

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-148

Judge:

Complainant:

ORDER

The complainant alleged that a superior court judge committed campaign violations during the 2014 judicial election cycle.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

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

Dated: September 22, 2015

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on September 22, 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 _____, does hereby submit separate judicial ethics violation complaints that clearly demonstrate a pattern of misconduct and collusion among members of the _____ judiciary, acting in concert with _____, to influence the outcome of an election and to ensure Judge _____ re-election. The _____ complaints are replete with instances of intentionally orchestrated malignant actions; they are regrettable proof of the startling lack of ethical behavior within the _____ judiciary. Herein, as demonstrated, members of the _____ judiciary have acted to defeat _____ aspirations for elective office, and indeed _____ 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 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 _____ 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 _____ involving the misconduct of Judge _____. 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] Court Judge [redacted] abused the discretion of his position by retaliating against [redacted] for [redacted] having run for the elective office of [redacted]. Immediately after [redacted] announced his candidacy, Judge [redacted], while colluding with incumbent [redacted], supported a hostile working environment and significantly cut [redacted] working hours, in response to Judge [redacted] demands, in an attempt to influence the outcome of an election. [redacted] working hours as [redacted] were cut by Judge [redacted] by over [redacted], solely because [redacted] had announced his intention to seek elective office by running against Judge [redacted]. Judge [redacted] then delegated those hours to other [redacted] Judge [redacted] retaliatory actions, using county and state resources in violation of A.R.S. § 11-410 and A.R.S. § 16-292, had the obvious intended effect of reducing [redacted] income and his ability to finance his own elective office campaign, thereby influencing the outcome of an election. Judge [redacted] used the prestige of his judicial position and the public record to retaliate against [redacted]. Judge [redacted] was acting on behalf of Judge [redacted] and actively took part in a political campaign other than his own, in violation of Arizona Code of Judicial Conduct Rule 3.1(E); Rule 4.1(A)(3); Rule 4.1(A)(5) and Rule 4.1(A)(8).

Judge [redacted] further retaliated against [redacted] in violation of Arizona Code of Judicial Conduct Rule 2.16(B). On [redacted] days after the Commission on Judicial Conduct filed formal ethics charges against Judge [redacted], Judge [redacted] signed [redacted], appointing and reappointing judges *pro tempore* for the [redacted] fiscal year. [redacted] was not reappointed, despite having been reappointed every year since [redacted]. Judge [redacted] action to not reappoint [redacted] was for no other reason than retaliation and cronyism, and to quash political opposition.

Judge [redacted] retaliatory action in not reappointing Sanford also came immediately after Judge [redacted] became fully aware that [redacted] had also retaliated against [redacted]. Judge [redacted] stated to [redacted] on two occasions that he would not be recommending [redacted] reappointment in the [redacted] court. Judge [redacted] own retaliatory actions, elucidated in a separate complaint, were taken because Judge [redacted] stated he was concerned about a "potential for drama" that may manifest when the Commission on Judicial Conduct announces its decision in the case against Judge [redacted] (Case No. [redacted]), and "how [redacted] might use the CJC's decision to [redacted] own benefit." A digital audio file of the two conversations between [redacted] and Judge [redacted] is immediately available. Judge [redacted] was made fully aware of Judge [redacted] own

retaliatory action, and Judge responded by terminating appointive position. has asked Judge to explain his decision in terminating appointive position, to no avail. Judge will not respond to correspondence. Court administration () attempted to explain (as shown in attachment 6) that none of the County had recommended that I be appointed in their courts. Yet Judge was well aware of the retaliatory positions of Judges and for not recommending my reappointment. Additionally, Court Administration has repeatedly announced and has conveyed his immediate availability, on numerous occasions, to work in . Despite the aforementioned, Judge ignored the other judges' retaliation against and continued to support the hostile working environment against , which culminated in Judge denying reappointment for fiscal year .

In further misconduct by Judge notified Judge early-on about Judge violations of Canon 4 of the Arizona Code of Judicial Conduct, and Judge use of county and state resources in Judge own campaign for elective office. Judge , being well aware of Judge misconduct, and in violation of Arizona Code of Judicial Conduct Rule 2.15(A) and Rule 4.1(B), side-stepped concerns every time raised them, including in , and in a formal written complaint filed with Judge in . Judge never responded to regarding the filing of a formal written complaint, which caused to then file his complaint with the Commission on Judicial Conduct.

Judge has violated the Arizona Code of Judicial Conduct, Rule 1.1; Rule 1.2; and Rule 1.3 by committing misconduct as a judge and by abusing the prestige of his judicial office to advance the personal or economic interests of himself or others.

Applicable State Law 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 ... :

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 ... :

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 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 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. The misconduct has had an adverse effect on _____ aspirations for public office, his continued service as an appointed protem judge (indeed his very livelihood), his association with Arizona State Retirement System, as well as a personal and emotional toll. 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 (including Judge _____ membership on the Arizona Judicial Ethics Advisory Committee), and convene an investigative panel to consider the filing of formal charges and recommendation of a formal sanction.

Respectfully submitted on this _____ day of _____