

# *Arizona Judicial Ethics Bulletin*

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## **TASK FORCE FILES PETITION WITH COURT TO ADOPT NEW JUDICIAL CODE**

On January 9, 2008, the Task Force on the Code of Judicial Conduct filed a petition with the Arizona Supreme Court to adopt a new code based on the ABA's 2007 Model Code of Judicial Conduct. Although the Arizona code had been amended several times since its most recent adoption in 1993, the new code marks the first comprehensive revision of the judicial code in more than 15 years.

In its petition, the task force asked the supreme court to expedite the review process in light of next year's elections and the need to train judges on the new code, if adopted, prior to the beginning of the election cycle. In response, the court agreed to accelerate the time for filing comments on the proposed code and comments may be submitted electronically through the Arizona Court Rules Forum at the following link: <http://supreme8/rules/>. The petition and the supporting documentation are located under R-09-0007. Comments must be filed by March 31, 2009.

### **Background**

The task force completed its project in a little less than two years. It met 18 times to compare and analyze the existing and model codes and reviewed each section line-by-line. Early in the process, when it became evident that the model code retained the fundamental elements of the existing code and would likely serve as a national model for the foreseeable future, the task force decided to use the model code as the basic working document rather than attempt to amend the existing code. In the view of the task force, this approach resulted in a stronger, more cohesive code that is tailored to the needs of the Arizona judiciary.

As the project was winding down, the supreme court recommended that the task force schedule public hearings to consider comments on the proposed code. Notice of the hearings and a draft of the new code were published on the court's ethics website, and invitations were sent to judges, professional organizations with an interest in judicial ethics, and the public in general to attend hearings in Phoenix and Tucson. During the hearings, participants were encouraged to share their concerns about the proposed code. After the hearings, the task force considered all the comments during its final meeting in December and made several changes to the proposed code.

The final task force report consists of four parts: the report itself, which describes the project and explains the major recommendations; the complete proposed code in its final

form; a highlighted version showing all of the proposed changes from the ABA Model Code in traditional legislative format; and an overview that briefly describes the rationale for changes in the highlighted version. Links to these materials, which are designed for different audiences, can be viewed by clicking this link: <http://www.supreme.state.az.us/ethics/> The same materials can be found on the Court Rules Forum.

### **Highlights of the New Code**

The new proposed code contains numerous changes to the ABA's model code, some of which are described below. (These highlights were used in the public hearings and were previously distributed to judges by e-mail.) The proposed code:

- Adopts the structure of the 2007 ABA Model Code of Judicial Conduct in which canons remain as broad, overarching principles but with text divided into "rules" and "comments," along the lines of the rules governing lawyers.
- Reorganizes the old canons completely by putting related provisions together in reconfigured rules with expanded and rewritten comments.
- Places greater emphasis on judicial independence, integrity and impartiality as fundamental governing principles that are applicable throughout the code. [Rule 1.2.]
- Retains the appearance of impropriety as an independent basis for discipline. [Rule 1.2.]
- Approves participation in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and foster greater access to justice for all. [Rule 1.2, Comment 4.]
- Encourages judges to reach out to the public to promote better understanding of the judicial system and increased confidence in the administration of justice. [Rules 1.2, Comment 6 and 2.1, Comment 2.]
- Permits judges to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters heard fairly. [Rule 2.2, Comment 4.]
- Allows judges to encourage lawyers to provide pro bono legal services [Rule 3.7(B).]
- Lets judges engage in ex parte communications when serving on problem-solving, mental health or drug courts if authorized by local rules or protocols consented to by the parties. [Rule 2.9, Comment 4.]
- Imposes a duty to take appropriate action involving judges who may be impaired by drugs or alcohol, or by a mental, emotional or physical condition. [Rule 2.14.]

