

TO:

Hon Howard B Grodman

Robert B Van Wyck

Meredith L Vivona

George A Riemer

Kimberly Welch

Hon Mark R Moran

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, AZ 85007
Telephone: (602) 452-3200

FILED

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ARIZONA COMMISSION ON
JUDICIAL CONDUCT

**STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning
Judge Howard Grodman
Flagstaff Justice Court
Coconino County
State of Arizona,

Respondent.

Case No.: 14-216

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDATIONS**

The Commission on Judicial Conduct (“Commission”) commenced formal proceedings against Justice of the Peace Howard Grodman (“Respondent”) on May 4, 2015, by filing a statement of charges pursuant to Rule 24, Rules of the Commission on Judicial Conduct (“Commission Rules”). Respondent filed an answer to the statement of charges on May 28, 2015.

On July 1, 2015, Acting Disciplinary Counsel, Meredith Vivona, and Respondent’s counsel, Robert Van Wyck, filed a document with the Commission entitled “Stipulated Facts.” Counsel later reached stipulations regarding all but one of the violations alleged in the statement of charges, as evidenced by their August 3, 2015 filing entitled “Stipulated Code of Judicial Conduct Violations.” With minor modifications set forth below, the Commission adopts the parties’ factual stipulations

and, after independent review, concludes that the stipulated Code violations have been established by clear and convincing evidence.

A hearing was held on August 7, 2015, before a seven-member hearing panel comprised of Presiding Member Judge Margaret H. Downie and Commission members Christopher Ames, Roger Barton, Colleen Concannon, Judge Louis Frank Dominguez, Judge George H. Foster, Jr., and Art Hinshaw. The hearing panel included a member from each category of Commission membership, as contemplated by Commission Rule 3(f). No member of the hearing panel served on or participated in the investigative panel.

On August 11, 2015, the Clerk of the Commission advised the hearing panel and counsel that a digital recording of the August 7 hearing was available. Pursuant to Commission Rule 28(a), this report and recommendation is submitted within 15 days of that notification.

The Commission has jurisdiction pursuant to Article 6.1 of the Arizona Constitution.

FINDINGS OF FACT

The hearing panel adopts the following findings of fact:

1. Respondent has served as a justice of the peace in Coconino County, Arizona since January 2011.
2. Respondent was serving in his capacity as a judge at all times relevant to these proceedings.

3. Respondent is subject to the Arizona Code of Judicial Conduct (“Code”). Ariz. R. Sup. Ct. 81.

4. Respondent sought re-election to his position as justice of the peace. Warren Sanford opposed Respondent in the primary election held on August 26, 2014. Sanford had been serving as a *pro tem* Justice of the Peace for Coconino County and as an on-call Flagstaff Municipal Court Magistrate.

5. As part of his re-election efforts, Respondent engaged in numerous campaign-related activities, including email communications, a campaign Facebook page (facebook.com/judgehowardgrodman), and a campaign website (www.howardgrodman.com).

6. The Arizona Administrative Office of the Court (“AOC”) provides Respondent with a work email address: HGrodman@courts.az.gov (hereafter, “AOC email account”). Respondent has had access to and control over his AOC email account since January 2011.

7. Around September 2013, Respondent began using his AOC email account for non-work, campaign-related communications, including the following:

- a. October 4, 2013 message from Respondent to G.M. stating: “[Judge Sanford]’s one of my pro tems. I fired him yesterday. He’s been a pro tem a long time, but not a lawyer.”

- b. November 25, 2013 message from Respondent to E.A., stating: “I want to get an official badge that identifies me to wear to events, to court fuckface’s elect warren [sic] Sanford justice of the peace badge. I could use your help in design.”
- c. January 28, 2014 message from Respondent to C.B., stating, in part: “I don’t see a problem receiving email at my court address.” C.B. replied: “City attorney told us that we are not allowed to us [sic] public property for campaign purposes. . . . Don’t know if the same rule applies to judges.”
- d. February 20, 2014 message from Respondent to B.M. discussing Sanford and asking: “Would you allow me to list you as an endorsement on my website?”
- e. March 11, 2014 email from Respondent to L.F. regarding Sanford’s Facebook post about being “unanimously endorsed for Justice of the Peace by To’Nanees’ Dizi Chapter,” asking: “This showed up on Warren Sanford’s Facebook page. Can you help me to undo it?”
- f. March 14, 2014 email from Respondent to R.K. with a subject line “your endorsement of Sanford,” stating: “Here’s how he [Sanford] fixed it, so it only implies that you are endorsing him. What a sleaze!” This email message included the Coconino County logo and Respondent’s judicial title.

