

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-394

Judge: Donald G. Roberts

Complainant: Mark R. Moran

ORDER

The complainant alleged a justice of the peace engaged in conduct that could reasonably be perceived as harassment.

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 2.8(B) requires that “a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity. . . .”

The commission found that Judge Roberts violated the foregoing rules by making unwelcomed verbal comments to two detention officers and having unwelcomed physical contact with one of those detention officers. Allegations of a similar nature in the future may lead to formal disciplinary proceedings.

Accordingly, Justice of the Peace Donald G. Roberts 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: 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.



2014-394

DEC 12 2014



SUPERIOR COURT OF ARIZONA

Superior Court Division 3

Honorable Mark R. Moran
Presiding Judge

December 9, 2014

State of Arizona
Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, AZ 85007

Dear Commission:

On Friday, November 7, 2014 my Court Administrator, Gary Krcmarik and Deputy Court Administrator, Sharon Yates, met with Sheriff Bill Pribil of the Coconino County Sheriff's Office, Commander Matt Figueroa and Deputy Chief Jim Driscoll regarding a complaint of inappropriate conduct toward a detention officer made by Judge Donald G. Roberts, Justice of the Peace for the Page Justice Court.

In the detention officer's complaint against Judge Roberts, the officer states that Judge Roberts would make facial gestures (winking, creepy smile) toward him. The officer also states in his complaint that on several occasions, Judge Roberts would grab his shoulder and squeeze in a "shoulder rub" fashion. I have attached a copy of the written complaint we received from the Sheriff's Office for the Commission's review.

This is the second complaint that has been brought to my attention regarding possible inappropriate behavior by Judge Roberts. The first complaint came to my attention on October 15, 2013 after my Court Administrator, Gary Krcmarik, received a phone call on October 14, 2013 from the Commander of the jail regarding a complaint of inappropriate conduct by Judge Roberts toward a detention officer. The complaint, attached, states that Judge Roberts would call the detention officer names like "Handsome Ransom" and "My Little Buddy" without being permitted to do so.

After receiving the first complaint from the Sheriff's Office, I spoke to Judge Roberts on October 16, 2013. I discussed with Judge Roberts that a complaint had been filed against him regarding inappropriate behavior. I told him that it was not appropriate to use nicknames or any other names other than the individual's actual name when addressing someone during the performance of their duties, specifically, addressing a detention officer as "Handsome Ransom" during a judicial proceeding. I also discussed with Judge Roberts that he needed to be aware that his interactions with others must be professional and consistent with the Code of Judicial Conduct. Judge Roberts said he understood my concerns but was not aware he was offending anyone.

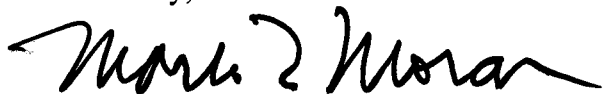
The second complaint of inappropriate behavior filed against Judge Roberts includes what may be perceived as “unwanted” or “inappropriate” touching. Under these circumstances, I believe that an informal, oral reprimand is insufficient and that, pursuant to the Arizona Code of Judicial Conduct, Rule 2.15, I have an ethical obligation to report this behavior to the Commission.

The specific code violations are: Rule 1.2 and Rule 2.3(B). Judge Roberts’ actions toward the officer may be a violation of Rule 2.3(B), which prohibits judges, in the performance of their duties, by words or conduct, from engaging in harassment. (See: Comment 4).

On November 18, 2014, I spoke with Judge Roberts by phone to inform him of the nature of this complaint and that I would be filing a referral with the Commission. Present during this conference call were my Court Administrator, Gary Krcmarik and Deputy Court Administrator, Sharon Yates.

If you have any questions or need any additional information, please feel free to contact me at (928) 679-7568 or mmoran@courts.az.gov. You may also contact my Court Administrator, Gary Krcmarik at (928) 679-7514 or gkrcmari@courts.az.gov.

Sincerely,

A handwritten signature in black ink that reads "Mark R. Moran". The signature is fluid and cursive, with the first name "Mark" and last name "Moran" clearly distinguishable.

Mark R. Moran, Presiding Judge
Coconino County Superior Court

Enclosures

Resp
JAN 28 2015

***JUSTICE OF THE PEACE COURT
PAGE PRECINCT, COCONINO COUNTY
547 Vista Avenue * P.O. Box 1565
Page, Arizona 86040***

***Donald G. Roberts
Justice of the Peace***

***Telephone: (928) 645-8871
Fax: (928) 645-1869***

January 23, 2015

Ms. April Elliott
Staff Attorney
Commission on Judicial Conduct
1501 W Washington Street, Suite 229
Phoenix, AZ 85007

Re: Notice of Complaint and Opportunity to Respond (Case No. 14-394)

Dear Ms. Elliott:

This letter is in response to the above-mentioned Case No. 14-394.

I'll address the complaint from October 8, 2013 first, since this is the first time I have received anything in writing. Presiding Judge Mark Moran, Superior Court Administrator Gary Krcmarik, and Deputy Court Administrator, Sharon Yates, met with me in the lobby during a conference in December, 2013. At this time they casually mentioned that someone had filed a complaint against me for calling them a nickname of "handsome Ransom". Seeing the actual complaint I am now aware that there was a lot more to it.

In response to the incident of nickname: When I entered the holding facility one day, there were two officers working together; one was Officer Hansen and the other Officer Ransom. Innocently enough, I referred to the duo as "handsome Ransom." Other than just a spontaneous attempt at being funny & clever, nothing was meant by it and no one ever said anything to indicate that it was received in any other fashion. Once or twice I did say to Officer Hansen, "how's my little buddy doing?" but again there was no ulterior meaning intended or noticeable objection taken. Officer Ransom is a nice young man and I would never intentionally do or say anything to make him feel uncomfortable.

