

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 13-009

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Judge: No. 1460111001A

Complainant: No. 1460111001B

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**ORDER**

The complainant alleged a municipal court judge engaged in sexual harassment and retaliated against the complainant for objecting to his conduct.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge 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 all of the information provided by the complainant and the judge's response, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: March 28, 2013.

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 March 28, 2013.

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

NOTICE OF CLAIM

TO: CITY OF \_\_\_\_\_, a municipality; \_\_\_\_\_, \  
 cipal Court Judge.

PLEASE TAKE NOTICE that \_\_\_\_\_ (hereinafter  
 \_\_\_\_\_), has the following just, valid and unsatisfied legal claims for damages  
 against the \_\_\_\_\_ (hereinafter "City") and  
 (hereinafter \_\_\_\_\_): Statutory wrongful discharge in violation of A.R.S. § 23-  
 1501(3)(c), Common law wrongful discharge in violation of  
 Mem. Hosp., 147 Ariz. 370, 710 P.2d 1025 (1985), Violation of A.R.S. § 38-532, negli-  
 gent infliction of emotional distress, and intentional infliction of emotional distress.

\_\_\_\_\_ also has the following just, valid and unsatisfied legal claims for damages  
 against City only for breach of employment contract and breach of the implied cove-  
 nant of good faith and fair dealing inherent in all contracts in Arizona. In addition,

\_\_\_\_\_ has the following just, valid and unsatisfied legal claim for damages against  
 \_\_\_\_\_ only for intentional interference with employment contract. These claims  
 are based upon the following factual and legal allegations.

1. \_\_\_\_\_ began working as a City Court Clerk for the  
 Court in January 2003 and continued as an employee in the \_\_\_\_\_ until  
 her wrongful constructive discharge on \_\_\_\_\_. \_\_\_\_\_ received regular  
 promotions in her job and became the City Court Supervisor for the \_\_\_\_\_  
 Municipal Court in 2005 and continued in that job until \_\_\_\_\_. After \_\_\_\_\_  
 \_\_\_\_\_, \_\_\_\_\_ job title was known as City Court Administrator.

2. [redacted] job performance was continually outstanding throughout her employment with City. Her direct supervisor throughout her employment was the [redacted] Court judge. Her job performance evaluations throughout her employment with City were consistently "outstanding," the highest rating allowed under the City's job performance rating system. However, [redacted] never gave her a job performance evaluation after he became her supervisor, and she had no such evaluation in 2011 and 2012.

3. [redacted] took judicial education courses and criminal justice courses during the course of her employment with City, which enhanced the [redacted] Court, making it one of the outstanding court systems in the State of Arizona. She amassed incredible knowledge of the Court system and of the rules and regulations applicable to the [redacted] Court so that this Court operated efficiently and effectively during her employment.

4. On [redacted] became the [redacted] Court Judge and [redacted] direct supervisor.

5. In February and March 2011, [redacted] often correctly informed [redacted] of proper court procedures he was missing while doing his job from the judicial bench. On one occasion he jokingly wrote her a note saying "You're fired."

6. On [redacted], after a long court day, [redacted] showed [redacted] a photograph of his wife's breasts in a bikini bathing suit top, enlarged/zoomed to show only the actual breasts. [redacted] was offended, telling [redacted] she didn't want to see his "porn," and she proceeded to her office to get ready to leave for the day. As

was leaving the office, requested that not refer to his picture of his wife as "porn." apologized and said his wife was lovely but that she didn't want to see a photograph like that. responded he couldn't wait for his wife to get home so he could chase her around the bedroom. Thinking this conversation from her supervisor was very inappropriate, quickly left.

7. On further occasions at work between July 2011 and December 2011 continued to make sexual comments regarding his wife in the presence of made comments about how the stress of his no longer being a police officer caused him to be more sexually active than he had been before, "as if he and his wife were teenagers," and how his sexual urges caused him to chase his wife around the home and the bedroom. These comments made the work place unpleasant for , and she tried to distance herself from without responding when these comments were made.

8. ) became the new City Manager. immediate supervisor regarding job as the Court judge. , as she had often done before with the previous City managers, began communicating with on a budget proposal regarding the future of the City Court in the hope of hiring another full time City Court employee. e kept updated on the status of these conversations. became upset with and told her not to have further contact with until he could figure out his own relationship with him.