- g. March 25, 2014 email from Respondent to L.L., stating, in part: “I was at the last DORR breakfast and spoke Warren didn’t and was pissed. You could help me by letting Steve know how full of shit Warren is and how decent I’ve been. Warren pretends like he has a significant role in the Coconino County justice courts when all he’s ever been is one on a roster of about a dozen on call pro tems. . . . I know I have 5 more months to deal with his gimmicks and bullshit.” This email message included the Coconino County logo and Respondent’s judicial title.
- h. June 5, 2014 email from Respondent to the President of the Coconino County Democratic Party, stating that certain statements by Sanford in the Compass newsletter were “both a direct (not even veiled) attack on me and an outright lie. I request that you enforce your cardinal rule and ban Judge Sanford from the Compass hereafter.” This email message included Respondent’s judicial title.
- i. June 16, 2014 message to B.B. stating, in part: “[C.B.] asked me to contact you she wonders if she can post a campaign sign at the addresses you have allowed me.” This email message included Respondent’s judicial title.

8. Respondent advised the Commission that he stopped using his AOC email account for campaign-related activities when he learned of a public records request by Sanford. Respondent learned of the public records request by July 1, 2014.

9. On July 1, 2014, Respondent emailed L.C. to advise: “[Y]ou should use my *judgegrodman@gmail.com* for campaign related stuff. The Ss are doing a freedom of information act request of my work emails that have certain key words. . . .”

10. Within a few days of July 7, 2014, Court Administrator Gary Krcmarik and Deputy Court Administrator Sharon Yates contacted Respondent and instructed him to stop improperly using his AOC email account, which, at the time, Respondent confirmed he had done.

11. Respondent continued to use his AOC email account for campaign-related purposes after July 1, 2014, including:

- a. July 2, 2014 email to E.R., stating: “[P]lease delete the PO box as a donation option, since I no longer have it. If not Paypal, then have them email *judgegrodman@gmail.com*.”
- b. July 5, 2014 email to M.T., stating: “I’m canvassing your neighborhood and no one’s home. Would you allow me to post a yard sign until the primary?”
- c. July 7, 2014 email to T.M., stating: “May I post a reelect me sign on your Humphreys property?”
- d. July 14, 2014 email to J.A., stating: “I had in my memory that you said it would be ok for me to post a sign at your shop. Sorry if I just dreamed it up.”

- e. July 17, 2014 email to E.R. stating: “[P]lease post this on Facebook. And indicate that a similar resolution was passed by the Leupp Chapter on June 20, 2014.”
- f. July 19, 2014 email to L.C. setting forth the text of a proposed campaign radio advertisement asking for votes.

12. In his answer to the statement of charges, Respondent admitted that his previous avowal he had stopped using his AOC email account for campaign purposes after July 1, 2014 was incorrect.

13. After July 1, 2014, Respondent continued to receive campaign Facebook page notifications on his AOC email account.

14. In a July 28, 2014 article that appeared in the *Arizona Daily Sun*, Respondent admitted improperly using his AOC email account, stating:

I acknowledge responding to some emails that were sent to my court account on my court account even though they contained some campaign related content. I also initiated some emails from that account. I regret doing so, and should have taken the extra time to use a personal account. I do that now.

15. In his September 5, 2014 response to the Commission, Respondent admitted he was “wrong to use my courts [sic] email account for any campaign related communications and I have corrected that.”

16. In a July 8, 2014 Facebook post, Respondent, wearing his judicial robe, appears in a photograph in front of the judicial bench with an unnamed woman. The caption to the photo reads: "Judge reconciles county's relationship with Navajo" and provides a link to an article in the National Association of Counties County News dated June 30, 2014. The article does not have any associated photographs. The same photograph appeared on Respondent's campaign website, where the woman is identified as Coconino County Supervisor Lena Fowler. The photograph does not link to any news articles and does not contain a disclosure regarding the photograph.

17. In an October 20, 2014 Facebook post, Respondent, wearing his judicial robe, is depicted in a photograph taken in front of the judicial bench wherein he appears to be marrying two people.

