

**1995 ANNUAL REPORT**

The **Commission on Judicial Conduct** received 192 complaints against judges and other judicial officers in 1995. It issued 18 informal sanctions and adjusted three complaints with informal advisory letters. Although several major investigations were commenced, the commission did not hold any formal hearings during the year. While the number of complaints decreased, overall activity was consistent with long-term statistical trends.

The commission's caseload was undoubtedly affected by the judiciary's increasing interest in ethical issues. Spurred by a record number of complaints and ethical problems the previous year, the Administrative Office of the Courts sponsored a series of "ethics road shows" around the state in 1995 to help judges and court employees recognize potential pitfalls. Judges and court administrators also requested a record number of formal and informal advisory opinions.

Throughout the year, the commission continued to improve its internal operations. Acting on a petition filed by the commission, the supreme court approved several changes in the commission's rules of procedure that simplified formal proceedings and clarified jurisdiction over commissioners and other judicial officers. In another major development, the legislature approved funding for the commission's first full-time investigator.

It was also a busy year for the Arizona Supreme Court's **Judicial Ethics Advisory Committee**, which concluded its 20th year with 21 formal opinions. This is a new record for the committee and represents about one-fifth of the total opinions issued by the committee since its inception in 1976. Last year's opinions dealt with a variety of interesting questions, ranging from the appropriateness of memberships in different types of organizations to the propriety of soliciting donations from judicial colleagues.

Over the years, the Advisory Committee has issued more than 100 opinions, all of which are fully reported and indexed in the judicial ethics manual. The committee operated informally until 1991 when the commission agreed to provide staff and other support.

**Ethics Manual Update**

This issue of the *Bulletin* accompanies a major update of the judicial ethics manual published by the Commission on Judicial Conduct and the Judicial Ethics Advisory Committee. The update includes a new

title page, a revised introduction, new indices and copies of the opinions issued during the last half of the year.

The loose-leaf manual is provided free to all full-time judges and judicial officers, including commissioners and referees. Additional copies are distributed for reference purposes to appellate and superior court clerks, court administrators, key public officials and major law libraries. Those who need copies should send a request on official stationery to the commission's office.

**EXAMPLES OF MISCONDUCT**

While the details of investigations are confidential, the Commission on Judicial Conduct recently decided to publish brief descriptions of informal sanctions to give the judiciary and the public a better understanding of why discipline is imposed on judges. Informal sanctions are important because the commission can refer to prior sanctions in future proceedings when a judge persists in misconduct.

**Reprimands**

Private reprimands are issued to judges for unacceptable conduct that does not rise to the level of formal proceedings. Here are examples of the reprimands issued in 1995.

! A superior court judge warned the parties not to come to his court again or he would put them in jail, along with any family members that tried to help them.

! A justice of the peace sent a letter to the editor of a local newspaper endorsing a candidate for public office.

! A justice of the peace failed to decide cases within 60 days even after the delays were brought to his attention.

! A superior court judge told a litigant that she was a lousy mother in a case where her conduct was not at issue.

! A justice of the peace sent several letters to the defendants involved in a contract dispute warning them of the consequences of their failure to pay a judgment.

! A justice of the peace contacted court employees and others to obtain statements exonerating the judge after a complaint was filed with the commission. The

judge failed to explain the reason for soliciting their help.

**Admonitions**

Private admonitions remind judges about their ethical responsibilities and warn them to avoid inappropriate conduct. The following admonitions were issued last year.

! A superior court judge asked a juvenile defendant during a sentencing hearing what he should do with him, "hang him or shoot him?"

! A justice of the peace responded angrily to a letter from a probation officer by impugning the officer's motives in a situation that did not warrant such a communication.

! A superior court judge failed to rule on a petition for post-conviction relief within 60 days.

! A superior court judge gave a litigant the impression that the judge used the court bailiff to run personal errands during court hours.

