

1 amended as described below to expand the available options for discipline in this
2 narrow category of cases.

3 **SUMMARY OF THE PROPOSED AMENDMENTS**

4 Before 2006, the commission had available two informal sanctions: an
5 admonition and a reprimand, both of which were generally issued privately.¹ The
6 commission's rules at the time defined an "Admonition" as: "a confidential, informal
7 disciplinary sanction imposed when a judge's conduct appears improper, even
8 though it may meet minimum standards of conduct." The rules at the time defined
9 "reprimand" as: "a confidential, informal disciplinary sanction imposed when a
10 judge has technically committed misconduct but the conduct is not so egregious or
11 clear as to warrant censure, suspension, removal, or retirement."
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14 Due to amendments approved by this Court and implemented effective since
15 2006, the only informal sanction currently available to the commission is a public
16 reprimand. As this Court has recognized, a public reprimand is a serious matter.
17 *See Carroll v. Commission on Judicial Conduct*, 160 P.3d 1140, 1142, 215 Ariz. 382,
18 384, ¶ 8 (2007) ("The imposition of informal sanctions . . . has significant
19 consequences.") The restrictions imposed since 2006 have resulted in judges
20 receiving public reprimands in cases involving minor misconduct and / or
21 substantial mitigating factors.
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24 The commission's struggle with balancing the limits on available informal
25 sanction alternatives, with the need for consistency between cases, and the
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28 ¹ In some cases the commission determined that a reprimand should be made public based on the nature or circumstances of the case. *See, e.g., In re Simon*, 04-239, and *In re Castillo*, 04-297.

1 recognition of the impact that a public reprimand has on a judge, led to the instant
2 proposal for the re-introduction of a lesser, informal sanction.

3 Terminology: Add a new term, “Admonition”, and define it consistent with proposed
4 Rule 17(a) as described below.

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6 Rule 9: Amending the language to so that admonitions will be treated the same as
7 dismissed cases, in which the complaint and resulting order are the only documents
8 available to the public, and both are redacted to remove identifying information.²

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10 Rule 17: The commission proposes several substantive changes:

11 (a) A new first subsection is created providing for a new admonition sanction.

12 The commission proposes a return to having this confidential sanction option for a
13 narrow range of cases.³ Specifically, this amendment limits the availability of the
14 admonition to only those cases where (1) the conduct at issue is an unintentional or
15 technical violation of the Code; (2) the judge has not previously received a
16 disciplinary sanction for similar misconduct; and (3) the judge has not received a
17 disciplinary sanction for any reason within the previous two years. While the
18 admonition is defined as a confidential sanction, the commission retains its general
19 discretionary authority under Commission Rule 9 to disclose otherwise confidential
20 matters. In an appropriate case that meets the discretionary disclosure standards of
21 Rule 9, the commission could publicly disclose an admonition.
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25 ² The commission has filed a separate petition that includes various additional changes to Rule 9.
26 The version of Rule 9 attached to this petition in Appendix A sets out the proposed amendments set
forth in the commission’s other petition as well as those described above.

27 ³ While the commission supports a private, confidential sanction, the members are very mindful of
28 the public interest in transparency with regard to judicial misconduct cases and the need for judicial
accountability. Should the members of the Court believe the public interest is better served with only
public sanctions, the commission notes that it would support amending this proposal so that the
admonition sanction is a public one.

1 (b) In now-subsection (b), a technical clarification provides that a reprimand may
2 be imposed if one or more grounds for discipline is present.

3 (c) With regard to what will now be subsection (c), the commission has
4 consistently interpreted this provision as providing for additional conditions that
5 may be imposed in a case resulting in informal sanctions, as opposed to providing
6 for an unlimited number of alternative informal sanctions. Thus, the members
7 propose amending the language so that it is clear the commission has the authority
8 to impose additional conditions on an informal sanction. Further, the commission
9 believes it is important that the rules explicitly state that failure to comply with
10 any other condition imposed as part of a sanction for misconduct may constitute
11 grounds for subsequent discipline.

12 Rule 18: Consistent with the amendment to Rule 17(c), amended language for Rule
13 18 would clarify that the commission has authority to recommend additional
14 conditions when imposing a formal sanction.

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18 Respectfully submitted this 20th day of November, 2013.

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21 **COMMISSION ON JUDICIAL CONDUCT**

22 s/ Louis Frank Dominguez
23 Louis Frank Dominguez
24 Commission Chair
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