

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-057

Complainant: Linda C. Huston

Judge: Carmine Cornelio

ORDER

After reviewing the complaint, the evidence gathered during preliminary investigation, and the judge's response, the Commission on Judicial Conduct finds that the judge's conduct in this case violated the Code of Judicial Conduct.

Canon 1A requires a judge to personally observe high standards of conduct. By confronting a court employee in the public street and making a hand gesture in an accusatory manner, the judge violated this canon. Additionally, a judge must be patient, dignified and courteous and require the same conduct of persons reporting to him or her. Canon 3B(4).

In addition, Canon 3B(3) requires that a judge maintain order and decorum in the courtroom, and as stated above, Canon 3B(4) mandates that a judge be patient, dignified and courteous. The judge violated this canon when he used an obscene expletive in open court.

The judge is hereby reprimanded for his conduct pursuant to Rule 17(a). The record in this case, consisting of the complaint, the judge's response and this order, shall be made public as required by Rule 9(a).

Dated: July 12, 2007.

FOR THE COMMISSION

/s/ J. W. Brammer, Jr.
Hon. J. William Brammer, Jr.
Commission Chair

Copies of this order were mailed to the complainant and the judge on July 12, 2007.

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

FOR OFFICE USE ONLY

CJC-07-057

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

COMPLAINT AGAINST A JUDGE

Your name: Linda C. Huston Judge's name: Carmine Cornelio 1/8/07

November 22, 2006

A few minutes after 1:00 p.m. on Wednesday, November 22, 2006, Louise Beitel, Dana Dent and I left Deb's Coney Dog restaurant in La Placita. At the entrance to the restaurant Judge Carmine Cornelio walked past us (West). He turned toward Louise Beitel and me, and made a fist with his right hand. Because of the nature of the gesture, I asked him if that was intended for Louise or myself. He said something I couldn't understand so I repeated my question. He then stopped and walked over to me, again made a fist with his right hand, placing it between us, and said directly to me 'You put her where?' The remark was made in all seriousness and was threatening and intimidating in nature. He then turned and walked away at which time I said, "Judge, there are things you don't know". He continued walking away from me and swung his right hand backward in a dismissive gesture.

I was stunned and completely unsettled by the incident. Judge Cornelio's question/statement was a reference to where I was scheduling a particular courtroom clerk, who is under my supervision, to cover court. I did immediately report the incident to my Associate Clerk, Karen Duffy, who attempted, unsuccessfully, to meet with the judge that day, November 22, 2006. I informed her at that time that I felt I could not, and would not, be placed in a situation where I had to be alone with Judge Cornelio, and that I intended to file an ethics complaint. Ms. Duffy did meet with Judge Cornelio, I believe in early December 2006, and advised him of the seriousness of the situation. Following that meeting I told Ms. Duffy I would, with her present, be willing to meet with Judge Cornelio upon my return from vacation in January 2007. On December 15, 2006, at a time when I happened to be in her office, she received a telephone call from Judge Cornelio during which she advised him of this and his response on the telephone was that he would contact me. He then hung the phone up before she could respond. Ms. Duffy advised me of his intent to contact me and that it appeared that he did not intend to have her present at any meeting. I told her at that time that I would not engage in a conversation with Judge Cornelio regarding the incident without her present. Upon returning to my office within just a few minutes of Judge Cornelio's call to Ms. Duffy, I discovered that he had phoned me. This call was answered by Ruth Krenn and he was advised I was not in my office. He left no message.

February 18, 2007

My intent was to mail the above complaint upon my return from vacation in early January 2007. Upon phoning your office in late January I was informed that your office did not have a record of the complaint. A search of my office revealed that it had been inadvertently filed along with my copy in my personal files. I believe it is important for me to share with you that I am as convinced today, nearly three months after the incident, that it was completely inappropriate and was intended to be threatening, intimidating and humiliating in nature. I still revisit details of the specific event in my mind, and every time the judicial elevator door opens in the Superior Court center the first thing I do is to scan the area to see if Judge Cornelio is in it or getting off of it.

In thirty-six years of marriage my husband has never raised a clenched fist to me. That a sitting judge would do so remains beyond my comprehension, that he would do it in a public place shows either an extreme lack of control and/or a blatant disregard for others, and the fact he would not accept my desire to interact through an intermediary, my supervisor, shows a lack of acceptance of my rights and of his responsibility to acknowledge and abide within them.

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JUDGE CARMINE CORNELIO
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April 11, 2007

Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, AZ 85007

Re: Case No. 07-057

Dear Commission Members,

I have received and reviewed your letter dated March 28, 2007, as well as the signed complaint from Ms. Linda Huston. Please consider this my response.

Ms. Huston's complaint mentions an incident and describes conduct of mine that she believes was inappropriate and intended to be threatening, intimidating, and humiliating in nature. She also states that she believes that my failure to accept her desire to act through an intermediary shows a lack of acceptance of her rights and my responsibility to abide by them.

