

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-239

Complainant: No. 0308100112A

Judge: No. 0308100112B

ORDER

The commission reviewed this complaint, which was self-reported, and determined that there was no ethical misconduct. Accordingly, the case is dismissed pursuant to Rule 16(a).

Dated: November 27, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on November 27, 2007.

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

August 27, 2007

AUG 29 2007

CJC - 07 - 239

Commission on Judicial Conduct
ATTN: E. Keith Stott, Jr., Executive Director
1501 W. Washington, Suite 229
Phoenix, AZ 85007

Dear Mr. Stott:

I have been directed by the Presiding Judge [] to self-report a possible ethics violation to the Commission. I don't know if it still counts as self-reporting if I'm ordered to do it, but that's probably beside the point. I am the Presiding Criminal Judge for [] and have been for the last [] years. One of my duties is to handle all lower court appeals to the Superior Court in criminal and civil traffic cases. My common practice in reviewing these cases has been to read the appellate memoranda of the parties and then review the record of the trial court proceedings, which usually consists of a CD recording but sometimes also includes a transcript. If either party requests oral argument, the rules require that such request be granted. Often times in reviewing the record I may find that portions of the record are missing, in which case I direct the trial court to provide to me whatever I don't have. After the record has been completely provided to me and reviewed, and after any oral argument has been held, I then enter a written order addressing the issues raised on appeal.

My position has always been, for purposes of A.R.S. 12-128.01 and the required monthly certification that I have no cause pending and undetermined for 60 days after it has been submitted for decision, that such time on a lower court appeal starts running when all the above things have happened and when there is nothing left to do but for me to make a decision. The Presiding Judge, however, has advised me that he believes that the 60 days begins to run upon the Superior Court receiving the case from the lower court. I cannot say that my understanding or interpretation of the statute is any more reasonable than his. Having never served on the Court of Appeals or the Supreme Court, I cannot say whether the judges on those courts must rule within 60 days of receipt of an appeal from a Superior

Court in order to get paid. I have the impression that cases take far longer than that to be resolved on appeal, but my purpose is not to deflect attention from myself.

The Presiding Judge advised me of his position on Wednesday, August 15, 2007. As you might suspect, this came about because of a complaint that he received regarding a case which had been pending on appeal before me for awhile. My research indicates that, as of that date, I had the following cases assigned to me that had been filed in the County Superior Court on the following dates:

As of Friday, August 24, 2007, I had reviewed approximately 10 hours of recordings of the trial proceedings of the first 5 cases listed above. As of today I have entered orders in all 5 of those cases. The 6th case listed above involves 5 hours of recording which I fully anticipate reviewing by the close of this week, allowing me to rule on that case before the end of the month. I expect that when I next send in my monthly certification that I have no case pending for over 60 days, I will comply not only with my interpretation of the statute but also the Presiding Judge's. I have cleared these cases from my calendar, while maintaining my usual criminal calendar, primarily on my lunch hour, after work and on the weekend. I mention that not to suggest some heroic effort on my part but to make clear that I take extremely seriously any suggestion that I have acted unethically or have filed false certifications in order to receive my paycheck.

If there is any further information that I may provide to you regarding any of the above circumstances, please do not hesitate to contact me. Thank you for your anticipated cooperation and assistance.

Sincerely,

cc: (via fax)