18. Respondent organized an open-court session to take place on April 22, 2014, at the Cameron Chapter Facility. Respondent created, or caused to be created, advertisements for the event that included the following information:

Coconino County Flagstaff Justice Court

Holds Open Court in Cameron

Tuesday 4/22/14 @ 10 am DST Cameron Chapter Facility

This effort is made possible by Judge Howard Grodman, Constable Linda Kuczynski and Coconino County Supervisor Mandy Metzger

Who Should Register??

- Those with an open felony, misdemeanor, or traffic case with the Coconino County Flagstaff Justice Court, including cases with warrants. Individuals will be able to pay their fines and fees in full or make a payment on their case. We will accept cash, checks and credit cards. Please note we will be unable to make change.

- People who want to ask the Judge to cancel their warrant may appear without fear of being arrested in court.

19. In his September 5, 2014 response to the Commission, Respondent stated: “I did take the opportunity to hand out fliers while there. I viewed it as a political rather than court appearance.” This is so despite the fact Respondent noted he “may have had a chat with one person who had an unpaid balance on an old civil traffic matter.”

20. Respondent admitted in his November 10, 2014 supplemental response to the Commission that “the Cameron event was planned as a court event. It never formally changed to a campaign event.”

21. Respondent participated as a judge at the May 16, 2014 High Country Stand Down (“HCSD”). The HCSD was an event presented by the Coconino County Superior Court, the Flagstaff Justice Court, the Flagstaff Municipal Court and other agencies to “help veterans resolve any outstanding warrants they may have in these courts.”

22. HCSD promotional materials stated: “**You can appear before the Judge without fear of being arrested**” and also stated: “Those with an open felony, misdemeanor, or traffic case, including cases with warrants, will be able to pay their fines and fees in full, make a payment on their case, or ask the Judge to cancel either warrant.”

23. Respondent appeared at the HCSD as a judge for the purpose of performing judicial duties.

24. Prior to the HCSD, Deputy Court Administrator Sharon Yates advised Respondent that, in her opinion, he should not bring or hand out campaign flyers at the event.

25. Respondent does not “recall clearly,” but does not deny handing a campaign flyer to a veteran for whom he provided judicial services while at the HCSD.

26. Title 39, § 232.1(h)(1) of the United States Code prohibits posting political literature on postal property. This prohibition applies to campaign advertisements or flyers.

27. Respondent personally posted campaign signs at the Cameron Post Office in violation of federal law on or around the following dates:

- a. February 16, 2014
- b. March 23, 2014
- c. May 5, 2014
- d. June 21, 2014

28. On or around August 18, 2014, Respondent became aware that court employee K.S. had posted support for Sanford on her personal Facebook page.

29. K.S. had previously worked under Respondent’s direction but had recently moved to a different position at the Coconino County Superior Court.

30. Approximately a week before the primary election,¹ and during court business hours, Respondent sought out K.S. and asked to speak with her privately. K.S. followed Respondent to a nearby area, whereupon Respondent inquired about her Facebook post expressing support for Sanford. Respondent specifically asked whether K.S. was voting for Sanford and whether she would take down her Facebook post showing support for him. Respondent reminded K.S. of all that he did for the justice court and the kind of person he was. K.S. felt uncomfortable and reported the interaction with Respondent to her supervisors.

31. Respondent received a letter of reprimand dated August 20, 2014, from the Presiding Judge of the Coconino County Superior Court. The reprimand letter stated, in pertinent part:

It was brought to my attention yesterday by Sharon Yates that during the business hours of the court, you confronted a clerk in the Collections Department [K.S.] regarding her support expressed on her Facebook page of your opponent, Warren Sanford.

On two prior occasions we have met and I discussed with you concerns that had been raised about alleged ethical violations by you during this campaign. I again remind you that you cannot conduct political activities on County time. A.R.S. 11-410. In particular, A.R.S. 11-410(C) states: "Employees of a county shall not use the authority of their positions to influence the vote or political activities of any subordinate employee." If the situation above happened as described, your conduct is a violation of this statute, and violates the spirit of Canon 4 which states in part: "A judge . . . shall not engage in olitical or campaign activity that is inconsistent with the independence, *integrity*, or

¹ See Respondent's hearing testimony.

impartiality of the judiciary.” You are also reminded that your time on the clock is a county resource pursuant to Rule 4.1(8).