9. On initiated a conversation with

about the subject of his wife's birthday and how he missed her. During this conversation, [redacted] showed [redacted] the same photograph of his wife's breasts that he had shown her previously. [redacted] informed [redacted] he had already shown her this photograph the previous July and that she didn't want to see it again. After [redacted] professed ignorance about whether he had previously shown the photo to [redacted], [redacted] reminded him that she had called the photo "porn" and had said how she didn't want to see it because it made her uncomfortable. [redacted] then walked away from the conversation. [redacted] followed [redacted] and apologized, saying she was correct in that he had shown her the photo previously and that "she was right." A co-employee at the [redacted] Court at this time, [redacted], also confided in [redacted] at this time that [redacted] had shown her the same photo of [redacted] wife's breasts. [redacted] stated this event was awkward and uncomfortable for her. [redacted], therefore, made the work place objectively hostile and offensive to women in general and to [redacted] in particular by his practice of showing this photo to other women besides

10. Shortly after the foregoing conversation, [redacted] had a meeting regarding the future of the [redacted] Court. For the first time [redacted] disregarded [redacted] suggestions and stated he wanted to move the City Court to enter an Inter Governmental Agreement ("IGA") with Coconino County. [redacted] believed [redacted] was no longer valuing her suggestions regarding decision making in the [redacted] Court and that he was retaliating against her because she had opposed his actions in showing her the photo of his wife's breasts and talking about

sexual subjects.

11. On [redacted], at the behest of [redacted], directed by e-mail to decrease her accrued vacation time significantly by [redacted] in order to satisfy policy changes. Although [redacted] also stated he would work with [redacted] to better understand the administrative function of the City Court, he continued to go out of his way to undermine [redacted] regarding policy differences he had with her regarding the functioning of the City Court. This conduct made [redacted] workplace increasingly unpleasant.

12. [redacted], after having an argument with [redacted] about the problem judges the [redacted] Court would use, [redacted] informed [redacted] that he wanted to increase the time payment fee for court ordered penalties, fines, or sanctions assessed against some guilty criminal defendants from \$20 to \$30 in his discretion and to waive this fee entirely for some other guilty criminal defendants in his discretion.

[redacted] he could not do this in part because the \$20 fee was set by Arizona statute and could not be changed or waived. [redacted] n stated he would do it anyway because he was the judge. Thereafter, [redacted] made an oral complaint about this matter to [redacted], and [redacted] forwarded [redacted] an e-mail on [redacted], with attached Arizona statutes and appellate court opinions, substantiating [redacted] complaint. [redacted] forwarded that e-mail to [redacted], and [redacted] did not attempt thereafter to unlawfully increase the time payment fee or waive it entirely. [redacted] was angered because of [redacted] whistleblowing complaint in this regard, and retaliated against

her immediately thereafter.

13. [redacted] met with [redacted] and informed him of her frustration in that [redacted] was retaliating against her, making her workplace unpleasant, failing to follow up with her on projects on which she was working, and excluding her from decision-making that she previously had done.

[redacted] gave [redacted] a written disciplinary memorandum of instruction for working late on [redacted]. This was the first disciplinary memorandum of any kind [redacted] had ever received as an employee of the [redacted].

[redacted] informed [redacted] that this memorandum would not be forwarded to the City for her personnel file. In a meeting thereafter with [redacted] and [redacted] n, however,

[redacted] discovered the memorandum of instruction had been given to [redacted] n, who questioned her critically about it. [redacted] and [redacted] thereafter had a follow-up meeting. [redacted] why he had been untruthful with her and had

given this disciplinary memorandum to [redacted] felt the memorandum had been placed in her personnel file because [redacted], the highest official of the City, had it and was questioning her about it. In response to this question, [redacted] simply smiled and walked away without responding.

14. [redacted] met to discuss the constant complaints from law enforcement about [redacted] s [redacted] he had issued to law enforcement on [redacted] by e-mail that they were to submit a separate probable cause statement to the judge with certain filed criminal complaints.

[redacted] that the City Court had been audited by the Arizona Supreme Court

Office of the Courts in 2004 and that the [redacted] had been ordered then not to have police officers place additional probable cause statements on filed criminal complaints because such conduct would be considered improper ex parte contact between the judge and an interested party in a criminal case. Law enforcement had been informed of this changed directive in 2004 and that probable cause statements would not further be allowed. [redacted] despite the fact he was a police officer in 2004 and should have been aware of this directive, insisted in this meeting with [redacted] that he nonetheless wanted these probable cause statements. [redacted]

warned [redacted] however, that he should stop "policing" these cases in this regard and that he should also stop meeting with police officers ex parte to discuss criminal cases.

