



Supreme Court

STATE OF ARIZONA

402 ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007-3231

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NOËL K. DESSAINT
CLERK OF THE COURT

KATHLEEN E. KEMPLEY
CHIEF DEPUTY CLERK

June 9, 2005

RE: RULES 9 & 16, RULES OF COMM ON JUDICIAL CONDUCT
Arizona Supreme Court No. R-04-0023

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on June 1, 2005, in regard to the above-referenced cause:

ORDERED: Petition [to Amend Terminology and Rules 9 and 16, Rules of the Commission on Judicial Conduct] = ADOPTED as modified, effective December 1, 2005.

Noel K Dessaint, Clerk

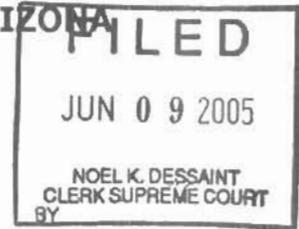
TO:

Andrew P Thomas, Maricopa County Attorney
Attn: Paul J McMurdie and Philip J MacDonnell
Hon J William Brammer Jr., Chairperson, Commission on Judicial Conduct
Eleanor L Miller, Law Office of Eleanor L Miller
Hon Gerald A Williams and Hon Quentin V Tolby, Glendale Justice Court
James J Haas, Arizona Public Defender Association
Gregory T Parzych, President, Arizona Attorneys for Criminal Justice
Hon Dan R Slayton, Judge Pro Tem, Coconino County Superior Court
Hon David Widmaier, Presiding Justice of the Peace, Pinetop/Lakeside
Justice Court
Hon John S Leonardo, Presiding Judge, Pima County Superior Court
Robert B Van Wyck, Chief Counsel, State Bar of Arizona
Hon Barbara R Mundell, Probate Presiding Judge, Maricopa County Superior
Court
Hon A John Pelander, Chief Judge, Court of Appeals - Division Two
Hon M Jan Florez, Judge, Court of Appeals - Division Two
Hon J William Brammer Jr., Judge, Court of Appeals - Division Two
Hon Peter J Eckerstrom, Judge, Court of Appeals - Division Two
Hon Philip G Espinosa, Judge, Court of Appeals - Division Two

Hon Joseph W Howard, Judge, Court of Appeals - Division Two
Donald Allen Guadagni
Bruce W Bowers, Arizona Prosecuting Attorneys' Advisory Council
Christopher E Candelaria, Apache County Attorney
Terence C Hance, Coconino County Attorney
Derek D Rapier, Greenlee County Attorney
Matthew J Smith, Mohave County Attorney
Edward G Rheinheimer, Cochise County Attorney's Office
Daisy D Flores, Gila County Attorney
Martin E Brannan, La Paz County Attorney's Office
Melvin R Bowers Jr, Navajo County Attorney
George E Silva, Santa Cruz County Attorney
Robert Carter Olson, Pinal County Attorney
Barbara LaWall, Pima County Attorney
John F Fearing, Executive Director, Arizona Newspapers Association
Joel Foster, President, The Arizona Advocacy Network Foundation
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IN THE SUPREME COURT OF THE STATE OF ARIZONA

Supreme Court No. R-04-0023



ORDER AMENDING TERMINOLOGY AND RULES 5, 9, 16-18, AND 23, RULES OF
THE COMMISSION ON JUDICIAL CONDUCT

IT IS ORDERED amending Terminology and Rules 5, 9, 16-18, and 23, Rules of the Commission on Judicial Conduct, as set forth in the attachment hereto,* effective January 1, 2006. These changes shall be effective as to cases in which the complaint is filed on or after January 1, 2006.

DATED in the City of Phoenix, Arizona at the Arizona Courts Building, this 9th day of , 2005.

For the Court:

A handwritten signature in cursive script, reading "Ruth V. McGregor". The signature is written over a horizontal line.

Ruth V. McGregor
Vice Chief Justice

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

AMENDMENTS TO THE RULES OF THE COMMISSION ON JUDICIAL CONDUCT

PREAMBLE

[No change to the Preamble.]

TERMINOLOGY

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

"Admonition" is a confidential, informal disciplinary sanction imposed when a judge's conduct appears improper, even though it may meet minimum standards of conduct.

