

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 12-089

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Complainant: No. 1350700268A

Judge: No. 1359700268B

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**ORDER**

The complainant generally alleged several judges engaged in judicial misconduct by voting in favor of a proposed rule change in the course of their participation on a supreme court committee.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judges engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainant, the commission found no evidence of ethical misconduct and concluded that the judges did not violate the Code in this case. The commission does not have jurisdiction to investigate claims of alleged violations of the law in court rule-making proceedings. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: June 7, 2012.

FOR THE COMMISSION

/s/ George Riemer

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George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on June 7, 2012.

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

This is a complaint of judicial misconduct against Judge \_\_\_\_\_ for violating Rules 1.1, 1.2, and 2.15 of the Code of Judicial Conduct, as described below. Depending on her motives and personal history, she may have also violated Rules 1.3, 2.2 and 2.4.

This complaint arises out of Judge \_\_\_\_\_ activity during the November 8, 2011 meeting of the Committee on the Impact of Domestic Violence and the Courts, as reported in the CIDVC's meeting minutes for same, attached.

Specifically, on page 2 of the minutes is Item II.B., Petition to amend ARPOP [Arizona Rules of Protective Order Procedure] Rule 6(E)(4)(e)(2). It proposes to "add the same 'credible threat' language that is currently applied to [Title 13 - Criminal] Orders of Protection to [Title 12 - Civil] Injunctions Against Harassment. That is that a judge may prohibit the defendant from possessing, purchasing, or receiving firearms for the duration of the order if the judge finds that the defendant poses a credible threat to the physical safety of the plaintiff or another person protected by the order."

Now, as brief background—and first and foremost for this complaint—there is absolutely no statutory authority for ARPOP Rule 6(E)(4)(e)(2) prohibiting firearms in a civil injunction. The word "firearm" does not appear anywhere in A.R.S. §12-1809, the underlying statute for the Rule. Rule 6(E)(4)(e)(2) is a rogue Rule!

Consistent with this, there is no statute cited in the ARPOP to support Rule 6(E)(4)(e)(2).

Given this, no judge should support this Rule since it is clearly outlaw.

Nevertheless, Judge \_\_\_\_\_ moved to support the above amendment to this Rule. (It was seconded and approved unanimously by members of the CIDVC.<sup>1</sup> See page 3 of the minutes.)

Since Judge \_\_\_\_\_ moved to amend an unlawful Rule and subsequently voted to amend it, she is in violation of Code of Conduct Rule 1.1 for not complying with the law.

Even though ignorance of the law is no excuse, I have observed that when it comes to complaints of judicial misconduct, ignorance is an excuse. (See Comment 3 to your Rule 2.2.) But as to ignorance, if it wasn't clear enough from a plain reading of black letter law that there is no statutory authority for ARPOP Rule 6(E)(4)(e)(2), it was made eminently clear two years ago that there is no statutory authority for this Rule when a petition to repeal the Rule was published in the Arizona Supreme Court's public forum then. (See Petition No. R-09-0045.) Considering that the chair of the CIDVC, Judge \_\_\_\_\_ was instructed by a majority vote of CIDVC members to respond to that petition, if Judge \_\_\_\_\_ was a member at the time, she is especially culpable today for violating Rule 1.1.

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Even if the law for civil injunctions (A.R.S. § 12-1809) gave judicial officers the authority to prohibit firearms, the law is only a Title 12 civil law. It is not a Title 13 criminal Domestic Violence law and the Legislature did not codify it as criminal law.

But by moving the Committee to add verbiage from Title 13 criminal Domestic Violence law to a Title 12 rule on civil injunctions, Judge [redacted] has taken on the role of a Legislature.

