

David K. Byers
Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, AZ 85007
(602) 452-3301
Projects2@courts.az.gov

ARIZONA SUPREME COURT

In the Matter of	)	
	)	
PETITION TO AMEND RULE 81,	)	Supreme Court No. R-24_____
RULES OF THE ARIZONA	)	(expedited consideration and
SUPREME COURT, CODE OF	)	emergency adoption requested)
JUDICIAL CONDUCT,	)	
TERMINOLOGY AND RULE 2.10	)	
_____	)	

I. INTRODUCTION

Pursuant to Rule 28 of the Arizona Supreme Court, Petitioner respectfully petitions this Court to amend the Arizona Code of Judicial Conduct to add a definition to the Terminology section and a provision to Rule 2.10 as shown in Appendix A. The amendment would specifically authorize a presiding judge of a court of record to make statements and provide statistics about another judge's administrative performance in calendar and caseload management. The proposed amendment is the result of ongoing discussions during meetings of the presiding judges of the superior court beginning in June 2023.

II. GROUNDS FOR APPROVAL

Judges and the judicial branch are subject to comments from outside forces that impact both the trust and confidence in the administration of justice in Arizona. A judge may become the subject of disinformation campaigns used to further the agenda of an outside party's personal or political gain. With such misinformation about judges being spread, the public is then subject to inaccurate and irresponsible representations of the judicial branch.

The Arizona Code of Judicial Conduct stresses the importance of restrictions to judicial speech as being essential to the maintenance of the judiciary's independence, integrity, and impartiality. However, the integrity of this branch is at harm when the spreading of such inaccuracies is distributed to the public without knowledge that the information is inaccurate. The amendment being proposed here does not change or alter the independence, integrity, or impartiality required. Rather, the proposal clarifies that the presiding judge of the Superior Court in a county,¹ the chief judge of a division of the Court of Appeals, and the Chief Justice of the Arizona Supreme Court, may make statements and provide statistics about another judge's administrative performance in calendar and caseload management. This information otherwise may not be available to the public.

¹ The presiding judge of the Superior Court in a county exercises administrative supervision over the Superior Court, the justice of the peace courts, and the municipal courts in their counties. Administrative Order 2017-79.

This proposal expands on the 2021 amendments to Rule 2.10(E). This proposed amendment will further the intent of protecting the judiciary and judges from being negatively implicated in the unsubstantiated spread of misinformation that harms the public trust with the courts. By amending the rule to specifically authorize statements, the public can look to those in these administrative supervisory positions to provide accurate information that dissuades them from following the misrepresentation being perpetuated by those who are weakening the integrity of the judicial branch in Arizona.

III. EXPEDITED CONSIDERATION AND EMERGENCY ADOPTION REQUESTED

As permitted by Supreme Court Rule 28(h), Petitioner requests expedited consideration and emergency temporary adoption of the proposed rule amendments at the Court's August 2024 Rules Agenda with a comment period to follow and consideration for permanent adoption at the Court's December 2024 Rules Agenda. Petitioner respectfully requests that this petition be open for preliminary comments until May 31, 2024, with a reply due by June 17, 2024, to provide an opportunity for the public to comment before this petition is considered at the Court's August 2024 Rules Agenda. If adopted, the petition should be reopened for further comment following the August Rules Agenda.

The presiding judges of the Superior Court have vetted this proposal during their quarterly meetings since June 2023. Various drafts were considered, but a

consensus could not be reached by the January 10, 2024, filing deadline. During their March 2024 meeting, three of the presiding judges were tasked with making a final recommendation. They drafted the proposed provision and circulated it to their peers, and it has garnered near unanimous support (14 presiding judges support the proposal with only one abstention).

The investment of time by the presiding judges of the Superior Court in drafting and vetting this proposal presents a compelling circumstance for its consideration in August and emergency adoption. Adherence to the timeline for consideration and adoption through the normal rules cycle would delay implementation until January 1, 2026. Nothing would be gained by following that timeline, given that the petition can be opened now for comment and then reopened again after the August Rules Agenda. The public will have ample opportunity to weigh in on the proposal before the Court considers adopting it on a permanent basis in December.

RESPECTFULLY SUBMITTED this _____ day of April, 2024.

By /s/David K. Byers
David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, Arizona 85007
(602) 452-3301
Projects2@courts.az.gov

APPENDIX A

Rules of the Supreme Court of Arizona Rule 81, Arizona Code of Judicial Conduct (new language is underlined)

TERMINOLOGY

* * *

“Presiding judge of a court of record” means a presiding judge of the superior court in a county, a chief judge of the court of appeals, or the chief justice.

* * *

RULE 2.10. Judicial Statements

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge’s direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party in writing, via social media or broadcast media or otherwise to allegations in the media or elsewhere concerning the judge’s conduct in a matter or to false, misleading, or unfair allegations or attacks upon the judge’s character or reputation.

(F) Subject to the requirements of paragraph (A), a presiding judge of a court of record is authorized to make statements and provide statistics about another judge’s administrative performance in calendar and caseload management.