

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-118

Complainant: Myra Harris

Judge: Keith Frankel
Ronald Karp

ORDER

The complainant alleged that two justices of the peace, one a full-time judge and the other a pro-tem judge, improperly filed amicus (friend of the court) briefs in two superior court cases when the full-time judge was the judge whose decisions were subject to review in both cases and the pro-tem judge urged the full-time judge to co-sign both briefs which he authored and also signed.

Rule 1.2 of the Arizona Code of Judicial Conduct provides that judges shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and avoid impropriety and the appearance of impropriety. Comment 3 to Rule 1.2 provides, in part, as follows: "Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary." See also Rule 2.2 which provides that judges shall uphold the law, and shall perform all judicial duties fairly and impartially.

While the commission understands the judges filed the amicus briefs for the purpose of clarifying the law, that they had no personal stake in either matter, and that the second brief was withdrawn after the complainant advised them the filing of the first amicus brief was improper, the judges nevertheless violated Rule 1.2 as they failed to promote public confidence that judges are to be neutral and impartial and not advocates for particular legal results. Indeed, the judges expressly asserted in each brief that they were filing it, in part, because the defendant had not appeared and had not filed any brief of his own. Although perhaps well-intentioned, this amplified the impression that Judge Frankel was abandoning his impartiality and speaking on behalf of one of the litigants. Only in very limited circumstances are judges permitted to advocate the correctness of a contested ruling to a higher court. See, e.g., *Hurles v. Superior Court*, 174 Ariz. 331, 849 P.2d 1 (Ariz. App. 1993). This was not one of them. While Judge Karp argued before the commission that he was not involved in either case as a judge and he mistakenly included his judicial title on the briefs when he never

intended to do so, he nevertheless sought and obtained Judge Frankel's signature on both briefs. Judge Karp knew Judge Frankel was the judge whose rulings were being reviewed by the superior court.

Both Judge Frankel and Judge Karp are hereby reprimanded for filing amicus briefs in the two cases in question in violation of Rule 1.2 pursuant to Commission Rule 17(a), and the record in this case, consisting of the complaint, the judges' responses, and this order shall be made public as required by Commission Rule 9(a).

Dated: August 21, 2012.

FOR THE COMMISSION

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judges on August 21, 2012.

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



MAY 07 2012

Myra Harris
Commissioner

SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY
201 W. Jefferson
Phoenix, Arizona 85003-2243

May 2, 2012

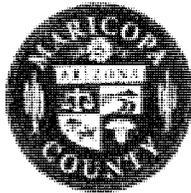
State of Arizona
Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, Arizona 85007

Dear Commission Members,

I am writing to inform you of a situation involving two justices of the peace—Judge Ron Karp and Judge Keith Frankel—which recently came to my attention. Judge Frankel was the trial judge for CC2011-032178RC at the San Marcos Justice Court. After granting Plaintiff a default judgment, Judge Frankel reduced the interest on the requested amount. Plaintiff appealed Judge Frankel's decision. Judges Frankel and Karp filed a joint "amicus" brief in the lower court appeal, opposing Plaintiff's request and stating in their amicus brief that they were filing the brief because (1) the Defendant was not represented; (2) the Defendant had not appeared in the action; and (3) the "amicus has an obvious interest in other credit card collection cases that routinely appear in this Trial Court." I am concerned because I feel their action gives the appearance of impropriety. Therefore, I am forwarding to you copies of (1) the Lower Court Appeal memorandum decision for LC2012-000055-001 DT; (2) Plaintiff's (Appellant's) original appellate memorandum—"Memorandum on Appeal to the Superior Court"; (3) Judges Karp and Frankel's "Amicus Curiae Brief"; (4) "Appellant's Response to Amicus Curiae Brief"; and (5) "Appellant's Motion To Strike Amicus Curiae Brief" for your consideration.

