

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-293

Complainant: Stacy Fradette
Ronda Brockman
Terri Messick

Judge: Douglas LaSota

ORDER

After reviewing the complaint, the evidence gathered during preliminary investigation, and the judge's response, the Commission on Judicial Conduct finds that Judge LaSota's conduct in this case violated Canon 2 of the 1993 Code of Judicial Conduct, and Rules 1.2, 3.1(A), (C) and (E) of the 2009 Code, which requires that a judge avoid impropriety and the appearance of impropriety in all of the judge's activities.

Accordingly, the judge is hereby reprimanded for his conduct pursuant to Rule 17(a), and the record in this case, consisting of the complaint, the judge's response and this order, shall be made public as required by Rule 9(a).

The judge is further ordered to attend and complete employee relations and management training. The judge must report back to the commission regarding training within 90 days of the date he receives this order. The commission's executive director must pre-approve the training program.

Dated: March 18, 2010.

FOR THE COMMISSION

J. William Brammer, Jr.
Commission Chair

Copies of this order were mailed to the complainant and hand-delivered to the judge on March 22, 2010.

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

NOTICE

Multiple complaints were filed against the judge raising allegations of judicial misconduct as well as unrelated allegations of conduct that occurred in the summer and fall of 2009. The following is a summary of the allegations of judicial misconduct raised in the complaints. This is not a statement of facts as found by the commission based on an investigation, but rather a summary of allegations raised that prompted further investigation.

1. The judge was observed viewing a photograph of male genitalia on your court laptop computer in view of the front office area, your staff, and potentially members of the public who approached the clerk's window.
2. The judge removed the laptop computer from the courthouse and may have attempted to conceal this removal by placing his keyboard to cover the empty docking station. This was the first time that the judge had ever taken the computer outside the courthouse. When he returned the computer the following Monday morning, the hard drive had been "wiped" such that all programs and files had been cleaned off the computer.
3. While engaged in an escalating disagreement with court staff in the front office, and while the door leading to the courtroom was open and members of the public were present, the judge stated, "If you get me fired, I will kill myself."
4. The judge was overheard on a regular basis informing creditors, financial institutions, his cell phone company, and others of his position as a Judge in what may have been an effort to receive more time for payments, leniency on bill collections, or more timely assistance than the companies provide to the general public.
5. The judge was observed on a daily basis using the court computer, printer, and paper to print out as much as two to three reams worth of paper in personal information. Examples include: bank statements, coupons for personal use, and financial statements from various companies.
6. The judge attended a meeting with court staff and city representatives to discuss, among other things, his suicide threat. Following that meeting, he may have issued reprimands to staff members and provided negative feedback in employee reviews.
7. A Mr. Barnes filed a petition for a protective order with the court against his brother, James Barnes. In hearing his request, the judge warned him that he would likely be brought up on criminal charges for the facts he attempted to cite in support of his petition. He then withdrew the petition and the judge may have instructed court staff to shred all of the paperwork.

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January 29, 2010

JAN 29 2010

Office of the Commission
on Judicial Conduct
1501 West Washington Street
Suite 229
Phoenix, Arizona 85007

Attention: Jennifer Perkins
Staff Attorney

Re: Case No. 09-293

Gentlemen:

I have been asked by Judge Douglas LaSota to prepare his response to the Commission's letter of December 10, 2009. The following response deals with the allegations in the order in which they appear.

1. This paragraph states that Judge LaSota was viewing a photo of male genitalia on the court laptop computer on August 12, 2009. While he cannot be certain of the date, this allegation is quite possibly correct.

In the summer of 2009, Judge LaSota was experiencing urinary problems for which he had sought medical assistance.

During the period in question he had accessed some internet medical sites in an attempt to determine what the problem might be. The image which Ms. Fradette observed may have been in connection with such a search.

On August 14, 2009, two (2) days after the image was apparently viewed by a member of the court staff, Judge LaSota had an ultrasound procedure

This procedure had been scheduled for some time prior to August 12, 2009. The result of that procedure showed a kidney stone in his right kidney

and an enlarged prostate gland.

LaSota later obtained treatment
condition

Judge
for this

It is also possible that Ms. Fradette observed a photo from a web site that Judge LaSota accessed from time to time. In August of 2009, Judge LaSota had been separated from his wife for approximately three (3) months. His wife had returned to her native country (Ukraine) and it was apparent to him that there would be no reconciliation. Judge LaSota from time to time would access a site called Craig's List which had a dating service.

