

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-147

Judge:

Complainant:

ORDER

The complainant alleged that a justice of the peace committed various violations during the 2014 judicial election cycle and retaliated against him for his involvement in a pending commission matter.

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.

While the judge should not have used his court email to send campaign related messages, the Scope Section of the Code contemplates that not every transgression will result in the imposition of discipline. Although the commission found that the judge's conduct violated Rules 1.2, 3.1(E), and 4.1(A)(8), the commission determined that no formal discipline was warranted after considering all the facts and circumstances. After review, the commission determined that the appropriate action was to issue the judge a private warning letter to familiarize himself with the restrictions on the use of court resources, including email, pursuant to Rules 3.1(E) and 4.1(A)(8), and to be aware that such misuse does not promote public confidence in the judiciary as required by Rule 1.2. The complaint is dismissed pursuant to Rules 16(b) and 23(a).

Dated: September 25, 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 September 25, 2015.

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

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

Re: Judicial Complaint against Judge

Dear Commission Members,

Introduction:

Pursuant to Arizona Code of Judicial Conduct Rule 2.15(A), complainant [redacted], does hereby submit separate judicial ethics violation complaints that clearly demonstrate a pattern of misconduct and collusion among members of the [redacted] judiciary, acting in concert with [redacted], to influence the outcome of an election and to ensure Judge [redacted] re-election. The [redacted] complaints are replete with instances of intentionally orchestrated malignant actions; they are regrettable proof of the startling lack of ethical behavior within the [redacted] judiciary. Herein, as demonstrated, members of the [redacted] judiciary have acted to defeat [redacted] aspirations for elective office, and indeed [redacted] continued service in an appointive position, without any meaningful or just cause other than cronyism and retaliation, and with a goal to quash political opposition. Ultimately, these [redacted] complaints are brought forth not because of a lost election or a wrongfully terminated judicial appointment; but rather to openly address flagrant instances of unethical and unlawful behavior that pervade our local judiciary.

The misconduct of the [redacted] respondents is deeply troubling on a number of levels, not least of which is the arrogance displayed by those individuals the public relies on to independently follow their mandated role as arbiters of justice. From the preamble of the Arizona Code of Judicial Conduct, "An independent, fair, and impartial judiciary is indispensable to our system of justice. Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence."

Much of what is reported here was previously disclosed to the Commission on Judicial Conduct in case number [redacted] involving the misconduct of Judge [redacted]. A reasonable expectation, from Commission on Judicial Conduct Rule 2.15(A), is that the Commission would,

sua sponte, take action upon being informed of judicial misconduct that is complicit to an open complaint. Yet [redacted] was recently informed by Commission staff that no such action would take place unless separate complaints were filed.

Instances of Misconduct:

Please see [redacted] attached and numbered documents -- emails sent and received on the Arizona Administrative Office of the Courts email server.

[redacted] has retaliated against [redacted] in violation of the Code of Judicial Conduct Rule 2.16(B). Judge [redacted], on separate occasions, told [redacted] that Judge [redacted] would not be recommending [redacted] for reappointment in his court (a protem position [redacted] has held since [redacted]) because of "[redacted]" when the Commission on Judicial Conduct investigation involving [redacted] (case number [redacted]) is resolved. Judge [redacted] further said he is concerned about "[redacted]" Judge [redacted] also stated he is "[redacted]". Judge [redacted] sole reason for discontinuing [redacted] coverage in his court is retaliatory -- because [redacted] filed a judicial ethics complaint against Judge [redacted]. Judge [redacted] has repeatedly said to [redacted], including on [redacted] occasions they recently met ([redacted] and [redacted]), that [redacted] has always done a great job serving the [redacted] courts. A digital audio file of the [redacted] conversations is immediately available to corroborate these instances of judicial misconduct.

Judge [redacted] further conducted elective office campaign email discussions with Judge [redacted], and Judge [redacted], using county and state resources, including the use of a demeaning invective against [redacted]. In one record, Judge [redacted] sends an email to Judge [redacted] and Judge [redacted] with the subject line "[redacted]" Judge [redacted] has violated A.R.S. § 16-292; A.R.S. § 11-410; and Code of Judicial Conduct Rule 4.1(A)(3); Rule 4.1(A)(5); Rule 4.1(A)(8); and Rule 4.1(B).