15. [redacted] thereafter made a second whistleblowing complaint to [redacted] of the Arizona Supreme Court Office of the Courts about this practice of requiring probable cause statements and other ex parte contacts between the [redacted] Judge and law enforcement officers. [redacted] researched the matter and forwarded an e-mail to [redacted] on [redacted], with an attached Arizona Supreme Court opinion and Arizona Supreme Court Judicial Ethics opinions, stating that factual bases for actions in criminal cases could be based upon police reports and admissions from the defendants but not from additional ex parte contacts between the judge and law enforcement officers, including receipt of separate probable cause statements from law enforcement officers. [redacted] requested that [redacted]

Officer for the Administrative



Office of the Arizona Supreme Court, also sent an e-mail to [redacted] with [redacted] e-mail attached, advising that he agreed with [redacted] and that this exact question had just come up and answered the same way at a [redacted] the previous week. [redacted] had attended the [redacted]. This communication from [redacted] and [redacted] was made known to [redacted] because [redacted] had forwarded a copy of his e-mail and [redacted] mail to [redacted]. Thereafter, [redacted] ceased his demands for law enforcement to provide separate probable cause statements. [redacted] became angry with [redacted] for making this whistleblowing complaint and retaliated further against her soon thereafter.

16. [redacted] to discuss matters regarding the City Court. [redacted] got very angry with [redacted] at this meeting because she was not agreeing with the way he wanted to run the City Court and that they should meet later. [redacted] also again said that he was going to go home and "chase his wife around the table." [redacted] felt abused by this conversation and said she didn't want to meet with him later about these matters.

17. Between [redacted] [redacted] continued to make similar sexual comments in the presence of [redacted] [redacted] did not welcome such comments. This conduct made [redacted] work environment unpleasant. Also, during this time period [redacted] discontinued all social gatherings she had with [redacted]. Prior to this time period she had participated in social gatherings with [redacted].

18. On [redacted] met with [redacted] the City

Human Resources Director, and made a formal verbal complaint against [redacted] for sexual harassment, retaliation for reporting sexual harassment, and retaliation for engaging in legitimate whistleblowing activities. [redacted] supported this complaint with all of the foregoing facts.

19. [redacted] was argumentative, rude, and manipulative with [redacted] at work. [redacted] became extremely stressed.

[redacted] received information from others working for [redacted] County that they were doing the same work task [redacted] had assigned to [redacted]. Distraught, [redacted] went to [redacted] office stating that she didn't want to play games any further and that she would record all further conversations between her and him so that this kind of misunderstanding, whether deliberate or not, did not continue. [redacted] also told

[redacted] she felt his actions were retaliatory toward her for making the formal complaint on [redacted]

20. On [redacted] [redacted] went home sick early with a significant migraine headache. On [redacted] [redacted] called in sick and took a sick day off.

[redacted] thereafter came to [redacted] home to deliver her a letter from [redacted], dated May 9, 2012, placing her on paid administrative leave and ordering her not to come onto City property or to have any contact with City employees or do any City Court work. [redacted] also stated that [redacted] had been placed on paid administrative leave as well regarding City Court duties and that he also was not allowed to handle any City Court or City matters. A pro tem judge took over all City Court judge duties. [redacted] violated the directive to him from [redacted] because he

did make decisions on City Court cases when he was on administrative leave.

21. being placed on administrative leave was a retaliatory action caused directly by making the complaint to .

22. On telephoned and told her she would be interviewed by an attorney from Phoenix the following day about her complaint against . stated during this conversation that had admitted to her he had showed a photo of his wife's breasts. asked however, if the photo had been shown by depicted the wife holding a paintbrush. responded that the photo she was shown did not have anything but the wife's breasts, not even the wife's face, arms, or torso and that there was no paintbrush in the photo. also stated in this conversation that had told her he didn't want to "lose his career over this."

23. 2 the headaches suffered by got worse, her breathing became difficult, and she found herself crying non stop. She found it very difficult to sleep, and she felt she was having a heart attack.

24. , went to the and saw a doctor who prescribed Clonazepam for her condition of extreme anxiety. Thereafter, met with a f attorney she had retained to attend the Phoenix attorney interview with her. The interview with the Phoenix attorney thereafter occurred. It was very emotional and lasted approximately two hours. answered all questions truthfully. The attorney was a witness to the interview. paid the attorney \$2,000.00 for these legal services.

25.

At this time [redacted] gave a letter, signed by him and dated [redacted], to both [redacted]. The letter stated that [redacted] had received that day "the 'Findings' of the Phoenix attorney who was acting as special counsel to investigate a charge of sexual harassment, filed by [redacted]." The letter further stated that the "independent investigation" did not support the sexual harassment charges and further found no support for [redacted]'s claim of retaliation. The letter also stated that the [redacted] charges were considered closed and that the City Code, Employee Handbook, and Service Agreement with the Magistrate applied to both [redacted].