Some of the pages on that site contained access to photos which may have contained a photo such as described by Ms. Fradette. There is no way to know what image may be brought up when a photo is accessed.

Regarding the portion of the allegation that this incident took place in view of the front office area, and that other staff members and members of the public potentially could have seen it, it is necessary to know the layout of the court. The front office area at that time was the work place for Judge LaSota and one employee who assisted members of the public who came to the service window for information and assistance. The other employees worked in a room behind the courtroom and not in the front office area. A member of the public comes to the front window for assistance. That person does not have an unobstructed view of the judge's desk and his computer. There was a tall bookshelf and a pillar which would obstruct the view of the judge's desk from a member of the public at the front window. The only way to observe the screen of the judge's computer was to walk behind him. Even that view would be obstructed by the judge's body if he was working on the computer. In short, there is no way a member of the public could have seen any image on Judge LaSota's computer. Obviously, members of the judge's staff might be able to see images if they walked

behind him.

Some time ago, the placement of the judge and his staff in the court building was changed. Judge LaSota and his administrator now use the office behind the courtroom away from public view and other staff members use the front office area. As is more fully described below, Judge LaSota no longer uses the court computer for such purposes.

2. This paragraph states that Judge LaSota removed the laptop computer from the courthouse on August 12th or 13th but attempted to conceal that fact. When the computer was returned on the following Monday, the computer hard drive had been "wiped" and all programs and files had been cleaned off of the computer.

Initially, Judge LaSota agrees that he took the computer from the courthouse but does not believe that he did so on the 12th or 13th of August. His recollection is that he took the computer to Phoenix on the 14th, a Friday. [Judge LaSota retains his home in Phoenix and returns there on weekends.] He also disputes that he attempted to conceal his removal of the computer. The laptop was contained in a docking station with a keyboard, monitor and mouse attached. He had to pull the docking station forward to remove the laptop. This pulled the docking station close to the front of the desk leaving no room for the keyboard in its usual position. Thus he placed the keyboard behind the gelpad and up against the docking station.

On or about August 12th or 13th, 2009, the Cottonwood City manager, Doug Bartosh, advised Judge LaSota that he had received complaints from court staff about a number of issues.

A meeting was schedule for August 14, 2009, to discuss problems occurring in the court.

The meeting which was held on August 14, 2009 was with the four (4) court employees, Judge LaSota, the City Manager

and the HR Director, Iris Dobler. [The fourth employee had a complaint unrelated to the matters before the commission. This employee, Danielle Thagard, was upset that Judge LaSota had required her to hold open the door to the courtroom for a disabled defendant.] During the meeting, some of the issues which are the subject of the three (3) complaints before the Commission were discussed. However, the issue of the image was not raised. Nevertheless, Judge LaSota was concerned about that issue. He was concerned that such an image or images that may have been generated by his accessing Craig's List were still on the computer and that their presence there, albeit inadvertent, were improper. Thus he took the computer with him to Phoenix to have any such images removed. [He also took the computer to duplicate some court policy information he was working on onto his home computer. However, his principle concern was to have removed any inappropriate images which might be on the computer.]

Judge LaSota took the computer to an electronic's store in Phoenix to have all possible inappropriate images removed. Unfortunately, this also caused the removal of virtually all data from the computer. The computer was returned to the court the following Monday but the judge was unable to restore the data which had been removed. Thus he called the Arizona Office of the Courts for assistance in restoring the programs. This process was begun but not completed. Thus, a new computer was provided by AOC.

The following Monday, August 17, 2009, before returning to Cottonwood, Judge LaSota purchased a new computer for his own use in order to avoid any future concern about inappropriate subject matter being on the court's computer.

3. This paragraph states that on August 13, 2009, Judge LaSota engaged in an argument with court staff while the door to the courtroom was open and members of the public present.

This incident occurred on August 13, 2009, in the afternoon. The incident occurred in the front office area at Judge LaSota's desk. This is the same area of the court

building where Ms. Fradette apparently observed an image of a penis. The incident occurred in the following manner:

On the afternoon of August 13, 2009, a male defendant in a wheelchair had entered the vestibule of the front office area. There is a door which opens into the courtroom from the vestibule. The defendant was having extreme difficulty in getting his wheelchair through this doorway into the courtroom. Judge LaSota observed this and went to help the man. Before he was able to assist, the handicapped man was able to get through the door and into the courtroom. When the proceeding began, Judge LaSota told this defendant that at the end of the proceeding he would have a staff member help him get back through the door. He also asked the staff member present in court at that time [Danielle Thagard] to assist this person through the door when the proceedings were completed. It was this request by Judge LaSota which precipitated the heated discussion referenced in the Commission's December 10, 2009, letter, paragraph 3.