In reference to root beer float: On this particular weekend in question there were just the two officers (Hansen & Ransom) on duty so they could not leave the jail. After Court, since my wife and I were going to lunch I offered to pick up food for them. At that time the fast food place made an extra root beer float. My wife didn't want it so I offered it to whoever came out first, and told him he could share if he wanted to. The first officer out just happened to be Officer Hansen, so he lucked out and got the root beer float.

Regarding talking with Officer Ransom about football, as I recall he had told me he was a Green Bay Packer fan. Being a Minnesota Viking fan we could have talked about football extensively, of course. It was a two-way conversation which he could have ended at any time, and I believe he would have were it keeping him from his duties.

In reference to the complaint from Officer Larsen where he said he was embarrassed publicly: During the Drug Court proceedings (which are not open to the public), a member had asked what would happen if one of the candidates would fall off the wagon next week, and I stated that he would end up in the "jury box," (where one of the candidates was currently sitting for sanction on a violation). All the candidates and team members thought that was funny, and everyone laughed and looked in the direction of the "in custody" candidate and officer. This perfectly-appropriate Courtroom humor certainly had nothing to do with any officer in particular. When I looked in that direction—as everyone did at that time—I was most certainly smiling, but made no creepy face or winked, to my knowledge. (Although under the circumstances it is entirely possible that I made a very general "just kidding" wink in that direction—a perfectly appropriate gesture, considering the jesting in that moment.)

For many years it has been my custom to make a call to the jail before I go to bed each and every night, to see what is in store for me for the next day. I also call again in the morning before I go to work. [As the presiding judge of this precinct, I have always kept close tabs on the progress of defendants as they proceed through the legal processes over which I have jurisdiction, the first being the 24-hour clock that ticks prior to a Defendant's Initial Appearance.] In responding to Officer Larsen's statement on the phone that he was alone and had no other officers to help him, in a kidding manner I told him not to worry, that If no one wanted to work with him we would work through it ourselves, and that I liked him, even if no one else did... or something to that effect. No story, no drama, just good-humored ribbing.

Over the past years, there have been regular occasions when the officers at the holding facility have requested I conduct Initial Appearances at the jail due to staff shortages or scheduling issues; or at other times—with I.A. deadlines looming--the Courtroom was simply not available even though officers were (due to our Courtroom-sharing partners, the Page Magistrate Court). To remedy this I would leave the Court, travel to the jail, and see the "custodies" in the small, multi-purpose room there. This I did both to save taxpayers' money (no "on call officer" would have to be called in), and, frankly, simply to help out the officers at the facility, as requested. On the particular day in question, it was a personnel-shortage issue. Shortly after I arrived at the facility Officer Larsen walked by, and I recall saying to him, "I didn't know you were working..." hinting that I did not know why I had to go to the jail if they had enough officers to transport the in custodies. Frankly, I recall being annoyed by the unnecessary trip, which could have manifested itself in the form of an unpleasant expression on my face.

In reference to the offer to buy tacos: There had been a pattern on Tuesdays when Officers Malone and Bartel would be working the shift by themselves. And since they could not leave the jail to get lunch, I would offer to bring them tacos (two-for-a-dollar on Tuesdays). I happened to

Ms. April Elliott
January 23, 2015
Page 3

be asking Officers Malone and Bartel how many tacos they would like when Officer Larsen walked in, and to be polite, I offered him some tacos as well. But of course, since Officer Larsen was arriving to work, the taco offer became moot because his very presence afforded them the ability to leave for lunch. Officer Larsen had never been included before; the tacos were a because - they're-short-handed, Tuesday-shift only courtesy.

Regarding the shoulder rubbing: To the best of my recollection there was one day when Officer Larsen was in the tower that he was showing me something on the computer screen (I cannot recall exactly what). I was standing behind him while he was seated. As someone who stands 6'2" and has a bad back, I hunched over and put my hands on his shoulders to brace myself while looking at the screen. That's the only time I recall putting both hands on his shoulders. If I rubbed his vest-padded shoulders at all, it would have been a reflexive, unconscious act. Any other times, I may have touched or tapped his shoulder when he was on the phone or otherwise preoccupied, at a time when I was picking up the paperwork and wanted him to notice that I had done so. At no time did Officer Larsen so much as hint that any of my contact with him—either physical or verbal--disturb or annoy him.

It should be noted that to aid in the prevention of any further misunderstandings or misconceptions regarding the behaviors or intentions of either myself or any on my staff, the day I received the complaint in writing I instituted a new policy for Page Justice Court: We will be conducting all judicial business in our Courtroom only—either in person or by video--including weekends, thereby eliminating the need for any judge to encroach upon the workspace of the holding facility officers.

To say that the accusations in the complaints filed against me are disturbing would be a gross understatement. These interpretations of my behaviors are patently absurd, highly offensive, and manifestly outrageous. Yet perception is a very real creature, and the impressions of the accusing officers must be taken quite seriously. That my friendly nature and manner must be reined in to a more-formal position—more aloof, even among those who are on the same "team"—is without question. That change in me has already been made.

In closing, I want to thank you for allowing me an extension on this letter. I am proud of being a Judge and take very seriously my service to the public, to understate it. I assure you that during my 21 years of service, I have always treated everyone at the jail in a kind, courteousness, and professional manner. I have behaved in this manner throughout my career, and there has never been any intent to do otherwise.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald G. Roberts". The signature is fluid and cursive, with a large, stylized initial "D".

