

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-255

Complainant: Steven Tucker

Judge: John Basteen

ORDER

The complainant alleged that a justice of the peace engaged in prohibited political activity and improperly addressed the county board of supervisors by suggesting that the sheriff's office increase the issuance of traffic citations to help increase justice court productivity credits and salaries.

After reviewing the complaint, the relevant recording, and the judge's response, the Commission finds that Judge Basteen violated the Code of Judicial Conduct, warranting an informal sanction. Specifically, the judge's presentation to the Greenlee County Board of Supervisors regarding productivity credits for the courts included statements regarding the need for law enforcement to issue more citations. These comments could be reasonably perceived by the public to suggest an appearance of partiality when the judge handles traffic citations, in violation of Rule 1.2, and to suggest that the judge was improperly advancing the financial interests of the court over the public's interest or the interests of justice, in violation of Rule 1.3.

Accordingly, Judge John Basteen is hereby reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The record of this case, consisting of the complaint, the judge's response, and this order, shall be made public as required by Rule 9(a). The Commission dismissed all remaining allegations.

Dated: December 4, 2012.

FOR THE COMMISSION

Louis Frank Domínguez
Commission Chair

Copies of this order were mailed to the complainant and the judges on December 4, 2012.

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

On September 4th, 2012 at about 1015 hours, Judge John Basteen and Judge Grace Nabor appeared in their official capacity as Justice of the Peace at the Greenlee County Board of Supervisors public meeting to discuss and request action on a boundary line issue. In the past the boundary line was moved and resulted in Judge Basteen increasing his productivity points and Judge Nabor in decreasing her productivity points. They appeared at the meeting to discuss changing the boundary in an attempt to balance the points. Present at the meeting were, Chairman Richard Lunt, Supervisor David Gomez, Supervisor Ron Cambell, County Manager Kay Gale, Clerk of Board Yvonne Pearson and Chief Financial Officer Hillary Badger. They can all be reached at 928-865-2310.

Judge Nabor discussed the change and requested that Hwy 191 between the County line and Hwy 75 be divided down the center line so it would increase her points and at the same time maintain Judge Basteen's points. She stated that Judge Basteen agreed. Judge Basteen then requested to speak. He then handed out packets to the board of supervisors and made a statement that I will summarize; He stated that he was in agreement with Judge Nabor. He stated that the Board might consider joining the two courts stating that one court could handle all cases. He then stated that the Greenlee County Deputies are not doing their job and if they increased the amount of citations that they issued that his productivity points would increase thus increasing his salary. He followed up by stating that when he worked for DPS he was given a Quota of 160 citations that he was forced to issue every month. He said that with the last DPS Officer moving from the area that DPS would be no more and that it would require the Sheriff's Office to pick up the slack to prevent his court from losing productivity points and the Judge losing salary. He stated that the Deputies were not being held accountable for their time and suggested the BOS force the Sheriff to use and DPS activity report. He said that if the Deputies would write 70 citations per month that he would get one point per month. Judge Nabor then requested to speak and stated she did not know what Judge Basteen was going to say and she was only there to discuss the boundary issue. I then addressed the Board then Judge Basteen attempted to address the Board and was told by Supervisor Lunt that he was outside the agenda item and that he would not be allowed to speak.

There are less than 2000 citizens that live in Judge Basteen's district including children under 16 years of age who do not drive. If 70 citations were issued a month it would result in 848 citations per year which would result in 42% of the population being issued citations. Last year 250 citations were issued in Judge Basteen's court. This accounts for 12.5% of the population being issued citations.

On several occasions during the past years, Judge Basteen has approached me, my staff and DPS Sgt. Dan Long (928-428-2505) and encouraged us to increase the amount of citations issued to increase his productivity points to increase his salary. I believe that DPS has issued a letter to Judge Basteen to request he stop this behavior or a complaint would be filed with the AOC. I have told Judge Basteen that my staff will not issue citations for the purpose of increasing his salary. Judge Basteen made comments about the Sheriff's Office employee's not being accountable for their activity. Judge Basteen has never requested information about the accountability of my staff and made some assumptions that DPS and Sheriff's Office's are responsible for the same work. This statement will cause hard feelings between my staff and the court and will cause harm to our relationship and the public trust. It will also give the public and my staff the opinion that the Judge is biased against the Sheriff Office employee because they refuse to supplement his salary. Judge Basteen then left the meeting and was headed south back to his district. At the same time Lt. Pat Sexton (928-865-4149) was headed southbound. Lt. Sexton was headed home because he was sick and was traveling behind Judge Basteen. Judge Basteen then pulled off the road in the York area and met with candidate for Sheriff Jaime Aguilar. The following are a few of the rules that I believe Judge Basteen violated;

RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office

It is improper for the judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

RULE 2.1 Giving precedence to Judicial Duties

To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification.