Ms. Thagard was apparently put off with Judge LaSota's direction to her to assist the handicapped person. She complained to her supervisor, Terri Messick, that her duties did not include opening doors for defendants. Ms. Messick approached Judge LaSota, who was now at his desk in the front office area. Her manner was confrontational and irate. She stated: "Why did you tell Danielle to open the door for defendants? It is not her job to open doors for defendants!" The judge replied that the person was handicapped and that it was everyone's job to open doors for handicapped people. The judge was preparing for arraignments and asked Ms. Messick to discuss the matter later. She refused and continued arguing with him. She stated that everyone in the court was ready to quit. She added that if they all quit, the City would fire him as well. In response, Judge LaSota stated something to the effect that "if you get me fired, I'll just kill myself like my son did. Is that what you want me to do?" [Judge LaSota's son took his own life in 2003. The staff was aware of this fact since it came up during the Judge's interview with the City Council and the City's Judicial Advisory Board.] Judge LaSota was extremely irritated by Ms.

Messick's confrontational attitude and what he perceived to be insubordination and extremely poor judgment. His comment was made and intended to be sarcastic. While voices were raised, the argument was not so loud that it could have been heard in the courtroom.

Judge LaSota certainly is not proud of the fact that he raised his voice and made the comments set forth above. Nevertheless, a review of the complaints and materials attached to them demonstrates that by August of 2009, a hostile and oppositional relationship had developed between the judge and at least three (3) of the staff members. The materials which the Commission furnished to Judge LaSota demonstrate that employee Ronda Brockman began keeping notes on Judge LaSota as early as May 21, 2009. This was approximately one month after Judge LaSota began working at the court. Ms. Fradette began keeping notes as early as June 3, 2009. Judge LaSota believes that this antipathy was generated by the loyalty these employees held towards the prior judge, Richard Serden, and their anger with the fact that his contract with the City was not renewed. Additionally, when Judge LaSota began with the Court, he changed a number of then existing procedures and changed the bond schedule regarding disposition of cases. These changes were necessary, in the view of Judge LaSota, to comply with the requirements of the law. However, the staff did not agree and opposed these changes and repeatedly expressed their opposition to the judge. On other occasions, staff members simply refused to follow the judge's instructions on small matters such as amending complaints to reflect the true name of a defendant, etc. In short, Judge LaSota's comment was the culmination of a lengthy pattern of opposition and defiance by members of the court staff. While he regrets his comments and does not assert that his conduct was appropriate, what occurred was certainly understandable. Moreover, at the meeting on August 14, 2009, Judge LaSota apologized to the staff for his outburst.

Attached to this response is a statement from Diane Burke. The statement is marked Exhibit B. Ms. Burke is a former court clerk with many years of experience with the

Prescott Justice Court and prior legal experience as a legal secretary and paralegal. She presently works for Yavapai County in their weekend initial appearance/jail court. She was referred to the Cottonwood Municipal Court by the Court Administrator for Yavapai County to perform volunteer clerk services for that court. She began on November 2, 2009 and still works in that court as a volunteer.

4. This paragraph alleges that Judge LaSota used his position as a judge to obtain relief/leniency from creditors on bill collections, etc.

A review of the documents provided indicate that this assertion is based upon the statements of Ms. Brockman and Ms. Fradette. Ms. Brockman's assertions are that Judge LaSota has been on the telephone for extended periods of time for personal matters and that he appears to be threatening or heated. One person allegedly was told that if they cut him off he will sue. Ms. Fradette's allegations are that she overheard a conversation regarding "cobra" in which Judge LaSota allegedly used his position as a judge to intimidate or for personal gain. We could find no specific allegation from the complainants for more time or leniency in making payments - although it is possible that we have overlooked them in the documents provided.

