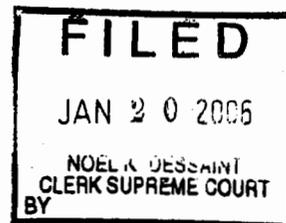


IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-05-0026

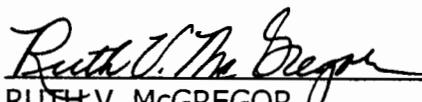


ORDER AMENDING THE RULES OF  
THE COMMISSION ON JUDICIAL CONDUCT

IT IS ORDERED that the Rules of the Commission on Judicial Conduct be amended on an emergency basis pursuant to Rule 28(G), Rules of the Supreme Court, in accordance with the attachment hereto,\* effective as of the date of signing. Comments on these rules may be filed with the Clerk of the Court on or before May 22, 2006.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 20<sup>th</sup> day of January, 2006.

For the Court:

  
\_\_\_\_\_  
RUTH V. MCGREGOR  
Chief Justice

\* Changes or additions in text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.

# RULES OF THE COMMISSION ON JUDICIAL CONDUCT

## PREAMBLE

[No change in text.]

## TERMINOLOGY

The following terms have specific meanings within the context of these rules:

“Censure” through “Recommendations” [No change in text.]

“Record” means the complaint, the judge's response, the commission's findings, if any and the final dispositional ~~letter-order~~ in a case involving informal proceedings, and all documents filed in a case involving formal proceedings beginning with the notice and statement of formal charges, including the transcript of the hearing if a- recommendations are filed with the supreme court.

“Reprimand” through “Supreme Court” [No change in text.]

## SECTION A. ORGANIZATION AND STRUCTURE

Rules 1-3. [No change in text.]

### Rule 4. Administration

(a)-(b) [No change in text.]

(c) **Duties of disciplinary counsel.** Disciplinary counsel shall conduct preliminary investigations and perform the functions of a prosecutor in proceedings before investigative panels, hearing panels or hearing officers, and the supreme court. Disciplinary counsel shall file formal charges when directed to do so by the commission or an investigative panel, and shall perform ~~any other services required by the commission~~ other duties as directed by the commission.

(d) [No change in text.]

## SECTION B. GENERAL PROVISIONS

Rules 5-8. [No change in text.]

### Rule 9. Public Access and Confidentiality

(a)-(c) [No change in text.]

(d) **Protective orders.** Upon motion by a party or by a person from whom the information was obtained, or by disciplinary counsel, and for good cause shown, the commission, an investigative panel, a hearing panel or a hearing officer may make an order sealing a portion of the record. Sealed materials shall be opened and viewed only by the commission or one of its corresponding panels, a hearing officer, disciplinary counsel or the supreme court. The information shall not otherwise be disclosed unless the parties and the person providing the information are given notice and an opportunity to be heard.

**Rules 10-12.** [No change in text.]

**Rule 13. Subpoena Power**

(a) [No change in text.]

(b) **Enforcement.** Upon proper application, the superior court in any county in which the attendance of a witness or production of documents is required ~~may~~ shall enforce the attendance and testimony of any witnesses and the production of any documents subpoenaed.

(c) [No change in text.]

**Rule 14. Prohibition Against Retaliation**

A judge against whom a complaint is filed shall not directly or indirectly engage in any act of retaliation against any person who files ~~such~~-a complaint, cooperates in the investigation of ~~such~~-a complaint, or acts as a witness in any proceeding brought against the judge. "Retaliation" includes, but is not limited to, the act of dismissing or procuring the dismissal, without reasonable cause, of a member of the judge's staff or other person subject to the judge's direction and control, creating a hostile or offensive working environment for such person, or filing a frivolous bar complaint against an attorney who is a complainant or witness. The commission or disciplinary counsel may, at any time, file a petition with the supreme court for an order prohibiting, at the risk of sanctions for contempt, conduct of a judge that is or appears to be retaliatory in nature.

**Rule 15.** [No change in text.]

**SECTION C. DISPOSITIONS AND SANCTIONS**

**Rule 16. Dispositions in General**

(a) [No change in text.]

