

1 Margaret H. Downie, Bar No. 009669
2 Executive Director
3 Commission on Judicial Conduct
4 1501 W. Washington, Suite 229
5 Phoenix, AZ 85007
6 (602) 452-3200
7 mdownie@courts.az.gov

8 **IN THE SUPREME COURT**
9 **STATE OF ARIZONA**

10 In the Matter of:

11 **PETITION TO AMEND RULE 81,**
12 **RULES OF THE SUPREME**
13 **COURT, ARIZONA CODE OF**
14 **JUDICIAL CONDUCT, RULES 1.2**
15 **AND 2.10.**

Supreme Court No. R-21-0001

Comment of the Arizona
Commission on Judicial Conduct

16 The Arizona Commission on Judicial Conduct (“Commission”) files this
17 comment regarding the petition filed by the Arizona Supreme Court Task Force on
18 Countering Disinformation (“Task Force”) proposing amendments to the Arizona
19 Code of Judicial Conduct (“Code”). With one relatively minor exception, the
20 Commission supports the petition.

21 As the Task Force’s petition notes, Canon 4 allows judicial candidates to
22 respond more broadly to personal attacks than Rule 2.10(E) seems to permit for
23 sitting judges. As currently worded, Rule 2.10(E) appears to limit a sitting judge to
24 publicly responding to allegations “concerning the judge’s *conduct in a matter.*”
25 (Emphasis added). Judicial candidates, on the other hand, are permitted to respond
to a broader array of attacks:

1 Judicial candidates are sometimes the subject of false, misleading, or
2 unfair allegations made by opposing candidates, third parties, or the
3 media. For example, false or misleading statements might be made
4 regarding the identity, present position, experience, qualifications, or
5 judicial rulings of a candidate. In other situations, false or misleading
6 allegations may be made that bear upon a candidate’s integrity or
7 fitness for judicial office. As long as the candidate does not violate
8 this rule, the candidate may make a factually accurate public response.

9 Rule 4.3, comment 3.

10 The Task Force’s intent appears to be to place sitting judges on equal footing
11 with judicial candidates when it comes to countering disinformation or unfair
12 personal attacks. With one relatively minor exception, the proposed changes do
13 just that. The exception? Under Canon 4, a judicial candidate may make a
14 factually accurate public response to “false, misleading, *or unfair* allegations.”
15 (Emphasis added). The Task Force’s proposed changes to the comment to Rule
16 1.2 and the text of and comments to Rule 2.10 would permit a judge to respond to
17 “false, misleading, *or unsubstantiated* allegations.” (Emphasis added). The
18 Commission is uncertain whether the proposed change in wording (“unfair” versus
19 “unsubstantiated”) serves a purpose that is not immediately apparent. Barring that,
20 the Commission would prefer that any changes to the language in Rule 2.10(E) be
21 consistent with Rule 4.3.

22 CONCLUSION

23 The Task Force’s proposed changes would keep in place the overriding
24 imperative of Rule 2.10(A) that any public statements by a judge must not be
25 reasonably 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. Therefore, with the minor

