

FILED
JAN 22 2007
NOEL K. DESSAINT
CLERK SUPREME COURT
BY

SUPREME COURT OF ARIZONA

Inquiry concerning Judge)
)
DAVID C. MORALES)
Bisbee Justice Court)
Cochise County)
State of Arizona)
Respondent)
_____)


Supreme Court No. JC-07-0001
Commission No. 06-275

ORDER

This matter having come before the Commission on Judicial Conduct, it having duly rendered and filed its recommendation, and all applicable rights to object to or petition for modification of the recommendations having been waived by Respondent, and the Court having no further responsibility for review pursuant to Rule 29(g) of the Rules of Procedure for the Commission on Judicial Conduct,

IT IS ORDERED, ADJUDGED AND DECREED that **David C. Morales**, a justice of the peace in the City of Bisbee, Cochise County, is hereby censured for violations of the Code of Judicial Conduct as set forth in the Recommendation and the Agreement for Discipline by Consent, which are attached hereto.

DATED this 22nd day of January 2007.


Noel K. Dessaint
Clerk of the Court

TO:
David C. Morales, Judge, Bisbee Justice Court
(Certified Mail, Return Receipt and Regular Mail)
Linda Haynes, Disciplinary Counsel, Commission on Judicial Conduct
E. Keith Stott, Jr., Executive Director, Commission on Judicial Conduct
Jode Otman, West Publishing Company, Editorial Department, D3-40 #4467
Lexis-Nexis
tel

Arizona Commission on Judicial Conduct
 1501 West Washington Street, Suite 229
 Phoenix, AZ 85007
 Telephone: (602) 452-3200
 Facsimile: (602) 452-3201

FILED

JAN 19 2007

ARIZONA COMMISSION ON
 JUDICIAL CONDUCT

**STATE OF ARIZONA
 COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning Judge

DAVID C. MORALES

Bisbee Justice Court

Cochise County

State of Arizona

Respondent

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Supreme Court No.

Commission Case No. 06-275

RECOMMENDATION

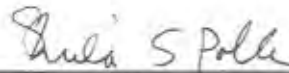
On December 7, 2006, the Commission on Judicial Conduct ("Commission") filed formal charges against Judge David C. Morales ("Respondent") following a finding of reasonable cause by the three-member investigative panel assigned to oversee the investigation in this case. On the same date, the chairperson 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 January 4, 2007, Respondent and Disciplinary Counsel submitted an Agreement for Discipline by Consent ("agreement") containing an admission of judicial misconduct and a waiver of Respondent's right to appeal and all other procedural rights set forth in Rule 29 of the Rules of the Commission on Judicial Conduct. The agreement and other pertinent pleadings were circulated to the members of the hearing panel for their consideration on January 10, 2007. The members reviewed the documents and unanimously voted to accept the terms of the agreement during a 24-hour voting period that ended on January 12, 2007.

In full accordance with the terms and conditions of the agreement, which are incorporated herein by reference, the hearing panel recommends to the Arizona Supreme Court that Respondent be publicly censured for violating the Code of Judicial Conduct as admitted in the agreement; that the parties pay their own costs and attorney's fees associated with this case; and that the parties comply with all other conditions set forth in the agreement.

RESPECTFULLY SUBMITTED this 19th day of January 2007.

FOR THE HEARING PANEL




Hon. Sheila Polk
Presiding Member of the Hearing Panel

Copies of this pleading were delivered and mailed this 19th day of January 2007 to:

Hon. David C. Morales
Respondent
207 N. Judd Avenue
Bisbee, AZ 85602

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

By: 
Acting Clerk

Linda Haynes
Disciplinary Counsel (Bar #12178)
Commission on Judicial Conduct
1501 W. Washington St., Suite 229
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FILED

JAN 13 2007

COUNTY OF COCHISE
BISBEE JUSTICE COURT PRECINCT #1

FILED

JAN 04 2007

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning Judge

DAVID C. MORALES

Justice Court

City of Bisbee

State of Arizona

Respondent

Case No. 06-275

**AGREEMENT FOR
DISCIPLINE BY CONSENT**

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

JURISDICTION

1. The Commission has jurisdiction of this matter pursuant to Article 6.1 § 4 of the Arizona Constitution.
2. This Agreement for Discipline by Consent is filed pursuant to Rule 30(a) of the Rules of the Commission on Judicial Conduct (Commission Rules).
3. Respondent has served as a Justice of the Peace in Bisbee since January 1, 1999, and was serving in this capacity at all times relevant to the allegations contained herein.

4. As a justice of the peace, Respondent is and has been subject to the Code of Judicial Conduct (Code) as set forth in Supreme Court Rule 81.

BACKGROUND

5. On December 7, 2006, Disciplinary Counsel filed a formal Statement of Charges 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 Counts Two and Five in the statement of charges 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 there was sufficient evidence to prove those allegations by clear and convincing evidence.