Judge Donald G. Roberts

MR

MAY 14 2015

1 Mark I. Harrison, 001226
Nathan T. Arrowsmith, 031165
2 OSBORN MALEDON, P.A.
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6 Attorneys for The Honorable Donald G. Roberts

7 STATE OF ARIZONA

8 COMMISSION ON JUDICIAL CONDUCT

9 Mark R. Moran,)	Complaint 14-394
)	
10 Complainant,)	
)	MOTION FOR RECONSIDERATION
11 vs.)	
)	
12 Donald G. Roberts,)	
)	
13 Judge.)	

14 Pursuant to Rule 23(b) of the Rules of the Commission on Judicial Conduct, Judge
15 Donald G. Roberts moves the Commission to reconsider and vacate its March 26, 2015 Order
16 (the "Order") reprimanding him for violating Rules 1.2 and 2.8(B) of the Arizona Code of
17 Judicial Conduct and requests the opportunity to appear before the Commission if the
18 Commission believes such an appearance will aid it in deciding this motion.

19 Judge Roberts respectfully submits that reconsideration is warranted because:

20 (1) he was not adequately afforded the opportunity to modify his behavior prior to the
21 filing the complaint;

22 (2) he has a long and distinguished career of service to the bench and his community;

23 (3) this is the first complaint of this nature filed against him in over 20 years of service
24 as a judicial officer;

1 (4) the conduct of which Judge Roberts is accused is less severe than the types of
2 conduct for which the Commission has previously reprimanded judicial officers, making a
3 public reprimand in this case disproportionate and unjust; and

4 (5) since receiving the Order, Judge Roberts has taken several significant, proactive,
5 and prophylactic steps to address the behavior which led to the complaint.

6 For all of these reasons, the Commission should reconsider and vacate the Order and
7 dismiss the complaint or alternatively, dismiss it with confidential comments as permitted by
8 Rule 16(b), Rules of the Commission. As indicated above, if the Commission believes it would
9 aid the Commission in deciding this motion, Judge Roberts requests the opportunity to appear
10 before the Commission pursuant to Rule 23(b)(1), Rules of the Commission.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. FACTUAL BACKGROUND**

13 Judge Mark Moran filed this complaint against Judge Roberts on December 9, 2014.
14 The complaint alleges that Judge Roberts engaged in inappropriate conduct, such as making
15 “facial gestures,” grabbing and squeezing shoulders in a “shoulder rub” fashion, and using
16 nicknames, toward one or more detention officers. Judge Moran alleges that he received two
17 different complaints about Judge Roberts, on October 15, 2013 (the “First Complaint”) and
18 November 7, 2014 (the “Second Complaint”). The First Complaint, which was received more
19 than one year before Judge Moran filed his complaint with the Commission, alleged that Judge
20 Roberts “would call [] detention officer[s] names like ‘Handsome Ransom’ and ‘My Little
21 Buddy’ without being permitted to do so.” The Second Complaint alleged that Judge Roberts
22 “would make facial gestures (winking, creepy smile)” toward a detention officer, and that on
23 several occasions, Judge Roberts “would grab [the officer’s] shoulder and squeeze in a
24 ‘shoulder rub’ fashion.” Judge Moran notes that he spoke to Judge Roberts twice prior to filing
25 the present complaint: once in an informal setting on October 16, 2013, regarding the First
26

1 Complaint, and once on November 18, 2014, “to inform him of the nature of this complaint and
2 that I would be filing a referral with the Commission.” Although Judge Roberts does recall the
3 November 18, 2014 phone call from Judge Moran, he does not recall being informed of the
4 shoulder rubbing allegations during that call.

5 An investigation of the allegations made against Judge Roberts was conducted by Patty
6 Crawford, an HR business consultant, who interviewed Judge Roberts as well as five
7 employees of the Coconino County Sheriff’s Office. Ms. Crawford produced a report on her
8 findings which was dated December 12, 2014 – three days after Judge Moran’s complaint was
9 filed with the Commission. Although Ms. Crawford noted that the consensus among Sheriff’s
10 Office employees was that Judge Roberts “stands close to an individual when talking, has
11 lingering handshakes, touches/pats individuals on the back,” and likes to talk for long periods
12 of time, she did not conclude that Judge Roberts’ comments were sexually based. *Ms.*
13 *Crawford further noted that the desired outcome on the part of the complaining officer was for*
14 *the behavior to cease.*

15 Following Judge Moran’s complaint, Judge Roberts submitted a response letter on
16 January 23, 2015 and offered his view of the pertinent facts. Judge Roberts noted that he came
17 up with the nickname “Handsome Ransom” for a duo of detention officers – Officers Hansen
18 and Ransom. He acknowledged saying “how’s my little buddy doing?” to Officer Hansen,
19 however, stated that nothing inappropriate was intended by the question. Judge Roberts further
20 discussed his interactions with detention staff, noting that he makes visits to the jail to conduct
21 initial appearances when they are short staffed and that he also routinely brought lunch for
22 detention officers on Tuesdays when only two officers were on duty and were unable to leave
23 for lunch. He also noted that it has long been his custom to call the jail before going to bed
24 each night as a way of keeping tabs on criminal defendants and ensuring that he fulfills his
25 obligation to conduct initial appearances within the required 24 hour timeframe. As to the
26

1 alleged shoulder rubbing, Judge Roberts noted that the only time he can recall touching the
2 complaining officer on the shoulder was a time where the officer called Judge Roberts over to
3 look at something on a small laptop computer screen and Judge Roberts put his hand on the
4 officer's shoulder to brace himself because he had to lean down in order to see the small screen.

