

Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, AZ 85007-3327
602-452-3200

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning	)	Case No. 06-250
)	
ANDREW GASTELUM)	
Maryvale Justice Court)	
Maricopa County	)	PUBLIC REPRIMAND
State of Arizona)	
Respondent)	
)	

On February 21, 2007, the Commission on Judicial Conduct ("Commission") filed formal charges against Justice of the Peace Andrew Gastelum ("Respondent") based on a finding of reasonable cause by the three-member investigative panel appointed to oversee the investigation in this case. On March 20, 2007, the chairperson of the Commission appointed an eight-member hearing panel to hear and take evidence in the case and designated the undersigned as the presiding member of the panel.

On April 27, 2007, Respondent and Disciplinary Counsel jointly submitted the attached Stipulated Agreement for Public Reprimand ("agreement") in which both parties agree that a public reprimand is an appropriate disposition in this case and waive the right to reconsideration of the matter or to a hearing as provided in Rule 23.

On May 3, 2007, the hearing panel met telephonically to consider the terms of the agreement and the nature and extent of Respondent's conduct. At the conclusion of the discussion, the panel approved the Stipulated Agreement for Public Reprimand. Now, therefore,

IT IS ORDERED that Justice of the Peace Andrew Gastelum is hereby reprimanded for violating the Code of Judicial Conduct by failing to maintain the dignity required by Canon 5B(1)(a), as described in the attached Stipulated Agreement for Public Reprimand.

IT IS FURTHER ORDERED that the parties shall not make any statements to the press that are contrary to the terms of this agreement, that both parties will pay their own costs and attorneys' fees associated with this case, and that the formal proceeding in this matter is concluded.

DATED this 8th day of May 2007,

FOR THE HEARING PANEL

Hon. John Gemmill
Presiding Member of the Hearing Panel

Copies of this pleading delivered and mailed this 8th day of May 2007, to:

Scott Williams
Counsel for the Respondent
7701 E. Indian School Road, Suite J
Scottsdale, AZ 85251

Linda Haynes, Disciplinary Counsel
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

By: _____

Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, AZ 85007
Telephone: (602) 452-3200
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FILED

APR 27 2007

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Justice of the Peace)	
)	
ANDREW GASTELUM	)	Case No. 06-250
Maryvale Justice Court)	
Cochise County	)	STIPULATED AGREEMENT
State of Arizona	)	FOR PUBLIC REPRIMAND
Respondent.)	
)	

Judge Andrew Gastelum, (Respondent) and Linda Haynes, Disciplinary Counsel for the Commission on Judicial Conduct (Commission), hereby submit the following proposed resolution of this case pursuant to Rule 30 of the Rules of the Commission on Judicial Conduct (Rules).

AGREEMENT

1. The Commission has jurisdiction over these matters pursuant to Article 6.1 of the Arizona Constitution.
2. Respondent became a candidate for judicial office on October 24, 2005, and was a judicial candidate at all times relevant to the allegations contained herein.
3. As a judicial candidate, Respondent was subject to Canon 5 of the Code of Judicial Conduct as set forth in Supreme Court Rule 81.
4. On November 7, 2006, Respondent was elected Justice of the Peace in the Maryvale Court.

BACKGROUND

5. On February 20, 2007, a formal Statement of Charges was filed against Respondent after a duly appointed investigative panel found reasonable cause to commence formal proceedings.

MUTUAL CONSIDERATION

6. Respondent admits committing the acts of judicial misconduct and corresponding ethical violations set forth below. In consideration thereof, the Commission shall dismiss Count I in its entirety, as well as any allegations not specifically referred to in this agreement. The dismissal of charges by the Commission should not be construed as a comment as to whether or not there was sufficient evidence to prove those allegations by clear and convincing evidence.

MATERIAL FACTS

7. Respondent admits that on or about September 5, 2006, he mailed out a flyer stating, among other things:

"On March 7, 2006, my Opponent called "Joe" at "Habitat for Humanity" to replace his cabinets at 4708 N. 63rd Ave. For Free!!!" "My Opponent is supported by REPUBLICANS and Family & Friends of REMOVED JUDGE Miranda. CRIMINALLY CHARGED with defrauding his clients. He associates even now with the same people as does the Criminally Charged & REMOVED JUDGE Miranda. Do we TRUST him to be an honest judge when he associates with people who still associate with the criminally Charged Miranda? NO!!! No!!!.