MATERIAL FACTS

7. Respondent admits that in March and April of 2006, he met with a defendant and her daughter on four separate occasions and advised them on how to answer a lawsuit that had been filed against them, including providing detailed legal advice to them. Respondent is not an attorney.

8. Respondent also admits that he presided over the same case on July 21, 2006, and entered a judgment.

9. The parties agree that on October 2, after the defendant's attorney filed a motion to set aside the judgment, Respondent realized he had violated the judicial canons and self-reported his conduct to the Commission on Judicial Conduct.

ADMISSIONS CONCERNING CODE OF JUDICIAL CONDUCT

10. Respondent agrees that by engaging in several substantive, *ex parte* conversations with the defendant and her daughter, he violated Canon 3B(7) which provides that “[a] judge shall not initiate, permit, or consider *ex parte* communications”

11. Respondent agrees that by providing legal advice to the defendant, he violated Canon 2A which mandates that a judge shall comply with the law. Rule 31(b) of the Rules of the Supreme Court provides that “no person shall practice law in this state or hold himself out as one who may practice law in this state unless he is an active member of the state bar. . . .”

12. Respondent agrees that by not disqualifying himself after engaging in substantive communications with a defendant in a pending case, Respondent violated Canon 3E(1), which requires that a judge disqualify himself where his impartiality might be questioned.

AGREED UPON SANCTION

13. Respondent agrees that censure is an appropriate sanction for his misconduct.

14. Respondent further agrees to attend and satisfactorily complete the New Judges’ Orientation scheduled January 8 through 20 and April 16 through 20, 2007, and to assist the Commission in obtaining evidence of satisfactory completion from the Judicial Educational Services Division of the Administrative Office of the Courts.

OTHER TERMS AND CONDITIONS

15. 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.

16. If this agreement is accepted by the hearing panel and approved by the Supreme Court, both parties agree to waive any rights they might have to a hearing before the Commission.

17. Pursuant to Commission Rule 28(a), both parties waive their right to object to the hearing panel's proposed recommendations and their right to appeal the charges at issue in this matter, including the appeal procedures set out in Commission Rule 29.

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

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

20. Respondent clearly understands the terms and conditions of this agreement and fully agrees with its terms. Respondent waives his right to legal counsel in this matter.

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

SUBMITTED this 3 day of January, 2007.



David C. Morales
Respondent

1-3-07
Date Signed



Linda Haynes, Disciplinary Counsel
Commission on Judicial Conduct

12-28-06
Date Signed

Linda Haynes
Disciplinary Counsel (Bar #12178)
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1501 W. Washington St., Suite 229
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FILED

DEC 07 2006

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

**STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning Judge)	
)	
DAVID C. MORALES)	Case No. 06-275
Justice Court)	
City of Bisbee)	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, David C. Morales, 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 has served as a Justice of the Peace in Bisbee since January 1, 1999, and was serving in this capacity at all times relevant to the allegations contained herein.

4. As a justice of the peace, Respondent is and has been subject to the Code of Judicial Conduct (Code) as set forth in Supreme Court Rule 81.

FACTUAL ALLEGATIONS

5. On March 2, 2006, a bank filed a lawsuit against a married couple, and Respondent was assigned to the case. On March 6, the defendant's daughter called the court and got an appointment to meet with Respondent. On March 8, the daughter and the defendant met with Respondent at the courthouse, and Respondent gave legal advice in Spanish and English, telling them to answer the complaint with a letter and to make an offer to settle. He told them the letter would serve as an answer and should be filed in the court. When the women asked if they should hire an attorney, he told them they did not need one. On March 9, Respondent met with the women again, reviewed the letter the defendant wrote, and instructed the defendant to make a change in the assets she listed.

6. On April 19, Respondent met with the defendant and her daughter for a third time and gave them legal advice regarding their upcoming alternative dispute resolution (ADR) proceeding. On May 19, the bank filed a motion for judgment on the pleadings because the answer did not deny the allegations in the complaint. At some point before July 21, Respondent met with the women a fourth time to review the motion and told them the ADR meeting would be reset. On July 21, Respondent entered a judgment in favor of the bank based on the bank's motion.

7. On October 2, the defendant's attorney filed a motion to set aside the judgment, which was granted. After seeing the motion to set aside, Respondent told his presiding superior court judge about the case and was advised to report directly to the Commission on Judicial Conduct. Respondent self-reported his conduct on October 6, 2006.

COUNT I

EX PARTE CONTACT

8. By engaging in several substantive, *ex parte* conversations with the defendant and her daughter, Respondent violated Canon 3B(7) which provides that “[a] judge shall not initiate, permit, or consider *ex parte* communications”

COUNT TWO

APPEARANCE OF IMPROPRIETY

9. By allowing staff to set up confidential appointments for litigants, Respondent violated Canon 2, which requires a judge to avoid impropriety and the appearance of impropriety. Section A requires that a judge act “in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Section B states that a judge should not convey the impression that someone is in a special position to influence him. Canon 3B(8) mandates that a judge dispose of matters fairly. Speaking privately only to the defendants was patently unfair to the plaintiff.