Your actions undermined the integrity of your position as a judge. It was also a misuse of your position of authority over a court employee. What a county employee does on their Facebook on private time is protected speech and not subject to review, discussion, criticism, etc. by a judicial officer.

Although Sharon and Gary have talked to you about this specific situation, consider this letter a formal reprimand.

32. In responding to inquiries from the Commission on September 5, 2014, and November 12, 2014, Respondent did not disclose the incident involving K.S., the letter of reprimand from the Presiding Judge, or the fact that the Presiding Judge had met with him twice previously to discuss concerns about alleged ethical violations relating to campaign activities.

33. In addition to improperly using his AOC email account for campaign-related purposes, Respondent used unprofessional and undignified language in his email communications, including calling Warren Sanford a “sleaze” and “fuckface” and stating that Sanford was “full of shit.”

34. Respondent also used his AOC email account to obtain a campaign endorsement from an individual who was then providing services to the Flagstaff Justice Court.

35. After Sanford announced he was running against Respondent, Respondent caused his work hours to be significantly reduced and ultimately precluded him from serving on the justice court.

36. Specifically, on or around October 8, 2013, Respondent asked Judge Arlington to communicate with Sanford and cancel his existing court coverage dates. As a direct result of Respondent's request, Judge Arlington emailed Sanford on October 8, 2013, stating: "Per your discussion with Howard last week, I am making different coverage arrangements for the six December dates I had previously scheduled with you." Additionally, Respondent communicated directly with the superior court presiding judge, advising that he did not want Sanford serving at the justice court. Respondent also communicated to the presiding judge that he did not want Sanford to be paid out of the justice court budget.

37. Based on Respondent's urging, the presiding judge issued a memorandum setting forth a compromise whereby Sanford would serve in matters for which the city court paid him as a *pro tem*, but he was not permitted to serve on matters paid from the justice court budget.

38. Respondent did not want Sanford working at the justice court for reasons unrelated to Sanford's judicial performance.

CONCLUSIONS OF LAW

Conclusions of law 1 through 8 are based on the parties' stipulations set forth in the August 3, 2015 filing entitled, "Stipulated Code of Judicial Conduct Violations." The only Code violation remaining in dispute is the allegation that Respondent violated Rule 2.16, which requires a judge to "cooperate and be candid and honest with judicial and lawyer disciplinary agencies." As conclusions of law 9 through 10 reflect,

the Commission concludes that one of the Rule 2.16 violations alleged in the statement of charges has been proven by clear and convincing evidence.

1. By improperly using his AOC email account, Respondent violated:

Rule 1.1 (“A judge shall comply with the law, including the Code of Judicial Conduct.”)

Rule 1.2 (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”)

Rule 1.3 (“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”)

Rule 3.1(E) (A judge shall not “make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.”)

Rule 4.1(A)(8) (A judge shall not “use court staff, facilities, or other court resources in a campaign for judicial office.”)

Rule 4.2(A)(1) (A judicial candidate shall “act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.”)

Rule 4.2(A)(2) (A judicial candidate shall “comply with all applicable election, election campaign, and election campaign fund-raising laws and regulation.”)

2. By using improper campaign photographs, Respondent violated **Rule 1.2** (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”).

3. Respondent's improper campaign activities at two official court events where he was acting in his judicial capacity violated:

Rule 1.2 ("A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.")

Rule 1.3 ("A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.")

Rule 4.1(A)(8) (A judge shall not "use court staff, facilities, or other court resources in a campaign for judicial office.")

Rule 4.2(A)(1) (A judicial candidate shall "act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.")

4. Respondent's improper posting of campaign materials at a United States Post Office in contravention of federal law violated:

Rule 1.1 ("A judge shall comply with the law, including the Code of Judicial Conduct.")

Rule 1.2 ("A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.")

Rule 4.2(A)(1) (A judicial candidate shall "act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.")

5. Respondent's improper campaigning during court hours violated:

Rule 1.2 ("A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.")

Rule 1.3 (“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”)

Rule 4.2(A)(1) (A judicial candidate shall “act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.”)

6. Respondent’s use of crude, offensive, and disparaging language directed at his campaign opponent violated:

Rule 1.2 (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”)

Rule 2.8(B) (“A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge’s direction and control.”)

7. Respondent’s improper efforts to obtain campaign endorsements violated:

Rule 1.2 (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”)

Rule 1.3 (“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”)

Rule 3.1(E) (A judge shall not “make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.”)

