

ETHICS BULLETIN NOW ON THE WEB

The *Judicial Conduct and Ethics Bulletin*, launched in December 1991, provides Arizona judges with information about disciplinary decisions, summaries of new advisory opinions, and articles or notices on topics of current concern. It was formerly distributed with the *Judicial Conduct and Ethics Manual*. Faced with increasing costs and shrinking budgets, the Commission on Judicial Conduct and the Judicial Ethics Advisory Committee discontinued mailing the manual and bulletin in 2003. Both publications are now published on the Internet at www.supreme.state.az.us/ethics.

In addition, the advisory committee recently reformatted all of the ethics opinions to make them easier to read on the Internet. Hyperlinks were added in the reference section of each opinion to take readers directly to other Arizona opinions cited in an opinion's text. Similar links were added to the list of opinions, the subject index, and the canon index. To provide further research assistance, a full-text search capability was added to the site. All links are highlighted in blue, and a search may be initiated by clicking on "Custom Search" and typing a query.

The commission and the advisory committee welcome comments or suggestions you may have about these new features. Please drop us a line at cjc@supreme.sp.state.az.us.

Membership Changes

The newest member of the Commission on Judicial Conduct is Angela H. Sifuentes (public member from Casa Grande). There were no membership changes to the Judicial Ethics Advisory Committee in 2003.

American Judicature Society Relocates

The American Judicature Society works to maintain the independence and integrity of the courts and increase public understanding of the justice system. It is a nonpartisan organization with a national membership of judges, lawyers and other citizens interested in the administration of justice. In June 2003, the society moved from Chicago to the Opperman Center at Drake University in Des Moines, Iowa. The AJS Center for Judicial Ethics, which assists state judicial conduct commissions and publishes material on judicial conduct and ethics, continues to be administered by Cynthia Gray in Chicago.

The Year in Review

Commission on Judicial Conduct

In 2003, the Commission on Judicial Conduct received 973 inquiries and 338 complaints, compared with 896 inquiries and 353 complaints the previous year. While the number of inquiries increased by 8.6 percent, complaints decreased by 4.2 percent. As in previous years,

most complaints were dismissed following initial review or preliminary investigation. More than 80 percent of the complaints filed in 2003 were dismissed for lack of jurisdiction, insufficient evidence of judicial misconduct, or a finding of no misconduct. There were 51 cases pending resolution at the end of the year.

During the year, the commission issued 31 advisory letters and issued informal or private sanctions in the form of 12 admonitions and 7 reprimands. Advisory letters are not considered sanctions and need not be reported on applications for higher judicial office or committee assignments. The commission held two formal hearings during the year that resulted in the suspension of a justice of the peace and a recommendation that a superior court judge be removed from office. Both judges resigned from their judicial positions pending final action by the supreme court on the commission's recommendations.

Judicial Ethics Advisory Committee

The supreme court's Judicial Ethics Advisory Committee, which is staffed by the commission, issued eight formal opinions during the year and responded to 162 requests for informal advice on ethical issues.

Constable Ethics Committee

By law, the commission is also responsible for staffing the Constable Ethics Committee, which investigates complaints against elected constables. The committee received 14 complaints against constables in 2003.

New Advisory Opinions

The Judicial Ethics Advisory Committee issued the following opinions in 2003. The full text of the opinions can be viewed by clicking on the opinion number:

[Opinion 03-01](#) (January 8, 2003)

With qualifications, a retired judge available for assignment may serve as a paid, professional witness in a civil case while subject to call at any time as a pro tem judge in the superior court.

[Opinion 03-02](#) (Originally issued August 7, 2003; reissued October 27, 2003)

A judge may sponsor educational programs to bring students and other members of the community into the courthouse, but may not allow participants to wear judicial robes, sit with the judge on the bench, or administer oaths to witnesses in judicial proceedings. The court may not solicit contributions to help fund the program.

[Opinion 03-03](#) (Originally issued September 24, 2003; reissued November 7, 2003)

A judge or court employee should report to the Commission on Judicial Conduct any known, substantial violation of the standards contained in the Arizona Constitution and the Code of Judicial Conduct.

[Opinion 03-04](#) (October 16, 2003)

With qualifications, a justice of the peace may serve as safety officer for the town's volunteer fire department, may accept a monthly stipend for his service, and may continue to serve as fire department safety officer if he accepts a second judicial position as a part-time town magistrate.

Opinion 03-05 (October 30, 2003)

A judge may sign nominating petitions for non-judicial candidates, but may not circulate petitions other than the judge's own petition, and then only outside the courthouse. A judge's spouse or other family member may circulate nominating petitions, work on a non-judge's political campaign, and hold office in a political party or organization. A member of a precinct committee may not retain office when he or she becomes a candidate for judicial office, and a member of a judge's personal staff may not serve as an officer in a political club or organization.