"Advisory letter" is a confidential, informal communication reminding a judge of ethical obligations, or an instruction designed to assist a judge in improving or modifying behaviors or procedures.

"Censure" is a ~~form of formal~~ public discipline imposed upon sanction based on a finding that a judge has clearly committed misconduct but the conduct is not so egregious as to warrant suspension, removal or retirement.

[No change to "Code" through "Recommendations."]

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

"Reprimand" is an ~~confidential,~~ informal public disciplinary sanction imposed when a judge has ~~technically committed misconduct but the conduct~~ for minor misconduct that is does not so egregious or clear as to warrant censure, suspension, removal, or retirement.

[No change to "Supreme Court."]

SECTION A. ORGANIZATION AND STRUCTURE ADMINISTRATION

[No changes to Rules 1 through 4.]

SECTION B. GENERAL PROVISIONS

Rule 5. Purpose of ~~disciplinary actions~~ judicial discipline. [Change in heading only.]

[No changes to Rules 6 through 8.]

Rule 9. Public Access and Confidentiality

(a) **Public access.** ~~After the filing of a judge's response to formal charges or the expiration of the time provided for such a response, the record and all proceedings in a case pending before the commission shall be public. The record in informal proceedings shall be public after the complainant and the judge are notified of the outcome of the proceedings and the time provided for further commission review has expired. The record in formal proceedings shall be public after the filing of the judge's response to formal charges or the expiration of the time provided for such a response, the entry of an order approving an agreement for discipline by consent, or the waiver of confidentiality by the judge.~~

(b) **Confidential matters.** All other commission correspondence, draft documents, computer records, investigative reports, attorney work product, commission deliberations, and records of informal proceedings in dismissed cases are confidential ; provided that, following entry of an order of dismissal, the complaint and the order of dismissal shall be made public but with all identifying information regarding any person or court redacted and the judge and complainant designated only by number.

(c) **Discretionary disclosure.** The commission may disclose a complaint to a judge and a

judge's response to a complainant at any time. It may also disclose confidential information to confirm a pending investigation in a case in which an investigation has become public or to clarify proceedings in such a case in which an investigation has become public; to explain the final disposition of a complaint; to protect individuals, the public, or the administration of justice; and to comply with official requests from agencies and other organizations involved in criminal prosecutions, bar discipline investigations, or judicial nomination, selection, and retention proceedings. Unless otherwise ordered by the commission, complainants, respondent judges and witnesses are not prohibited from disclosing the existence of proceedings or from disclosing any documents or correspondence served on or provided to those persons.

(d) Protective orders. Upon motion by a party or by a person from whom the information was obtained, 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.

[No changes to Rules 10 through 15.]

SECTION C. ~~DISCIPLINARY REMEDIES~~ DISPOSITIONS AND SANCTIONS

~~Rule 16. Disciplinary Remedies~~

~~—(a) Advisory letter.~~ The commission may issue an advisory letter reminding a judge of ethical obligations or giving instructions designed to assist a judge in improving or modifying behaviors or procedures. ~~Advisory letters are confidential and shall not be disclosed to appointing authorities, nor shall they be used in aggravation or mitigation of any other sanction imposed under these rules.~~

Advisory letters are final and not subject to review.

~~(b) **Diversión.** The commission may direct the judge to participate in professional counseling or treatment, education, mentoring by another judge, or other activities. It may also impose conditions on a judge's conduct. If a judge accepts recommendations for such activities or conditions, the commission may suspend further proceedings and monitor the judge's conduct in accordance with Rule 34.~~

~~(c) **Consultation with a judge.** At any time before formal proceedings are commenced, the commission may confer personally and confidentially with a judge to discuss disciplinary alternatives and other options, including retirement or resignation with or without an agreement to refrain from future performance of judicial duties. If the judge agrees to retire or resign, the complaint may be closed.~~

Rule 16. Dispositions in general.

(a) **Dismissal.** The commission may dismiss a complaint that fails to allege an act of judicial misconduct, that lacks sufficient evidence to support an investigation, that is solely appellate in nature, or that is otherwise frivolous, unfounded or outside its jurisdiction. A dismissal may be issued with confidential comments reminding a judge of ethical obligations or recommending changes in behavior or procedures.