8. Respondent's improper retaliation against his campaign opponent violated:

Rule 1.2 ("A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.")

Rule 1.3 ("A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.")

9. By failing to disclose the incident involving K.S. (*see* findings of fact 28–31), Respondent violated Rule 2.16(A) ("A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies."). Acting Disciplinary Counsel's November 6, 2014 letter clearly called for Respondent to disclose that incident. Although Respondent testified at the hearing that he did not think of that incident when responding to Acting Disciplinary Counsel's inquiry, the Commission did not find that testimony credible, particularly given the fact that Respondent had recently received a strongly worded written reprimand from his presiding judge for that very conduct and had also been approached by the court administrator regarding the incident.

10. The hearing panel does not find clear and convincing evidence of the other Rule 2.16 violations alleged in the statement of charges.

AGGRAVATING AND MITIGATING FACTORS

Commission Rule 19 sets forth a number of factors to consider in determining the appropriate sanction for Code violations. The hearing panel finds as follows regarding relevant aggravating and mitigating factors.

Aggravating Factors

1. **The nature, extent, and frequency of the misconduct.** Respondent's misconduct, beginning in approximately September 2013 was serious, broad, and ongoing. Even after being warned three times by court personnel about various campaign-related activities, the improper conduct continued. The Commission accords significant weight to this factor.

2. **The judge's experience and length of service on the bench.** Respondent was not a new judge at the time of the Code violations. In addition, Respondent was and is a member of the Arizona Judicial Ethics Advisory Committee.

3. **Whether the conduct occurred in the judge's official capacity or private life.** Respondent's misconduct occurred in his official capacity, which is an aggravating factor. *See In Re Peck*, 177 Ariz. 283, 288 (1994) ("We must treat official conduct even more strictly than improprieties in a judge's private life because it goes to the very integrity of our judicial system.").

4. **The nature and extent to which the acts of misconduct injured other persons or respect for the judiciary.** Respondent conceded at the hearing that his conduct harmed Warren Sanford. Additionally, court employee K.S. was made to feel uncomfortable in the workplace when Respondent, her former supervisor, confronted her in the courthouse about her stated support of Sanford on Facebook and asked her to remove the post. Finally, Respondent's campaign-related misconduct was publicized in the media, bringing disrepute to the judicial branch.

5. **Whether and to what extent the judge exploited his or her position for improper purposes.** Respondent's misconduct occurred in his official capacity and resulted in an exploitation of his judicial position for personal gain.

6. **Whether the judge cooperated fully and honestly with the commission in the proceeding.** As discussed *supra*, the hearing panel concludes that Respondent was not forthcoming in his November 6, 2014 response to the Commission regarding the K.S. incident.

Mitigating Factors

1. **Whether the judge has recognized and acknowledged the wrongful nature of the conduct and manifested an effort to change or reform the conduct.** Respondent testified that he recognizes and acknowledges the wrongful nature of his conduct, and he entered into stipulations conceding most of the Code violations alleged. Respondent testified he has taken corrective actions and positive steps to ensure similar misconduct will not occur again, including having a third party handle campaign-related matters in the future.

2. **Whether there has been prior disciplinary action concerning the judge, and if so, its remoteness and relevance to the present proceeding.** Respondent has no prior disciplinary history.

3. **Whether the judge complied with prior discipline or requested and complied with a formal ethics advisory opinion.** Not applicable in this case.

4. **Whether the judge was suffering from personal or emotional problems or from physical or mental disability or impairment at the time of**

the misconduct. Respondent testified that he was encountering personal difficulties during at least some portion of the relevant time frame.

PROPORTIONALITY

Commission Rule 5 describes the purpose of Arizona’s judicial discipline system as follows:

The purpose of the judicial discipline and incapacity system is to protect the public and to maintain high standards for the judiciary and the administration of justice. Any disciplinary remedy or sanction imposed shall be sufficient to restore and maintain the dignity and honor of the position and to protect the public by assuring that the judge will refrain from similar acts of misconduct in the future.