Judge [redacted] has violated the Arizona Code of Judicial Conduct, Rule 1.1; Rule 1.2; Rule 1.3; Rule 2.16(B); Rule 3.1(E); Rule 4.1(A)(3); Rule 4.1(A)(5); Rule 4.1(A)(8); A.R.S. § 16-292(A); and A.R.S. § 11-410(A) by committing misconduct as a judge; by abusing the prestige of judicial office to advance the personal or economic interests of himself or others; by retaliating against [redacted] having assisted with an investigation of a fellow judge; by using the public record and the prestige of judicial office to oppose another candidate for public office; by participating in another judge's campaign for elective office; and by using county and state resources to send elective office campaign-related material for the purpose of influencing the outcome of an election.

Further, Judge [redacted] has denied [redacted] request to comply with Rule 2.5(C) while appointed as a [redacted] in Judge [redacted] court, requested authorization to fulfill [redacted] and Arizona Code of Judicial Conduct Rule 2.5(C), involving mandatory continuing education requirements. Judge [redacted]

_____, while approving others' training requests, denied _____ request, thereby leaving _____ with no other option than to attend mandatory training seminars at _____ own expense, again in retaliation for _____ having filed a judicial ethics violation complaint. Judge _____ has violated Rule 2.16(B).

Judge _____ was fully aware of Judge _____ own misconduct in numerous instances, yet he did nothing to inform appropriate authorities, in violation of Rule 2.15(A); and Rule 4.1(B).

Applicable Statutes and Commission Rules:

Article 6.1, Section 4 of the Arizona Constitution forbids a judge from engaging in conduct that is prejudicial to the administration of justice that brings the judicial office into disrepute.

A.R.S. § 11-410. Use of county resources or employees to influence elections; prohibition; civil penalty; definitions:

A. A county shall not spend or use its resources, including the use or expenditure of monies, accounts, credit, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages, personnel, equipment, materials, buildings or any other thing of value, for the purpose of influencing the outcomes of elections.

"Influencing the outcomes of elections" means supporting or opposing a candidate for nomination or election to public office.

A.R.S. § 16-192. Use of state, special district resources to influence elections; prohibition; civil penalties; definitions

A. Notwithstanding any other law, this state and special taxing districts and any public agency, department, board, commission, committee, council or authority shall not spend or use public resources to influence an election, including the use or expenditure of monies, accounts, credit, materials, equipment, buildings, facilities, vehicles, postage, telecommunications, computer hardware and software, web pages and personnel and any other thing of value of the public entity.

"Influence an election" means supporting or opposing a candidate for nomination or election to public office... .

RULE 1.1 of the Code of Judicial Conduct requires a judge to "comply with the law, including the code of judicial conduct."

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 1.3 requires that a judge 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.”

RULE 2.15. Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge’s honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

Comment

1. Taking action to address known misconduct is a judge’s obligation. Paragraph[] (A) ... impose[s] an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one’s judicial colleagues or members of the legal profession undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system. This rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

RULE 2.16. Cooperation with Disciplinary Authorities

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

RULE 2.5. Competence, Diligence, and Cooperation

(C) A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.

RULE 3.1(E) states that when engaging in extrajudicial activities, a judge shall not “make use of court premises, staff, stationery, equipment, or other resources, except for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.”

RULE 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General

(A) A judge or a judicial candidate shall not do any of the following: (3) publicly endorse or oppose another candidate for any public office; (5) actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office; (8) use court staff, facilities, or other court resources in a campaign for judicial office[.]

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

Conclusion:

The gravity of the misconduct demonstrated herein is deeply troubling. That the respondent committed misconduct for the purpose of influencing the outcome of an election and quashing political opposition is particularly appalling. Judge _____ misconduct has clearly had a detrimental effect on the judicial system as a whole, an institution _____ has honorably served for nearly _____ years; and the misconduct has had an adverse effect on aspirations for public office and his continued service as an _____. Never in his most pessimistic view of civility has _____ ever imagined the degree of cheating, collusion, duplicity, and deception that was carried out by those entrusted in judicial positions. It is incomprehensible that judges, who are sworn to uphold principles of fairness, impartiality, and integrity, could be capable of such self-serving actions.

Complainant _____ respectfully requests the Commission acknowledge the egregious and deleterious nature of Judge _____ misconduct involving retaliation and violations of the Judicial Code of Conduct and state law to influence an election, along with relevant aggravating factors pursuant to Commission Rule 19, and convene an investigative panel to consider the filing of formal charges and recommendation of a formal sanction.

Respectfully submitted on this _____ day of _____