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IN THE SUPREME COURT OF ARIZONA

Petition to Amend the Rules of the)
Commission on Judicial Conduct) Supreme Court No.:

Pursuant to Rule 28, Rules of the Supreme Court, the Honorable Louis Frank Dominguez, Chairman of the Arizona Commission on Judicial Conduct (commission), respectfully petitions this Court on behalf of the commission to adopt amendments to the Rules of the Commission on Judicial Conduct as described below and set forth in the attached Appendix A. The commission believes these changes are necessary to improve the clarity and efficiency of procedures related to judicial misconduct cases.

INTRODUCTION

Commission members and staff have identified a number of concerns in the commission's procedural rules and recommend the adoption of the amendments described herein. Many of the proposed amendments are technical in that they involve little or no substantive changes but rather simply improve the clarity of the language describing the commission's processes. The commission also recommends the adoption of several substantive changes as well.

SUMMARY OF THE PROPOSED AMENDMENTS

Terminology Section – “Formal Charges”: technical change to recognize that, in addition to a hearing panel, the commission itself can authorize formal charges.

Terminology Section – “Record”: technical change to clarify that the concern is with documents filed with the commission (as opposed to any courts). In addition, a substantive change to allow for commission hearings to be recorded digitally rather than by a court reporter.

Rule 4: Changes clarifying that the Executive Director serves at the pleasure of the commission, while other staff serve at the pleasure of the Executive Director and authorizing the Executive Director to oversee and assist in the processing and investigation of complaints consistent with the commission’s administrative policies and to assign duties to Disciplinary Counsel. Note that Commission Administrative Policy 21 explicitly limits the Executive Director’s ability to advise a hearing panel when he has participated in the investigation or prosecution of a complaint.

Rule 9: Changes to the substance and structure of the rule in order to:

1. Make the commission’s public access and confidentiality restrictions clear as to each type of case, based on case outcome;
2. Specify the general rule in cases involving motions for reconsideration;
3. Express the commission’s standard in considering requests for discretionary disclosure of otherwise confidential documents;
4. Clarify that no individuals involved in complaint investigations are bound by confidentiality absent an order from the commission;

1 5. Expand access to sealed materials beyond just Disciplinary Counsel to all
2 commission staff, recognizing that the processing of closed files is accomplished by
3 various staff members who are bound to keep commission matters confidential in
4 any event;

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6 6. Ensure transparency regarding the commission's press release policy; and

7 7. Direct the notification of appropriate authorities within a court when a judge
8 on that court receives a sanction for judicial misconduct.

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10 Rule 12: Substantive change to allow for service via electronic mail of documents
11 related to commission proceedings.

12 Rule 13: Additional language to specify the confidentiality of documents obtained
13 through use of the Commission's subpoena power.

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15 Rule 15: Technical amendment to the title to accurately reflect its contents.

16 Rule 16: Additional language clarifying that the commission can direct the
17 Executive Director and/or Disciplinary Counsel to meet with a judge to discuss
18 disciplinary alternatives.

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20 Rule 20: Amendment to clarify the procedure in situations where a case file is
21 opened without a complaint but rather on the basis of information learned through
22 an alternative source, such as news reports.

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24 Rule 21: Amendment to the language to clarify the initial screening process for
25 complaints, which allows commission staff to make recommendations to either the
26 full commission or an investigative panel, as appropriate. The amendments are
27 intended to clarify that the resolution of all complaints lies with the members of the
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1 commission and not with staff.

2 Rule 22: Amendment to the language for general clarity, in order to ensure
3 consistency with Rule 21, and to:

4 1. Allow Disciplinary Counsel to request investigative assistance from other
5 staff members as necessary; and

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7 2. Establish that either Disciplinary Counsel or the Executive Director has the
8 authority to request the appointment of an Investigative Panel.

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10 Rule 24: Technical change to ensure all parties understand that general “notice
11 pleading” standards apply in formal proceedings; to remove the specification that
12 the Executive Director be the one to prepare the notice of formal proceedings
13 document (and allow, for example, the Disciplinary Counsel or other staff to do so);
14 and to specify who resolves requests for amendment of the formal charges.

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16 Rule 26: Additional language establishing in the procedural rules the commission’s
17 current practice of issuing a case management order at the outset of a case, and
18 amending the rule to clarify that failure to properly disclose evidence and witnesses
19 in a timely manner will result in the preclusion of that evidence absent
20 extraordinary circumstances.

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22 Rule 27: While the commission has appointed a hearing officer in appropriate cases,
23 it has never appointed a panel of hearing officers and thus recommends an
24 amendment to remove the language authorizing that option as unnecessary. In
25 addition, the Arizona Supreme Court has not interpreted the language of subsection
26 (e)(2), and questions have arisen in recent cases as to the appropriate interpretation
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1 of this language (most notably, In re Woolbright, JC-11-0004). The commission thus
2 recommends that future hearing panels be directed to relevant precedent in the
3 attorney discipline context given the procedural rules in that context contain the
4 same “as far as practicable” language. *See* Supreme Court Rule 48(c). Further
5 amendments to this rule improve its clarity; allow for the use of a former
6 commission member to serve as a settlement judge; allow for proceedings to be
7 digitally recorded rather than recorded only through the use of a court reporter; and
8 explicitly clarify that the prohibition against improper ex parte communications
9 does not preclude staff from providing appropriate administrative assistance to
10 commission members.
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13 Rule 28: Technical changes to clarify the timing for filing the commission’s
14 recommendations with the Supreme Court, which documents must be filed with
15 those recommendations, and specifying the procedures when there is a digital
16 recording of a hearing rather than a transcript.
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18 Rule 29: Similar to Rule 28, technical changes to clarify the documents that must be
19 filed with the commission’s recommendations to the Supreme Court.
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21 Rule 30: Additional language to allow for electronic service of documents.
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Respectfully submitted this 20th day of November, 2013.

COMMISSION ON JUDICIAL CONDUCT

s/ Louis Frank Dominguez
Louis Frank Dominguez
Commission Chair