(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) **Consultation.** The commission may confer confidentially with a judge at any time to

discuss disciplinary alternatives including voluntary retirement or resignation from judicial office. If a judge agrees to retire or resign while a complaint is pending, the commission may dismiss the complaint or take other appropriate action consistent with these rules.

(d) Discipline by contracting authority. The commission may recommend to the chief justice, a chief judge, or a presiding judge of any court that a judicial officer hired under contract be disciplined directly by the contracting authority.

Rule 17. Informal sanctions

~~(a) Admonition.~~ The commission may admonish a judge for conduct that appears improper. ~~(even though it may meet minimum standards of conduct) and warn the judge of ethical responsibilities imposed by the code and the need to avoid certain conduct or inappropriate practices in the future.~~

~~(b) (a) Reprimand.~~ The commission may reprimand a judge without a formal hearing for conduct that is unacceptable under one of the grounds for judicial discipline but that is not so serious as to warrant formal proceedings or further discipline by the supreme court.

~~(c) (b) Other informal sanctions.~~ The commission may ~~adjust an informal sanction by any other appropriate means~~ take any other informal action consistent with these rules, including, but not limited to, the ~~use of any remedies set forth in Rule 16 or~~ the assessment of attorney fees and costs.

Rule 18. Formal Sanctions

~~(a) Censure, suspension, or removal.~~ Pursuant to ~~article 6.1, § 4 of the constitution,~~ The commission may recommend to the supreme court, pursuant to article 6.1, § 4 of the constitution, that ~~the~~ a judge be censured, suspended without pay, or removed from office for misconduct following a formal hearing or the approval of an agreement for discipline by consent.

~~(b) Involuntary retirement.~~ Pursuant to ~~article 6.1, § 4 of the constitution,~~ t The commission

may recommend to the supreme court, pursuant to article 6.1, § 4 of the constitution, that a judge be involuntarily retired for a mental or physical incapacity that seriously interferes with the performance of the judge's duties and is likely to become permanent following an incapacity proceeding or the approval of an agreement for discipline by consent. ~~A judge retired by the supreme court shall be considered to have retired voluntarily.~~

(c) **Immediate disqualification.** ~~Pursuant to article 6.1, § 2 of the constitution,~~ a judge shall be disqualified, without loss of salary, pursuant to article 6.1, § 2 of the constitution, from acting as a judge when the commission files a recommendation to the supreme court for the judge's suspension, removal, or retirement.

(d) **Criminal conduct.** ~~Pursuant to article 6.1, § 3 of the constitution,~~ ~~t~~ The commission may recommend to the supreme court, pursuant to article 6.1, § 3 of the constitution, that a judge be suspended from office without salary when the judge pleads guilty or no contest to, or is found guilty of, a crime punishable as a felony under state or federal law or of any other crime that involves moral turpitude under such law. The supreme court may also act on its own motion under this section.

(e) **Other formal sanctions.** The commission may recommend the imposition of other formal sanctions consistent with these rules, including, but not limited to, the assessment of attorney fees and costs.

Rule 19. [No change.]

SECTION D. DISCIPLINARY PROCEEDINGS

[No changes to Rules 20 through 22.]

Rule 23. Commission review ~~of informal proceedings~~

(a) **Disposition.** After reviewing a complaint, the report of the executive director or disciplinary counsel, or the recommendation of an investigative panel ~~relating to disciplinary remedies or~~

~~informal sanctions~~, the commission may dismiss the complaint, order further investigation, or take any other disciplinary action impose an informal sanction consistent with these rules.

(b) Motion for reconsideration. When the commission dismisses a complaint or imposes ~~disciplinary remedies or~~ an informal sanctions, it shall notify the judge, the complainant, and disciplinary counsel of the outcome. ~~Except as provided in Rule 16(a), w~~ 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 judge, the complainant,~~ 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.

(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 novo hearing shall be governed by these rules.

[No changes to Rules 24 through 29.]

SECTION E. SPECIAL PROCEEDINGS

[No changes to Rules 30 through 34.]