With regard to the specifics of these complaints, Judge LaSota, as indicated above, has experienced medical problems during his employment with the court. He maintained the medical coverage he had from his former employer (cobra) to ensure coverage for pre-existing conditions. In the fall of 2009, his former employer claimed that Judge LaSota had not made his cobra payments and advised that they were going to cancel his coverage. The Judge called the former employer in response to this assertion. He thereafter provided proof of delivery of those payments by FedEx. At that point, the former employer stated that there was no proof of what was delivered and indicated that they were going to cancel the coverage. Upon hearing this, the judge advised them that he would obtain copies of his cashier's checks and provide them. He also advised them that if his coverage was cancelled he

would sue them. The judge thereafter provided copies of the checks which he had sent. The former employer had apparently misplaced them and they were never found. Replacement checks were provided and the matter has apparently been resolved. During these conversations, Judge LaSota did not mention his status as a judge. Obviously, his former employer knew his status since mail was sent to him at the court and calls were made to him at the court.

The claim that Judge LaSota used his position as a judge to secure leniency or forbearance for amounts owing to financial institutions, creditors, cell phone providers, etc., is not true. In November of 2002, Judge LaSota filed a Chapter 7 bankruptcy action which resulted in a discharge in March of 2003. Since that time he has experienced no difficulties with creditors. Upon reading paragraph 4 of the December 10, 2009, letter, Judge LaSota was asked to provide a copy of a current credit report. The report was obtained on-line on December 16, 2009, and is attached hereto as Exhibit C. The report covers the time period asserted in paragraph 4. A review of that report demonstrates that Judge LaSota was not experiencing difficulty with his creditors during the time he has been employed by the court. There are also no judgments shown. Recently, Judge LaSota has been obliged to call his cell phone provider to dispute roaming charges placed on his bill. He did not mention his status as a judge. These calls were nothing more than the usual disputes which occasionally arise with providers such as these.

5. This paragraph deals with the claim that Judge LaSota used the court computer, printer and substantial amounts of court supplies for personal use.

The policy of the City of Cottonwood provides that personal use of city property is permissible, provided there is no discernible cost or expense to the city.

For the first few months of his employment with the Cottonwood Court, Judge LaSota used the court computer and printer for personal use. However, when he first came to the

court, he also brought with him eight (8) reams of paper. This paper was intermixed with the court's supply of paper for official use. Judge LaSota certainly did not use 4000 pages of paper between his start date at the court and August 17, 2009. On August 17, 2009, he purchased and brought to the court twenty (20) reams of paper (10,000 sheets) which was intermixed with the court's supply of paper.

Regarding his usage, both prior to and after August 17, 2009, Judge LaSota's largest usage of paper was occasioned by his printing a large number of copies from the internet relating to pandemic preparation for the N1H1 virus (swine flu). He used this information to develop prevention procedures for the virus and later implemented the procedures for the court. He believes this usage was appropriate. His personal use of court paper comes nowhere near the amount of paper (14,000 sheets) he had brought to the court. Additionally, from time to time, Judge LaSota has spent his own personal funds to supply the immediate needs of the court for supplies. He has not sought reimbursement for these items.

As stated above, on August 17, 2009, Judge LaSota purchased his own personal computer for personal use. He no longer uses the court computer to access any dating sites.

6. This paragraph raises a claim that after a meeting with staff and city representatives on August 14, 2009, Judge LaSota issued reprimands to the staff and provided negative feedback in employee reviews.

Attached hereto is a letter from Iris Dobler, dated December 17, 2009, regarding the allegations in paragraph 6 of the December 10, 2009, letter. This is marked Exhibit D. Ms. Dobler is the Manager of the City of Cottonwood Human Resources Department. There were no oral or written reprimands of any of the three (3) complainants and the fourth staff member from Judge LaSota. Likewise, Judge LaSota gave no negative feedback in employee reviews. The employee reviews which Judge LaSota authored were only of Terri Messick, the Court Administrator. Copies of those two

(2) reviews are attached hereto. They are marked Exhibit E. Ms. Messick authored reviews of the other court staff.

If, by the use of the term employee reviews, you mean to include direct, oral communications between Judge LaSota and staff members, undoubtedly the judge did criticize the work and practices of staff members from time to time. However, Ms. Dobler's letter makes clear that whatever was said was kept between Judge LaSota and a staff member and did not affect the employee's work record or standing with the City of Cottonwood.

Regarding Ms. Messick's reviews by Judge LaSota, the first review gave her the highest rating (a 5 on a 1 to 5 scale) in all eight (8) categories. The second review, which occurred on August 23, 2009, some eleven (11) days after the August 14, 2009, meeting, showed four "5" ratings and four "4" ratings. These "4" ratings were in the area of quantity of work, interpersonal relationships, leadership and achieved previous goals. These slightly diminished ratings are supported by the fact* but yet are still favorable to Ms. Messick. She suffered no adverse consequences from them.

