

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-136

Complainant: No. 1310810262A

Judge: No. 1310810262B

ORDER

The commission reviewed the complaint filed in this matter and the court file and found no ethical misconduct on the part of the judge.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: June 25, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on June 25, 2007.

This order may not be used as a basis for disqualification of a judge.

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COMPLAINT AGAINST A JUDGE

Your name:

Judge's name:

Date:

4-9-07

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

In [redacted] Judge [redacted] ruled that I was allowed to proceed proper in matter [redacted]

Soon thereafter, Judge [redacted] recused himself and the foregoing matter (along with the probation matter [redacted])

[redacted] was transferred to the Hon. [redacted]

Both cases remained in Judge [redacted] court until [redacted]

Pursuant to Rule 10.2 (A.R.C.P.), a request was granted, after a [redacted] remand

returned an indictment, and the new case under the original CR# is now assigned to the Hon. [redacted]

The probation matter, now under appeal, with a Rule 32

proceeding remains in Judge [redacted] court (currently a motion for rehearing is pending adjudication).

The first element of this complaint is directly related to Rule 81 (Supreme Court Rules...) and Arizona constitutional provisions which mandate that a judge of the Superior Court must render disposition on pleadings at bar within 60 days. Judge [redacted] failed to rule on well over 20 defense pleadings within the timeframe mandated.

The vast majority of these pleadings were unchallenged due to prosecutor not responding or failing to respond in a timely manner, by rule, resulting in preclusion of such. The record alone clearly provides the documentary proof to support the foregoing. The record will reflect that I filed several motions to preclude and moved the court to render disposition. Judge [redacted] did not

(Attach additional sheets as needed)

render disposition. I filed motions to inform Judge [] that pleadings he left adjudicated had violated time mandates for such pursuant to Rule 81 and state constitutional provisions and, further, that other pending pleadings were in danger of exceeding the mandated time allotted for disposition. Judge [] again failed to take action to remedy the situation. The record will reflect that I wrote letters and went as far as filing a preemptory Writ of Mandamus; to include a civil pleading pursuant to Rule 12(c), A.R.Civ.P., asking Judge [] to simply rule on the pleadings. Judge [] did not respond to the foregoing pleadings and still did not render disposition on the numerous pleadings at bar beyond or near the 60 day threshold. Judge [] overall conduct related to this issue amounted to, at minimum, deliberate indifference. The end result is that Judge [] allowed volumes of adjudicated motions (most unchallenged or untimely challenged by state) to accumulate to the degree that the enormous volume

led Judge [redacted], upon transfer of the case to his court, to issue an extraordinary court ordered moratorium barring any party from filing any new pleadings because Judge [redacted] actions (or lack thereof) have made it virtually impossible for any judicial officer to grasp the issues and adjudicate accordingly in an efficient manner. As such, to date, there are still numerous pleadings from Judge [redacted] court awaiting adjudication which, along with the new court having to issue a moratorium on new pleadings, compounds the prejudice that has ensued to the defendants.

This initial element only serves as a backdrop and underpins numerous other issues and actions by Judge [redacted] that, if are not the product of bias and lack of impartiality, certainly create the tangible appearance of bias and lack of impartiality; which a judge is equally obligated to avoid. [At this point, it is exceedingly important to note and weigh the foregoing actions (or lack thereof) of Judge [redacted], and those to be delineated which will follow, that the

prosecutor in the matter that was previously before his court, and the probation matter still at bar before his court, is Judge [] former colleague, of 20 years, from his previous employer - the Arizona Attorney General's Office].

The following enumerate numerous other issues, actions, and incidents that separately and/or collectively, illuminate, at minimum, misconduct which, at minimum, has manifested the appearance of bias and lack of impartiality:

- 1) In a [] hearing, the transcript of an evidentiary hearing reveals a conversation in which I informed Judge [] of a motion that he would likely receive soon. Judge [] dismissed the motion before he received it and, obviously, before he read it. (I can provide the transcript),
- 2) The record will reflect that in the [] hearing while a witness was under examination, Judge [] allowed a licensed attorney, who was barred from the courtroom, pursuant

to the exclusionary rule ([redacted])

[redacted] was a subpoenaed witness), and who was, by rule, barred from monitoring the testimony being proffered, to enter the courtroom and render legal advice to a witness who was not his client. Judge [redacted] allowed this witness (Attorney [redacted]) to raise an oral motion in which he addressed and ruled on. Judge [redacted] permitted improper conduct by an attorney (and witness) in this judicial proceeding.

