

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 06-165

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Complainant: No. 1269900156A

Judge: No. 1269900156B

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**ORDER**

The commission reviewed the complaint filed in this matter and found that the issues raised concern a legal interpretation of a statute and are outside the jurisdiction of the commission; therefore, the complaint is dismissed pursuant to Rule 16(a).

Dated: October 3, 2006.

FOR THE COMMISSION

/s/ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on October 3, 2006.

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

[redacted] Justice of the Peace for the [redacted] was quoted by the [redacted] concerning a case wherein a subject was arrested but no subsequent charge was filed by the [redacted] County Attorney. In the article, [redacted] is quoted as saying concerning the case: "The County Attorney should have filed a complaint in a timely manner."

[redacted] is also stated to be the source of the statement that of 13 felony arrests occurring over the Memorial Day weekend, no complaints were filed by the County Attorney. [redacted] is also attributed as saying that Rule 1.3(a) of the Rules of Criminal Procedure only applies to written motions, a statement which is patently inaccurate.

An accompanying article concerning the effort by certain individuals to recall the County Attorney states: "According to information provided to the recall committee by the [redacted] Justice Court, there were 34 felony arrests within their jurisdiction in [redacted]. Of these, 15 complaints were filed within 48 hours. Of the others, six felony complaints were filed later, each with a summons being issued. One was reduced to a misdemeanor complaint. In [redacted] there were 20 felony arrests in the [redacted] court's jurisdiction with eight complaints filed within 48 hours. No complaints were filed at later dates. One case was dismissed by the court."

Also contained in the accompanying article concerning the recall effort, a stated reason why the County Attorney should be recalled is "He has filed numerous special actions against the Justice Courts over administrative issues."<sup>1</sup>

These comments to the press violate several judicial canons.

Canon 2A "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 2B "A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others ..."

Canon 3B5 "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice ..."

Canon 3B9 "A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing."

Canon 3C10 "A judge shall not, with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office."

[redacted]

Canon 4A1 "A judge shall conduct all of the judge's extra-judicial activities so that they do not ... cast reasonable doubt on the judge's capacity to act impartially as a judge ..."

Canon 5A5 "Except as otherwise permitted in this code, a judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice."

In making the statement that the County Attorney should have filed a complaint in a timely fashion, [redacted] who presides over the Court wherein the case would have been heard should charges has been preferred, implies that he believed the charges lodged by the police to be appropriate and appears to criticize the County Attorney's exercise of his constitutional and statutory discretion. This calls into question of the integrity, independence and impartiality of the judiciary and creates the appearance that, according to this judge, an arrest constitutes proof of a crime, an admonishment against which he must give every petit jury at every jury trial where such instruction is requested. One cannot imagine a more partial statement concerning an arrest than an assertion that the County Attorney should have filed a complaint. In the event that evidence comes forth upon which a charge should attach, [redacted] has already made a public judicial comment implying that he believes that the subject likely committed the offense.

The article concerning the recall effort states that [redacted] court provided information to those seeking recall in support of their claim concerning filing criminal complaints within 48 hours of initial appearance. He was also the target of the bulk of the Petitions for Special Action which are partial fodder for the recall effort. This combined with his assertion that the County Attorney should have brought criminal charges in arrests over which his court had jurisdiction leads to the unmistakable conclusion that he supports the recall effort. That he is not quoted as an individual but rather as a justice of the peace demonstrates that he is lending the prestige and esteem of the judiciary onto this political issue.

[redacted] conduct in providing information to a recall committee and "sound bites" to the press, especially those endorsing the filing of a felony charge against a presumptively innocent person against whom the County Attorney, in exercising his duty as an independent charging authority to the police, constitute a clear violation of the judicial canon's [redacted] is duty-bound to uphold. His comments and conduct, when taken as a totality [redacted] demonstrate a marked inability or unwillingness to comply with the mandates of Arizona's Judicial Canons.

Copies of the articles referred to earlier are attached.