Sincerely,

Myra Harris
Commissioner

**SAN MARCOS JUSTICE COURT**

June 19, 2012

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

Re: Response to Complaint, Case No. 12-118

Dear Members of the Commission:

I completely understand the concerns raised by the amicus brief in this case and, especially with the benefit of hindsight, fully recognize there was clearly a better and more appropriate way to make sure a complete record in this case went forward on appeal. At no time did I intend to advocate on behalf of anyone. I fully understand and embrace the paramount importance of being fair and impartial at all times.

In limited jurisdiction courts such as mine, considering the volume of filings, relatively few cases are appealed. Also, there generally is a lack of specific case law dealing with the issue(s) to guide the judge when rendering a decision. Most often when a party perceives a decision to be wrong they choose not to appeal. Even though appellate rulings from the Superior Court are non-binding on other cases, the opinion and legal authority expressed in the rulings can be considered as persuasive arguments in other similar cases. Gaining clarity on issues is of great benefit to a judge such as me and I fully respect the process.

The amicus brief that is the subject of this complaint was initiated, researched, and written by a former City of Chandler judge with 12 years of judicial experience. He was also encouraged to draft and to file this brief by a former justice of peace with over 20 years of experience. Both of these individuals hold law degrees and were practicing attorneys prior to serving as judges. The amicus brief is more extensive than I originally believed it would be; but I signed it in the hope that we could possibly receive a detailed opinion, covering every applicable issue thus giving me guidance in this area.

KEITH FRANKEL, Justice of the Peace

201 E Chicago St., Suite #103 Chandler, Arizona 85225
www.superiorcourt.maricopa.gov

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Re: Response to Complaint, Case No. 12-118

I realized that as a result of this whole experience, when rendering a decision, there is great utility in the preparation of a written Findings of Fact and Conclusions of Law.

To that end, and because I rarely wrote any formal opinions, I enrolled in and successfully completed the National Judicial College course in Legal Logic and Opinion Writing.

I am requesting the complaint be dismissed and I appreciate being afforded the opportunity to respond. Please contact me if you have any additional questions or concerns. Thank you.

Sincerely,

Keith Frankel
San Marcos Justice of the Peace

RONALD I. KARP

JUN 20 2012

CHANDLER, ARIZONA 85249

June 18, 2012

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

Re: Response to Case No. 12-118

Dear Members of the Commission:

Thank you for the opportunity to respond to Commissioner Harris's letter to you, dated May 2, 2012. I believe the Commission should not take any action against me because I did not participate in the Palladio LLC v Jason E Beck case as a judicial officer and because I did not engage in misconduct or act on behalf of any party or try to unduly influence Commissioner Harris.

I did not participate in the Palladio LLC v Jason E Beck case as a judicial officer.

1. In her letter, Commissioner Harris refers to me as "Judge Karp" (the actual wording she used was "Judges Frankel and Karp" and "Judges Karp and Frankel").
2. I am neither a full-time judge nor an elected justice of the peace.
3. When called upon to do so, I do serve as a justice of the peace pro tem in several justice courts in the East Valley.
4. I did not appear in the Palladio LLC v Jason E Beck case in a judicial capacity.
5. Commissioner Harris acknowledges my lack of connection with the case at page 6 of her Ruling when she states "Neither Judge Frankel – the ruling judge – nor Judge Karp – who joined in the brief . . ."
6. I did not "join in" the brief; I consider this to be "my" Amicus Curiae Brief because it was my idea to prepare, research and write the Amicus Curiae Brief.
7. The entire Amicus Curiae Brief is my work product; Judge Frankel's only association, as explained below, was to show support for my intentions and work by signing it.
8. When I signed the Amicus Curiae Brief, I failed to note that the signature block stated "Justice of the Peace, Pro Tem".
9. The title, "Justice of the Peace, Pro Tem", after my signature on the Amicus Curiae Brief is an error; it should not appear.
10. I intended to sign the Amicus Curiae Brief in my individual capacity.
11. I apologize for not noticing this error when I signed the Amicus Brief.
12. Even though no rulings in Palladio LLC v Jason E Beck contain my signature, I understand how, from reading the signature block containing my signature in the Amicus Curiae

Brief, Commissioner Harris could think that my participation in the Amicus Curiae Brief was part of my justice of the peace pro tem duties.