5 After receiving Judge Roberts' response, the Commission entered its order on
6 March 26, 2015.

7 **II. ARGUMENT.**

8 **A. Judge Roberts has a distinguished record of service to the bench and his 9 community.**

10 Judge Roberts is a long-serving Justice of the Peace with a distinguished career and a
11 record of service to his community. Judge Roberts was first elected as Justice of the Peace in
12 1986, nearly 30 years ago. He was reelected in 1990. Judge Roberts was not elected in 1994 or
13 1998, but returned to the bench in 2002 and has been serving ever since, having been reelected
14 in uncontested elections in 2010 and 2014. During Judge Roberts' career, he has served as the
15 Presiding Justice of the Peace of Coconino County for a total of four years, most recently from
16 January 2013 through December 2014, for which he received an award of recognition from the
17 Presiding Judge of Coconino County. He has also been a longtime member of the Arizona
18 Justice of the Peace Association and serves on that organization's executive board. Judge
19 Roberts also has served as the president of the National Judges Association, which is an
20 association of judges of limited jurisdiction, and helped to organize and host that organization's
21 national conference in Page in 1993.

22 In addition to his service on the bench, Judge Roberts has always been heavily involved
23 in service to his community. He has been a member of the Elks Lodge for over 35 years and
24 was recently recognized with the Elks' Distinguished Citizenship Award for 2014-15. Judge
25 Roberts is involved with organizing an annual Veterans' Day parade in Page, an annual Last
26 Supper pageant at his church, and actively supports local Boy Scout troops. He has also helped

1 to create and administer a DUI/drug court program for Page and Fredonia and has been
2 recognized by the Coconino County Board of Supervisors for his efforts.

3 Importantly, in all his time on the bench, Judge Roberts has never had any complaints
4 of harassment and has never received any formal discipline from the Commission.

5 **B. Judge Roberts did not intend to harass his co-workers and was not provided**
6 **with an adequate opportunity to modify his behavior before learning a**
7 **complaint would be filed.**

8 Although Judge Roberts understands that his co-workers' perceptions of his actions are
9 sincere and reasonable, he maintains that he did not intend to act inappropriately or to harass
10 anyone and he has offered explanations for his actions that are consistent with his innocent
11 intentions. Judge Roberts acknowledges that he put his hand on the shoulder of a detention
12 officer but maintains that any such contact was unconscious and not intended to harass the
13 officer – he was simply leaning down to view something on a small laptop computer screen and
14 needed to brace himself. Similarly, his offers to buy food for detention staff were made out of
15 the kindness of his heart and his late night calls to the jail were made in furtherance of his
16 responsibilities as a judicial officer. Judge Roberts also did not intend to harass or offend
17 anyone by his use of nicknames, which was merely a misguided attempt at humor. Judge
18 Roberts deeply regrets that his actions caused others to feel uncomfortable. Had he fully
19 understood the nature of the concerns about his behavior prior to the filing of the complaint, he
20 would have immediately taken action to change his behavior.

21 Unfortunately, Judge Roberts did not fully understand the extent or seriousness of the
22 accusations against him until he received the Commission's letter on December 16, 2014.
23 Judge Moran states that he spoke to Judge Roberts about the First Complaint on October 16,
24 2013, but this conversation was held in the lobby of a facility where the two were attending a
25 conference, rather than in a more formal, private setting. Throughout the conversation, other
26 conference attendees interrupted to say hello to both Judges Moran and Roberts. Given the

1 informal and casual nature of this conversation, Judge Roberts did not appreciate the
2 seriousness of the information which Judge Moran was bringing to his attention. Moreover,
3 this conversation took place more than a year before the filing of the complaint and Judge
4 Roberts does not recall receiving any other communications about his behavior in the interim.
5 As to the November 18, 2014 phone call, Judge Roberts recalls being made aware that a
6 complaint would be filed with the Commission but he does not remember being informed about
7 the “shoulder rubbing” or “winking” accusations. In retrospect, it appears that Judge Roberts
8 was not provided with an adequate opportunity to modify his behavior prior to learning that a
9 complaint would be filed against him.

10 **C. Judge Roberts has already taken appropriate steps to modify his behavior and**
11 **a public reprimand will serve no purpose other than to embarrass and**
12 **humiliate Judge Roberts.**

13 Upon learning about the specific nature of the allegations made against him, Judge
14 Roberts immediately took and is taking steps to change his behavior to ensure that he does not
15 do anything that could even be perceived as inappropriate. He has ceased the use of
16 nicknames, no longer visits or calls the jail, no longer purchases food for detention officers, and
17 most important, has made a concerted effort to be sensitive to the importance of respecting the
18 personal space of those with whom he interacts. Judge Roberts took these steps not simply as a
19 response to the complaint but because he wants to make sure that the staff with whom he works
20 does not feel uncomfortable in his presence. Judge Roberts would have taken the same steps to
21 modify his behavior had he fully understood the nature of the allegations against him prior to
22 the filing of the complaint. In any event, the desired result of the complaining officer, as
23 discussed in Ms. Crawford’s report, has been achieved – Judge Roberts has changed his
24 behavior. Indeed, there have been no complaints of a similar nature about Judge Roberts since
25 he received the Commission’s December 16 letter. Accordingly, a public reprimand by the
26 Commission is unnecessary and excessive. Judge Roberts has corrected the specific behavior

1 which led to the complaint and is taking additional prophylactic steps, outlined below, to
2 heighten his sensitivity to the conduct which led to the complaint to assure that it will not
3 reoccur. He should not be punished for workplace conduct without first having had the
4 opportunity to modify his behavior.

