

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-331

Judge: Clifford Gene Wilson

Complainant: Pedro L. Espinoza

ORDER

The complainant alleged that a magistrate judge failed to disqualify himself in a criminal trial when he had a conflict of interest.

Rule 1.2 of the Code of Judicial Conduct requires that a judge “shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Rule 2.11(A) requires that a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.”

Judge Wilson presided over a criminal damage trial in which the complainant, Pedro Espinoza, was the defendant. After finding Mr. Espinoza guilty, Judge Wilson inquired as to the cost to repair the damage to the window from the victim/witness. She responded, “I don’t know. You haven’t told me yet.” Judge Wilson then told her he would get that to her as he did have it. Judge Wilson admitted to being a property management agent for the property in question. He also admitted to having a prior conversation with the victim/witness who advised him when the window was broken. He claimed to have failed to make the connection between the two events until the testimony in court; however, once knowing his connection to the case, Judge Wilson failed to disqualify himself, vacate the proceedings and reset them before a judge pro-tem. Instead, he ordered Mr. Espinoza to pay \$120 in restitution to the property management company.

The commission found that Judge Wilson’s conduct violated Rules 1.2 and 2.11(A) of the Code. In addition, the commission encourages Judge Wilson to review Rule 3.11 to ensure all his business activities are in compliance with the Code.

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

Accordingly, Judge Clifford Gene Wilson is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judge's response, and this order shall be made public as required by Rule 9(a).

Dated: February 6, 2015

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on February 6, 2015.

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

OCT 14 2014

2014-331

Dear Judge McCarville,

My name is Pedro L. Espinoza and I live at _____ Street in _____ Arizona
I was brought to trial in Eloy City Court for a criminal damage that occurred on
July 4, 2013. The criminal damage occurred at a house Cheryl Benson lives in. The house
is at _____ street in _____ Arizona.

The reason I am writing to you is to file a complaint against Judge Wilson. From what I
have learned Cheryl Benson rents the house from Judge Wilson. In court during the
hearing when the judge asked her what the damage cost to fix she said something like "I
don't know you haven't told me yet". My question is how can Judge Wilson hear my
case when it looks like he is a victim of the case? I'm not real sure how the court system
works but I would think I should have been told this before. I don't think it is fair he is
finding me guilty for damaging property he manages. Wouldn't this be considered
something he should not hear?

Filing this complaint I am afraid of the next time I may have to see the Judge. I'm afraid
he could send me to jail if he finds out I filed the complaint. I just don't think it was right
for this to happen. I would appreciate someone looking into this and see if I am wrong or
if I am right and if I am right fixing it so it doesn't happen again.

I think the court case number was cr201300163 and I think the trial date was December
4, 2013.

Thank you, Pedro Espinoza



CITY OF ELOY

ARIZONA

City Court

Response

NOV 28 2014

Clifford Gene Wilson
626 E. Main St.
Eloy AZ 85122

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

Response to Case No. 14-331

November 24, 2014

To Members of the Commission on Judicial Conduct:

On July 7, 2013, Pedro Luis Espinoza was cited into the Eloy City Court for two counts of criminal damage. His arraignment was held on August 14, 2013 at 9:00 a.m. and Mr. Espinoza entered a plea of not guilty to both charges. A pretrial hearing was scheduled for October 2, 2013 at 1:30 p.m. Mr. Espinoza appeared at the pretrial, met with the city prosecutor, and the case was set for trial. The City Prosecutor also filed a Motion to modify the Defendants release conditions to have no contact with the victims involved in the case: The Motion was granted.

On December 4, 2013 at 3:00 p.m. the trial was held. Based on the evidence presented and testimony given, I found Mr. Espinoza guilty on both counts of criminal damage. A restitution hearing was set for January 30, 2014 at 10:15 A.M.

The Restitution Hearing was held and Donko Properties, LLC requested restitution for \$120 to repair a broken window. I granted their request.

I am a Judge in a small rural town, and have been on the bench for fourteen years. I am also a real estate broker in Eloy for the last 30 years. I am not active in the real estate business except for a few properties that I have managed for many years.

Mrs. Benson, one of the victims in Mr. Espinoza's case, is a tenant of Donko Properties, LLC. and I am their agent. Mrs. Benson testified at the trial on December 4, 2013, however, I failed to make the connection that she was a tenant living in a property that I manage.



CITY OF ELOY

ARIZONA

City Court

Mrs. Benson called me in July 2013, and advised me that she had a broken window as a result of someone attempting to break into her residence. Donko Properties, LLC., had the window replaced.

Prior to the trial, I was unaware of the names of the witnesses or who the victims were. While the testimony involved a broken window in July, I failed to make the connection that it could have been the same window that Donko Properties, LLC. replaced. Should I have recognized that Mrs. Benson was a tenant of my client? Most likely, but I did not.