13. Maricopa County Justice Courts Bench Policy Directive 1.3.1, effective 09-10-08, prescribes "the activities that are appropriate for a justice of the peace pro tempore to perform while acting in the capacity of a pro tempore in the Maricopa County Justice Court system."
14. Accordingly, I was never directed by any Justice of the Peace or any Justice Court Manager to research and write the Amicus Curiae Brief.
15. On my own initiative, on my own individual time, and in my home I researched and wrote the entire Amicus Curiae Brief.
16. Accordingly, I never presented a Weekly Pro Tem Payroll Report to any justice court manager for a verified signature which the Justice Court Administration requires whenever any justice of the peace pro tem is serving as a justice of the peace pro tem.
17. When a justice of the peace pro tem is serving in that official capacity, the justice of the peace pro tem files his Weekly Pro Tem Payroll Report; the justice of the peace pro tem may either note the hours worked for pay or the hours worked as "pro bono".
18. Because I was neither working for pay nor as "pro bono" as a justice of the peace pro tem, I did not prepare or submit or file the mandatory Weekly Pro Tem Payroll Report.
19. I further compounded my error and created this problem before you when I informed Justice of the Peace Frankel that I was preparing an Amicus Curiae Brief.
20. I informed Judge Frankel about my Amicus Curiae Brief because I challenged some of his rulings in the case and I wanted to know if any of my arguments offended him.
21. Judge Frankel told me that the Amicus Curiae Brief did not offend him; that he understood that I was not "attacking" his ruling, but instead wrote about my honest beliefs and analysis of the applicable law and, accordingly, was seeking to find an answer to a question of law.
22. Because Judge Frankel agreed that the legal authority in the subject area was very unclear, rather than being offended, Judge Frankel said that he would be happy to receive guidance from the Superior Court about whether or not his rulings were proper and legally sufficient.
23. Judge Frankel also told me that he wanted to support my preparation of the Amicus Curiae Brief by also signing it; he too wanted guidance from the Maricopa County Superior Court about the questions of law and legal research that I presented - even though the appellate court could state that he erred in his rulings on the case.
24. At all times, my sole motivation for filing the Amicus Curiae Brief was not to influence the outcome, but strictly to present an issue of substantial importance at the trial court level as discussed below.

I did not engage in misconduct or act as an advocate for any party, but always had one purpose: to discover the applicable law and provide justice for all parties.

1. As stated in the previous section, I did not participate in the Palladio LLC v Jason E Beck case as a judicial officer.