3) The record will reflect that the prosecutor failed to meet discovery / disclosure pursuant to rule and court order. I filed for sanctions under Rules 15.7 and 15.8, A.R.C.P.. On [redacted] [redacted], after the state had been in violation of rule and court order discovery / disclosure obligations for over a year, Judge [redacted] ruled that sanctions were due. To avoid

immediate sanctions, pursuant to Rule 15.8, the prosecutor reinstated the plea. Even after such, the prosecutor did not meet discovery/disclosure obligations pursuant to Rule 15.8.

Nevertheless, of the sanctions requested, the ruling that illustrates and creates the greatest appearance, at minimum, of the lack of impartiality is related to Rule 15.7. The State clearly failed in its obligation under Rule 15.1 (N.B. - This case began in [redacted]

[redacted] The State attempted to submit its required Rule 15.1 disclosure pleading in [redacted] This basic disclosure pleading is required to be filed within 30 days of arraignment). On [redacted]

Judge [redacted] ordered the State to turn over discovery and disclosure by [redacted]

In [redacted] I filed a pleading notifying Judge [redacted] that the State had violated the court order and was not in compliance with its discovery/disclosure obligations. In a hearing in [redacted] the

prosecutor made statements, on record, which revealed that she had an illicit agreement with my previous counsel not to turn over discovery; which also illustrates a bad faith intent. At this point, the Statz had been in violation of the court order for over a year.

Paragraph three of the "Committee Comment ... to Rule 15.7" outlines the fact-finding of a Court and what must be demonstrated by the non-disclosing party, pursuant to Rule 15.7, to avoid sanctions. This is important because the record is clear that Judge [] never requested or required the prosecutor to make the required demonstration before ruling that Statz had somehow, for lack of a better word, complied with discovery/disclosure obligations after Statz had been in violation of a court order for over a year. This ruling is the initial example of other rulings and actions of Judge []

to avoid imposing sanctions on [redacted], his former colleague, by ruling away and around her misconduct; no matter how egregious. (Transcripts of hearing will support the foregoing).

4) On [redacted], Judge [redacted] as the record will reflect, after the State [redacted] was unable to meet its burden related to terms alleged in a probation revocation hearing, just arbitrarily and capriciously chose an unalleged term and violated me and my co-defendant on the same unalleged term. (Transcripts are available to support this issue).

5) At a [redacted] hearing, [redacted] indicated, on the record, that she and Judge [redacted] had engaged in improper ex parte communications and that Judge [redacted] had suggested a course of action or given her advise on an issue related to a previous ruling that he knew was likely to and, was returned to his court for a ruling that is well

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beyond the bounds envisioned and mandated in the Code of Judicial Conduct, Canon 2. For the sake of brevity the complainant attaches the pleading and accompanying declarations in support of this issue.

The complainant is aware that the "Commission" cannot review a judge's decisions, except as necessary to understand alleged misconduct. This complaint is forwarded alleging misconduct within the constitutional grounds of the "Commission's" scope of authority. This complaint alleges, and the facts support, that Judge [] has engaged in prohibited ex parte communications; which inherently undermine the integrity of the judicial process and create the appearance of impropriety. Judge [] has failed to perform judicial duties of rendering prompt disposition of matters before his court, within the timeframe mandated by the State Constitution and State Supreme Court Rules. After being noticed of a serious ethical breach, Judge [] literally rushed a ruling to alter a court order to, essentially and in fact, protect

the prosecutor from pending prosecutorial misconduct allegations with reckless disregard to jurisdictional issues that were brought to the court's attention before it ruled and, thereby, Judge [] knowingly compromised the State and Federal Constitutional right to due process of both defendants in the matter that was at bar. Judge [] conduct and actions, overall as delineated herein, have failed, at minimum, to avoid the appearance of impropriety. As such, this complaint alleges constitutional grounds 1, 2, 5, and 6 under the commission's scope of authority which authorizes the commission to investigate the complaint made herein.