I am enclosing copies of the restitution checks that were paid to Donko Properties, LLC. along with the pictures that were presented at trial. I have been on the bench for 14 years, presided over 50,000+ cases, and I had never had anything like this happen before. When Donko Properties, LLC. was mentioned at the restitution hearing, it was too late and I did not know what to do at that point.

Sincerely,

Clifford Gene Wilson

02/17/15

Commission on Judicial Conduct
1501 W Washington Street, Suite 229
Phoenix, AZ 85007

RESPONSE/MOTION TO RECONSIDER TO CASE NO: 14-331

Dear Commission Members;

I would like to respectfully submit a Motion for Reconsideration regarding Case number 14-331.

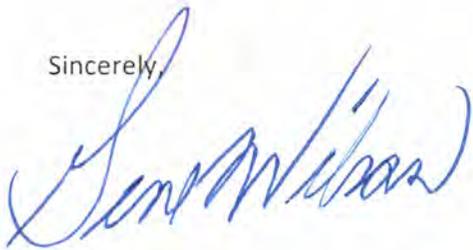
Although this event did occur, it was not premeditated. I did not know that I had a conflict in this case until it was too late. Please, take into consideration that I preside in a small rural jurisdiction and I do not have a pro tem or an associate Judge. I have requested to the City Council for one on several occasions and have been denied due to budget restraints. In small and poor jurisdiction the Judges have to answer to two masters. One being the City Council and two being the Arizona Court System who Administers Rules of Conduct, Administration Orders, Executive Orders, Canons and Rules of Criminal Procedure. This Jurisdiction, the Executive Branch does not understand the Separation of Powers between the Executive and Judicial Branches, too often in today's world of Politic Correctness Judges in small Jurisdictions find themselves in conflict with their two masters. That is the case in my jurisdiction.

The defendant appeared before me on his Initial appearance and plead not guilty to the charges, I then set a pretrial hearing and the Defendant was offered a plea agreement from the City Attorney, which he refused. The Court then set a Trial.

In the Trial of CR201300163, State vs Pedro Espinoza, I did not know Mr. Espinoza, the location of the said incident or the alleged victims. The State presented physical evidence that was irrefutable and the testimony given collaborated that evidence. The Prosecuting Attorney informed the Court at the end of the Trial that one of the Victims was present, it was then I asked her to come forward and if she had any claims of restitution against the defendant. At that time and very much to my surprise she made the comment "I don't know you haven't told me yet". It was not until that exact moment I did not know I was involved. It was my understanding that the Property Management Company replaced the window. Since I had no monetary ties to this Company except as the Leasing Agent and I get a paid commission on any rents collected. I thought it was ok to proceed. Another thought was I had just found defendant guilty and I don't have a backup Judge that it would be ok. Throughout the Trial, the defendant was angry, defiant, and his body language showed contempt for the proceedings with no indication of remorse. There were two victims involved in this case. One was a couple who lived next door who had their windshield on their vehicle broken and the right door panel damaged by the defendant's foot. These two victims left the State the next morning because of this incident. The second victim was the property management Company. They replaced the broken window for the tenant because she is

elderly, on Section 8 and did not have the means to take care of it. That is why the restitution was paid to them. I am not a principal or an employee of the Property Management Company and I thought that it was ok to proceed. I realize now that the perception of my relationship with the Property Management Company prohibits me from proceeding. I am going to attempt once again to ask City Council to allow an Associate Judge in this jurisdiction so this does not happen again. I humbly ask you, the commission members to please reconsider the public reprimand. Thank you for your understanding.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gene Wilson". The signature is written in a cursive style with a large initial "G" and "W".

Gene Wilson
Magistrate

April P. Elliott
Disciplinary Counsel (Bar #016701)
Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, AZ 85007
Telephone: (602) 452-3200
Email: *aelliott@courts.az.gov*

FILED

MAR 05 2015

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning)	Case No.: 14-331
Judge Gene Wilson)	
Eloy City Court,)	Response to Motion for
Pinal County,)	Reconsideration
State of Arizona,)	
)	
<u>Respondent</u>)	

On February 6, 2015, the Commission on Judicial Conduct (commission) publicly reprimanded Respondent Gene Wilson (Respondent) for violations of the Arizona Code of Judicial Conduct (Code). Judge Wilson filed a Motion for Reconsideration on February 20, 2015. Undersigned Disciplinary Counsel submits this response pursuant to Commission Rule 23(b), respectfully requesting that the commission deny the motion.