2. I have absolutely no interest in the outcome of the appeal; I am only interested in discovering the applicable question of law in the case.
3. In support of my position that I am not interested in the outcome of the Palladio LLC v Jason E Beck case, but rather in the broader goal of ascertaining a question of law: Commissioner Harris, at page 2 of her Ruling references my words, at page 1 of the Amicus Curiae Brief (lines 16-18): “this amicus has an obvious interest **in other credit card collection cases** (bolding added) that routinely appear in this Trial Court that will be affected by the decision in the present case” (see the next section, paragraph 1, about why, if Commissioner Harris had chosen to rule on the legal questions I presented, the Amicus Curiae Brief is not only the appropriate vehicle for my quest, but the only vehicle that I have available as an individual).
4. Even if I had participated in the case as a judicial officer, however, I believe that a justice of the peace or justice of the peace pro tem may file an Amicus Curiae Brief.
5. There are no rules, statutes or reported cases that prohibit a judge from filing an Amicus Curiae Brief.
6. There is precedent for full-time, elected justices of the peace to file an Amicus Curiae Brief.
7. Before I prepared my Amicus Curiae Brief, I spoke with retired West Mesa Justice of the Peace Clayton Hamblin about my intentions. He informed me that, as a full-time, elected justice of the peace, he had filed an Amicus Curiae Brief with the Maricopa County Superior Court (I do not recall if he stated he filed one brief or more than one brief).
8. Judge Hamblin stated that he filed his brief(s) because he believed it was not only his, but all judicial officers’ “judicial duty” to know the law and apply the law in their rulings and, that to him, anything short of that would be to “bring the judicial office into disrespect”.
9. To that goal, Judge Hamblin wholeheartedly supported and encouraged my desire to file an Amicus Curiae Brief and present questions of law and legal research to whomever would consider the appeal at the Maricopa County Superior Court.
10. In encouraging me to write the Amicus Curiae Brief, Judge Hamblin explained to me that if I had been involved in the case as a judicial officer, I could have written about the same questions of law and provided the same legal research (legal authority) in a trial court Order based upon a ruling on a Motion for Reconsideration and that the appellate court would then have considered this same presentation in the form of an appellate ruling; since I was not a judicial officer in this case, I could not write such an Order.
11. Judge Hamblin told me that he is aware of three or four times that all or many of the full-time justices of the peace filed Amicus Curiae Briefs with the Arizona Supreme Court.
12. Judge Hamblin also told me that no one ever questioned his Amicus Curiae Brief(s) nor is he aware of any problems with the filing of the Amicus Curiae Briefs by the full-time justices of the peace at the Supreme Court.
13. Based upon Judge Hamblin’s advice and the lack of any contrary statutory or case law authority, I prepared the Amicus Curiae Brief. Ironically, my only concern with the Amicus Curiae Brief was that it contained too many pages.

In accordance with the directions in your letter, I address the allegations by Commissioner Harris. Because I am not sure if I am only to address those matters that appear in Commissioner Harris's letter and/or the additional matters that she wrote about in the Record Appeal Ruling, I am addressing the matters that appear in both the letter and the Record Appeal Ruling with the following explanation ("Section" below refers to the corresponding Section of the Record Appeal Ruling):

Section 1. Memorandum Decisions: My Response: There is no legal authority that prevents a trial court from adopting and using legal cites, logic, and conclusions found in Memorandum Decisions so long as the trial court does not cite the Memorandum Decision or regard it as precedent.

1. Commissioner Harris, in page 2 of her Ruling, takes issue with my words about whether or not her Ruling can affect "other credit card cases". Commissioner Harris believes "This misstates the effect of Superior Court appellate decisions" and cites various authorities for her position.
2. I agree with the Commissioner Harris's presentation with respect to using or citing a Memorandum Decision as precedent.
3. I disagree with Commissioner Harris's presentation, however, that while neither a judicial officer nor a party nor an attorney can cite and use a Memorandum Decision as precedent, I can find no legal prohibition whatsoever for any judicial officer or party or attorney simply arguing or presenting, in part, or in full, the same legal arguments, authority and conclusions as may be found in a Memorandum Decision (but without citing or referring to the Memorandum Decision in any way).
4. Had Commissioner Harris chosen to address the "credit card agreement" questions of law in a civil default action that I presented in my Amicus Curiae Brief, I believe that in my judicial capacity I could have, **at my discretion**, chosen to adopt all, part or none of her legal reasoning in future credit card collection cases that came before me.

Section 2. Advisory Opinions: My Response: My purpose in the Amicus Curiae Brief is not to ask the appellate court for an advisory opinion, but to rule on questions of law as described in Section III of the Amicus Curiae Brief.

1. Amicus Curiae Briefs are often used to present issues of substantial importance and creative legal theories.
2. Without citing any authority, Commissioner Harris, at page 3 of her Ruling, states "These are all issues that are appropriately raised by a litigant and not by the trial court".
3. There is no legal authority that states that I, as an individual (and the argument is the same if I was appearing as a judicial officer), cannot file an Amicus Curiae Brief to present issues of substantial importance and creative legal theories.
4. The heart of my Amicus Curiae Brief centers on the legal effect and use of Cullen v. Auto-Owner Ins. Co., 189 P.3d 344 (Ariz. 2008); for an explanation of my legal argument, see the Amicus Curiae Brief, pages 6 and 7.

