

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 82,)	Supreme Court No. R-24_____
RULES OF THE ARIZONA)	(expedited consideration and
SUPREME COURT, JUDICIAL)	emergency adoption requested)
ETHICS ADVISORY COMMITTEE))	
_____))	

I. INTRODUCTION

Pursuant to Rule 28 of the Arizona Supreme Court, Petitioner respectfully petitions this Court to amend Rule 82, Rules of the Supreme Court of Arizona as shown in Appendix A. The proposed amendment would (1) require the Judicial Ethics Advisory Committee (“Advisory Committee”) to seek comment before issuing a formal advisory opinion and (2) provide for this Court’s review before a formal advisory opinion becomes final. The process for issuance of a formal advisory opinion concerning the Code of Judicial Conduct or the Code of Conduct for Judicial Employees would then better align with the process for issuance of an advisory opinion concerning legal ethics under Rule 42.1, Rules of the Supreme Court of Arizona.

II. GROUNDS FOR APPROVAL

A. Practice of Seeking Comment

Rule 82 does not currently provide explicit authority allowing the Advisory Committee to seek comment from stakeholders prior to issuing a formal advisory opinion. Approximately seven years ago, the Advisory Committee adopted a policy of seeking comment. A summary of the facts and questions presented to the Advisory Committee are distributed electronically to judicial officers on issues presented under the Code of Judicial Conduct. Judicial officers are invited to submit comments and the comment period is typically set for approximately 30 days. A similar process would be followed for issues presented under the Code of Conduct for Judicial Employees with distribution targeted to court administrators and presiding judges. The current practice reportedly has worked well to obtain input from interested stakeholders.

Amending Rule 82 as proposed to explicitly require the Advisory Committee to seek comment will bolster the current practice of seeking comment from stakeholders.

B. Supreme Court Review

Rule 82 does not currently provide a mechanism for this Court's review of a formal advisory opinion prior to its issuance. If the Court disagrees with a formal advisory opinion, in whole or in part, its recourse is to reconsider the opinion under

Rule 82(g). The review process concerning opinions on lawyer ethics issued by the Ethics Advisory Committee provides a framework for prior review that may be incorporated into Rule 82.

Rule 42.1(i) of the Rules of the Arizona Supreme Court provides:

(i) Supreme Court Review. After the public comment period ends and the Committee reviews the comments and makes any further revisions to the proposed opinion that it believes are appropriate, the Committee chair must file the proposed opinion and all materials considered by the Committee in adopting the opinion with the Clerk of the Supreme Court for Supreme Court review. Within 90 days after the proposed opinion's submission, the court may take any action it deems appropriate, including declining review of the opinion, approving the opinion, ordering that the opinion not be posted or distributed, modifying the opinion, or directing the Committee to make specified changes or reconsider certain issues.

The proposed amendment to Rule 82 seeks to incorporate this same review process with respect to formal opinions that the Advisory Committee plans to issue.

Allowing for prior review will provide this Court an opportunity to tailor formal advisory opinions to its own interpretation of the Code of Judicial Conduct and the Code of Conduct for Judicial Employees prior to their issuance. It will also bolster the authority of formal advisory opinions issued because they will then carry the imprimatur of this Court.

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 June 28, 2024, with a reply due by July 19, 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.

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 3rd day of June, 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 82, Judicial Ethics Advisory Committee** *(new language is underlined, deleted text is ~~stricken~~)*

(a) Membership. The Chief Justice shall appoint a Judicial Ethics Advisory Committee of the Supreme Court (referred to in the rule as the “advisory committee”) consisting of nine members. At least one member shall be from the public. Of the judicial members, at least one member shall be appointed from the Court of Appeals; at least one member shall be appointed from the Superior Court; one member shall be appointed from the Municipal Courts; one member shall be appointed from the Justice of the Peace Courts; and one member shall be a designee of the Administrative Director. Members shall serve three-year terms; terms shall be staggered as designated by the Chief Justice; and no member except the designee of the Administrative Director shall serve for more than two consecutive terms. Members shall continue to serve until a successor is appointed, and appointments to fill a vacancy shall be for the balance of the term vacated.

(b) Powers and Duties. The advisory committee so established shall have authority to:

(1) render advisory opinions on proper judicial conduct with respect to the provisions of the Code of Judicial Conduct, any financial reporting requirements, or any other requirement of law applicable to judges or candidates for judicial office provided that an opinion should not be requested and shall not be issued on a matter known to be pending before a court or before the Commission on Judicial Conduct;

(2) render opinions on proper employee conduct with respect to the provisions of the Code of Conduct for Judicial Employees;

(3) make recommendations to the Supreme Court for amendment of the Code of Judicial Conduct or the Code of Conduct for Judicial Employees or these rules; and

(4) make recommendations regarding appropriate subjects for judicial education programs.