(b) **Additional forms of discipline.** If the commission finds an act of judicial misconduct, in addition to any other sanction or sanctions imposed, the commission may direct a judge to participate in professional counseling, ~~continuing~~ judicial education, mentoring ~~by other judges~~, or other similar activities.

(c)-(d) [No change in text.]

**Rule 17-18.** [No change in text.]

### **Rule 19. Mitigating and Aggravating Factors**

(a)-(b) [No change in text.]

(c) whether the conduct occurred in the judge's official capacity or ~~in his or her~~ private life;

(d)-(j) [No change in text.]

## **SECTION D. DISCIPLINARY PROCEEDINGS**

**Rule 20.** [No change in text.]

### **Rule 21. Initial Screening**

The executive director shall conduct an initial screening to determine whether a complaint warrants ~~further~~ investigation and evaluation. A complaint that is frivolous, unfounded, solely appellate in nature, or outside the jurisdiction of the commission shall be dismissed subject to review by the commission at its next scheduled meeting. A complaint that is not dismissed shall be referred to disciplinary counsel for further investigation.

### **Rule 22. Investigation**

(a) **Preliminary investigation.** Disciplinary counsel shall conduct a preliminary investigation of a complaint that is not dismissed during initial screening. If, after preliminary investigation of a complaint, disciplinary counsel recommends dismissal or imposition of ~~disciplinary remedies or~~ informal sanctions, the investigative findings and recommendation shall be reported to the commission.

(b) **Request for response from judge.** As part of the preliminary investigation, ~~commission staff may notify the judge~~ may be notified of the substance of the complaint and afforded ~~the judge~~ a reasonable opportunity to respond. The commission shall not impose informal sanctions or initiate formal proceedings without first having provided such notice and opportunity.

(c) **Appointment of investigative panel.** If, after consultation with the executive director, disciplinary counsel determines that a full investigation may be required to resolve a complaint or that sufficient evidence may already exist to support formal charges against a judge, a three-member investigative panel shall be appointed as provided in Rule 3(f), ~~and the executive director shall report only the fact of the appointment to the commission.~~

(d)-(e) [No change in text.]

(f) **Finding of reasonable cause.** At the conclusion of a full investigation, the investigative panel may instruct disciplinary counsel to prepare formal charges if it finds reasonable cause to believe that one or more grounds for discipline of a judge exists that cannot be resolved through dismissal, ~~disciplinary remedies,~~ or informal sanctions. In all other cases, the investigative panel shall refer the matter to the full commission for final disposition.

### **Rule 23. Commission Review**

(a) **Disposition.** After reviewing a complaint, the report of the executive director or disciplinary counsel, or the recommendation of an investigative panel, the commission may dismiss the complaint, ~~order further investigation,~~ or impose an informal sanction consistent with these rules.

(b) **Motion for reconsideration.** ~~When the commission dismisses a complaint or imposes an informal sanctions, it shall notify the judge, the complainant, and disciplinary counsel of the outcome. Within fifteen days of the date of mailing notice of disposition, the judge or the complainant may file a motion for reconsideration, which may include a request to appear before the commission. The commission shall serve the motion for reconsideration on the opposing party, who may respond within fifteen days from the date of mailing. If the request to appear is granted, the commission shall notify the the parties and disciplinary counsel of the time and place of the appearance. The commission shall provide written notification of its decision on the motion within fifteen days after the time for a response to the motion has expired, or if a request to appear was granted, within fifteen days after the appearance. Within fifteen days of the mailing of an order, the judge or the complainant may file a motion for reconsideration, which may include a request to appear before the commission. No response to the motion is required unless requested by the commission. The commission shall promptly notify the judge and the complainant of its decision.~~

(c) **Request for formal hearing.** In addition or as an alternative to filing a motion for reconsideration ~~described in paragraph (b), the judge may, within fifteen days following the date of mailing of a notice of disposition or ten days after the date of mailing of a decision on a motion for reconsideration, request a formal hearing. The de~~

~~no~~ hearing shall be governed by these rules of the mailing of an order, file a request for a hearing conducted pursuant to Rule 27(f).