5. Although I believe that this is not the place to discuss case law, I cite this case here to explain why readers would understand that the Cullen, supra case is both “substantially important” and represents a “creative legal theory” because I believe that it mandates **the judge’s legal duties and responsibilities** in a default civil action.
6. If my belief is correct, then it follows that a subject that provides something new, something that has not previously been presented at the trial court, is exactly the information that is delivered through an Amicus Curiae Brief to an appellate court.

Section 3. Appearance of Impropriety: My Response: As an individual filing an Amicus Curiae Brief, I do not have an appearance of impropriety and, even if I had filed it in a judicial capacity, the substance of the Amicus Curiae Brief is clearly appropriate and permissible i.e. to address, in a default civil action, the questions of law concerning a judge’s legal duties and responsibilities.

1. When I am not serving in the capacity of a justice of the peace pro tem, although I choose not to, I can appear in court as an attorney.
2. Likewise, in my individual capacity, I believe it follows that I can file an Amicus Curiae Brief when I am not appearing in the capacity of a justice of the peace pro tem.
3. For the reasons stated in pages 2 and 3 above of this Response, I also believe that I can file an Amicus Curiae Brief even if I had been serving as a judicial officer in this case.
4. I disagree with Commissioner Harris’s conclusion that my discussion in my Amicus Curiae Brief about how Cullen, supra, **in a default action**, applies to **the judge’s legal duties and responsibilities** – as it applies to both parties - is inappropriate or anything other than a question of law about the administration of justice – for all.
5. I believe that all parties in a default action, including the plaintiff, plaintiff’s attorney, and the defendant have the same interest in expecting that the judge knows the law and fairly and equally applies the law.
6. I believe, as an officer of the court, plaintiff’s attorney likewise has a duty to alert the court if the attorney believes the court is making a legal error and that this duty applies to civil default actions; my point is that the paramount duty in any case is that the law is fairly and equitably applied.
7. I believe that when a judge is performing the judge’s legal duties and responsibilities (as described in Cullen, supra) such conduct can only positively “reflect on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”
8. Commissioner Harris states, at page 5 of her Ruling, that “the trial court does not and cannot have “an interest” in the case” and also stated that “The only interest a court may have is an interest in seeing that justice (1) is done and (2) is perceived to be done.”
9. Although these two sentences seem to contradict, I submit that Commissioner Harris has correctly pointed out the purpose of the Amicus Curiae Brief: my interest in researching and writing the Amicus Curiae Brief was to see “that justice is done and is perceived to be done”; I hoped to achieve this goal by presenting the questions of law concerning the applicability of Cullen, supra as it pertains, in a default action, to the judge’s legal duties and responsibilities.

10. I believe that any person reading the Amicus Curiae Brief would understand that the purpose of the Amicus Curiae Brief is to elicit a thoughtful and detailed inquiry as to the questions of law presented.
11. Commissioner Harris notes, in her Ruling at page 5, that “the Defendant (1) is not represented; and (2) has not appeared. Commissioner Harris then concludes that the purpose or at least the appearance of the Amicus Curiae Brief is to become an “advocate” for the Defendant.
12. I disagree with Commissioner Harris’s conclusion for this reason: the questions of law that I present throughout the Amicus Curiae always centers around the applicability of Cullen, supra: **in a default action, what are the judge’s legal duties and responsibilities?**
13. I wrote the terms “is not represented” and “has not appeared” in the Amicus Curiae Brief to alert the appellate court that the questions of law I presented was set in a “**default**” environment; although this may be an obvious fact in this Commission’s review when there is time to reflect on the legal environment, I have found in my judicial experience that sometimes in conducting a docket, it can be easy to overlook one or more details that could impact a judicial legal decision.
14. In the case on appeal, I believe the fact that this case is a default action is critical to the questions of law I presented in the Amicus Curiae Brief.

