

COMMISSION PROPOSES RULE CHANGES

The Commission on Judicial Conduct recently filed a petition with the Supreme Court to amend the Commission's rules of procedure. The Court decided to circulate the proposed amendments for comment, and the clerk's office is in the process of distributing the petition and proposed rules to presiding judges, county attorneys and other officials throughout the state.

The rules were last amended in 1990 following an intensive effort to simplify the rules and increase public access to information about formal discipline cases. Although the new rules went a long way toward accomplishing these goals, the Commission has since identified additional changes that would make the rules still easier to apply.

The most significant procedural change in the new rules is a provision to allow certain matters to become final after the Commission files its recommendations with the Supreme Court. The proposed rule would add a *sua sponte* provision to the rules, similar to Rule 53(e)(1) of the Rules of the Supreme Court governing lawyer discipline. The proposed rule would permit an unappealed recommendation of censure to become final without the Court's review. For the more serious sanctions of suspension, removal or retirement from office, the Court would have the discretion to review a matter *sua sponte* by ordering, within 60 days of filing, transmittal of the record on appeal and docketing.

In addition to the new procedure for court review of Commission recommendations, there are several changes in the structure and content of the rules. One is the inclusion of a simple preamble to the rules that sets forth the purpose of the Commission and describes its relationship to the Supreme Court. Written for the lay reader, the preamble explains that the Court is responsible for adopting the Code of Judicial Conduct, and the Commission is responsible for administering the judicial discipline system throughout the state.

Another significant change is a new terminology section designed to reduce the use of frequently repeated words and phrases in the text. In this section, the term "judge" is defined as "any person performing judicial functions or exercising judicial powers in the judicial branch of government in the State of Arizona, whether serving full time or part time, including justices, judges, justices of the peace, municipal judges or magistrates, and commissioners."

This language clarifies the Commission's jurisdiction over court commissioners, who have always been subject to the Code of Judicial Conduct but not the Commission's disciplinary procedures. Under this definition and the related amendments in the rules, which were strongly endorsed by the Arizona Judicial Council, complaints against court commissioners would be treated the same as complaints against judges. However, the Commission would submit its recommendations to presiding judges of the superior court rather than the Supreme Court.

In an effort to speed up the final stages of the disciplinary process, the Commission has proposed that 15 days become the standard time for filing motions and objections. At the present time, a judge may take up to 30 days after the filing of the Commission's recommendations to file objections, and the Commission has 20 days to respond. This can add up to almost two months to the proceeding during which the final outcome of the case remains uncertain because the matter cannot be deemed submitted to the Court. ~~Oral argument and subsequent court deliberations can add even more delay to the process.~~

The deadline for commenting on the proposed rule changes is December 30, 1994. Judges who do not receive copies of the proposed rules from the clerk's office may obtain a copy from the Commission by calling 542-5200.

DEADLINE FOR REVIEWING MEMBERSHIPS

When the Supreme Court adopted a new Code of Judicial Conduct last year, it put all judges on notice that they had to evaluate their memberships in social clubs and other organizations. Under Canon 2C, judges cannot hold membership in "any organization that practices invidious discrimination on the basis of race, sex, religion or national origin." The commentary to the canon explains that a judge must resign from "any organization which engages in invidious discrimination within one year of the effective date of this code or the inception of his or her service as a judge." The deadline for evaluating memberships was September 1, 1994. Opinions 94-7 and 94-13, which the Judicial Ethics Advisory Committee issued earlier this year, provide guidelines for examining individual memberships.

What about . . .

COMPLAINTS INVOLVING OLD MATTERS

Question: Does the Commission on Judicial Conduct expect judges to respond to complaints involving stale facts or old lawsuits?

Answer: As a general rule, the Commission will not investigate allegations involving conduct that occurred more than three years prior to the date of a complaint,

because it is unreasonable to expect judges or witnesses to remember events that took place that long ago. The Commission evaluates each case on an individual basis, however, and may make exceptions when a complaint concerns a pattern of behavior or extremely serious misconduct.