5 Further, a public reprimand will not have a deterrent effect in this case because the
6 complaint itself has been deterrent enough – Judge Roberts has already demonstrated a
7 willingness and desire to change his behavior. That no similar incidents have occurred is
8 compelling evidence that Judge Roberts has learned from this incident and is fully committed
9 to ensuring that there are no future, similar incidents. At this point, a reprimand will only serve
10 to publicly embarrass and humiliate a dedicated public servant. Allowing harassment
11 allegations such as these to be made public would have a profoundly negative effect on Judge
12 Roberts. As an elected official and a resident of a small community, Judge Roberts' reputation
13 is understandably of the utmost importance to him. Judge Roberts simply does not deserve the
14 embarrassment and humiliation that would result from a public reprimand.

15
16 **D. Judge Roberts' alleged wrongdoing is not consistent with the types of conduct**
17 **for which the Commission has previously publicly reprimanded judicial**
officers.

18 There is no legal precedent for sanctioning the conduct alleged in the complaint against
19 Judge Roberts. The Commission has previously publicly reprimanded judicial officers for
20 conduct such as: attempting to use prestige of office to avoid charges for assault and disorderly
21 conduct (*see Commission v. Ratcliff*, Complaint 11-127); conducting judicial proceedings while
22 under the influence of alcohol (*see Moran v. Lodge*, Complaint 12-176); failing to appear for
23 work on Wednesdays and Fridays and working less than 25 hours per week (*see Rucker v.*
24 *Williams*, Complaint 09-307); viewing explicit pictures on a court computer in view of a public
25 area, printing two to three reams of personal information on a daily basis, and using the prestige
26

1 of office to seek favorable treatment from bill collectors (*see Fradette et al. v. LaSota*,
2 Complaint 09-923).

3 Judge Roberts' alleged conduct stands in sharp contrast with these cases. In each of the
4 aforementioned cases, the intent of each of the judicial officers to violate the Code of Judicial
5 Conduct was clear – holding court proceedings while intoxicated or attempting to use the
6 prestige of office to gain benefits both demonstrate a knowing intent to violate the Code. Here,
7 although Judge Roberts' conduct made his co-workers uncomfortable – and Judge Roberts does
8 not discount the validity of their perceptions – he simply *did not intend* to harass anyone or
9 make anyone uncomfortable.¹ Because workplace harassment issues such as these are heavily
10 dependent upon individual perceptions, Judge Roberts should be judged based on how he has
11 responded to these complaints rather than on the underlying conduct itself. As noted above,
12 Judge Roberts' actions demonstrate that he has responded thoughtfully, positively, and
13 appropriately to this situation and has modified his behavior in an effort to comply with
14 workplace behavioral norms.
15

16 **E. Judge Roberts remains committed to ensuring that no similar incidents**
17 **occur and is willing to take further action in that regard.**

18 Judge Roberts is committed to taking further steps to continue to gain a better
19 understanding of how his actions may be perceived by others. In addition to the steps already
20 taken to modify his behavior, Judge Roberts has contacted Judge Paul Julien, a Judicial
21 Education Officer with the Arizona Supreme Court, who has agreed to serve as his mentor and
22 provide one-on-one counseling in dealing with any conduct issues, including those involving
23 sensitivity to others. Judge Roberts has also contacted Judge Margaret McCullough, Presiding
24

25 ¹ If this matter went to a hearing, findings of fact on this pivotal issue would have to be based on “clear and
26 convincing evidence.” *See* Rule 27(f)(1), Rules of the Commission. In light of the conflicting views about
whether the conduct which led to the complaint was intentional, such findings seem very unlikely.

1 Judge of the Coconino County Juvenile Court, who – with the approval of Presiding Judge
2 Moran – has similarly agreed to mentor Judge Roberts on sensitivity and conduct issues. Judge
3 Roberts has also enrolled in a workplace sensitivity training course online to provide him with
4 further education and insight about how to appropriately interact with others in the workplace.²
5 If the Commission believes additional prophylactic programs are desirable or necessary, Judge
6 Roberts is more than willing to comply with the Commission’s reasonable directives.

7 Undersigned counsel has discussed with Presiding Judge Mark Moran the steps that
8 Judge Roberts has taken and is taking to effectively address the problem which led to the
9 complaint and undersigned counsel is authorized to state that Judge Moran was favorably
10 impressed with Judge Roberts’ positive action in responding to the problem. In view of the fact
11 that Judge Roberts did not have a meaningful opportunity to take corrective action before being
12 informed that a complaint would be filed, the steps he has taken and is taking since learning of
13 the Complaint and the Commission’s Order should negate and satisfy both the need and
14 purpose for a reprimand. Rule 17(b) of the Rules of the Commission allows the Commission to
15 “take any other informal action consistent with these rules, including but not limited to,
16 directing a judge to participate in professional counseling, judicial education, mentoring or
17 similar activities[.]” Both professional counseling with Judge Julien and workplace sensitivity
18 training clearly fall into the category of informal disciplinary measures contemplated by Rule
19 17(b) and, coupled with dismissal, would be the most appropriate resolution of this complaint.