The flyer further stated:

“Do we really want a FALSE DEMOCRAT as JP? NO!!! NO!!! NO!!!. My Opponent is supported by REPUBLICANS and Family & Friends of REMOVED JUDGE Miranda, CRIMINALLY CHARGED with defrauding his clients. He associates even now with the same people as does the CRIMINALLY CHARGED & REMOVED JUDGE Miranda.”

Respondent's flyer included the underlining, capitalization and punctuation indicated above; additionally, the font used was larger than 14 points and the print was bold.

ADMISSIONS CONCERNING CODE OF JUDICIAL CONDUCT

8. Respondent admits that by employing the lurid language delineated in paragraph 7, and by using multiple exclamation points, a bold font, capital letters, and making insinuations about his opponent, Respondent failed to maintain the dignity required by Canon 5B(1)(a), which provides that a candidate “shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary”

AGREED UPON SANCTION

9. Respondent and Disciplinary Counsel agree that a public reprimand is an appropriate disposition in this case.

OTHER TERMS AND CONDITIONS

10. This agreement, if accepted by the hearing panel, fully resolves all issues raised in the Statement of Charges and may be used as evidence in later proceedings in accordance with the Commission's Rules. If the hearing panel does not accept this agreement as a full resolution, then the admissions made by Respondent are withdrawn, and the matter will be set for hearing without use of this agreement.

11. Pursuant to Commission Rule 23, both parties waive their right to reconsideration of this matter or to a hearing.

12. Both parties agree not to make any statements to the press that are contrary to the terms of this agreement.

13. Both parties will pay their own costs and attorneys' fees associated with this case.

14. Respondent clearly understands the terms and conditions of this agreement and fully agrees with its terms.

15. This agreement constitutes the complete understanding between the parties.

SUBMITTED this ____ day of April, 2007.

Andrew Gastelum
Respondent

4-24-07
Date

Scott E. Williams
Counsel for Respondent

4-20-07
Date

Linda Haynes ✓
Disciplinary Counsel

4-19-07
Date

Linda Haynes
Disciplinary Counsel (Bar #12178)
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FILED

FEB 20 2007

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge)	
)	
ANDREW GASTELUM	)	Case No. 06-250
Maryvale Justice Court)	
Maricopa County	)	STATEMENT OF CHARGES
State of Arizona)	
Respondent)	

An investigative panel composed of three members of the Commission on Judicial Conduct (Commission) has determined that there is reasonable cause to commence formal proceedings against the Respondent, Justice of the Peace Andrew Gastelum, for misconduct in office. This statement of charges sets forth the jurisdiction of the Commission and specifies the nature of the alleged misconduct.

JURISDICTION

1. The Commission has jurisdiction of this matter pursuant to Article 6.1, § 4 of the Arizona Constitution.
2. This Statement of Charges is filed pursuant to Rule 24(a) of the Rules of the Commission on Judicial Conduct (Commission Rules).
3. Respondent became a candidate for judicial office on October 24, 2005, and was a judicial candidate at all times relevant to the allegations contained herein.

4. As a judicial candidate, Respondent was subject to Canon 5 of the Code of Judicial Conduct (Code) as set forth in Supreme Court Rule 81.

5. Closed files pertaining to judicial discipline of a Respondent may be referred to and used by the Commission or by Respondent for the purpose of determining the severity of the sanction, a pattern of misconduct, or exoneration of the judge pursuant to Commission Rule 22(e).

FACTUAL ALLEGATIONS

6. Respondent, who is an attorney, was elected as a justice of the peace in the Maryvale precinct in 1997 and served in that capacity until 2004, when he was defeated by Judge Jesse Miranda.

7. On March 2, 2006, Respondent filed a notice to run for election in the Maryvale precinct. At that time, Judge Hercules Dellas was the Justice of the Peace, having been appointed by the Maricopa County Board of Supervisors to fill the vacancy left when Judge Jesse Miranda resigned from office. Judge Dellas was also a candidate for the Maryvale Justice of the Peace position in the 2006 election.

