

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-075

Complainant: No. 0014010528A

Judge: No. 0014010528B

ORDER

The commission reviewed the complaint filed in this matter and found no intentional misconduct on the part of the judge.

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

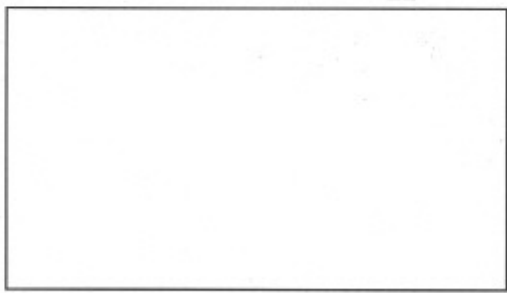
Dated: July 12, 2007.

FOR THE COMMISSION

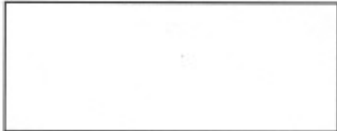
/s/ Keith Stott
Executive Director

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.



MAR 19 2007



March 16, 2007

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

CJC-07-075
CONFIDENTIAL

RE: Commissioner [redacted] Superior Court

Dear Ms. or Sir:

The purpose of this correspondence is lodge a formal complaint against [redacted] Superior Court Commissioner [redacted] for the following delineated conduct that is potentially violative of Canon 3(B)(7), Rule 81, Code of Judicial Conduct, Arizona Rules of Professional Conduct.

A. FACTS:

I am one of two attorneys who represent [redacted] who is charged with first-degree murder in [redacted] Superior Court. The case is currently pending before the Hon. [redacted]. However, Judge [redacted] is presently on a leave of absence because of an illness in his family, and his criminal calendar is temporarily assigned to Commissioner [redacted]. The cause number is [redacted]. There is a co-defendant, [redacted] who is also charged with first-degree murder. He is represented by attorney [redacted] from the [redacted] law firm of [redacted].

On Thursday, [redacted] a status conference concerning the case was held before Comm. [redacted]. In attendance were Comm. [redacted] the prosecutor, Deputy [redacted] County Attorney [redacted] both clients who are in custody, and myself. After the conclusion of the status conference at about 9:20 a.m., I met with several of my client's relatives in a witness room immediately adjacent to the courtroom. At approximately 9:45 a.m., [redacted] knocked on the door, opened it, and dropped the attached order (Exhibit A) on the table and immediately left without explanation. After reading the order, I quickly returned to my office - although I was supposed to be at the [redacted] County Regional Court Center in [redacted] AZ. After returning at about 10:15 a.m., I hastily called the office of [redacted] County Superior

Court Presiding Criminal Judge [] explained to his judicial assistant briefly what had occurred, and requested an emergency hearing. I was informed by Judge [] judicial assistant that both Judge [] and the Hon. [] Associate Presiding Criminal Judge, were in training and that the Hon. [] was handling emergency criminal matters. At about 10:20 a.m., I called Judge [] judicial assistant again briefly explaining my situation and that time was of the essence because I did not want to violate a court order that required me to produce an item in less than 2 hours. At the conclusion of the conversation, I then faxed a copy of the order to Judge [] chambers

After attending the hearing in [] I returned to my office and again called Judge [] chambers leaving a voice message this time. Approximately five minutes later I received a call from Judge [] judicial assistant who told me that Judge [] requested that I present the request to Comm [] I then prepared as quickly as possible the attached Emergency Motion for Protective Order and Stay (Exhibit B) and faxed it to Comm. [] The Emergency Motion has yet to be ruled upon, and no hearing date has been set.

B. COMPLAINT:

Upon information and belief, [] presented, either orally or in writing, and argued before Comm. [] an ex parte motion to request production of a videotape he claimed I possessed. As the relevant party to the proceeding, on behalf of my client, I was never provided a copy of the motion (if, in fact, it exists) filed by [] and as a result, I could not respond; I was never advised of any hearing concerning the motion in order to protect my client's interests and, as a result, was not afforded the opportunity to argue and to oppose the motion. Upon information and belief, all of this activity was improperly conducted in an ex parte fashion by [] and Comm. [] (It is unknown whether [] was present or even knew about the hearing.)

Further, it appears from the hand written entry on the order, []-9:28 am," that [] purposely waited until I left the courtroom to present the document.

C. VIOLATION:

Comm. [] potentially violated Canon 3(B)(7), Code of Judicial Conduct, Rule 81, Arizona Rules of Professional Conduct, which prohibits judges from engaging in ex parte proceedings.

D. REQUESTS:

Please investigate this complaint as expeditiously as possible because the case is pending. Also, I request that Comm [] be required to recuse herself from all further proceedings in this case.

CJC-07-075

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



Enclosures