

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 18-274

Judge:

Complainant:

ORDER

A superior court commissioner self-reported delayed rulings on multiple post-conviction matters.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the commissioner 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 the commissioner failed to issue rulings within the time required by law. While this was improper under Rules 1.1, 1.2, and 2.5(A), the Scope Section of the Code of Judicial Conduct provides that it is not intended that every transgression will result in the imposition of discipline. After considering all the facts and circumstances, including substantial mitigation that included the commissioner foregoing his pay while the rulings were outstanding, the Commission decided to dismiss the matter pursuant to Rules 16(b) and 23(a), but to issue a warning letter to the commissioner reminding him of his obligation to rule timely. The Commission further encouraged the commissioner to review Formal Ethics Advisory Opinion 06-02 and to ensure he continues with proper calendaring measures. The Commission notes that future conduct of a similar nature by the commissioner will likely result in the imposition of more severe sanctions, including possible formal charges.

///

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

Commission members Denise K. Aguilar, Louis Frank Dominguez and George H. Foster, Jr., did not participate in the consideration of this matter.

Dated: March 29, 2019

FOR THE COMMISSION

/s/ Diane M. Johnsen

Hon. Diane M. Johnsen
Commission Vice-chair

Copies of this order were distributed to all
appropriate persons on March 29, 2019.

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

ARIZONA COMMISSION ON JUDICIAL CONDUCT
 1501 West Washington Street, Suite 229
 Phoenix, Arizona 85007

Re:

Honorable Members of the Judicial Commission:

I am self-reporting possible violations of the Judicial Code of Conduct: (1) I exceeded the sixty day ruling period for certain post-conviction relief petitions, and (2) I unintentionally filed erroneous judicial certifications for the suggested I notify the Commission. This is that notification.

The Outstanding PCRs and Certifications

The following are the most pertinent facts pertaining to this self-reporting. I can provide additional, relevant information upon request.

I served the Court as a from
 until During that time, generally, I presided over
 My present assignment is the
 In this assignment, I have been responsible for as
 many as . Since in any I have had as many as

Prior to this year, I was assigned

Via an email to me in each case, the assigned the following

On [redacted] I was summoned to meet with [redacted] and [redacted] respecting outstanding [redacted] (the [redacted]) as well as my judicial certification. As explained below, that certification (along with [redacted]) did not reference the overdue [redacted] ruling (nor the [redacted] ruling, see below). I explained I was aware of [redacted] but believed I did not need to take further action because of the number of repetitive, post-appeal, post-Rule 32 filings by [redacted].¹ I also responded that I did not intentionally ignore [redacted] when I submitted my [redacted] certifications. I further reiterated, in detail, the challenges I was facing keeping up with [redacted] daily matters because of [redacted] Judge [redacted] was aware of [redacted].

He very kindly covered my [redacted] calendars on [redacted] while I completed the [redacted] Judge [redacted] once again, helped me with the [redacted] ruling (the [redacted]).

On [redacted] I asked my judicial assistant to check with the [redacted] to confirm there were no other outstanding [redacted]. Much to my surprise and dismay, I learned of the [redacted] and [redacted] (and [redacted] others that were not overdue). Again, I was *unaware* of [redacted] when I completed the [redacted] certification. I should have been aware, but I wasn't. ([redacted] were technically overdue at the time of the meeting, but I had not submitted a [redacted] certification for [redacted].

The [redacted] have been completed. A hearing was held last week in [redacted] counsel for [redacted] stated his client intends to move [redacted] despite my inclination to grant the Petition for misinformation at the time of [redacted].

To the best of my knowledge, I have no other overdue [redacted] and the [redacted] certifications have been corrected. I have prepared a letter to [redacted] respecting the certifications to determine if I need to take any further action moving forward.

My Position

First and most importantly: *I accept full responsibility for the situation.* I have been neglectful, but it was not willful. I trust my colleagues that know me well will attest I take my judicial responsibilities very seriously. To that end, I believe I have performed and met all expectations of my daily " [redacted]" duties. It is now obvious I have fallen short respecting other responsibilities. I am sorry and embarrassed and hope that I have not brought dishonor to the Court or to myself. I will not put myself in this position again.

¹ My misunderstanding of my responsibilities in this circumstance was based solely on ignorance – not willful disregard. As evident from the enclosed " [redacted]" spreadsheet that we have created, there presently pending are [redacted] motions. In addition and quite coincidentally, I just received from the [redacted] " [redacted]" dated [redacted] wherein [redacted].

In fact, I have blown the 60-day deadline in these matters and the certifications did not contain accurate information. I did not focus on the *though I should have*, nor did I knowingly falsify any certification. In fact, I did not file subsequent certifications for fear of missing a deliverable and being accused of an intentional misrepresentation. I discussed this with our administrator who handles the certifications. By not filing certifications I risked not getting paid. That was a consequence I understood and accepted.

Enclosed are copies of emails between and me respecting this situation. Also enclosed is a copy of certification, which confirms that I do disclose untimeliness.

The Underlying Reasons and Remedial Measures Taken

-

- for a number of reasons, including my commitment to this job.

if the Commission desires additional details, I would welcome the opportunity to provide it

In light of the circumstances and to have the chance to address

including working the necessary hours to timely address deliverables that I remain responsible for from my previous trial assignment.

I will be proactive to better handle my responsibilities. Pride has kept me from seeking assistance that I know some of my colleagues would gladly provide. To that point, I

appreciate the guidance and efforts of _____, a dear mentor, under these very challenging circumstances.

- Change of Judicial Staff and Circumstances

To manage workload, roles and responsibilities with my staff, I have had an administrative system in place whereby I hold primary responsibility for tracking assignments, and my judicial assistant serves as backup. This has worked well.

In _____ I had a judicial assistant change. My new JA was not trained in the handling of _____ and related procedures. _____ is now. I have further augmented my tracking system and have put into place the following remedial measures:

- a. On _____ my we developed a new _____ response tracking spreadsheet indicating _____ assignment date, _____ case identification, _____ response due date. An example is enclosed. My JA and I are reviewing it at least weekly.
- b. Each week, I will continue to search and review my email for _____ assignment notifications.
- c. My JA periodically will contact the court's _____ administrators as an additional check for assignments.

In closing, know that I truly care about my job and take seriously my responsibilities as a judicial officer. *I take full responsibility for my mistakes and oversight*, but please know I did not willfully neglect the _____ or falsify the certifications. Going forward, I will strive to prevent these events from happening again.

At the Commission's request, I will provide additional information. Thank you.

Respectfully,

Enc.

cc: Judge _____
Judge _____