I. Respondent Provided No Basis Upon Which to Grant His Motion.

A. Budget Constraints Do Not Justify a Violation of the Code.

Judge Wilson's request that the commission reconsider its decision to reprimand him has two arguments. First, he argues that like many judges in small courts, he answers to two masters – the Eloy City Council and the Arizona court system – and states they are often in conflict. He alleges that he has been denied the use of pro tem judges due to budget constraints. Therefore, he did not have another judge to which he could refer Mr. Espinoza's matter. Budget constraints certainly affect every court, however, those constraints are not a license to engage in conduct that violates the Code.

B. Judge Wilson's Actions Were Not Premeditated.

Next, Judge Wilson argues that he did not know he had a conflict until it was too late, and that his actions were not premeditated. He claims he did not know until the middle of trial that this involved a property being managed by the property management company he worked for. This is not a new argument. This was part of Judge Wilson's initial response, and the commission has already considered this argument in making its decision. Once the judge became aware of the connection, he should have immediately recused himself.

II. Good Cause Exists for the Imposition of the Reprimand.

A. The Factual Basis for the Reprimand.

The commission's reprimand was based on a finding that Judge Wilson violated two separate Code provisions: Rules 1.2 and Rule 2.11(A). The conduct that led to this finding can be broken down as follows:

1. Judge Wilson serves as a leasing agent for a property management company. One of the properties managed sustained a broken window. Judge Wilson had a conversation with the tenant, Cheryl Benson, of this property about fixing the window.
2. Pedro Espinoza was charged with criminal damage in the Eloy City Court for breaking the window at the residence belonging to Cheryl Benson. She testified against Mr. Espinoza at trial. Judge Wilson presided over the trial.
3. After finding Mr. Espinoza guilty, the issue of restitution is addressed. When Judge Wilson asks Ms. Benson the cost to repair the window, she responds by saying, "I don't know. You haven't told me yet." Judge Wilson then says he would get that to her as he does have that information.
4. Judge Wilson failed to recuse himself when he knew or should have known the address in question was a property managed by the company for whom he served as leasing agent. Likewise, Judge Wilson failed to recuse himself when he knew or should have

known he had previously had a conversation with Cheryl Benson about the broken window. Clearly, she remembered the conversation.

5. Upon learning of the conflict, Judge Wilson took no remedial measures such as vacating the trial and verdict and resetting Mr. Espinoza's trial before another judge.

Rule 1.2 of the Code requires that a judge "shall act all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Judge Wilson's association with the property management company that was for all intents and purposes a victim in Mr. Espinoza's trial certainly had and has the appearance of impropriety. This erodes public confidence that a judge can be fair and impartial to both sides.

Rule 2.11(A) of the Code requires that a judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." Serving as an agent for the property management company for the property that was damaged in a criminal damage trial would cause a reasonable person to question Judge Wilson's impartiality. And even if one were to accept as true Judge Wilson's assertion that he did not know of the conflict until it was too late, he failed to take any remedial measures once he became aware of the conflict.

III. Factors Supporting a Sanction

The Scope section of the Code sets forth several factors for the commission to consider in determining whether a sanction is appropriate in a particular case. On balance, those factors support the issuance of the reprimand in this case.

A. Seriousness of the Transgressions.

Our judicial system depends on the public's perception that judges are fair and impartial. A reasonable person would believe that a judge who also serves as a leasing agent

for the property that was damaged in a criminal damage trial could not be fair and impartial at the trial.

This factor weighs in favor of a sanction.

B. Facts and Circumstances Existing at the Time of the Transgression.

Judge Wilson admitted he only handled a small number of properties, so he should have been aware of the address which was provided during testimony to establish the location of the crime. He should have recognized the conflict at that point. Even if one accepts Judge Wilson's assertion that he did not know of the conflict until it was too late, he failed to take any remedial measures. By his own admission, he did not seek advice on the situation from another judge or the Judicial Ethics Advisory Committee. He did nothing except impose the restitution, further compounding the conflict.

This factor weighs in favor of a sanction.

C. Extent of Any Pattern of Improper Activity or Previous Violations.

Judge Wilson has never been disciplined for judicial misconduct.

This factor weighs against a sanction.

D. The Effect of the Improper Activity Upon the Judicial System or Others.

As noted above, a fundamental requirement for the success of our judicial system is that the public can trust in the independence, integrity, and impartiality of the judges who serve on the bench. Mr. Espinoza certainly has no trust in the independence, integrity and impartiality of the judicial system after this experience. Judge Wilson's conduct in calling his own impartiality into question undermined this fundamental principle.

This factor weighs in favor of a sanction.

Three of the four factors that the commission must consider weigh in favor of issuing a sanction. While Judge Wilson is without a prior disciplinary history, this conduct is so

egregious that it cannot be ignored by the commission. There is currently no lesser informal sanction available to the commission other than a reprimand, so once the commission determines an informal sanction is called for, its only choice is to issue a public reprimand.