Rule 2.4 External Influences on Judicial Conduct

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

RULE 3.2 Appearances Before Governmental Bodies and Consultation with Government Officials

Comment 2.

In appearing before governmental bodies or consulting with government officials judges must be mindful that they remain subject to other provisions of this code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10 governing public comment on pending and impending matters, and Rule 3.1 ©, prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Commission on Judicial Conduct

1501 W Washington St, Ste 229

Phoenix AZ 85007

OCT 17 2012

Re: Response to Notice of Complaint (Case No. 12-255)

Dear Commission Members,

The following is a response to the complaint made against me by Sheriff Tucker of the Greenlee County Sheriff's Office.

At the behest of Judge Nabor of Precinct #1, I was placed on the agenda of the September 04, 2012 Board of Supervisor's Meeting. The topic was to be judicial productivity credits. Judge Nabor was concerned as to her loss of productivity and salary and was requesting realignment of the judicial boundaries to suit her purposes.

Although, I did not believe, nor do I currently believe that realignment is the solution to the problem, I consented to speak in behalf of the realignment primarily because this very issue caused a bitter contention between us four years ago and I was not either willing or able to go through it again.

To begin my address, I stated that I would not stand against Judge Nabor, but I asked the Board to consider two alternatives, and they agreed to listen.

I started out by advising the Board, as well as all in attendance that I would not seek a third term as Justice of the Peace. I further stated that as for my final two years in office that my salary had already been established, and that any decisions that the Board made in this meeting would not take effect until after I was out of office. Therefore, I had nothing to either gain or lose by the comments that I made.

My first alternative was to have the Board consider consolidation of the two Greenlee County Justice Courts at the end of my judicial term. I pointed out that while some judges across the state are running as many as 1500 points in their courts, I found it to be in poor taste for Judge Nabor and I to be so bitterly fighting over a combined point total of less than 115 in our courts.

I then offered my second alternative which was for the Board to consider holding the Sheriff's Office accountable for the low productivity by which both courts are plagued. I addressed the following matters; First of all I gave a brief overview of how the productivity formula works. I provided a sampling of Aztec monthly filing reports which reflected the low activity from my court. Then, I addressed my 22 years of experience that I had as a police officer as well as what was expected of me. I also provided the Board with samples of the time accounting reports that I was required to use when I was a police officer. I explained how the report worked and the efficiency of such report that held individual officers accountable for every minute of their time. I provided to the Board a 65 page ADOT report which showed a sharp increase in traffic accidents and fatalities. I advised the Board that based on my experience; I could say without any uncertainty that when accidents are on the rise, the stats would

show that enforcement was down. I asked the Board to hold the Sheriff's Office accountable to the taxpayers and citizens of this county. I asked the Board to consider seeking the monthly filing reports that are extracted from Aztec from each court so that they could get a first hand impression as to the activities of the Sheriff's Office.

During his rebuttal, the Sheriff made a statement to the effect that it was not his job to make the judges richer. I agree wholeheartedly with that statement. I will further add that as a former police officer who served an entire career as such, it was also not my job to make judges richer. It was my job however, to do my job every time I was on duty to the best of my ability, serving and protecting the public, and being accountable for all of my time.

Sometime after the meeting, I was approached by the Chairman of the Board who thanked me for my comments, stating that it was good for me to come forward and let them know when there were problems.