Opinion 03-06 (November 18, 2003)

It is inappropriate for attorneys currently serving as pro tem judges to list their judicial titles on legal stationery and in advertising for business.

Opinion 03-07 (November 20, 2003)

A judicial employee may work as a certified legal document preparer under very limited circumstances.

Opinion 03-08 (December 17, 2003)

With qualifications, a judge may participate in programs to teach law enforcement officers on general legal topics, in specialized programs to teach prosecutors "the care and feeding of a superior court judge," in a state bar conference on search and seizure law that is open to prosecutors and defense counsel alike, and may attend a judicial conference or bar-sponsored seminar taught by police personnel, prosecutors, or defense counsel. A judge may not participate in a program to train law enforcement officers how to prepare valid search warrants or attend a law enforcement training program at which officers discuss or demonstrate new devices, technologies or police procedures.

Disciplinary Highlights From 2003

Each year, as noted above, the Commission on Judicial Conduct handles hundreds of complaints against judges. Some complaints result in informal and formal disciplinary action. The following are summaries of discipline imposed in 2003.

Formal Discipline

In the most serious cases of judicial misconduct, the Commission on Judicial Conduct may hold a public hearing to consider evidence about a judge's conduct and can recommend to the supreme court that a judge be censured, suspended without pay, or removed from office for misconduct. The commission recommended formal discipline in two cases in 2003:

- A justice of the peace was charged with incompetence and improper decorum in carrying out her judicial duties. Prior to the filing of formal charges, the judge had been informally reprimanded and directed to attend additional training. The supreme court entered an order suspending the judge for 60 days, without pay, and requiring her to participate in a 90-day mentoring program under the full-time supervision of an experienced judge. The court also required the judge to apply for a certificate of compliance indicating that she had remedied the deficiencies underlying the admitted ethical violations. After

receiving the final report from her mentor judge, but prior to the compliance hearing before the commission, the judge resigned. **In re Watkins**, JC-03-001 (December 16, 2003).

- A male superior court judge was charged with having an unprofessional or inappropriate relationship with a female deputy county attorney who regularly appeared before him as counsel of record. The judge was also charged with assaulting his wife. A hearing panel found that the judge had committed the misconduct alleged and had been untruthful in his initial responses to the allegations, and it recommended to the supreme court that the judge be removed from judicial office. On the day his response to the supreme court was due, the judge resigned. The supreme court invited both parties to brief whether the judge should have to pay the costs associated with the proceedings, and the court subsequently remanded the case to the commission for further action. **In re Nelson**, JC-03-002.

Reprimands

Private reprimands are issued to judges for unacceptable conduct that does not rise to the level of formal proceedings. The commission issued the following reprimands in 2003:

- A justice of the peace made comments and touched several female employees inappropriately.
- A pro tem municipal judge's comments could have been construed as sexual harassment.
- A justice of the peace damaged a vehicle while parking in a public garage, then denied responsibility and was uncooperative, misleading, and dishonest during the commission's investigation.
- A justice of the peace failed to control a contentious court proceeding, did not understand the issues, and ruled on the case without hearing all of the evidence.
- A superior court judge engaged in improper conversations with the prosecutor in a case and inappropriately admonished two witnesses.
- A justice of the peace granted a motion to dismiss without giving the opposing party notice or an opportunity to be heard.
- A justice of the peace delayed ruling on a motion for more than four months, despite being repeatedly reminded to rule by the complainant, and continued to delay ruling for a month after being ordered to do so by a superior court judge.

Admonitions

Private admonitions remind judges of their ethical responsibilities and warn them to avoid inappropriate conduct. The commission issued the following admonitions in 2003:

- A justice of the peace gave leftover materials from his primary campaign to a school board candidate.
- A pro tem justice of the peace made inappropriate comments during a trial.
- A superior court judge contacted a litigant's employer after reviewing his criminal history in the pre-sentence report.

- A justice court hearing officer encouraged the plaintiff in a small claims case to accept the defendant's offer to pay her insurance deductible as a reasonable settlement offer.
- A pro tem justice of the peace failed to allow the complainant an opportunity to be heard.
- A justice of the peace made improper statements in a tone that demonstrated hostility toward a third-party litigant in a civil case.
- A superior court judge required an attorney with whom the court had contentious dealings to file a motion for change of judge for cause in each case, rather than voluntarily recusing from his cases.
- A justice of the peace allowed his staff to highlight key points in court papers filed by litigants to save the court time, giving the impression that the judge did not read pleadings.
- A justice of the peace told a contentious complainant to "shut up" during a court proceeding.
- A justice of the peace posted a misleading biography on the court's web site.
- A pro tem justice of the peace failed to disclose prior involvement with a party in a civil case.
- A superior court judge signed an order by mistake before the time to respond had expired.