- Permits a judge to make a voluntary appearance at a public hearing in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties. [Rule 3.2(B).]
- Improves guidance on participation in educational, religious, charitable, fraternal or civic organizations and activities. [Rule 3.7.]
- Revamps rules on receiving and reporting gifts and the reimbursement of expenses and waivers of fees or charges for extrajudicial activities. [Rules 3.13 and 3.14.]
- Updates guidelines on political activities in general and adds a major new rule on campaign standards and communications. [Rule 4.3.].

Judges, court administrators and others interested in judicial ethics are encouraged to become familiar with the proposed code and to submit their comments to the supreme court

## **2008 Advisory Opinions**

The Judicial Ethics Advisory Committee issued three opinions in 2008. The opinions are summarized here. The full text of the opinion can be viewed at the following link: <http://www.supreme.state.az.us/ethics> and click on Judicial Ethics Advisory Opinions.

### **Opinion 08-01 (April 30, 2008)**

A candidate for judicial office may publicly announce his or her views on disputed legal and political issues provided the comments conform to the standards of Canon 5B(1)(d)(I). Once taking the bench, disqualification from cases involving the same issues on which the candidate commented may be required. Candidates may not endorse other candidates but may publish third-party endorsements.

A judicial candidate may not personally solicit and receive campaign contributions but may make contributions to his or her own campaign committee and may make contributions to political organizations provided the contributions conform to the standards of Canon 5A(1)(C).

Lastly, a judicial candidate may publicize his or her political party affiliation and associate with local and state party organizations provided the candidate does not speak on behalf of the party organization itself, but may speak at a party event on his or her own behalf.

### **Opinion 08-02 (October 24, 2008)**

A judge who receives a survivor's benefit from a hospital retirement fund may be required to disqualify in cases in which the hospital is a party if the benefit constitute a substantial financial interest.

## **Opinion 08-03 (December 16, 2008)**

Courts may not ethically participate in a police-related program to install television screens in courthouse lobbies that would display continuous information about the Silent Witness program and other public service announcements.

### **Membership Updates**

#### **Commission on Judicial Conduct**

Following is a list of the current members of the commission, including three new members appointed earlier this year. Beginning with the commission officers: Judge **J. William Brammer, Jr.** Chair (Court of Appeals, Div.2, Tucson); Judge **Louis Frank Dominguez**, Vice Chair (Municipal Court, Phoenix); **Angela H. Sifuentes**, Secretary (public member, Casa Grande); **Harriett Chavez**, (Superior Court, Phoenix); Stanley **Furman**, (public member, Phoenix, replacing **Marion Weinzweig**, Phoenix); Judge **Sherry L. Geisler** (Justice Court, Springerville); Judge **Michael O. Miller** (Superior Court, Tucson, replacing Judge **Robert M. Brutinel**, Superior Court, Prescott); **Sylvia Patino-Brandfon** (public member, Green Valley); **Sheila S. Polk** (attorney member, Prescott); **Catherine M. Stewart** (attorney member, Tucson); and, Judge **Lawrence F. Winthrop** (Court of Appeals, Div. 1, Phoenix, replacing Judge **John Gemmill**, Court of Appeals, Div.1).

#### **Judicial Ethics Advisory Committee**

\_\_\_The following is a list of the current members of the Judicial Ethics Advisory Committee: Judge **Terry Chandler**, (Superior Court, Tucson); **David J. Damron**, (attorney member, Phoenix); Judge **Timothy B. Dickerson**, (Justice Court, Sierra Vista); **Philip G. Espinosa**, Chair, (Court of Appeals, Div. 2, Tucson); Judge **Bethany Hicks**, (Superior Court, Phoenix); Judge **Patrick Irvine**, (Court of Appeals, Div. 1, Phoenix); Judge **MaryAnne Majestic**, (Municipal Court, Tempe); Judge **Sherry K. Stephens**, (Superior Court, Mesa); and **David Withey**, (attorney member, AOC, Phoenix).

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The *Arizona Judicial Ethics 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, contact the editor at 1501 W. Washington Street, Suite 229, Phoenix, Arizona 85007, or call 602-452-3200.

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