

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-122

Complainant: No. 1277910621A

Judge: No. 1277910621B

ORDER

The commission reviewed the complaint in this matter and found no ethical misconduct on the part of the judge or special masters. The case is dismissed pursuant to Rules 16(a) and 23(a).

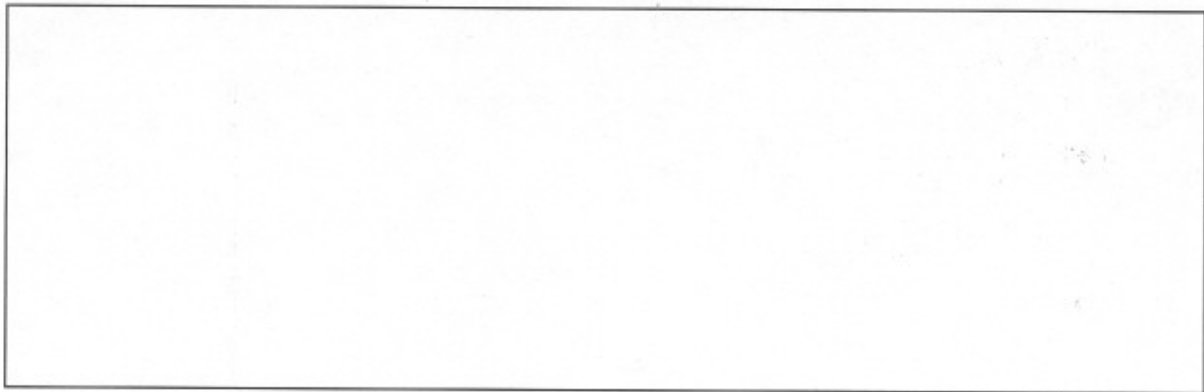
Dated: October 4, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on October 4, 2006.

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



May 2, 2006

VIA FIRST CLASS MAIL

MAY 04 2006

CJC-06-122

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

Re: **Complaint** [Redacted]

Case: [Redacted]

Complainants: [Redacted]

Dear Members of the Commission:

This is a supplement to the above-referenced judicial complaint. Unfortunately, the situation has not improved since [Redacted] when we filed the original complaint, and we now feel compelled to inform the Commission of the following developments:

1. **Retaliation—Judge** [Redacted]
On [Redacted] Judge [Redacted] issued a minute entry containing six rulings adverse to our client, each of which was, procedurally, quite unusual. For example, one of our motions was denied before our reply brief was even due, and several prior orders in our favor were overturned, including one to which no one had even objected. Two motions for reconsideration were granted in favor of the opposing parties, which would be an unusual event in any [Redacted] courtroom, and particularly so under the circumstances (one of the issues had already been the subject of five rounds of briefing and two oral arguments before a decision had been rendered in our client's favor; the other had not been raised for 2½ years and had *already been declared abandoned* by Judge [Redacted] in a previous order). We are concerned that these six extraordinary rulings, all of which were issued on the same day (and not long after we filed our judicial complaint), may have been made in retaliation for our complaint, whether consciously or subconsciously. Attached as Exhibit A are the briefs relating to our Motion for Change of Judge for Cause, which we filed on [Redacted]. Regardless of whether the facts recited in the briefs reach the level of "bias and prejudice" needed to obtain a change of judge, we believe that they clearly constitute retaliation (or the appearance of retaliation).

2. **Newly Discovered *Ex Parte* Communication—Special Masters** [redacted]

On [redacted] the Special Masters filed a Fee Application in this matter, which included a copy of their time entries. Considering that the Special Masters had already filed two briefs in [redacted] purporting to disclose all their *ex parte* contacts with our opposing counsel, we were stunned to find that the time entries suggested the existence of yet another *ex parte* contact. Although it took the Special Masters a month to respond to our request for a copy of this *ex parte* communication, they eventually provided us with a copy of a lengthy list of questions that was faxed, with no notice to us, to one of the attorneys opposing our client. This newly-discovered *ex parte* communication: (1) was in writing, and therefore should have been uncovered in the Special Masters' previous attempts to account for all their *ex parte* communications, (2) was initiated by the Special Masters, (3) requested substantive argument on issues that unquestionably involved our client—like whether he should be removed as the Personal Representative, (4) was followed by a 45-minute *ex parte* telephone conversation between one of the Special Masters [redacted] and counsel for the Trustee of the [redacted] presumably on the same issues, and (5) was not disclosed by the Special Masters when Judge [redacted] requested a complete account of their *ex parte* communications. Attached as Exhibit B are the briefs relating to our Motion to Remove the Special Master Based upon Newly Discovered Evidence, which we filed on [redacted]

Again, we regret having to make this complaint. We had hoped, perhaps naively, that at some point the Special Masters would simply acknowledge that they didn't realize they were not supposed to engage in *ex parte* communications, and that Judge [redacted] would recognize that she could not, consistent with her own obligations, endorse such activities. Unfortunately, this hasn't happened.

Thank you again for your attention to this matter.

I affirm, under penalty of perjury, that the foregoing information and the allegations contained in the attached complaint are true.