! A superior court judge spoke to a petitioner's religious leader to explain the court's ruling, giving the respondent the impression that the judge was not impartial.

## **New Advisory Opinions**

The Judicial Ethics Advisory Committee issued the following opinions in the latter half of 1995. Copies of the full opinions are being mailed to all judges with this issue of the *Bulletin*. The opinions should be retained in the *Judicial Conduct and Ethics Manual* along with the new indices included in the mailing.

**Opinion 95-8** (May 3, 1995)

This is a supplement to Opinion 94-8 that deals with the ethical constraints on public lawyers serving as pro tem judges.

**Opinion 95-9** (May 24, 1995)

A judge may not participate in a state bar program that encourages lawyers to ask questions of their more experienced colleagues dealing with substantive and procedural legal issues.

**Opinion 95-10** (June 15, 1995)

A court may hire employees married to law enforcement officers except when marital relationships, taking into consideration all the circumstances, might affect public confidence in the impartiality of the judiciary.

**Opinion 95-11** (June 16, 1995)

Upon taking the bench, a judge is required for a reasonable period of time to notify parties and their attorneys of the judge's previous partnership with a lawyer representing one of the parties.

**Opinion 95-12** (June 19, 1995)

A full-time judge who owns rental properties may not rent space to attorneys who practice in or are likely to come before the court on which the judge serves. Depending on the circumstances, similar rules may apply to part-time judges and other judicial officers.

**Opinion 95-13** (June 20, 1995)

A judge may attend receptions sponsored by private associations of attorneys who represent particular classes of litigants.

**Opinion 95-14** (June 21, 1995)

A judge may communicate with a special master outside the presence of the parties or their attorneys without violating the prohibition against *ex parte* communications, but may not do the same thing with an attorney appointed for the children in a domestic relations case.

**Opinion 95-15** (August 3, 1995)

A court may cooperate with the police in sending a warning letter to persons with outstanding arrest warrants.

**Opinion 95-16** (August 28, 1995)

A pro tem justice of the peace must resign from judicial office before running in an election to the county's home rule charter committee.

**Opinion 95-17** (August 29, 1995)

Contract criminal defense attorneys are not precluded from serving as pro tem judges on the criminal bench.

**Opinion 95-18** (September 13, 1995)

It is not improper for a justice of the peace to notify the county attorney when a deadline is about to expire.

**Opinion 95-19** (October 20, 1995)

A commissioner is not required, by marriage to a supervising deputy county attorney, to disqualify herself in criminal matters involving the spouse's office unless other circumstances indicate that her impartiality might reasonably be questioned.

**Opinion 95-20** (October 27, 1995)

Although judges may solicit support from colleagues

for a judicially-related cause, they may not do so for non-judicial causes.

**Opinion 95-21** (December 1, 1995)

A judge may not write a recommendation for a counseling service to be used in making applications for grant funds.

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### **Noteworthy Publications**

The American Judicature Society has published a new report entitled, *Judicial Disqualification: An Empirical Study of Judicial Practices and Attitudes*. Written by Jeffrey M. Shaman and Jona Goldschmidt, the 88-page paperback is a systematic, survey-based examination of the attitudes and practices of judges regarding disqualification.

The Michie Company recently published the second edition of *Judicial Conduct and Ethics*, written by law professors Jeffrey M. Shaman, Steven Lubet and James J. Alfani. The book is the standard work in its field, and the revision includes the changes in the Model Code of Judicial Conduct adopted by the American Bar Association in 1990. The model code served as the basis for the current Arizona code.

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### **Staff Changes**

The Commission on Judicial Conduct hired **John G. King** as its first investigator. John is a retired special investigator for the Air Force and recently served as an investigator with the state real estate and insurance fraud divisions. **Jackie Wheatley**, the commission's administrative secretary, recently graduated from ASU and accepted a position with a national hotel in California. **Jill Siller** was hired earlier this month as the new administrative secretary. She currently attends the University of Phoenix and plans to graduate later this year.