The letter also gave directives to both parties, including the following directives to [redacted]: (1) that she was to assist the judge by performing all duties lawfully assigned by the judge, (2) that she was not to undermine the judge, (3) that she should perform scheduling duties in a reasonable manner for the good of the Court and not for individual interests, (4) that she should communicate openly and clearly, and (5) that she should act professionally and in a considerate manner.

26. The aforesaid letter and its so-called "Findings" evidence further retaliation against [redacted] for filing the complaint of [redacted]. [redacted] was never shown the so-called "Findings" or given the opportunity to respond to them to an impartial fact finder. The "independent investigation" itself and its "Findings" constitutes a separate retaliatory adverse action against [redacted] for filing her sexual harassment and whistleblowing complaint on [redacted].

27. [redacted] returned to work on [redacted], but on that date she was

scheduled to attend classes in Phoenix through

28. On \_\_\_\_\_ issued an administrative order prohibiting employees from tape recording other employees in the work place unless appropriate circumstances exist, such circumstances presumably to be decided by \_\_\_\_\_ himself. This order was retaliatory against \_\_\_\_\_ for her meeting with \_\_\_\_\_ on \_\_\_\_\_ when she said she would record her conversations with \_\_\_\_\_ because of misunderstandings and retaliation she was suffering as a result of the filing of her complaint on \_\_\_\_\_

29. On \_\_\_\_\_, \_\_\_\_\_ first day back in the work place after her administrative leave and Phoenix classes, \_\_\_\_\_ in the presence of \_\_\_\_\_, disciplined \_\_\_\_\_ with a formal letter of reprimand for her alleged insubordinate actions and alleged creation of a hostile working environment on \_\_\_\_\_ she said she would be recording further conversations. \_\_\_\_\_ got very upset during this meeting and stated the disciplinary action was directly retaliatory against her. She complained again about the actions of sexual harassment of \_\_\_\_\_ n and his continued attempt to try to make her look incompetent.

30. Later in \_\_\_\_\_ e sent a memorandum to \_\_\_\_\_ requesting to take vacation days; \_\_\_\_\_ responded to that request by approving the vacation days but changing \_\_\_\_\_ work schedule in a way which was objectionable to \_\_\_\_\_. On \_\_\_\_\_ inappropriately criticized \_\_\_\_\_ quality customer service to the public. \_\_\_\_\_ had never before been criticized in this manner regarding customer service to the public.

31. Between [redacted] from his other judicial staff and made it a point to exclude [redacted] from employment favors given other staff members because of their alleged loyalty. [redacted] began suffering more severely from anxiety and headaches during this period of time.

[redacted] sleep disturbance and depression became more severe.

32. On [redacted] doctor placed her on sick leave due to exhaustion and anxiety for two weeks ([redacted]).

33. On [redacted] another City Court staff employee telephoned [redacted] for guidance on a City Court matter. [redacted] went to the workplace to help this staff employee. Thereafter [redacted] went into [redacted] office to place a note on his desk regarding further assistance this staff member would need. At this time [redacted] noticed paperwork/handwritten notes on [redacted] desk regarding [redacted] improper claims and allegations against [redacted] alleged justification for the incidents of sexual harassment alleged by [redacted]. This information caused heightened fear in [redacted]. [redacted] was working on allegations to use to fire her and that the allegations were directly related to her filing of the sexual harassment complaint.

34. On [redacted] the other City Court staff employee again requested [redacted] to come in to the City Court to assist her. [redacted] went to the workplace to assist this employee. At this time [redacted] again noticed paperwork/handwritten notes on [redacted] desk accusing her of committing medical leave fraud. Upon seeing this further evidence [redacted] was working on allegations to use to fire her,

submitted her written resignation from employment at the

resignation letter stated that she was the victim of harassment and could no longer work in the hostile work environment that existed. Her letter stated she had reported her concerns to the City Manager and City Human Resources Director but that she had suffered continuing retaliation and harassment thereafter.

35. Because a reasonable employee in position would have felt compelled to resign a job she had loved and because her health was worsening because of harassment and retaliation, resignation constitutes a constructive wrongful discharge.

36. All actions of alleged herein were done within the course and scope of employment with City, and as a result thereof City is liable for the actions of

37. By reason of the actions of and City, has been deprived of income in the form of past wages and fringe benefits as well as future wages and fringe benefits in an amount in excess of

38. As a result of the actions of and City, has incurred damages with regard to finding suitable and comparable employment, and is entitled to recover these damages from

39. As the proximate result of the actions of has suffered and will continue to suffer extreme emotional distress, mental anguish, anxiety, anger, stress, insecurity, shame, and depression which has resulted in loss of appetite, sleep disturbance, nightmares, extreme nervousness, headaches and stomach

upset. is therefore entitled to recover compensatory damages against and City for these injuries in an amount in excess of \$250,000.