Section 4. Amicus Briefs at Lower Court Appeals: My Response: I do not know if this issue is before this Commission, but if it is, I suggest that it is a legal issue.

1. As I wrote at page 3 above, Judge Hamblin has filed either one or more Amicus Briefs with the Superior Court.
2. I was not the person “who joined in the brief”; I conceived the idea, discussed it with Judge Hamblin, researched it and then wrote the Amicus Curiae Brief in its entirety.
3. In her Ruling, Commissioner Harris chose to not address the applicability of Cullen, supra in a default action. For whatever reason, that is entirely within her discretion.
4. In her Ruling, Commissioner Harris, at pages 7, 8, and 9 of her Ruling, however, did concur with my arguments, legal authority and conclusion, concerning the issue of Attorney Fees which appear at pages 16 and 17 of the Amicus Curiae Brief.

For all of the above reasons, I respectfully request that this Commission dismiss the Complaint against me. As a footnote, I would add that effective August 2, 2012, our Governor has signed into law House Bill 2664. This new law directly addresses my concerns about how a trial court judge can issue a Default Judgment in a breach of credit card agreement case.

Thank you for considering my Response.

Sincerely yours,

Ronald I. Karp



JUN 21 2012

Myra Harris
Commissioner

SUPERIOR COURT OF ARIZONA
IN MARICOPA COUNTY
201 W. Jefferson
Phoenix, Arizona 85003-2243

June 14, 2012

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

Re: Case No. 12-118

Dear Commission Members,

I am writing to inform you about a second situation involving two justices of the peace—Judge Ron Karp and Judge Keith Frankel—which recently came to my attention. Judge Frankel was the trial judge at the San Marcos Justice Court for CC2011-113389 a case which—in relevant part—replicates the situation in CC2011-032178RC. I previously—on May 2, 2012—wrote about the prior case. In CC2100-113389, after granting Plaintiff a default judgment, Judge Frankel reduced the interest on the requested amount. Plaintiff appealed Judge Frankel's decision. Judges Frankel and Karp again filed a joint "amicus" brief in the lower court appeal, opposing Plaintiff's request and stating in their amicus brief that they were filing the brief because (1) the Defendant was not represented; (2) the Defendant had not appeared in the action; and (3) the "amicus has an obvious interest in other credit card collection cases that routinely appear in this Trial Court." As before, I am concerned because I feel their action gives the appearance of impropriety. I do note that the justices filed the amicus brief in February, 2012, several months before I wrote my prior letter. However, I feel that I need to inform the committee of this second violation. The relevant documents in this case essentially replicate those of the preceding case so I am not including copies at this time.

Sincerely,

Myra Harris
Commissioner

From: Keith Frankel - MCJCX
Sent: Thursday, June 28, 2012 1:14 PM
To: Perkins, Jennifer
Subject: Case No 12-118

Ms. Perkins – I am in receipt of your letter dated June 27,2012. In response to your question I have never personally filed an amicus brief in any other case. For the record, I did not sign the amicus brief submitted by other Justices of Peace in the Woolbright Case. Also as a newly elected Judge I abstained from on the vote to submit an amicus brief in the case of Justice McVey.

I was on the Bench when it was voted to submit a brief in support of Sherriff Arpio's suit involving sweeps of funds but the Bench submitted the amicus brief and was not personally signed by the Judges. At least I do not recall or believe I personally signed.

Would also like to point out that in the second case referenced, I formally requested to have the amicus brief withdrawn prior to any decision in that case being rendered. My formal request to withdraw the submitted amicus brief was never responded to.

Thank you for affording me the opportunity to respond. Please advise if I need to send this as a formal letter or if this electronic communication will suffice.