(c) Administration. The advisory committee shall be administered under the direction of a chairperson appointed by the Chief Justice, and assisted, as appropriate, by the staff of the Administrative Office of the Courts and the staff of the Commission on Judicial Conduct.

(1) The chairperson is authorized to appoint a vice-chairperson from the members of the advisory committee, to call meetings as needed, and to otherwise coordinate the work of the advisory committee.

(2) Upon agreement by the Commission on Judicial Conduct, the advisory committee's office shall be located at the same address as the Commission on Judicial Conduct and Commission staff shall be available to answer questions concerning advisory committee procedures, to receive and process opinion requests, to maintain committee records, and to provide other staff assistance as appropriate. All communications with staff concerning requests for advisory opinions shall be confidential, and members of the Commission may not serve on the advisory committee during their tenure on the Commission.

(3) The Administrative Office of the Courts shall distribute the formal opinions of the advisory committee until the advisory committee or the Commission on Judicial Conduct is funded for this purpose, and shall provide other staff assistance as appropriate.

(d) Opinion Requests. Advisory opinions may be requested by a judge or candidate for judicial office, by a court, by an agency charged with judicial administration, by a judicial employee, or by any member of the advisory committee. Requests for formal advisory opinions shall be submitted in writing at the committee's office or to any committee member and should be accompanied by a letter or memorandum describing the facts and discussing the issues presented in the request. Each request for a formal opinion shall be assigned a number when received, and copies of requests shall be forwarded to all committee members. The identity, organizational affiliation, and geographic location of persons requesting opinions shall be confidential. Requests for informal advisory opinions may be submitted in writing to the committee's office or communicated in person or by telephone to any member of the committee or its staff.

(e) Consideration of Requests. The chairperson of the advisory committee shall determine whether a request for an opinion should be resolved formally with a written, published opinion or informally by letter or other communication. Formal opinions shall be decided by a majority vote of the advisory committee. Informal opinions may be assigned to any member of the advisory committee or its staff to discuss and resolve directly with the person or organization requesting the opinion. The advisory committee may confer in person or by telephone as often as needed to conduct committee business and resolve pending requests.

(f) Comment Period. The advisory committee must seek comment prior to issuance of a formal advisory opinion through the distribution of a summary of the facts and

questions presented. The comment period must be open for at least thirty days. After the comment period ends, the advisory committee must consider all submitted comments and, in light of those comments, decide whether to issue a formal advisory opinion or take other appropriate action.

(g) Supreme Court Review. If the advisory committee decides to issue a formal advisory opinion, the advisory committee chair must file the proposed opinion and all materials considered by the advisory committee in adopting the opinion with the Clerk of the Supreme Court for Supreme Court review. Within 90 days after the proposed opinion's submission, the court may take any action it deems appropriate, including declining review of the opinion, approving the opinion, ordering that the opinion not be posted or distributed, modifying the opinion, or directing the advisory committee to make specified changes or reconsider certain issues.

(fh) Opinion Distribution. If the Supreme Court does not take any action on the proposed opinion within 90 days or after it declines review or approves the opinion (with or without modifications), the formal advisory opinion will be deemed final. Immediately upon approval, the advisory committee's The formal advisory opinion shall be initially distributed to the requester, the justices, clerk and chief staff attorney of the supreme court, the chief judges of the court of appeals, the presiding judges of the superior court, the director of the Administrative Office of the Courts, and the chief bar counsel to the Arizona State Bar. Formal opinions shall be accumulated and distributed to all other judges at least annually. Records of advisory committee determinations and opinions shall be maintained at the committee's office.

(gi) Reconsideration. Within thirty days after the distribution of a formal opinion to all judges, any person, court or agency authorized to request an opinion under this rule may petition the advisory committee to reconsider the opinion by submitting a request for reconsideration to the advisory committee's office in the form of a letter or memorandum explaining the basis for the request. The advisory committee shall respond to the request by either reaffirming or revising the formal opinion. If the advisory committee revises the opinion, it must resubmit the opinion to the supreme court for review. If warranted, the advisory committee or the supreme court may also reconsider an opinion at any time on its own motion. Revised opinions shall be distributed in the same manner as original opinions.

(hj) Opinion as Defense. Reliance on a formal advisory opinion may be raised as a defense in any disciplinary proceeding.