21 **III. CONCLUSION**

22 Judge Roberts has been a dedicated, hard-working judicial officer for more than 20
23 years. He has served the bench and his community admirably. Judge Roberts deeply regrets
24

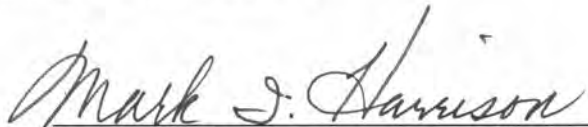
25 ² Judge Roberts has enrolled in “Sensitivity Training in the Workplace” through www.universalclass.com
26 and has already started the course.

1 that his actions caused others to feel uncomfortable and has taken and is taking steps to assure
2 that the same problem will not reoccur in the future. The facts which led to this complaint,
3 coupled with the proactive steps which Judge Roberts has taken to effectively address the
4 underlying problem, should be more than sufficient to cause the Commission to reconsider and
5 vacate its earlier Order and spare Judge Roberts from the embarrassment and humiliation which
6 he would surely suffer if he is the subject of the Commission's March 26 Order. For the
7 foregoing reasons, Judge Roberts respectfully requests that the Commission reconsider and
8 vacate its March 26th order and dismiss the complaint pursuant to Rule 16(a) of the Rules of
9 the Commission or in the alternative, dismiss with confidential comments, pursuant to
10 Rule 16(b).

11 DATED this 14th day of May, 2015.

12 OSBORN MALEDON, P.A.

13
14 By



15 Mark I. Harrison

16 Nathan T. Arrowsmith

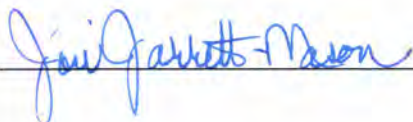
17 2929 North Central Ave., 21st Floor

18 Phoenix, Arizona 85012-2793

19 Attorneys for The Honorable Donald G.
20 Roberts

21 ORIGINAL of the foregoing sent
22 via email & hand delivered for filing
23 this 14th day of May, 2015, to:

24 Judge Louis Frank Dominguez, Commission Chair
25 Arizona Commission on Judicial Conduct
26 1501 W. Washington Street, Ste. 229
Phoenix, AZ 85007



MAY 26 2015

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Attorneys for the Hon. Donald G. Roberts

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Mark R. Moran,)	Complaint 14-394
)	
Complainant,)	
)	SUPPLEMENT TO MOTION FOR
vs.)	RECONSIDERATION
)	
Donald G. Roberts,)	
)	
Judge.)	

Judge Donald G. Roberts submits the attached Certificate of Completion demonstrating that on May 20, 2015, he successfully completed the "Sensitivity Training in the Workplace" online course referenced in his motion for reconsideration (at page 9) with a final grade of 96%. Judge Roberts' prompt completion of this course is further evidence that he fully understands how his behavior was perceived by others and demonstrates his commitment to avoid similar incidents in the future.

DATED this 26th day of May, 2015.

OSBORN MALEDON, P.A.

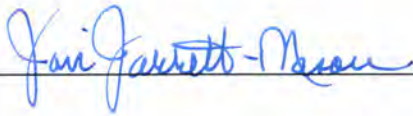
By Mark I. Harrison
Mark I. Harrison
Nathan T. Arrowsmith
2929 North Central Ave., 21st Floor
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Attorneys for the Hon. Donald G. Roberts

1 ORIGINAL of the foregoing sent
2 via email & hand delivered for filing
3 this 26th day of May, 2015, to:

4 Judge Louis Frank Dominguez, Commission Chair
5 Arizona Commission on Judicial Conduct
6 1501 W. Washington Street, Ste. 229
7 Phoenix, AZ 85007

8 April P. Elliott, Disciplinary Counsel
9 Arizona Commission on Judicial Conduct
10 1501 W. Washington Street, Ste. 229
11 Phoenix, AZ 85007

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A handwritten signature in blue ink, reading "Jani Garrett-Mason", is written over a horizontal line.

Universal Class, Inc. Presents...
Certificate of Course Completion

Awarded To

Donald G. Roberts

for successfully completing the online class

Sensitivity Training in the Workplace



Serial No. 8992415188341

Start Date	5/11/2015
End Date	5/20/2015
Lessons Completed	10
Assignments Submitted	23
Exams Taken	11
Surveys Processed	1
Days Visited	5
Final Grade	96%
CEUs Awarded	0.9
Contact Hours	9



FILED

MAY 18 2015

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

**Inquiry concerning
Judge Donald G. Roberts
Page Justice Court
Coconino County
State of Arizona,**

Case No.: 14-394

CORRECTED

ORDER DIRECTING THE FILING OF A RESPONSE MEMORANDUM

Respondent

Respondent Judge Donald G. Roberts, through his counsel, Mark I. Harrison, filed a Motion for Reconsideration of the public reprimand issued on March 26, 2015.

IT IS ORDERED that Disciplinary Counsel for the commission shall prepare and file a response memorandum to Respondent's motion. Disciplinary Counsel shall provide a copy of her Response to Respondent on or before May 29, 2015. Absent a request from the commission, Respondent may not submit a written reply brief or any additional materials.

Dated this 18th day of May, 2015.

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this pleading were delivered on May 18, 2015, via electronic mail, to Judge Donald G. Roberts, through his attorney:

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Respondent's Attorney

April P. Elliott
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Disciplinary Counsel

By: /s/ Kim Welch
Kim Welch, Commission Clerk

April P. Elliott
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FILED
MAY 27 2015
ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning) Case No.: 14-394
)
Judge Donald G. Roberts) Response to Motion for
Page Justice Court) Reconsideration
Coconino County)
State of Arizona,)
)
Respondent)

On March 26, 2015, the Commission on Judicial Conduct (Commission) publicly reprimanded Justice of the Peace Donald G. Roberts (Respondent) for violations of the Arizona Code of Judicial Conduct (Code). Respondent filed a Motion for Reconsideration on May 14, 2015. Undersigned Disciplinary Counsel submits this response pursuant to Commission Rule 23(b), respectfully requesting that the commission deny the motion.