COUNT THREE

PRACTICING LAW WITHOUT A LICENSE

10. By providing legal advice to the defendant, Respondent violated Canon 2A which mandates that a judge shall comply with the law. Rule 31(b) of the Rules of the Supreme Court provides that “no person shall practice law in this state or hold himself out as one who may practice law in this state unless he is an active member of the state bar. . . .” The Supreme Court defines “Practice of law” as providing legal advice or services by various means, including preparing or expressing legal opinions, preparing documents, and negotiating legal rights for someone. Respondent is not an attorney and is not licensed to practice law in Arizona.

COUNT FOUR

FAILURE TO DISQUALIFY

11. By engaging in substantive, ex parte communications with a defendant in an open case and not disqualifying himself in all further proceedings, Respondent violated Canon 3E(1), which requires that a judge disqualify himself where his impartiality might be questioned. Canon 3E(1)(a) extends the disqualification provision to cases where "Respondent has . . . personal knowledge of disputed evidentiary facts concerning the proceeding"

COUNT FIVE

INCOMPETENCE

12. By failing to report multiple grave ethical violations until they were explained to him, Respondent demonstrated a serious lack of understanding of the Ethical Canons and demonstrated incompetence in the law in violation of Canon 3B(2), which requires that a judge maintain competence in the law.

CONCLUSION

13. 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.

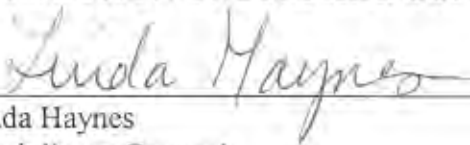
14. Rule 6 of the Commission Rules provides that grounds for discipline include "conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the code." Each of the charges alleged in this pleading constitutes conduct prejudicial to the administration 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. Additionally, each

count violates Canon 1A, which requires a judge to maintain, enforce and personally observe high standards of conduct and to uphold the integrity of the judiciary, and Canon 2A ("A judge shall . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"). 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.

15. 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 7th day of December, 2006.

COMMISSION ON JUDICIAL CONDUCT



Linda Haynes
Disciplinary Counsel

ORIGINAL of this pleading filed
this 7th day of December 2006, with:

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

Copy of this mailed by certified mail
this 7th day of December 2006, to:

David C. Morales
Justice Court
207 N. Judd Drive
Bisbee, AZ 85603

December 21, 2006

Confidential

E. Keith Stott, Jr.
Commission on Judicial Conduct
1501 West Washington Street, Room 229
Phoenix, Arizona, 85007

FILED
DEC 22 2006
DEC 22 2006

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

RE: Response to ethical violations

Case No. 06-275

Dear Mr. Stott, Jr.

In March of this year Mrs Urrea (plaintiff) and her adult daughter came to see me. The daughter said, "We have just received notice requesting a response to a Summary Judgement that was sent to my mother and we don't understand what it means." I then told them the reasoning behind this type of motion. I then advised them to hire an attorney to help them through this process. The daughter said her parents didn't have the money. The daughter then asked, "What to they want?" I informed her the response needed to contain either a denial of the amount owed, or the amount alleged was incorrect, or they agree that they do owe the alleged amount.

I then advised that if in the response, her parents refuted the amount for any reason there would be a hearing. If, however, the response was that they did owe the alleged amount in full then the Summary Judgement would be granted. I emphasized that only questioning the amount or a denial of the amount owed amount would result in a hearing.

The daughter then asked if in fact her parents did owe the amount, "Could my parents make payments?" Again, I advised them that with the help of an attorney perhaps the attorney could plead the case on their behalf, maybe even negotiating a compromised amount.

Before the response time had run out, the daughter came into the lobby and asked me to read their response. I refused and advised her to file their response if she was inclined to do so.


On 06-01-06, I granted the motion for judgment on the pleadings because the defendant's response was in agreement with the pleadings for the Summary Judgment.

On two separate occasions after the judgment, the defendant and her daughter came to see me. Each time I advised them to seek legal counsel. As a matter of fact the last time they came in the daughter made reference for the first time of some land her parents owned that she wanted. I told her that she better hire an attorney.

I deeply regret my error and take full responsibility for my action. I crossed the line from judicial information into judicial advice and I should have never signed the judgment. I should have recused myself. In my eight years on the bench and my constant vigil to stay clear of even the appearance of impropriety, I am very disappointed in my action. I sincerely believed that I learned my lesson.

I am available to answer any questions and willing what to do whatever you deem my next step should be.

Sincerely;


Hon. David C. Morales
207 N. Judd Ave. Bisbee, Ariz., 85602