

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-298

Complainant: No. 1298510180A

Judge: No. 1298510180B

ORDER

The commission reviewed the complaint filed in this matter, as well as the judge's response, and found no ethical misconduct on the part of the judge.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: January 26, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on January 26, 2007.

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

CJC-06-298

Information in Support of Judicial Conduct Complaint

Pursuant to Article 6.1 (3)(D)(1) or the Arizona Constitution Code of Judicial Conduct I am obligated to file this complaint as I believe there are no other "appropriate actions" which can be taken to correct conduct of the Judge in question. I do not believe these issues are legal matters for appeal, otherwise this complaint would not have been filed.

The following background is supplied, some detail has been eliminated or summarized so as to get to the root of the issues.

On [] [] a Judicial Candidate, filed a Complaint for Special Action and Application for Preliminary and Permanent Injunction against [] Justice of the Peace and Candidate.

The Hon. [] of the [] Superior Court was asked to act as visiting Judge in the matter by Hon. [] Superior Court, Civil Division.

On [] Plaintiff [] dismissed the case.

On [] [] attorney for Respondent [] filed a motion for attorney fees and costs.

On [] [] filed a response.

On [] Judge [] filed an order placing the case on the Court's non-appearance calendar pending the filing of a reply of parties.

On [] [] attorney for the Respondent filed a reply to the response.

On [] Judge [] issued an order in the case.

On [] [] attorney for the Respondent filed a motion for reconsideration.

It should be noted that all pleadings were filed (originals) in the Superior Court [] and copies were faxed by the parties to Judge []

1. Ex Parte Communication with the Plaintiff. In an order (*exhibit 1*) of Judge [] dated [] Judge [] states "Due to failure of the Clerk of Superior Court, the Court was unaware of the filing of the Motion for Attorney Fees until contacting [] personally to find out what motion he was responding to. [] had sent the Court his response to the Defendants' Motion."

Canon 3(B)(7) "...A Judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding...."

Not only does the Judge state he contacted the Plaintiff, but the following issues make it clear that there could only have been ex parte conversations between Judge [] and [] in order for the Judge to have made his rulings and commentary in the fashion that he did. Although there are several exceptions to the rule, none apply here.

2. Judge [] states in an Order dated [] that he finds "by clear and convincing evidence that [] did not bring his claim as harassment or in bad faith. (*Exhibit 2*) In fact, the Court finds the opposite. The Court finds that [] was very sloppy in obtaining the necessary signatures for his petitions and that [] is the source of his own troubles in this election issue."

The only way that Judge [] could have made the above ruling and commentary is if he had seen and reviewed [] nomination petitions. **No nomination petitions were ever filed in court, not with the original pleadings or at any other time and no hearing was ever had on these issues.** How could the Judge make a ruling "by clear and convincing evidence" having seen no evidence? Clearly an ex parte communication with the plaintiff was involved.

3. Further, there is a clear appearance of impropriety based upon Judge [] ruling. Judge [] made completely erroneous, unprofessional and improper commentary in a court order on evidence he had never seen. He states "the Court finds that [] was very sloppy in obtaining the necessary signatures for his petitions and that [] is the source of his own troubles in this election issue." He could only make such commentary if he had seen the petitions. And if he had not seen the petitions, his commentary is completely without merit and screams of impropriety.

Canon 2(A). "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."

The Judge's commentary on evidence which he has not seen does not promote confidence and integrity in the judiciary and in fact damages the very institution for which the Judge works.

Judge [] comments that "[] was very sloppy" is outrageous. This commentary, placed in an order by the Judge, was broadcast on the front page of our local newspaper (*exhibit 3*) and appears to have been done intentionally to discredit []. This unprofessional and unethical behavior should not be condoned. A more proper order is to deny the petitioners request for attorney fees with a modicum of commentary stating the courts finding of facts and conclusions of law.

4.) Failure to rule in a timely manner. On [] [] attorney for the Respondent, filed a motion for reconsideration (*exhibit 4*) with the Superior Court [] [] and faxed a copy to Judge []. The Court in [] County was called and checked to be sure the faxed copy arrived in the [] Court House. To date, the Judge has not ruled on the motion leaving the parties hanging for almost 90 days.

Canon 3. A judge shall perform the duties of judicial office impartially and **diligently**.

ARS §12-128.01. Receipt of salary by judges and commissioners; affidavit; pending and undetermined causes; violation; classification A. A superior court judge or commissioner shall not receive his salary unless such judge or commissioner either certifies that no cause before such judge or commissioner remains pending and undetermined for sixty days after it has been submitted for decision or there is submitted by the chief justice of the Arizona supreme court a certification that such superior court judge or commissioner has been physically disabled during the preceding sixty days or that good and sufficient cause exists to excuse the application of this section to particularly identified litigation then pending.

B. Any certification submitted by the chief justice pursuant to subsection A shall set forth in detail the nature and duration of the physical disability involved or the reason why subsection A should not apply to the specified pending litigation.

C. Any person who issues or causes to be issued any check, warrant or payment to a judge or commissioner knowing that, pursuant to this section, such judge or commissioner should not receive his salary is guilty of a class 3 misdemeanor.