

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-155

Judge:

Complainant:

ORDER

The complainant alleged a municipal court judge failed to perform his duties diligently and ensure proper procedures were followed by the clerk's office.

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 the complaint, 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: August 28, 2013.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on August 28, 2013.

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

This is a complaint of judicial misconduct against Judge _____ of the _____ . As below, Judge _____ has willfully and persistently failed to perform his duties, has violated the Code of Judicial Conduct and subsequently, his conduct has brought the judiciary into disrepute. See Rule 2.5, *Competence, Diligence, and Cooperation* and Rule 2.12 *Supervisory Duties*.

CASE #1

(Note that the judge listed in the public access information is _____ . That is not entirely correct. For the purposes of this complaint, Judge _____ took over from Judge _____ in November 2011.)

Per Mr. _____ *Letter to the Editor* (as published in the May 16, 2013 issue of *The Desert Freedom Press*, _____ 1) along with Judge _____ *Minute Entry* of March 28, 2013 (_____ Mr. _____ recently suffered a false arrest and was jailed on March 17, 2013 for an outstanding warrant issued by Judge _____ on October 18, 2011.

That warrant should have been cancelled (cleared) a year and a half beforehand by Judge _____ presumably on October 18, 2011 or, at the latest, on November 23, per Judge _____ undated *Determination of Release* form. (_____ 3.).¹

As it relates to Judge _____ the issues here are the subsequent revelations learned from the false arrest. First, that absent any paperwork sent to Mr. _____ Judge _____ said the matter had been dismissed (on an unspecified date) in June 2012. Second, that even though Judge _____ said the matter had been dismissed in June 2012, the Case Activity printout (_____ 4) says the case was dismissed on February 28, 2012. Third, the clerk reports that Mr. _____ court file is missing. (Contrary to Judge _____ reference to the file in his *Minute Entry* above. The clerk told Mr. _____ that his file is missing. If the file is missing, how can Judge _____ say in his *Minute Entry* (_____ 2) he "review[ed] the file"?)²

As to the Case Activity, Judge _____ and his staff have not been diligent in maintaining

¹ Arguably then, when Judge _____ learned this, he should have filed a complaint of judicial misconduct against former Judge _____, per Rule 2.15, for her dual failures to perform her duty here. If he did not, his failure should be added to his other violations to come.

² The Court's hard drive was completely destroyed in March, 2012, unrecoverable by DPS's forensic unit. Now a case file is missing. Is an employee destroying evidence? Complainant submits Judge _____ had a duty to report these "coincidences" to law enforcement.

this Case Activity. First, all the actions in the printout are wrongly attributed to the Defendant. Clearly the Plaintiff should be listed at a few points. (For example, 2/15/2012, Response to (Defendant's) Motion to Dismiss.)

More critically, the Activity mysteriously ends on 2/28/2012. Judge [redacted] says the case wasn't dismissed until June. But Mr. [redacted] reports that he had filed three documents on 2/28/2012 which do not appear in the Activity. (Two Notices of Errata and one Amended Reply.)

Nor does the Activity report show an Order dismissing the case, even at this late date, after Judge [redacted] became aware of the problem of the missing Order.

Last, Judge [redacted] said the case was dismissed on an unspecified date in July 2012. The Case Activity says 2/28/2012. It cannot be both.

If Judge [redacted] dismissed the matter in June, then Judge [redacted] violated Mr. [redacted] right to speedy trial, the 60-day Rule in the Arizona Constitution, since Judge [redacted] did not rule within 60 days after Mr. [redacted] Amended Reply, filed on 2/28/2012.

CASE #2

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This matter involves an appeal of three concurrent criminal cases in [redacted]. There are a number of issues here. Please refer Mr. [redacted] phone call to complainant (on the CDROM) while Mr. [redacted] inspected his court record in the [redacted] clerk's office Friday, November 16, 2012. Mr. [redacted] was inspecting the record to learn why his appeal had not been forwarded [redacted] months after his attorney filed a brief.

First, Mr. [redacted] filed a motion on July 2, 2012, as a pro se, for an extension of time to file his memorandum. Per Mr. [redacted] at 00:45 - 01:30 in the phone call, and again at 03:15 - 04:05, the clerk, in response, sent various Orders to Mr. [redacted] at the wrong address. (PO Box 42 instead of 422.) The Post Officer returned the mailings, unopened, undeliverable, but apparently made no effort to double-check Mr. [redacted] address. (The address in Mr. [redacted] paperwork is correct.)

Most crucially, Mr. [redacted] attorney's brief had not been put into the court file! Even though the brief was there in the clerk's office. (11:00 -13:00.) It took a personal visit from Mr. [redacted] Immediately after Mr. [redacted] visit, on the following Monday, the clerk finally forwarded the file [redacted] County Superior Court.

CASE #3

There are three issues here.

First, Judge [redacted] failed to uphold the Rules of the Arizona Supreme Court. Specifically, [redacted] was initially served with a criminal summons by an employee of the [redacted] a Mr. [redacted], who is not licensed by the Arizona Supreme Court as a process server. (This upon information from [redacted], Certification Specialist with the Supreme Court AOC and from [redacted] County.) Even if Mr. [redacted] could legally serve [redacted], he could not in this instance since he would be a party in her case. [redacted] raised the issue of Mr [redacted] simulating service with Judge [redacted] (at 10:10 to 11:15 in the court audio on the CDROM) and that Mr. [redacted] was impersonating an officer of the court. Judge [redacted] took no action.

After she reporting to Judge [redacted] that Mr. [redacted] might have committed the crime of simulating legal process (A.R.S. § 13-2814), he responded "We don't do that here."

But we do do that here. In Arizona, "any person who has reasonable grounds to believe another has committed a crime may file a complaint."

Ariz. 179, 181, 602 P.2d 847, 849 (1979.)) Complainant submits that Judge [redacted] committed misconduct by not considering [redacted] se statement as a formal criminal complaint.

Second, there must have been some "hanky panky" between Judge [redacted] and the [redacted] of [redacted] interim Attorney, [redacted] For when Mr. [redacted] initially presented [redacted] with a summons, it listed three counts. (But no Case number. See [redacted] A.) But when the [redacted] re-served [redacted] via a peace officer, the second summons only listed two counts. ([redacted] B.)

In the court audio at 6:46 - 7:40, [redacted] informed Judge [redacted] that the summons she was legally served with only listed two Counts. Yet, the summons/complaint that Judge [redacted] read in court (not amended) listed three Counts! This is a violation of the Six Amendment, lack of fair warning/notice to the accused. And it implies ex parte communication between Judge [redacted] and [redacted] since Judge [redacted] signed both.

Subsequently, [redacted] filed a Rule 10.2 Notice for a Change of Judge (as a matter of right). Judge [redacted] assigned a new judge to the case. The [redacted] moved the court to dismiss. Despite Rule 10, Judge [redacted] intercepted that motion. Judge [redacted] did not notify pro se defendant that there was a motion before the court. Thus, he denied her the opportunity for a hearing on the matter and the opportunity for dismissal with prejudice.

Judge [redacted] did not write an Order or Entry of Judgement, where he would have had to indicated whether the dismissal was either with, or without, prejudice. Instead, he wrote a Minute Entry dismissing the case and cc:'d a copy of his Entry to the judge assigned to the case. None of the latter appear in the Case Activity. ([redacted] :C.)