Judge Keith Frankel
San Marcos Justice Precinct

RONALD I. KARP

JUL 17 2012

Chandler, Arizona 85249

July 16, 2012

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

Re: Second Response to Case No. 12-118 (Questions from Attorney Jennifer Perkins)

Dear Members of the Commission:

Thank you for the opportunity to respond to Commissioner Harris's second letter to you, dated June 14, 2012. As I stated in my first response, I believe the Commission should not take any action against me because I did not participate in the Elche, LLC v Joseph W. Hardy case (hereinafter "Elche") as a judicial officer, and because I did not engage in misconduct or act on behalf of any party. I will respond to the questions in the order presented in Attorney Perkins' letter to me, dated June 27, 2012.

Please provide the background of your submission of an amicus brief in Case No. CC2011-113389 ("Elche") and a copy of your brief.

1. I do not remember how I found out that the Elche matter was being appealed.
2. I do remember thinking that the issues were almost exactly like the Palladio matter.
3. Because I already had researched and written the Palladio Amicus Curiae Brief, I remember thinking that it would not consume much time or effort to amend the Palladio Amicus Curiae Brief so that I could present the same issues in the Elche case.
4. I also remember hoping that there would be a different appeals judge for the Elche case so that I could get two opinions about the central issue and theme that I presented in both of the Amicus Curiae Briefs: **What duties does Cullen v. Auto-Owners Ins. Co., 189 P.3d 344 (Ariz. 2008) [especially at pages 345-346] impose on the trial judge in a civil case proceeding by default?**
5. I have discussed the above issue on numerous occasions with judges and lawyers; the usual result of my discussions is either that no one has heard of the case or that my interpretation is novel and somewhat creative. No one, however, has ever offered me any legal reason against my conclusion that Cullen, supra, applies in default civil cases; all agree that it is a relatively new case (2008); there is no judicial guidance on its use; and that most judges don't apply it because they don't see the need to change from their current practice.

6. My motivation for filing the two Amicus Curiae Briefs was to get one or two appeals judges to agree to review Cullen, supra (by reading the Briefs), and to provide a ruling about its application..
7. As Commissioner Harris wrote in her Palladio ruling, in accordance with Rule 111, Rules of Supreme Court, I agree that a judge, lawyer or party can not cite such a ruling, but as I wrote in my first response to you, I believe that there is no rule that says a judge, lawyer or party, on their own initiative and belief, so long as they do not cite the lower court appeal ruling, can still adopt any logic or law contained in such a ruling either in full or in part.
8. One day in early May (maybe Monday, May 7, 2012?) I received a telephone call from Judge Frankel asking me if I agree that we should file a Motion to Withdraw our Amicus Curiae Brief in the Elche matter because of Commissioner Harris' ruling in the Palladio matter, especially because of the concerns that she wrote about the appropriateness of our filing of an Amicus Curiae Brief.
9. From that discussion, I realized that Commissioner Harris had the appeal assignment for both the Palladio and Elche cases; I immediately agreed to be part of the Motion.
10. The Motion to Withdraw was either filed the same day as our telephone call or the next day.
11. Since our early May submission of that Motion, I do not believe that Commissioner Harris ever has ruled on our Motion to Withdraw.
12. Per my telephone call with Attorney Perkins on Friday, July 13, 2012, I am not submitting a copy of the Elche brief because she said that Judge Frankel has already provided a copy of the brief to her; she also said that one copy would be sufficient for both of our matters.

Have you filed any amicus curiae other than the two cases identified by Commissioner Harris?

13. I have not filed any other Amicus Curiae Briefs.

Your June 18, 2012, response indicates you relied on information provide to you by former Justice of the Peace Hamblen that he may have filed one or more amicus briefs.

14. Attached as Enclosure 1 to this Second Response is a letter from retired Judge Hamblen. The letter provides the background information you requested about his amicus briefs.