8. During the campaign, Judge Dellas filed a complaint against Respondent based on signs Respondent had put up for his campaign. The commission dismissed the complaint but issued a comment to Respondent, warning him not to use the word "Re-Elect" on his signs.¹

9. Subsequently, Respondent filed two complaints against Judge Dellas: one alleging that Judge Dellas used improper wording on his signs, and one alleging that he solicited improper endorsements. Both cases were dismissed without comment by the commission.

¹ Although the identity of judges in dismissed complaints is normally confidential, pursuant to Rule 9(c) of the commission rules confidential information may be used to clarify proceedings in a case.

10. On September 7, 2006, Respondent filed a third complaint against Judge Dellas alleging that Judge Dellas contacted Habitat for Humanity ("Habitat") and requested "free" kitchen cabinets.

11. A commission investigation of Respondent's complaint disclosed that Habitat has a retail store that sells surplus cabinets and other home products to the public. The Habitat employee in charge of the store was contacted, and he stated that he recalled a man calling to ask about a certain size of cabinet and that the man had sent a fax to Habitat. The employee did not recall the man's name and had no knowledge that it was Judge Dellas. The employee did not know that Dellas was a judge or attached to any judicial office. The employee denied that Judge Dellas asked for free merchandise of any kind. The commission subsequently dismissed the complaint on October 16, 2006.

12. On October 16, 2007, a copy of the commission's order dismissing the complaint was mailed to Respondent. The order stated, in part: "The judge [Judge Dellas] faxed a request for the availability of kitchen cabinets to the Habitat for Humanity retail store, which offers surplus or used cabinetry and other fixtures for sale to the public. The store raises money for the charity, and *the judge was seeking to purchase the cabinets.*" [Emphasis added].

13. On or about October 30, 2006, after Respondent received the commission's order, and just eight days before the election, Respondent mailed out a flyer stating, among other things:

"On March 7, 2006, my Opponent called "Joe" at "Habitat for Humanity" to replace his cabinets at 4708 N. 63rd Ave. For Free!!!" "My Opponent is supported by REPUBLICANS and Family & Friends of REMOVED JUDGE Miranda, CRIMINALLY CHARGED with defrauding his clients. He associates

even now with the same people as does the Criminally C h a r g e d & REMOVED JUDGE Miranda. Do we TRUST him to be an honest judge when he associates with people who still associate with the criminally Charged Miranda? NO!!! No!!!.

Respondent's flyer included the underlining, capitalization and punctuation indicated above; additionally, the font used was larger than 14 points and the print was bold.

14. In the flyer Respondent distributed on October 30, Respondent also stated, among other things:

"Do we really want a FALSE DEMOCRAT as JP? NO!!! NO!!! NO!!!; My Opponent is supported by REPUBLICANS and Family & Friends of REMOVED JUDGE Miranda. CRIMINALLY CHARGED with defrauding his clients. He associates even now with the same people as does the CRIMINALLY CHARGED & REMOVED JUDGE Miranda."

Respondent's flyer included the underlining, capitalization and punctuation indicated above; additionally, the font used was larger than 14 points and the print was bold.

15. On or about November 6, 2006, on the eve of the election date, Respondent told Judge Dellas (in a face-to-face encounter), "you shouldn't have filed that complaint," referring to the complaint Judge Dellas filed on June 30, 2006.

16. On November 7, 2006, Respondent was elected Justice of the Peace in the Maryvale Court.

COUNT I
KNOWINGLY MISREPRESENTING FACTS ABOUT A CANDIDATE

17. By misrepresenting that Judge Dellas tried to obtain “free” cabinets from Habitat, rather than paying for them, when he knew or should have known that Habitat makes surplus fixtures available for sale, Respondent violated Canon 5B(1)(d)(ii), which prohibits a candidate from “knowingly misrepresent[ing] the identity, qualifications, present position or other fact concerning the candidate or an opponent.”

COUNT TWO
FAILING TO BE DIGNIFIED AND COURTEOUS

18. By employing the lurid language delineated in paragraphs 11 and 12, above, and by using multiple exclamation points, a bold font, capital letters, and making insinuations about his opponent, Respondent failed to maintain the dignity required by Canon 5B(1)(a), which provides that a candidate “shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary”

CONCLUSION

19. Respondent, by his actions, violated the Code of Judicial Conduct. His conduct is prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Article 6.1 §4 of the Arizona Constitution.