**Rules 24-25.** [No change in text.]

### **Rule 26. Discovery**

(a) **Witnesses.** Within twenty days of the filing of a response, disciplinary counsel and the judge shall exchange the names and addresses of all persons known to have knowledge of the relevant facts, designating those persons the parties intend to call at the hearing. A party may withhold such information only with permission of the presiding member of the hearing panel (or his or her designee) or the hearing officer, and only for good cause shown. Review of the withholding request shall be in camera, but the requesting party shall advise the other party of the existence of the request. ~~The parties may take depositions only of potential witnesses, including material witnesses who are unavailable to testify at the hearing.~~

(b) **Other evidence.** The parties shall exchange evidence relevant to the ~~formal~~ charges that is not otherwise confidential. Confidential information may be discoverable only upon good cause shown.

(c) **Exculpatory evidence.** Disciplinary counsel shall provide the judge with exculpatory evidence relevant to the ~~formal~~ charges that directly negates the allegations. Exculpatory evidence, for the purposes of ~~formal-disciplinary~~ proceedings, is not evidence of otherwise expected judicial conduct.

(d)-(g) [No change in text.]

### **Rule 27. Hearings**

(a)-(b) [No change in text.]

(c) **Use of hearing officer.** If a hearing panel is unable to function within the intent of these rules ~~(for example, when a judge subject to informal sanctions requests a formal hearing or when the full commission has received information through reports from either commission staff or an investigative panel regarding an investigation)~~, the commission shall appoint a hearing officer or a panel of three hearing officers to perform the functions of the hearing panel as set forth in these rules. If a panel of hearing officers is appointed, the composition of the panel shall, if feasible, reflect the membership categories of the commission.

(d)-(e) [No change in text.]

(f) **Conduct of hearing.** The following rules shall apply to ~~formal~~ hearings:

(1) [No change in text.]

(2) The Arizona Rules of Evidence shall apply as far as practicable in all ~~formal~~ commission proceedings, and Rule 122 of the Rules of the Supreme Court shall apply to all requests for electronic and photographic coverage of such proceedings.

(3)-(8) [No change in text.]

(9) The hearing shall be transcribed by a court reporter or ~~tape~~-electronically recorded for use by the supreme court, and a transcript shall be filed with the commission's recommendations. Any party may obtain a copy of the transcript at his or her own expense.

(g) [No change in text.]

(h) **Failure to appear.** If the judge fails to appear at the ~~formal~~-hearing, either in person or through counsel, he or she shall be deemed to have admitted the factual allegations that were to be the subject of such appearance and to have conceded the merits of any motion or recommendations to be considered at such appearance. Absent good cause, the proceedings shall not be continued or delayed based on the judge's failure to appear.

#### **Rule 28. Recommendations**

(a)-(b) [No change in text.]

(c) **Filing and notice to judge.** ~~Final~~-Recommendations imposing for formal sanctions shall be filed with the clerk of the supreme court and are subject to review in accordance with Rule 29. ~~Final~~-Recommendations imposing for informal sanctions are final shall be filed with the commission and are not subject to review by the supreme court. In either case, a copy of the recommendations and notice of the filing shall be promptly served upon the judge and the complainant.

Rules 29-30. [No change in text.]

### **SECTION E. SPECIAL PROCEEDINGS**

#### **Rule 31. Interim Reassignment**

At any time after the institution of a preliminary investigation, when it appears that a judge poses a substantial threat of serious harm to the public or the administration of justice, the investigative panel may recommend to the chief justice of the supreme court that the judge be reassigned pending a final determination of any proceeding under these rules. The panel's recommendation shall be filed with the clerk of the court and served

on the judge, who ~~The judge~~ may file objections to the recommendation ~~of interim reassignment~~. The chief justice's ruling on the recommendation shall continue in effect until final disposition of all pending proceedings against the judge, unless earlier vacated or modified.

**Rules 32-34.** [No change in text.]