Advisory Letters

Advisory letters are issued to remind judges of their ethical obligations or to give instructions designed to help improve or modify behaviors or procedures. They are not disciplinary sanctions. The following are summaries of some of the advisory letters issued in 2003:

- A former justice of the peace, who was removed from the bench for misconduct in office, was advised that his using the term "honorable" and wearing judicial robes in his photograph on the school governing board's website were improper.
- A municipal court hearing officer was advised that although there may be room for debate as to whether the 60-day statute applies to hearing officers, the Code of Judicial Conduct requires all judges and judicial officers to rule on matters promptly.
- A justice of the peace was advised to begin court proceedings on time and to notify the parties and apologize to them personally for any inconvenience that may be caused whenever delay is unavoidable.
- A superior court judge who self-reported failure to comply with the 60-day rule was advised that all matters should be decided promptly and was reminded of the various rules requiring judges to certify that they have no undecided matters pending beyond 60 days.
- A municipal court judge was advised that defendants have the right to know the range of potential fines. The judge's refusal to explain the fine before the defendant entered a plea was unnecessary and even contentious in light of the requirement to be patient, courteous and dignified.

- A superior court hearing officer, who was a former DUI prosecutor, was reminded of his ethical obligation to perform judicial duties impartially and fairly and to avoid behavior that might be perceived as prejudicial. He was further advised to make sure he was not involved as a prosecutor in cases before him and not to rely on defense attorneys to do this for him.
- A municipal court judge, who seemed to encourage or favor allegations of anti-gay bias by law enforcement officers, was advised to perform judicial duties without bias or prejudice and to avoid even the appearance of impropriety by tempering her comments or disqualifying herself in such cases.
- A justice of the peace inadvertently sent the complainant a notice with an incorrect time for a hearing and then granted the defendant's request to dismiss the case. The judge and the defendant were former co-workers. Although the prior employment relationship was addressed previously in another case involving the same parties, the judge was advised to avoid even the appearance of impropriety and to be more cautious in matters that involve litigants who have worked with him in the past.
- A justice of the peace who traveled to various polling places with a person who took pictures of campaign volunteers for the judge's opponent was advised that his conduct created a perception of intimidation contrary to the requirement that judges act at all times in a manner that promotes public confidence in the judiciary.
- A superior court judge was advised that he should not have heard aggravated assault cases involving domestic violence while similar charges were pending against him and was reminded of his obligation to disqualify himself in a proceeding in which his impartiality might reasonably be questioned.
- A justice of the peace who allegedly allowed a court clerk to inappropriately influence his judicial rulings was reminded of his administrative responsibility to supervise court clerks.
- A justice of the peace was advised that the canons require judges to afford every litigant the right to be heard, that it was unrealistic to mail notice to an out-of-state litigant three days before he was expected to appear, and that the court would have lost nothing by giving the litigant more leeway.
- A superior court judge who spoke with an expert witness during a break in a trial was advised that his conduct could be perceived as improper and to avoid even innocent conversations with litigants and witnesses during trials.
- A superior court judge was advised that his use of a government vehicle with no county markings and registered under the name of a fictitious business was problematic and possibly a violation of the law.
- A justice court hearing officer was advised to be careful about making statements during a trial that might be misconstrued as vouching for one party or the other.
- A municipal court judge who responded sarcastically to a party's announcement at the end of the trial that she would appeal his decision was advised to avoid making flippant comments.

- A municipal court judge who appeared to be too friendly with law enforcement witnesses was reminded of his ethical obligation to perform judicial duties impartially, to avoid even the appearance of impropriety, and to be circumspect when talking with police officers during court proceedings.
- A superior court judge who was unnecessarily curt during three brief hearings involving the complainant was advised to be more courteous in communicating with litigants.
- A pro tem superior court judge was advised that she should have been more respectful and courteous when the complainant alleged that his former spouse suffered from mental illness and the judge responded by stating that the complainant knew this when he married her.
- A superior court judge was advised that the code does not differentiate between contested and uncontested matters when he indicated his belief that he could receive an attorney's services without charge because the attorney did not appear before him in contested matters. The better practice would be for the attorney not to appear before him at all.
- A justice of the peace was advised to rule on petitions promptly after the judge acknowledged not ruling on a small claims case within ten days because the complainant deserved another hearing before another judge.
- A justice of the peace was advised that his conduct arguably violated the commission's confidentiality rule when he contacted a party after receiving the complaint to ask if he had acted improperly toward the complainant.