20. Rule 6 of the Commission Rules provides that grounds for discipline include “conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the code.” Each of the charges alleged in this pleading constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of Rule 6, as well as Article 6.1, § 4 of the Arizona Constitution.

21. Article 6.1, § 4 of the Arizona Constitution provides that the Supreme Court may censure, suspend, or remove a judge for conduct that brings his judicial office into disrepute.

22. The Commission, upon conclusion of a hearing and a finding of good cause, may recommend to the Supreme Court that Respondent be publicly censured, suspended or removed from judicial office, and that the Court grant other relief as may be deemed appropriate.

DATED this 20th day of February, 2007.

COMMISSION ON JUDICIAL CONDUCT

Linda Haynes
Disciplinary Counsel

ORIGINAL of this pleading filed
this 20th day of February, 2007, with:

The Arizona Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, AZ 85007

Copy of this mailed by certified mail
this 20th day of February, 2007, to:

Andrew Gastelum
Maryvale Justice Court
4622 W. Indian School Road, D10
Phoenix, AZ 85035

1 **WILLIAMS & ASSOCIATES**

2 Attorneys at Law
3 7701 East Indian School Road
4 Suite J
5 Scottsdale, Arizona 85251
6 (480) 994-4732
7 Scott E. Williams #012417
8 Attorneys for Respondent

9 STATE OF ARIZONA

10 COMMISSION ON JUDICIAL CONDUCT

11 Inquiry concerning Judge)

12 ANDREW GASTELUM)
13 Maryvale Justice Court)
14 Maricopa County)
15 State of Arizona)

16 Respondent)

17 CASE NO. 06-250

18 RESPONSE TO STATEMENT OF
19 CHARGES

20 Counsel undersigned hereby makes his appearance on behalf of Respondent, and responds
21 to the Statement of Charges:

- 22 1. Respondent admits allegations 1 through 7;
- 23 2. Respondent admits allegation 8 and alleges that the word "re-elect" was proper by
24 Respondent in that the definition of re-elect is "to reinstate to a previous position."
- 25 3. Respondent admits allegations 9 and 10;
- 26 4. Respondent is without knowledge regarding the facts alleged in allegation 11 and
27 12, and therefore denies the same;
- 28 5. Respondent denies allegations 13 through 15;
- 29 6. Respondent admits allegation 16;
- 30 7. Respondent denies allegations 17 through 20;

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8. Respondent admits allegations 21 and 22.

DATED: March 12, 2007

WILLIAMS & ASSOCIATES

Scott E. Williams
7701 E. Indian School Road, Suite J
Scottsdale, Arizona 85251
Attorneys for Respondent

Hand-Delivered, March 12, 2007, to:

Original Filed:
The Arizona Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007

Copy Hand-Delivered:
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APR 03 2007

**ARIZONA COMMISSION ON
JUDICIAL CONDUCT**

**STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning Judge)	
)	
ANDREW GASTELUM	)	Case No. 06-250
Maryvale Justice Court)	
Maricopa County	)	MOTION TO AMEND
State of Arizona	)	STATEMENT OF CHARGES
Respondent)	
)	

COMES NOW DISCIPLINARY COUNSEL and as permitted by Rule 15 of the Arizona Rules of Civil Procedure, moves to amend the statement of charges to delete paragraph 12 in its entirety, to amend the date stated in paragraphs 13 and 14 to "on or about September 5, 2006," and not October 30, 2005, and to amend the date stated in paragraph 15 to "September 11, 2006," not November 6, 2006. The evidence to be produced at hearing will show that the flyer and statements were issued prior to the democratic primary on September 12, 2006, and not immediately before the general election in November.

DATED this 3rd day of April, 2007.

COMMISSION ON JUDICIAL CONDUCT

Linda Haynes
Disciplinary Counsel

ORIGINAL of this pleading filed
this 3rd day of April, 2007, with:

The Arizona Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, AZ 85007

Copy of this mailed by certified mail
this 3rd day of April, 2007, to:

Scott E. Williams
Attorney for the Respondent
Williams & Associates
7701 E. Indian School Road, Suite J
Scottsdale, AZ 85251