Specifically, per the meeting minutes, "Upon review of the [instant] second proposal, [redacted] pointed out that there are domestic violence situations in which ex-partners enlist third parties to harass and intimidate their victims. Following discussion, **members agreed that victims of harassment should receive the same protection as domestic violence victims.**"

IT IS NOT THE ROLE OF THE JUDGES TO ACT AS LEGISLATORS! The Arizona Constitution, which judges swear to support, plainly says "The legislative authority of the state shall be vested in the legislature . . ." Ariz. Const. art. IV, pt. 1, § 1(10). "[W]hen the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases, the legislature, **not the judiciary**, is the main guardian of the needs to be served by social legislation." *Haw. Housing Auth. v. Midkiff*, 467 U.S. 229, 239 (1984)

The language "credible threat" that Judge [redacted] moved to add to civil injunctions comes from criminal Domestic Violence law, A.R.S. §13-3602. If the Legislature wanted to give "victims" of harassment the same protection as victims of domestic violence, then the Legislature would have done so. "When construing a statute, one presumes that 'what the legislature means it will say.'" ([redacted] quoting *Padilla v. Indus. Comm'n*, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976))

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The Arizona Supreme Court has acknowledged that "The legislative, executive, and judicial branches of Arizona government are 'separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.' Ariz. Const. art. 3." *State v. Montes*, 226 Ariz. 194, 245 P.3d 879. So when Judge [redacted] exercised the power of the Legislature by adding verbiage from a criminal statute to a civil statute, she violated Article 3 of the Arizona constitution, Distribution of Powers, a further violation of Rule 1.1. (Not to mention a violation of her oath of office.)

Also, the Arizona Legislature recently affirmed the right of Arizonans "to bear arms in defense of himself," a right that shall not be impaired, per Article 2, § 26 of the Arizona Constitution. Given this along with the Second Amendment individual right to "keep and bear arms," when Judge [redacted] moved to condone Rule 6(E)(4)(e)(2), she acted doubly unconstitutionally. Not only did

she act outside her constitutionally limited power, but she acted to deprive Arizonans of a constitutional right. (And that via an ostensibly administrative rule!)

Naturally, as my fellow citizens look on at Judge \_\_\_\_\_ actions, especially as they are publicized in the Arizona Supreme Court's forum and the Internet, her actions do not promote confidence in the judiciary, a violation of Conduct Rule 1.2.

Further, she should have reported the misconduct of Judges \_\_\_\_\_ and \_\_\_\_\_ of the CIDVC for the above. The fact that she didn't is a violation of Rule 2.15.

Now, if Judge \_\_\_\_\_ is abusing her role as a female judge to advance her personal interest (for example, if she had ever been a victim of Domestic Violence or knew someone close who had), that would be a violation of Rule 1.3.

If Judge \_\_\_\_\_ had been a member of the CIDVC two years ago when a petition to repeal ARPOP Rule 6(E)(4)(e)(2) had been circulated, then this would be a violation of Rule 2.2, since she would have been on notice but failed to uphold and apply the law fairly and impartially.

And, as with Rule 1.3, if her actions on the CIDVC were swayed by the heavily female makeup of the CIDVC membership or her own family interests in Domestic Violence advocacy, then she has violated Rule 2.4.

This is a complaint of judicial misconduct against Judge \_\_\_\_\_ for violating Rules 1.1, 1.2, and 2.15 of the Code of Judicial Conduct, as described below. Depending on his motives and personal history, he may have also violated Rules 1.3, 2.2 and 2.4.

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Nevertheless, Judge \_\_\_\_\_ voted to support the above amendment to this Rule. (It was approved unanimously by members of the CIDVC.<sup>1</sup> See page 3 of the minutes.)

Since Judge \_\_\_\_\_ voted to amend an unlawful Rule, she is in violation of Code of Conduct Rule 1.1 for not complying with the law.

Even though ignorance of the law is no excuse, I have observed that when it comes to complaints of judicial misconduct, ignorance is an excuse. (See Comment 3 to your Rule 2.2.) But as to ignorance, if it wasn't clear enough from a plain reading of black letter law that there is no statutory authority for ARPOP Rule 6(E)(4)(e)(2), it was made eminently clear two years ago that there is no statutory authority for this Rule when a petition to repeal the Rule was published in the Arizona Supreme Court's public forum then. (See Petition No. R-09-0045.) Considering that the chair of the CIDVC, Judge \_\_\_\_\_ was instructed by a majority vote of CIDVC members to respond to that petition, if Judge \_\_\_\_\_ was a member at the time, she is especially culpable today for violating Rule 1.1.

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<sup>1</sup> Complaints of judicial misconduct for Judges \_\_\_\_\_ and \_\_\_\_\_ filed this same day. Since Judges \_\_\_\_\_ and \_\_\_\_\_ were absent and did not vote, no action accrues against them at this time.