40. As a result of the actions of and City, has incurred damages for medical treatment, psychological and counseling treatment, medical expenses, and medication expenses and will continue to incur these expenses in the future. As a result thereof, is entitled to recover compensatory damages for these expenses against and City in an amount in excess of \$5,000.

41. As a direct and proximate result of the aforesaid acts of and City, has suffered damages for loss of reputation reasonably suffered in the past and reasonably likely to be suffered in the future in an amount in excess of \$150,000.

42. By reason of the actions of and City, has sustained damages involving loss of credit reputation and is therefore entitled to recover compensatory general damages in this regard in an amount in excess of \$25,000.

43. As a further direct and proximate result of the foregoing conduct of and City, has sustained damages due to loss of enjoyment of life, that is, the participation in life's activities to the quality and extent normally enjoyed before the injury experienced and which with reasonable probability will be experienced in the future in an amount in excess of \$350,000.

44. By reason of the Defendants' actions, has had to secure the services of a and is therefore entitled to recover reasonable attorney's fees in the amount of \$2,000.







March 7, 2013

Commission On Judicial Conduct  
1501 W. Washington St. Suite 229  
Phoenix, AZ 85007

MAR 11 2013

Dear Members of the Commission,

I recently received a Notice of Complaint from your office regarding a complaint made by [redacted]. Thank you for the opportunity to respond. Enclosed and attached is comprehensive documentation pertaining to Ms. [redacted] allegations. Since taking office on [redacted], I have strived to set the highest ethical and performance standards for our court, and have held myself and our staff to those standards. My attempts to bring change to our court revolved around a leadership style that included providing a positive work environment in which employees thrive, while setting clear goals and holding employees accountable to those goals and standards for the betterment of the Court. Since our municipal and justice courts are housed in the same facility and employees work in close proximity, I also set goals and objectives to improve the relationships and efficiencies between the courts. All of the court employees except Ms. [redacted] did, and have continued to embrace the direction of the court, w

Unfortunately, not long after taking office, it became increasingly clear that I had inherited some serious personnel issues with Ms. [redacted] due to the prior lack of supervision and direction. Although other employees found new freedom and enthusiasm with their input and involvement in the direction of the Courts, Ms. [redacted] became increasingly resentful. Other employees' statements such as, "This is the most positive place I've ever worked" were commonplace. At my request, [redacted] Court Administration conducted an anonymous Leadership Practices Inventory (LPI) during the summer of 2011. All court employees except Ms. [redacted] participated in the survey. As you can see from the accompanying exhibit, employees rated my leadership style and the effect on the organization very positively.

As I attempted to more directly supervise Ms. [redacted] and the administrative function of the Court, it became obvious that Ms. [redacted] responded to my leadership authority and style with resentment and later, hostility. At that time I began to involve [redacted] County Court Administrator [redacted] and [redacted]

in the happenings of the Court, specifically pertaining to my challenges with Ms. As I became increasingly compelled to deal with Ms.

hostile, and insubordinate. In early May, 2012, as I was preparing to delve into recent activities involving insubordination and misconduct by Ms. , she filed a complaint with the City of against me that included the assertion I had sexually harassed her during the previous year. The City of had the complaint investigated by independent counsel ) The complaint was fully investigated and I was exonerated of any wrongdoing.

From the time of Mr. ' investigation until Ms. ; resignation on 2012, I continued to conduct myself and my demeanor towards in the same professional and ethical manner as I had since taking office. Since there were unresolved acts of insubordination by ; just prior to the investigation of her original complaint to the City, I addressed ; actions timely, with the input of the City of Human Resources Director, and in accordance with the City of Employee Manual. I have also included an exhaustive attachment including all emails, written correspondence, and notes between Ms. and me from the period of Ms. ; complaint until her resignation. Please see Exhibit 3

Finally, during the time between Ms. ; complaint to the City and her resignation, I received an unsolicited written complaint from Justice Court employee The complaint alleged that Ms. was creating a difficult and hostile environment in the Court. This was not a new phenomenon as I had received frequent complaints in the past about Ms. 's performance and demeanor from other court employees.

In closing, I want to thank you for your consideration. It has, and will continue to be my desire to set and lead by the highest ethical standards.

I am requesting that all exhibits attached to this response letter be sealed indefinitely.

Sincerely,