Conduct for Judicial Employees. Plans have been underway for several months, and now, with the approval of the supreme court, the committee will officially launch the program this month with the assistance of the Commission on Judicial Conduct.

The current version of the judicial conduct code was adopted by the Arizona Supreme Court in 1993, and the first employee code was implemented in 1997. The two codes have been used in training programs throughout the state and have provided guidance on ethical standards for many judges and court employees. With the passage of time, however, it has become increasingly apparent that the codes need to be updated to keep up not only with changes in the law but also with the changing needs and practical concerns of the judiciary.

Last summer, the U.S. Supreme Court, in a 5 to 4 decision, held that canons prohibiting candidates in judicial elections from announcing their views on disputed legal and political issues violate the First Amendment. *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002). The decision caused a flurry of changes in state codes of judicial conduct, and the American Bar Association Standing Committee on Judicial Independence established a Working Group on the First Amendment and Judicial Campaigns to study the model code restrictions. Recommended changes will be presented to the ABA House of Delegates in

August. In addition, the ABA has announced that it will begin a comprehensive study of the model code later this year.

More recently, a federal district judge in New York ruled that prohibitions on judicial activity contained in that state's Code of Judicial Conduct constituted a prior restraint on protected First Amendment activities. *Spargo v. New York State Commission on Judicial Conduct*, 244 F. Supp. 2d 72 (2003). The New York commission has since obtained clarification of the decision, but the case is still making its way through the appellate courts.

The committee will examine these and other cases as part of its overall review, but the primary focus of the project will be on the incremental changes needed to bring time-tested standards up to date with current judicial requirements. For example, many judges have suggested modest changes in the canons governing outside activities so that the judiciary can be more involved in community activities, and court employees have raised questions about the applicability of some of the canons pertaining to political activities. These are the types of issues the committee wants to address.

Judges, court employees, and others are encouraged to express their views on specific code provisions they would like to see changed. Anyone who would like to comment on the codes may do so by writing to the Judicial Ethics Advisory Committee at the address shown on the back of this bulletin. **The deadline for submitting suggestions is September 1, 2003.**

**Conduct and Ethics Manual Moves to Web**

The *Judicial Conduct and Ethics Manual*, a joint publication of the Commission on Judicial Conduct and the Judicial Ethics Advisory Committee, will be discontinued after the distribution of the April 2003 updates. In the future, the manual, which includes both the judicial and employee codes, all advisory opinions and other ethics-related information, will be published on the supreme court's web site under the heading "Judicial Conduct and Ethics."

Although the cost of the manual has been relatively small over the years, tighter budgets and increasing expenses have forced the publishers to develop more efficient methods of communicating with the judiciary and the public. Fortunately, new technologies and greater access to the Internet by judges and court staff have made it possible to distribute information faster

and at a lower cost. It is also easier to maintain a web page than it is to publish a printed manual. In fact, all the advisory opinions and most of the information contained in the manual have been available on the commission's web page for more than a year.

To help facilitate the transition, the two organizations will continue to use the *Judicial Conduct and Ethics Bulletin* to notify judges of new advisory opinions and other developments in the field of judicial ethics. The bulletin will be published as often as needed to keep judges up to date.

The new web page can be found at:  
**[www.supreme.state.az.us/ethics](http://www.supreme.state.az.us/ethics)**

## The Year in Review

Last year, the **Commission on Judicial Conduct** received 896 inquiries and processed 353 complaints involving more than 220 judges. This compared with 991 inquiries and 329 complaints the previous year. While the number of inquiries fell by 9.6 percent, complaints rose by 7.3 percent to reach a new all-time record.

In spite of a record number of complaints, most complaints were dismissed following initial review or preliminary investigation. More than 80 percent of the complaints filed in 2002 were dismissed for lack of jurisdiction, insufficient evidence of judicial misconduct, or a finding of no misconduct.

During the year, the commission issued 24 advisory letters, 5 admonitions, and 15 reprimands. Under new rules that became effective on January 1, 2002, advisory letters are not considered sanctions and need not be reported on applications for higher judicial office or committee assignments.

The commission filed only one formal case with the supreme court, which concurred with the commission's recommendation to censure a justice of the peace for misconduct. This is consistent with a long-term trend showing that, on average, formal sanctions comprise less than one percent of the commission's overall case load in any given year.

The **Judicial Ethics Advisory Committee**, which is staffed by the commission, issued nine formal opinions during the year and responded to 241 requests for informal advice on ethical issues.

By law, the commission is also responsible for staffing the **Constable Ethics Committee**, which received 25 complaints against constables last year.

## New Advisory Opinions

The Judicial Ethics Advisory Committee issued nine opinions in 2002, and copies were distributed with this bulletin.

### **Opinion 02-01** (July 15, 2002)

Judicial employees may circulate and sign election or other petitions and write letters to the editor on issues affecting the local community.

### **Opinion 02-02** (July 31, 2002)

Law school graduates who accept a judicial clerkship and receive an offer of employment from a law firm may accept reimbursement from the law firm for bar examination expenses, but may not participate in cases involving the law firm once the clerkship begins.

### **Opinion 02-03** (August 8, 2002)

Telephonic discussions between a judge and counsel for both parties and letters addressed to opposing counsel, with copies to the court, do not constitute prohibited *ex parte* communications.

### **Opinion 02-04** (August 12, 2002)

A judge may submit a written opinion of an attorney's professionalism in response to a request by counsel representing the attorney in a specialization recertification proceeding.

### **Opinion 02-05** (September 12, 2002)

Judges represented by the Attorney General's Office in litigation brought against them in a professional capacity must disqualify themselves in every case in which the lawyers representing them appear, unless the lawyers currently represent *all* judicial officers in the county or state.

### **Opinion 02-06** (September 21, 2002)

Lawyers appointed as pro tem justices of the peace to hear preliminary criminal matters on nights and weekends on a scheduled basis may litigate criminal or civil matters in the same justice court.

### **Opinion 02-07** (October 30, 2002)

The mayor of a town may serve as a part-time, pro tem municipal judge in an adjoining town and may serve as a pro tem justice of the peace in a precinct that geographically includes the town.

### **Opinion 02-08** (December 2, 2002)

A municipal court judge or clerk of the court may not participate in the hiring process for the city's prosecutor, chief of police, or other officials.

### **Opinion 02-09** (December 20, 2002)

A judge may not place a defendant on supervised probation monitored by a private company that employs the judge's spouse, unless both the prosecutor and defendant are informed of the spouse's interest and agree that the judge need not be disqualified.

## Membership Changes

The new members of the **Commission on Judicial Conduct** are **J. William Brammer, Jr.** (Court of Appeals, Division 2), **Marion Weinzweig** (public member from Phoenix), and **Phillip V. Westbrook** (public member from Chandler).

New members on the **Judicial Ethics Advisory Committee** are **David J. Damron** (attorney member from Phoenix), **John S. Taylor** (Cerberat Justice Court), **MaryAnne Majestic** (Tempe Municipal Court), and **Sheldon H. Weisberg** (Court of Appeals, Division 1).

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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 staff at 1501 W. Washington, Suite 229, Phoenix, AZ 85007; (602) 542-5200; or [cjc@supreme.sp.state.az.us](mailto:cjc@supreme.sp.state.az.us).

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