

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 13-081

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Judge:	No. 1350710384A No. 1350710384B
Complainant:	No. 1350710384A

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**ORDER**

The complainant alleged a \_\_\_\_\_ court justice and superior court judge improperly appeared before the state legislature to testify or lobby regarding judicial retirement benefits.

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 along with the judges' responses, the commission found no evidence of ethical misconduct and concluded that the judges did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: May 24, 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 judges on May 24, 2013

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

This is a complaint of judicial misconduct against \_\_\_\_\_ and \_\_\_\_\_ Superior Court \_\_\_\_\_ for conduct that brings the judiciary into disrepute.

This complaint arises out of a newspaper report three weeks ago in \_\_\_\_\_ documenting the two judges' voluntary appearance before the Arizona Senate Finance Committee. The issue is that these two judges lobbied the Legislature to increase court fees in order to benefit the economic interests of their judicial colleagues throughout Arizona.

### **NEED FOR COMMISSION JUDGES TO RECUSE**

Before going further then, because the underlying matter championed by the two judges impacts all judges in Arizona, and so causes an automatic conflict of interest, complainant requests that the judges on the Commission's six judge panel recuse themselves from this matter so as to avoid the appearance of impropriety within the Commission itself. (Pursuant to Commission Rule 2.11.)

Alternatively, complainant requests that this matter be forwarded to an out-of-state Commission. (Perhaps the Colorado Commission on Judicial Discipline.<sup>1</sup>)

The underlying matter here has already received front page coverage (of Section B) in the state's largest newspaper. It is under public scrutiny as it is. The judge members need to recuse to avoid conduct that further brings the judiciary into disrepute.

### **INTRODUCTION**

The overarching allegations in this complaint are that CJ \_\_\_\_\_ and \_\_\_\_\_ violated Canons 3, 2 and 1 of the Code of Judicial Conduct when they both lobbied the Legislature to increase court user fees on the public to benefit their colleagues personally.

### **FACTS**

As reported on \_\_\_\_\_ : newspaper article titled \_\_\_\_\_

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<sup>1</sup> Following the lead when \_\_\_\_\_, Independent Bar Counsel from the Colorado \_\_\_\_\_ Court, prosecuted Andrew Thomas because there was a conflict of interest in Arizona.

Two influential judges seeking a last-minute reprieve from proposed pension reforms asked a state Senate panel Wednesday to consider increasing fees paid by court users so future judges could continue to receive guaranteed retirement benefits.

The reporter, \_\_\_\_\_, also noted in his article that "A lawsuit challenging 2011 changes to the cost-of-living adjustments in the judges' retirement benefits is before the state's high court." (I.e., before CJ \_\_\_\_\_ ; \_\_\_\_\_)

Indeed, reporter \_\_\_\_\_ ; reported on the case in question (and the inherent conflict of interest therein) earlier in her January 14, 2012 article titled "Arizona judges will rule on own entitlements." (Exhibit 2.)

As such, \_\_\_\_\_ asked CJ \_\_\_\_\_ an obvious question: "When asked Wednesday if her lobbying on the issue was a conflict of interest because she must hear the case affecting judges, **the justice initially declined to answer . . .**"

(Complainant's two exhibits of news reports to the public should not be considered exhaustive. It's likely there is more publicity about these matters which complainant does not know about.)

**ALLEGATIONS**

Complainant offers that while the allegations in this complaint apply to both judges, CJ \_\_\_\_\_ is arguably more culpable.<sup>2</sup>

Nevertheless, by lobbying the Senate Finance Committee, both judges violated Rule 3.2, titled "Appearances Before Governmental Bodies and Consultation with Government Officials."<sup>3</sup>

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<sup>2</sup> Complainant presumes that Judge \_\_\_\_\_ would not have appeared before the Legislature on his own. Perhaps he was ordered by the CJ to appear? (Did she give him "an offer he couldn't refuse"?) The Commission should ask him.

<sup>3</sup> Which says, "A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official . . ."

Per Comment 2 for that Rule,<sup>4</sup> by abusing their prestige of office, the "two influential judges" (as the reporter begins in Exhibit 1) violated Rule 1.3.<sup>5</sup> Since CJ [redacted] is responsible for her subordinate's behavior, she doubly violated Rule 1.3 (the last clause in the Rule) by allowing Judge [redacted] to abuse his prestige of office.

Per Comment 2, they also violated Rule 2.10. In particular, CJ [redacted] has already telegraphed publicly what she thinks about judges' pensions. (That she wants more money for them.)

Given this, if CJ [redacted] does not disqualify herself from the pending litigation involving pensions, then she will have violated Rule 2.11.

And they both also violated Rule 3(C). This is particularly so for CJ [redacted] since she is sitting on a pending case regarding judges' pensions.

Last, due to her obvious conflict of interest (appearing before the Finance Committee on judicial pensions while sitting on a case involving same), CJ [redacted] violated Rule 1.2.

**Rule 19 Aggravating Factors**

Complainant offers the following:

[redacted] is the [redacted]. That is, she should know better. And, inferred from her silence to the reporter's obvious question in Exhibit 1, she does know better.

Furthermore, [redacted] has been quoted in [redacted] that she

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<sup>4</sup> Comment 2 says, "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(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality."

<sup>5</sup> "A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, **or allow others to do so.**"

"lives in the real world."<sup>6</sup> As such, she is aware of the public scrutiny judges are under and their obligation to be above reproach.

Consistent with her awareness of public scrutiny, Judge Gary Donahoe testified (during the Andrew Thomas disbarment hearing) that [redacted] asked him about the negative scrutiny he was under. That, when considering him for an appointment, she asked him, "Gary, what do you think the public reaction will be if we appoint you to this position because of the negative public perception that you have?"

[redacted] testified that CJ [redacted] passed over him for the appointment because of the felony accusations against him.

Since she is aware of the effects of "negative public perception," complainant suggests the Commission hold CJ [redacted] to her own standard when applying the Code to her in this instant matter.

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