. . . and that some or all of the Maricopa County Justices of the Peace may have filed briefs in several cases before the Arizona Supreme Court. Please provide the names of the cases in which the judges filed amicus briefs and any other information you have concerning those matters.

15. Attached as Enclosure 2 to this Second Response is a case activity document for **Arizona Supreme Court, JC-11-0004**, In the Matter of Hon. Phillip Woolbright; "**Side 2**" appears to include a total of **22 Justices of the Peace** who are identified as "**Amicus Curiae**".

16. Attached as Enclosure 3 to this Second Response is a copy of the front page of an Opinion by the **Arizona Supreme Court, JC-06-0002**, In the Matter of Jacqueline McVay, Justice of the Peace; In the middle of the page Wilenchik & Bartness, P.C. are listed as “Attorneys for **Amicus Curiae Maricopa County Justices of the Peace Bench**”.
17. Attached as Enclosure 4 to this Second Response is a copy of the front page of an Opinion by the **Arizona Court of Appeals, Division 1, Department A, CA-CV-09-0456**, Arpaio v. Maricopa County Board of Supervisors; “C. Steven McMurry, Justice of the Peace, Phoenix, Gerald A. Williams, Justice of the Peace, Surprise, Amicus Curiae for **Amicus Curiae Maricopa County Justices of the Peace**”.

Judicial Members of the state bar are not supposed to practice law. Are you saying that you intended to file the amicus brief pro se?

18. I did not serve as a judicial member on either the Palladio or Elche cases.
19. I do not believe that I was practicing law when I filed the Amicus Curiae Brief; similarly, I do not believe that the judges who participated in the Amicus Curiae Briefs cited above in the Arizona Supreme Court, the Arizona Court of Appeals and the Maricopa County Superior Court were practicing law when they filed their briefs (Judge C. Steven McMurry, Judge Gerald A. Williams and retired Judge Hamblen are also members of the state bar).
20. Based upon the above information that I discovered about other judges (including judges who are also members of the state bar) prior to writing my Amicus Curiae Briefs, I believed it was appropriate for me to write the Palladio or Elche briefs.
21. Yes, I intended to file the amicus brief pro se.

As it appears no superior court rule provides for amicus briefs, should your amicus brief have been accompanied by a motion asking for permission to do so?

22. Because there are no specific Maricopa County Superior Court rules dealing with Amicus Curiae Briefs, there is no clear answer, that is, there is no Superior Court rule which says a briefer is required to file a Motion asking for permission and there is no Superior Court rule which says a briefer is not required to file such a Motion.
23. From the limited information that I have, I do not believe that Commissioner Harris rejected my Amicus Curiae Briefs because of a lack of such a Motion; if she had, then it follows that Commissioner Harris would have rejected my Briefs in their entirety – without reading them - and noted so in her ruling or in a separate opinion as a procedural violation on my part.
24. Instead, it appears that Commissioner Harris initially accepted the Amicus Curiae Briefs, without requiring a Motion, either reading all or part of the Briefs.
25. It also appears that at some point after accepting and reading the Amicus Curiae Briefs, Commissioner Harris then decided to file a Complaint - based only upon the contents of the Briefs.
26. To directly answer your question, I believe Maricopa County Superior Court does not require a briefer to file a Motion asking for permission to do so.

27. Having said the above, I now believe the better course of action is to file such a Motion.
28. Attached as Enclosure 5 to this Second Response are two pages of the Case History from **Maricopa County Superior Court, Case Number FC2003-070081, Michhimer and Michhimer**; on page 2 of Enclosure 5, the note after the 2/11/2008 reads "**NOTE: BRIEF OF AMICUS CURIAE**"; this case demonstrates that even though there are no specific procedural rules, Maricopa County Superior Court accepts Amicus Curiae Briefs.

For all of the above reasons in this Second Response as well as the reasons cited in my First Response, I respectfully request that this Commission dismiss the Complaint against me.

Thank you for considering my case.

Sincerely yours,

Ronald I. Karp