New Advisory Opinions

This issue of the *Bulletin* accompanies a major mailing of advisory opinions previously issued by the Judicial Ethics Advisory Committee. Advance copies of the opinions were initially distributed to presiding superior court judges for use in the local courts. The opinions in today's mailing, which are summarized below, should be saved in the *Judicial Conduct and Ethics Manual*.

Opinion 93-5 (October 19, 1993)

A judge may accept complimentary legal publications in any format, such as CD-ROM, provided the materials are for official use.

Opinion 94-1 (February 16, 1994)

It is unethical for the clerk of a justice court to hold an elected position on a town council; however, a clerk in office before this opinion was published may be given a grace period. (As noted in another article on this page, the Supreme stayed this opinion on May 27, 1994.)

Opinion 94-2 (February 17, 1994)

A superior court employee may serve as a volunteer pro tempore justice of the peace for the limited purpose of conducting initial appearances.

Opinion 94-3 (February 18, 1994)

Neither a justice of the peace nor a candidate for justice of the peace may serve as a member of the sheriff's posse.

Opinion 94-4 (April 8, 1994)

A judge may not participate in fund raising by agreeing to have lunch with a successful bidder at a charity auction.

Opinion 94-5 (May 6, 1994)

Judges should not engage in multi-level marketing and distribution businesses.

Opinion 94-6 (June 10, 1994)

It is ethically improper for a judge or court to enter into a contract with a service provider, such as a defensive driving school, to provide special services or to pay all or part of the costs of the program as an inducement for being named the primary provider, unless the same services are required of all providers.

Opinion 94-7 (June 13, 1994)

Judges can participate as members or leaders in scouting organizations, in the absence of any harm to excluded persons. Whether or not an organization invidiously discriminates is a fact-specific question that each judge must answer to determine if membership is permissible.

Opinion 94-8 (July 20, 1994)

Public service attorneys are not eligible to serve as pro tempore judges. Opinion 89-1 is withdrawn.

Opinion 94-9 (August 1, 1994)

A judge may not serve as a member of the Advisory Council on Spinal and Head Injuries.

Opinion 94-10 (August 3, 1994)

Court staff may participate in a local volunteer police assistance program as long as the activity does not conflict with the independence and impartiality of the judiciary.

Opinion 94-11 (August 5, 1994)

Justice and municipal courts may use court employees as pro tempore judges as long as they meet all the legal requirements for holding office.

Opinion 94-12 (August 17, 1994)

In cases where an attorney is married to the judge's clerk, the judge does not have to recuse himself from hearing the attorney's cases, as long as he takes precautions to insure that the clerk does not handle the spouse's cases in any way. The judge may also appoint the attorney to indigent defense cases, but only if the cases are assigned on a rotational basis and the judge has no discretion in the appointment.

Opinion 94-13 (September 20, 1994)

Determining whether an organization invidiously discriminates requires each judge to investigate the many and varied facts that influence the membership practices of the organization. This opinion considers the difficult questions that should be addressed in analyzing these practices.

Opinion 94-14 (September 22, 1994)

A candidate for justice of the peace is not required to resign from a position on a school board until he or she is actually elected to judicial office.

and 94-1. Both opinions address the propriety of employees holding public office while actively serving in court-related positions. The Court stayed the opinions until the Administrative Office of the Courts can prepare and circulate a proposed code of conduct that would eliminate the patchwork of local rules governing the political activities of court employees.

Rule 82 Revised

Earlier this year, the Supreme Court revised Rule 82 which governs the procedures of the Judicial Ethics Advisory Committee. Copies of the amended rule are included with the advisory opinions distributed with this Bulletin. The rule should be placed in the reference section of the Judicial Conduct and Ethics Manual.

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 write the commission or committee staff at 1501 W. Washington Street, Suite 229, Phoenix, Arizona 85007; or call (602) 542-5200.

COURT STAYS ADVISORY OPINIONS

On May 27, the Arizona Supreme Court issued an administrative order staying Advisory Opinions 92-13