Even if the law for civil injunctions (A.R.S. § 12-1809) gave judicial officers the authority to prohibit firearms, the law is only a Title 12 civil law. It is not a Title 13 criminal Domestic Violence law and the Legislature did not codify it as criminal law.

But by voting to add verbiage from Title 13 criminal Domestic Violence law to a Title 12 rule on civil injunctions, Judge [redacted] has taken on the role of a Legislature.

Specifically, per the meeting minutes, "Upon review of the [instant] second proposal, [redacted] pointed out that there are domestic violence situations in which ex-partners enlist third parties to harass and intimidate their victims. Following discussion, **members agreed that victims of harassment should receive the same protection as domestic violence victims.**"

IT IS NOT THE ROLE OF THE JUDGES TO ACT AS LEGISLATORS! The Arizona Constitution, which judges swear to support, plainly says "The legislative authority of the state shall be vested in the legislature . . ." Ariz. Const. art. IV, pt. 1, § 1(10). "[W]hen the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases, the legislature, **not the judiciary**, is the main guardian of the needs to be served by social legislation." *Haw. Housing Auth. v. Midkiff*, 467 U.S. 229, 239 (1984)

The language "credible threat" that Judge [redacted] voted to add to civil injunctions comes from criminal Domestic Violence law, A.R.S. §13-3602. If the Legislature wanted to give "victims" of harassment the same protection as victims of domestic violence, then the Legislature would have done so. "When construing a statute, one presumes that 'what the legislature means it will say.'" ([redacted] quoting *Padilla v. Indus. Comm'n*, 113 Ariz. 104, 106, 546 P.2d 1135, 1137 (1976))

It is not the role of judges to make laws "better" in their opinion. ". . . it is to be presumed that their Legislatures, being chosen by the people, understand and correctly appreciate their needs. . . . **and their conclusions respecting the wisdom of their legislative acts are not reviewable by the courts.**" *Arizona Copper Co. V. Hammer*, 250 U.S. 400 (S. Ct. 1919)

The Arizona Supreme Court has acknowledged that "The legislative, executive, and judicial branches of Arizona government are 'separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.' Ariz. Const. art. 3." *State v. Montes*, 226 Ariz. 194, 245 P.3d 879. So when Judge [redacted] exercised the power of the Legislature by adding verbiage from a criminal statute to a civil statute, she violated Article 3 of the Arizona constitution, Distribution of Powers, a further violation of Rule 1.1. (Not to mention violating her oath of office.)

Also, the Arizona Legislature recently affirmed the right of Arizonans "to bear arms in defense of himself," a right that shall not be impaired, per Article 2, § 26 of the Arizona Constitution. Given this along with the Second Amendment individual right to "keep and bear arms," when Judge [redacted] voted to condone Rule 6(E)(4)(e)(2), she acted doubly unconstitutionally. Not only did she

act outside her constitutionally limited power, but she acted to deprive Arizonans of a constitutional right. (And that via an ostensibly administrative rule!)

Naturally, as my fellow citizens look on at Judge \_\_\_\_\_ actions, especially as they are publicized in the Arizona Supreme Court's forum and the Internet, her actions do not promote confidence in the judiciary, a violation of Conduct Rule 1.2.

Further, she should have reported the misconduct of Judges \_\_\_\_\_ and \_\_\_\_\_ of the CIDVC for the above. The fact that she didn't is a violation of Rule 2.15.

Now, if Judge \_\_\_\_\_ is abusing her role as a female judge to advance her personal interest (for example, if she had ever been a victim of Domestic Violence or knew someone close who had), that would be a violation of Rule 1.3.

If Judge \_\_\_\_\_ had been a member of the CIDVC two years ago when a petition to repeal ARPOP Rule 6(E)(4)(e)(2) had been circulated, then this would be a violation of Rule 2.2, since she would have been on notice but failed to uphold and apply the law fairly and impartially.

And, as with Rule 1.3, if her actions on the CIDVC were swayed by the heavily female makeup of the CIDVC membership or her own family interests in Domestic Violence advocacy, then she has violated Rule 2.4.