The comments that I made to the Board of Supervisors that day were drawn from my own conclusions based on the following criteria: My 22 years of police experience from which I learned what should be expected from a police officer; the expert knowledge that I have gained from experience (which included many awards and opportunities to teach at the police academy) as it relates to effective and efficient police time management; observations that I make as a citizen in my community as to the behavior and routines of the police officers in my precinct (Which it may be noted is policed solely by the Greenlee County Sheriff's Office, as there is no municipal police force); comments from citizens who come to my court and complain about service rendered from the Sheriff's Department, further asking me to exercise my authority somehow to make them do their jobs; and finally, comments from officers who come to my court making statements as to why the productivity is so low in my court.

I have had discussions with the Sheriff with regards to productivity as he mentions, and based on those discussions, along with some or all of the criteria mentioned above, I have come to the conclusion that some individuals in the Sheriff's Office administration are instructing the officers not to file cases into my court. This statement is not in any way meant to be derogatory toward any individual. I am only trying to emphasize as to why I felt so passionate about addressing the board in the matter in which I did. Having worked for approximately 12 years for a municipal police department and 10 for the AzDPS, I have a clear understanding of the differing roles and duties of the Sheriff's Office and DPS.

Also, in regard to conversations mentioned in the complaint regarding a conversation with Sgt. Dan Long of AzDPS as to low productivity, that is partially true. Back in March of 2008, I addressed a letter to Lt. Steve Roethle which was mainly personal, but it did address concerns about some noticeable drops in activity that I was experiencing from the DPS officers in my district. Lt. Roethle was my second level supervisor during some of my tenure as a police officer, and he always had high praises of me and my strong work ethic. The letter did prompt a personal visit to my office from Sgt. Long, and we did discuss productivity. During our talk, Sgt. Long, whom I worked with as a fellow officer, pointed out to me that because I was wearing a different hat now, that some of my statements could be construed by others as me soliciting filings for the purpose of increasing my salary, and he made a statement to the

effect if he announced to the public that I was complaining about the lack of tickets filed in my court, how would I think the public would react. After considering that statement, I admitted that I was wrong when considering things from that point of view. Sgt. Long and I never did have another conversation since regarding the topic, and as far as I know to this day, he never filed any complaints against me.

Finally, in regard to the complaint that I am conspiring with political candidates who are running for Sheriff for personal gain, I respond as follows; Lt. Sexton did see me pull off the road to visit with Mr. Jaime Aguilar while I was returning back to my court in my personal vehicle on that same day. Based on the accusation being made against me, I am surprised that Lt. Sexton didn't mention also seeing me with another candidate for Sheriff, Mr. Tim Sumner, who happens to be employed with the Greenlee County Sheriff's Office, just two weeks prior to this meeting.

I am involved in a community organization which provides athletic, recreational, and educational opportunities for youth in my community. I have volunteered here for more than six years. Both Mr. Aguilar and Mr. Sumner are board members of this chapter, and they both have served in their capacity for the last two years. This year, the three of us have created and organized a youth football league in Duncan. Over the last four months, the three of us have spent countless hours together organizing this effort. We all serve as co-coaches on the various teams.

As I was traveling home that day, I was aware of the police presence behind me, as the vehicle followed me for approximately 10 miles from Clifton. As I was traveling through the York area, I observed Mr. Aguilar standing by his vehicle off to the side of the road. I felt that he could not have been there at a more fortuitous time. I pulled off the road and greeted him, telling him how lucky I was to have spotted him. I had numerous items of football equipment in my vehicle which I needed to give to Mr. Aguilar, as I was leaving town that afternoon to travel to Prescott in order to attend the Justice of the Peace Conference. We discussed what needed to be covered for that week in my absence. I gave him the equipment and left. There is no conspiracy or collusion that exists between the three of us. As a Justice of the Peace, I have not publicly endorsed, nor will I ever publicly endorse a local political candidate. I have been offered nothing nor have I asked for anything. Both Mr. Aguilar and Mr. Sumner can be made available for comment.

In closing, I wish to emphasize that I was speaking to the Board of Supervisors on behalf of both Justice Courts. Although I cannot speak personally about reasons for low productivity which plagues Judge Nabor's court, I do believe that because of personality conflicts that have existed for quite some time between me and the Sheriff, they directly result in the low productivity in my court. In addressing the Board that day, I believe that I was defending what should be the honor and integrity of our courts.

Respectfully submitted,

Judge John Basteen

Enclosed with this response is an audio copy of the record of the Board of Supervisor's meeting which was provided to me by the board.