A judge should establish and personally maintain high standards of conduct. I believe that, by any reasonable and objective standard after a review of the facts set forth regarding this complaint, I have.

Some history and context is appropriate. I have been a judge for approximately five years. During that time, I have had a number of occasions to meet both publicly and privately with both Ms. Huston and Ms. Duffy about such issues as rotation of clerks, quality and content on Minute Entries, etc. Both are in senior management with the Clerk's Office. Unfortunately, the general working relationship between some of the Bench and Clerk's Office has not been without conflict and tension during my tenure. Communications grew so poor that it became necessary to form a Clerk/Court Liaison Committee to air grievances, complaints, etc.

I believe that direct communication with the Clerk's Office is beneficial and more constructive. I further believed (based on my history with both Ms. Huston and Ms. Duffy) that I had a professional working relationship with both of them where I could directly express not only my agreement with their management decisions but also any disagreement with those decisions.

Linda Morgan is a courtroom clerk who had, I believe, over 15 years experience as a courtroom clerk. Before she was assigned as a clerk to my court, I had some minimal contact with her. Just prior to Ms. Morgan's assignment to my court, I was called (by either Ms. Duffy or Ms. Huston) regarding Ms. Morgan. I was advised that she was under review regarding a possible suspension and/or termination. I was also told that Ms. Morgan was not productive, could not timely generate Minute Entries from court hearings, and scattered in her work. I was told that she was fragile¹ and not dependable.

I was also told that if I had problems with Ms. Morgan the Clerk's Office would immediately (and outside of normal rotation²) remove her from my division and provide me with a replacement clerk. Finally, I was also told that Ms. Morgan knew that they were calling me and the contents of the call.

I was surprised by management's assessment of this clerk, as my prior limited contact with her did not support it. Further, after learning of her assignment to my division, I asked several judges about her. She was given praise and high marks.

A few weeks into Ms. Morgan's assignment, I was called (again it was either Ms. Duffy or Ms. Huston) regarding Ms. Morgan. I reported that she was working out well, that her Minute Entries and work product were both timely and excellent and that I would not need a replacement clerk before the normal rotation schedule. I was then told that management had determined that Ms. Morgan's assignment with me would be terminated sooner and outside the normal course of rotation. I was told that I did not generate a sufficient amount of Minute Entries for their continuing observation of her work.³ I asked them to reconsider and a meeting was suggested by them.

Both Ms. Duffy and Ms. Huston then met with me in my office. I confirmed my satisfaction with Ms. Morgan's work. I also offered my opinion that moving her out of normal

¹This is perhaps understandable. I understand that Ms. Morgan has lost a husband after a long and very difficult course of a rare and ghastly disease. She has also had serious health problems of her own.

²Pima County Superior Court is currently operating under a system where courtroom clerks are "assigned" to a particular division for a four month period. When I took the bench, different clerks were assigned daily to different divisions. As a result, no working relationship could be established. The Clerk's Office now uses a four month rotation.

³I run an efficient calendar but do not keep track of the number on Minute Entries. I carry a full domestic calendar. I am in charge of the civil settlement program and try to schedule two mediations a week. I also conduct various hearings in my role as Presiding Arbitration Judge.

rotation timing would cause her to feel further persecuted⁴ and that she had a “bull’s eye” on her back regarding termination. I restated my willingness to have Ms. Morgan for the full rotation and indicated that I was willing to have her through a second rotation. Shortly after the meeting Ms. Morgan was reassigned.

The incident Ms. Huston describes and complains of occurred about a week later. It was lunch time and I was walking one way, Ms. Huston the other. As we approached, I pointed my index finger at Ms. Huston, stopped briefly, and stated “I can’t believe you did that to her.”⁵ The purpose of the statement was to express disagreement with the decision, which would have obvious negative consequences to Ms. Morgan and her career. I did not threaten Ms. Huston with a closed fist, nor a raised voice. We were several feet apart and in a public outdoor area. The gesture I made was intended to emphasize to Ms. Huston my disagreement with her decision. I commonly use hand gestures when speaking and have not had any prior occasions when they were misinterpreted.

About two weeks later⁶ Ms. Duffy met with me. She told me that Ms. Huston had felt threatened and felt that my conduct was inappropriate. Ms. Duffy also told me that Ms. Huston was considering pursuing the matter more formally and that Ms. Duffy thought I should meet with her and Ms. Huston so that I could apologize.

I told Ms. Duffy that I was surprised by Ms. Huston’s reaction and that someone who is in a management position responsible for firing individuals would feel threatened by the statement, gesture, or my disagreement with her decision. Ms. Duffy and I talked about the fact that I had no ability to affect Ms. Huston’s employment and that no physical threat existed or was intended.

Attorney Haynes’ letter indicates that the Commission contacted Ms. Duffy who said I refused to meet Ms. Huston with Ms. Duffy present. My recollection is I told Ms. Duffy that I preferred to discuss this matter directly with Ms. Huston as it appeared to be a misunderstanding. I told Ms. Duffy that I would call Ms. Huston to see if some reconciliation could be worked out. At no time was I told that Ms. Huston would be afraid or feel intimidated to meet with me.