7. This paragraph raises a claim that a Mr. Barnes filed a petition for protective order with the court against his brother. Upon learning of his request, Judge LaSota warned him that he might be charged criminally for the facts he asserted in support of his petition. Thereafter Mr. Barnes withdrew the petition. Judge LaSota thereafter allegedly instructed the court staff to shred all of the paperwork.

Judge LaSota has a limited recollection of an incident which he believes may be the matter referred to in this paragraph. A Mr. James Edward Barnes was charged in the Cottonwood Court with several misdemeanors. He made his initial appearance in the Cottonwood Court before Judge LaSota on July 30, 2009. See Exhibit F. The specific charges were Interference with Judicial Proceedings, Reckless Driving, Criminal Damage, Disorderly Conduct, Criminal Trespassing and Endangerment. The victim was a Mr. William

Howard Barnes. This is probably the "Mr. Barnes" mentioned in paragraph 7 of the December 10, 2009, letter.

Judge LaSota's recollection is that Mr. William Barnes appeared at the initial appearance to complain about the Defendant, James Edward Barnes. William Barnes may have been demanding a protective order from the court and explaining his reasons. Judge LaSota's recollection is that William Barnes related facts to him that might themselves constitute criminal conduct. He believes he may have told William Barnes that he might want to think twice about seeking a protective order based on those facts. Further, there was already in place a release order which prohibited James Barnes, the Defendant, from contacting William Barnes and thus no order of protection was necessary. Finally, it is likely that there was already in place an order of protection in favor of William Barnes and against James Barnes due to the Interference with Judicial Proceedings charge against James Barnes. The case against James Barnes is still pending. The release order for James Barnes, prohibiting him from contacting William Barnes, is still in effect.

With regard to the assertion that Judge LaSota directed a staff member to shred a document that had been filed with the court, he categorically denies such a claim. There is no file at the Cottonwood Court indicating that William Barnes ever filed such a petition. Further, the state's own AZTEC system shows no such filing. It is possible that Mr. William Barnes may have obtained and filled out the forms for an order of protection or injunction against harassment but never filed them. If he left those documents at the court they would have been disposed of. However, Judge LaSota has no recollection of any such documents, whether they were left with the court and if so, what became of them.

With regard to Judge LaSota's recollection of this event, the record of the Cottonwood Court shows that Mr. James Barnes appeared on the court's 1:30 p.m. calendar for July 30, 2009. He was one of eighteen (18) matters on the 1:30 p.m. calendar in addition to any walk-ins who may have come in on that day who would not appear on the calendar.

See Exhibit G.

8. Additional considerations. Judge LaSota's appointment as magistrate of the Cottonwood Court is his first full-time judicial assignment. Thus, he has never had to deal with employee and personnel issues such as he faced when he began his employment in Cottonwood. He has served as a *pro tem* magistrate in Scottsdale, Chandler and Mesa. However, during his work as a *pro tem* judge, he never experienced a complaint from any source. Also, during his 29 years or so in the private practice of law, no formal complaints were filed against him nor any disciplinary action taken.

Another factor which the Commission should be aware of is the physical facilities in which the Cottonwood Court operates. The courtroom is in the City Council Chambers. The actual working offices of the court itself consist of a front office with a vestibule where the public enters and limited working space which is rather small and crowded. Some of that space is cordoned off due to mold issues and is not used. An additional room is located behind the council chambers/courtroom. To be kind about it, the facilities are well below substandard. Employees and the Judge must work cheek to jowl and there is virtually no personal space either the judge or the court staff can call their own. Close quarters such as this are likely to generate or exacerbate tension between co-workers. The City apparently has recognized the problem and a new court facility is being constructed.

Since his appointment as magistrate in Cottonwood, Judge LaSota has taken and completed 50 hours of course work for new judges. Attached is a certificate from the Arizona Supreme Court, Education Services Division certifying his attendance. See Exhibit H attached. The course work included issues of Judicial Demeanor with others and Working and Communicating Effectively with Others.

Since November of 2009, a new staff has been hired for the Cottonwood Court. According to Ms. Burke, the staff and

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the Court are working well with no difficulties. There have been no new complaints since the arrival of the new staff.

I am hopeful that this response adequately addresses the issues which are raised in the December 10, 2009, letter. If further information or response is needed, please let me know. [I will be out of my office from February 2 through February 11, 2010. If additional response is required, please take that into account.]

Very truly yours,

J. Douglas McVay

JDM/sv

Enclosures