I. Good Cause Exists for the Imposition of the Reprimand

The commission's reprimand was based on a finding that Respondent violated two Code provisions: Rules 1.2 and Rule 2.8(B,) as he engaged in conduct that could reasonably be perceived as harassment. Respondent's conduct can be broken down between two different complaints: 1) The Officer Hansen/Officer Ransom Complaint,

October 2013 (First Complaint); and 2) The Officer Larsen Complaint, November 2014 (Second Complaint).

1. In the First Complaint, Deputy Ransom, a Coconino County detention officer, reported several instances of Respondent calling him “handsome Ransom” and “my little buddy,” and he felt this was unprofessional and made him feel uncomfortable. Other incidents were reported such as the Respondent going out of his way to say goodbye to Deputy Ransom when he visited the jail, Respondent purchasing lunch for Deputy Ransom and Deputy Hansen, and giving Deputy Ransom an extra root beer float.
2. Judge Mark Moran, Presiding Judge of the Coconino County Superior Court, was made aware of this First Complaint in October 2013, and he discussed it with Respondent. Judge Moran indicated he told Respondent it was inappropriate to use nicknames, and to only use an individual’s actual name when addressing them in the performance of their duties. Judge Moran also stated he told Respondent to be professional in his interactions with others, and to be compliant with the Code of Judicial Conduct.
3. In the Second Complaint, Deputy Larsen, a Coconino County detention officer, reported that Respondent winked at him and made a creepy smile toward him during a court proceeding. When this occurred, others in the court laughed and he felt uncomfortable. Deputy Larsen reported another incident in which Respondent found out Deputy Larsen was working alone at the jail, and Respondent commented that he would

work with him because he liked him. In another incident, when Respondent came into the jail and learned Deputy Larsen was working, he commented it was a nice surprise and made a creepy face toward Deputy Larsen. Deputy Larsen also reported Respondent buying him food, specifically, tacos. Most disturbing, however, Deputy Larsen reported that Respondent would touch him and rub his shoulders/back area, and this made Deputy Larsen extremely uncomfortable.

4. After the Second Complaint was filed, an internal human resources investigation was conducted. The investigator, Patsy Crofford, noted that Respondent is a friendly person who touches and pats individuals on the back. She stated that individuals she interviewed differed on whether or not Respondent's actions or comments were sexual in nature, but most believed they were annoying or uncomfortable at times. Ms. Crofford did not substantiate the allegations of sexual harassment, however, she noted that Respondent needed to respect the physical space of others, and have a professional relationship with the staff.
5. Additionally, after the Second Complaint was filed, Judge Moran spoke with Respondent and advised him he would be reporting the conduct to the Commission on Judicial Conduct.

Rule 1.2 of the Code 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." Additionally, Rule 2.8(B) requires a judge to be "patient, dignified, and courteous to

litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity” By making unwelcomed verbal comments and having unwelcomed physical contact as noted above, Respondent violated these rules.

II. 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

Respondent’s conduct occurred over a lengthy period of time, spawned two formal internal complaints against him in Coconino County, and led to an internal human resources investigation into whether or not his conduct amounted to sexual harassment. While the sexual harassment portion was ultimately unsubstantiated by the human resources investigator, this was not an exoneration. Clearly, the complaining detention officers, as well as others interviewed in the investigation, felt Respondent’s conduct transgressed the boundaries of a professional relationship and they felt uncomfortable by the verbal comments and/or physical contact. Respondent has stated he did not intend to harass anyone, however, multiple individuals expressed they were annoyed or made uncomfortable by his actions. After the First Complaint, Judge Moran made Respondent aware that his conduct was not welcomed, and that he needed to respect professional boundaries. Respondent failed to do so, and the Second Complaint notes more serious conduct of unwanted touching. Respondent’s argument that he should be judged based on “how he has responded to

these complaints rather than on the underlying conduct itself' is without merit. Respondent is the only one who perceives his conduct as harmless. Any reasonable person would perceive it as inappropriate and Respondent should have considered how the reasonable person would have perceived his conduct. Such conduct does not promote public confidence in the judiciary.

This factor weighs in favor of a sanction.

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

At the time the First Complaint was brought to Judge Moran's attention, he addressed it appropriately with a discussion with Respondent about professional boundaries. This should have been the end of the discussion. However, over a year later, the Second Complaint was brought to Judge Moran's attention, and this complaint involved not only unwelcomed verbal statements and food purchases, but unwelcomed physical contact. Judge Moran clearly felt a duty to report both instances to the Commission on Judicial Conduct. Judge Moran's prior discussion with Respondent in 2013 clearly had no effect. Respondent's argument in his Motion for Reconsideration that he was given no opportunity to correct his behavior before the complaint was filed, is without merit and disingenuous. Respondent had the opportunity in 2013 to establish and respect more professional boundaries with the detention officers, and he failed to do so. He continued the unwelcomed verbal comments and food purchases. Respondent also began engaging in unwelcomed physical contact. Judge Moran's hands were tied. His ethical and supervisory duties

required the initiation of an investigation by human resources and the filing of this judicial misconduct complaint.

This factor weighs in favor of a sanction.

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

Respondent has not previously been publicly disciplined for conduct of this nature. He does not have prior public discipline.

This factor weighs against a sanction.