Because Ms. Duffy had told me that Ms. Huston was scheduled for a long vacation, I

⁴Her immediate previous assignments were in IV-D and Drug Court. Both require “heavy lifting” of courtroom clerks. Some judges believe that the Clerk’s Office is making an effort to lose senior, higher paid courtroom clerks. For example, a long term, top notch courtroom clerk (Rosemarie Chastain) retired, in large part, because she was assigned to IV-D.

⁵That is my recollection. Ms. Huston’s report of the exact words may be accurate.

⁶The only time I am sure of (because of a telephone log) is my meeting with Ms. Duffy on December 12, 2006. Ms. Huston states the incident occurred on November 22, 2006.

called Ms. Huston's office promptly.⁷ Sometime after the holidays I saw Ms. Huston in the courthouse and offered to talk with her. She told me that things were "beyond that" and declined to discuss anything with me.

Linda Morgan, the courtroom clerk who was the subject of my comment, was placed on Administrative Leave and has now been terminated by the Clerk's Office.

Conclusion

I believed then, and I believe now, that the Clerk's Office dealt unfairly with Ms. Morgan. I felt it was proper for me to express that opinion directly to her and to do so with some emphasis. The verbal statement was not threatening. The physical gesture, is one often made in animated, every day conversations. I simply ask each of you to consider how often you have used your hands in a non-threatening manner to convey a point of emphasis.

Should I have taken Ms. Duffy up on her offer to arrange a formal meeting? In hindsight, it is clear I should have. My reason for not doing so was benign. As I expressed to Ms. Duffy in my meeting on December 12, I have no ill will nor ill regard for Ms. Huston. Hindsight also leads me to the conclusion that it was inappropriate for me to address Ms. Huston in public on this issue and in a manner that could have been misinterpreted by her. I regret having done so.

Thank you for giving consideration to my response. I am available for any follow up you may have.

Hon. Carmine Cornelio

⁷I left no message. Ms. Huston had left for vacation and I was also scheduled to gone for a while.

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April 20, 2007

Commission on Judicial Conduct
1501 W. Washington, Suite 229
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Re: Case No. 07-057

Dear Commission Members,

This letter completes my response and addresses the second issue. No written complaint was filed on this issue. However, the transmittal letter requested that I address it.

In Ruiz v. Goodyear Tire & Rubber Company (Pima County Case No. C-20050420), I cursed during a discussion of the final terms of settlement reached by the parties. I did so when counsel for Goodyear attempted to include, as a material term, a requirement that Judge Harrington reverse factual findings he had made against Goodyear, and further attempted to insert that Goodyear would obtain an unopposed ruling from the Court of Appeals. The CD recording accurately reflects that I stated that these terms were not proper and insistence on them would "fuck up" the settlement.

The case was a highly contentious one. There were multiple parties and lawyers. Tens of Millions of Dollars were at stake. There was an extreme level of distrust, dislike, and enmity. Judge Harrington had entered multiple sanction orders, finding that Goodyear had a pattern of abusive discovery practice. He had further made certain findings rejecting Goodyear's claims to

“trade secrets.”¹ He also found that Goodyear had a pattern of abusive discovery practice.

The parties had previously, attended a three day settlement conference with retired Judge Fleischman. It had failed. Even as to that settlement conference there were claims of bad faith. As a result, the Plaintiffs, at first, objected to attending the settlement conference before me, as ordered by Judge Harrington. The Plaintiffs believed that the Defendants had requested it as a continuing pattern of bad faith.

The settlement conference was conducted informally, as permitted by the rules. Ex parte communications and full confidentiality was approved by all parties. Discussion/negotiations occurred in chambers, the jury room, in the hallway, the courtroom, and even outside the courthouse. The first step was to address the strong distrust and bad faith/bad blood between the parties and counsel. As a result of frank discussion this was, ultimately, overcome and the case settled.

Some of the lawyers who attended include: Si Schultz, Michael Rollins, James Marner, Graeme Hancock, Barney Holtzman, Michael Johns, James Fitzgerald, Carter Morey, Kevin Sweeney, John Trachta, and John Tully. After this difficult settlement objective was achieved, I heard from several counsel involved. They were all complimentary. In fact, Attorney Carter Morey wrote the enclosed letter to Presiding Judge Jan E. Kearney regarding my involvement.

Despite the success of the settlement conference, the use of an expletive (even for impact) cannot be justified. The statement was a poor choice of words and unbecoming of a judicial officer. It is my duty to set an example of the kind of conduct necessary for an effective yet civil adversarial system. It is important that I provide a dignified and impartial atmosphere.

¹This ruling was the subject of the pending special action in the Court of Appeals.

I must (and will) remember this and refrain from using such language in the future.

Thank you for your full consideration. I remain available for any further inquiry you may have.

Hon. Carmine Cornelio

CC/djs

Enclosure - Attorney Carter Morey's Letter to Presiding Judge Jan Kearney