The goal of judicial discipline “is not to punish but, rather, to impose sanctions to protect the public and foster judicial integrity.” *Peck*, 177 Ariz. at 287. The Arizona Supreme Court has held that in determining a “proper and proportionate” sanction, it is helpful to examine prior judicial misconduct cases. *Id.*

A meaningful proportionality analysis is challenging because no reported Arizona decision presents a similar fact pattern. However, the Arizona Supreme Court has held that “absent significant mitigation, suspension or removal is the only proper sanction for repeated and serious misconduct.” *Id.* at 288.

The aggravating factors in this case substantially outweigh the mitigating factors. On the other hand, Respondent’s lack of disciplinary history, his acknowledgement of the improper nature of his conduct (albeit after-the-fact), and his avowal that he will not personally handle his own judicial campaigns in the future,

lead the hearing panel to conclude that removal is not necessary to protect the public and maintain high standards for the judiciary and the administration of justice.

In the case of *In re Lorona*, a justice of the peace was suspended after she repeatedly contacted another judge and “lent the prestige of her office to advance the private interests of her friend and her step-grandson,” both of whom “were given preferential treatment” in pending cases, 178 Ariz. 562, 567 (1994). The court cited the respondent judge’s refusal to acknowledge the wrongful nature of her conduct and noted her pattern of misconduct and multiple offenses that “were prejudicial to the administration of justice and brought her office into disrepute.” *Id.* Rejecting the Commission’s recommended 15-day suspension as “woefully inadequate,” the court held that the judge’s actions “represent an abuse of her office that goes to the heart of judicial integrity” and suspended her for 90 days. *Id.* at 569.

In the case of *In re Jett*, the court suspended a justice of the peace for the remainder of her term due to “willful misconduct” after she went to the jail where her boyfriend was being held and instructed staff to prepare a release order for him that she then signed in her judicial capacity, 180 Ariz. 103, 104–105, 111 (1994). In discussing the distinction between willful misconduct and conduct prejudicial to the administration of justice, the court stated:

The more serious charge [willful misconduct] should be reserved for unjudicial conduct which a judge acting in his judicial capacity commits in bad faith, while the lesser charge [conduct prejudicial to the administration of justice that brings the judicial office into disrepute] should be applied to conduct which a judge undertakes in good faith but which nevertheless would appear to an objective

observer to be not only unjudicial conduct but conduct prejudicial to the public esteem for the judicial office.

Id. at 107. The court identified “two types of judicial acts [that] fall within the scope of bad faith”:

(1) “intentionally committed acts which [the judge] knew or should have known were beyond [the judge’s] lawful power” and that involve “actual malice as the motivation for a judge’s acting ultra vires”; and (2) intentionally committed “acts within the lawful power of a judge which nevertheless are committed for a corrupt purpose, i.e., *for any purpose other than the faithful discharge of judicial duties.*”

Id. *Jett* is instructive regarding the cited legal tenets, but is less helpful when it comes to determining the appropriate length of suspension. Unlike Respondent here, Judge Jett had a lengthy disciplinary history, and the court concluded that she presented a threat to the public. *Id.* at 108–09.

Even if Respondent’s initial ethical missteps could be attributed to ignorance of Code-based campaign restrictions (a doubtful proposition given his service on the Judicial Ethics Advisory Committee), Respondent ignored numerous entreaties by court staff and the presiding judge to modify his behavior. Even a cursory review of the Code and relevant Judicial Ethics Advisory Committee opinions would have alerted Respondent to the impropriety of his actions. The hearing panel is also concerned that, at the hearing, Respondent would not initially concede that the written reprimand from the Presiding Judge was a major event in his professional career.

The hearing panel concludes that Respondent intentionally committed numerous Code violations for a purpose other than the faithful discharge of judicial duties,

warranting a period of suspension that is not the functional equivalent of an “unpaid vacation.” *Peck*, 177 Ariz. at 290.

RECOMMENDATIONS

Based on the foregoing, the hearing panel unanimously recommends that the Arizona Supreme Court:

1. Suspend Respondent from judicial office without pay for a period of 90 days. *See* Commission Rule 18(a).
2. Remove Respondent as a member of the Judicial Ethics Advisory Committee.
3. Order Respondent to pay the costs and fees incurred by the Commission in preparing and conducting the formal hearing in this matter. *See* Rule 18(e).
4. Grant such other relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED this 24th day of August, 2015.

Dated this 24th day of August, 2015.

COMMISSION ON JUDICIAL CONDUCT

/s/ Margaret H. Downie
Hon. Margaret H. Downie
Hearing Panel Presiding Member