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

The success of our judicial system requires that the public have trust in the independence, integrity, and impartiality of the judges who serve on the bench. When a judge behaves in an unprofessional manner, such behavior undermines that trust. Respondent's conduct occurred over a lengthy period of time and continued/escalated after he was first warned by Judge Moran that he should have clear professional boundaries with the detention staff.

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 (a dismissal with an advisory comment is not a sanction). Respondent's failure to set professional boundaries with the detention staff after he was first warned by Judge Moran is inexplicable.

Respondent asserts that his conduct does not rise to the level of a public reprimand. The most recent public reprimand, issued in Case No. 14-165, involved Judge Adam Watters abusing the prestige of office by appearing in a photograph on

his law firms' website in a judicial robe and advertising himself on the website as an active part-time judge pro tem in the Arizona court system. The Commission has previously imposed reprimands for violations of Rule 2.8 which mandates that judges "be patient, dignified, and courteous" to all those with whom the judge deals in an official capacity. In Case No. 13-035, the Commission reprimanded Judge Holt for inappropriate statements such as describing legal arguments as "stupid" and "screwy," and telling a defendant, "If you don't like it, move to Mexico." In Case No. 13-074, the Commission reprimanded Judge McClennen for making inappropriate sarcastic statements from the bench. Judge Conn was reprimanded in Case No. 13-178 for referring to the victim at a criminal sentencing as an "idiot" and negatively characterizing her motivations. Commissioner Newell was reprimanded in Case No. 13-211 for being impatient, harsh, and intimidating.

A violation of Rule 2.8 is not just a judge yelling at individuals from the bench, it encompasses broader behavior, and encompasses Respondent's behavior.

Finally, the reprimand issued against Judge Lorona in Case No. 14-096 is analogous. In that case, Judge Lorona was reprimanded for violations of different rules, Rules 1.2, 2.16, and 3.7(A)(6)(a). Judge Lorona had been previously warned that her participation on the Board of Directors for Pinal Hispanic Council was a conflict of interest because her court referred litigants to that agency for services. The agency's website also referred to her status as a judge. After receiving a warning letter, Judge Lorona only removed the reference to her judicial position on the website. She claimed that she failed to heed the full warning because she misunderstood it and overlooked it, mutually exclusive excuses. In the reprimand,

the Commission noted that while it appreciated Judge Lorona's desire to serve the community, such service must be consistent with the Code, and her failure to heed its warning and her disingenuous explanation as to why she did not heed the warning warranted the reprimand.

In this case, Respondent was warned by Judge Moran to set professional boundaries with detention staff and abide by the Code of Judicial Conduct in October 2013. Respondent claims that because this conversation did not occur in a formal, private setting, he did not "appreciate the seriousness of the information which Judge Moran was bringing to his attention," and that Respondent was not provided an opportunity to modify his behavior before the complaint was filed. Respondent did have an opportunity to correct his conduct and the imposition of a public reprimand based on his failure to do so protects the public "by assuring that the judge will refrain from similar acts of misconduct in the future." Commission Rule 5 (Purpose of Judicial Discipline).

III. 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

Respondent's conduct occurred over a two-year period of time, during which he was warned one time to cease his behavior. The behavior continued over the course of the following year and escalated. The egregiousness of the misconduct tends to give more weight to this being an aggravating, rather than a mitigating factor.

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

Respondent has been a judge for over 20 years. As noted in his motion for reconsideration, he has a distinguished record of service to both the bench and community. He has substantial experience, and should be well-versed in his ethical obligations under the Code. 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 Respondent's official capacity. Both Deputy Ransom and Deputy Larsen indicated they did not report Respondent's behavior for a significant period of time, as they were intimidated by his position and title. Therefore, this is an aggravating factor as well.

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

Deputy Ransom, Deputy Hansen, and Deputy Larsen were injured in the respect that they were made to feel uncomfortable, and experienced difficulty in performing their duties. Respondent's conduct also clearly impacted 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 Respondent alleges his attempts at humor and kindness were misconstrued, it is clear that others felt he used his position for improper actions. Therefore, this also appears to be an aggravating 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, Respondent does recognize how his conduct was perceived, and he is proactively engaging in training to avoid similar incidents in the future. 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

As stated previously, Respondent has no prior public discipline for similar conduct. 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 as applicable.

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

Respondent 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 Personal 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 Respondent, and Disciplinary Counsel does not deem this factor applicable to this case.

While the aggravating factors outweigh the mitigating factors numerically, the commission is free to assign whatever weight it chooses to the factors. Again, given the egregiousness of the conduct, Respondent's substantial experience, the injury to the detention officers, and the injury to the public perception of the judiciary,

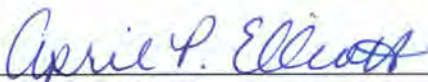
Disciplinary Counsel argues that the overall balance is in favor of upholding the prior sanction.

IV. Conclusion

Disciplinary Counsel respectfully requests that the commission deny Respondent's motion and leave in place the public reprimand order issued March 26, 2015, in this case.

Dated this 27th day of May, 2015.

COMMISSION ON JUDICIAL CONDUCT



April P. Elliott
Disciplinary Counsel

Copies of this pleading delivered via first class U.S. mail and email on May 27, 2015, to:

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Counsel for Respondent

By: 

Kim Welch, Commission Clerk

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-394

Judge: Donald G. Roberts

Complainant: Mark R. Moran

**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.

On June 12, 2015, the commission denied the motion for reconsideration, along with a request by the respondent judge to appear before the commission. 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: June 22, 2015

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were mailed
to the complainant and the judge
on June 22, 2015.

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