IV. Aggravating and Mitigating Factors

Rule 19 of the Commission Rules sets forth ten aggravating and mitigating factors for the commission to also consider.

A. Nature, Extent and Frequency of the Misconduct.

This appears to be an isolated incident of misconduct, however, the egregiousness of the violation tends to give more weight to this being an aggravating, rather than mitigating factor.

B. Judge's Experience and Length of Service on the Bench.

Judge Wilson has been a judge for 14 years. He has substantial experience, and should be well-versed in his ethical obligations under the Code, including when he needs to recuse himself. Therefore, this is an aggravating factor as well.

C. Whether the Conduct Occurred in the Judge's Official Capacity or Private Life.

The conduct occurred in Judge Wilson's official capacity, however, Disciplinary Counsel does not deem this factor applicable to this case.

D. Nature and Extent to Which the Acts of Misconduct Injured Other Persons or Respect for the Judiciary.

Mr. Espinoza clearly was injured in that did not receive a fair and impartial trial based on Judge Wilson's involvement with the property management company. This also clearly impacts the public's perception and respect for the judiciary, and casts the judiciary in a negative light. This is an aggravating factor.

E. Whether and To What Extent the Judge Exploited His or Her Position for Improper Purposes.

While Judge Wilson apparently receives a commission based on the rents collected for the property management company, it does not appear he personally benefitted from this matter. Therefore, this appears to be a mitigating factor.

F. Whether the Judge has Recognized and Acknowledged the Wrongful Nature of the Conduct and Manifested an Effort to Change or Reform the Conduct.

In his motion for reconsideration, Judge Wilson does recognize this caused an appearance of impropriety, and indicated he would attempt to seek funding for an associate judge so the situation does not repeat itself. It clearly took Judge Wilson a while to recognize the wrongfulness of his conduct, but he has reached that point, and presumably will not repeat the same mistake. Therefore, this becomes a mitigating factor.

G. Whether There Has Been Prior Disciplinary Action Concerning the Judge, and if so, its Remoteness and Relevance to the Present Proceeding.

Judge Wilson has no disciplinary history, and thus, this is a mitigating factor.

H. Whether the Judge Complied with Prior Discipline or Requested and Complied with a Formal Ethics Advisory Opinion.

Disciplinary Counsel does not deem this factor applicable to this case.

I. Whether the Judge Cooperated Fully and Honestly with the Commission in the Proceeding.

Judge Wilson has fully cooperated and has been honest as best as Disciplinary Counsel can determine. This is a mitigating factor.

J. Whether the Judge was Suffering from Person or Emotional Problems or from Physical or Mental Disability or Impairment at the Time of the Misconduct.

This was not raised as a defense by Judge Wilson, and Disciplinary Counsel does not deem this factor applicable to this case

While the aggravating and mitigating factors fairly balance numerically, the commission is free to assign whatever weight it chooses to the factors. Again, given the

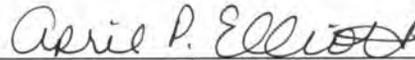
egregiousness of the conduct, Judge Wilson's substantial experience, the injury to Mr. Espinoza and the injury to the public perception of the judiciary, Disciplinary Counsel argues that the overall balance is in favor of upholding the prior sanction.

V. Conclusion

Disciplinary Counsel respectfully requests that the commission deny Respondent's motion and leave in place the public reprimand order issued February 6, 2015, in this case.

Dated this 5th day of March, 2015.

COMMISSION ON JUDICIAL CONDUCT

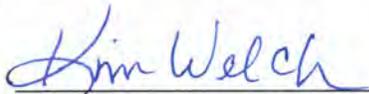


April P. Elliott
Disciplinary Counsel

Copies of this pleading delivered via first class mail on March 5, 2015, to:

Hon. Gene Wilson
Eloy City Court
626 N. Main St.
Eloy, AZ 85131

Respondent

By: 
Kim Welch, Commission Clerk

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-331

Judge: Clifford Gene Wilson

Complainant: Pedro L. Espinoza

**ORDER DENYING RESPONDENT JUDGE'S
MOTION FOR RECONSIDERATION**

The respondent judge filed a motion for reconsideration of the commission's decision to reprimand him as set forth in its previous order. Pursuant to Commission Policy 23, disciplinary counsel was requested to file a response to the motion and did so.

The commission voted on March 20, 2015, to deny the motion for reconsideration. As provided in Commission Policy 23, the respondent judge's motion for reconsideration, disciplinary counsel's response, and this order denying the motion for reconsideration shall be made a part of the record that is posted to the commission's website with the other public documents (the complaint, the judge's response, and the reprimand order).

Dated: March 26, 2015

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on March 26, 2015.

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