

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-283

Complainant:	Cedric Hay	No.
Judge:	James West	No.

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 violated the Code of Judicial Conduct.

In this case, the judge improperly presided over a traffic case involving a member of his service club in violation of Canon 3E(1), which requires a judge to disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Although the judge disclosed his relationship with the defendant, he did not complete all the steps required for the remittal of disqualification under Canon 3F in order to proceed with a change of plea. In addition, the judge used paid sick leave to serve as a pro tem judge in another court in violation of Canon 1, which requires a judge to maintain high standards of conduct.

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: February 22, 2008.

FOR THE COMMISSION

\s\ J. William Brammer, Jr.
Hon. J. William Brammer, Jr.
Commission Chair

Copies of this order were mailed to the complainant and the judge on February 6, 2008.

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

CJC-07-283

COMPLAINT AGAINST A JUDGE

Your name: Cedric Hay Judge's name: James West Date: 10/26/07

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

For the last five months I have been tasked with updating Title VI of the Marana Town Code which relates to our Municipal Court. This assignment has required me to speak at length with many members of the court staff as well as the Court Administrator and our Town Magistrate. These conversations, coupled with additional investigation on my part have revealed three specific behaviors which I feel constitute ^{misconduct} on the part of the Town Magistrate. As a member of the Arizona State Bar Association I feel that I have no other choice but to report them so that they may be properly investigated.

The first situation involves the Judge conducting weddings and receiving compensation during court hours. This behavior was initially reported to me last spring but I was subsequently told that it had stopped or stopped. Last week I was given a copy of a page from a calendar which is kept for the Judge. (attached) On Friday October 12th there is an entry for a wedding which was performed at 4:15 p.m. with \$50.00 written in the corner. I asked two Town employees who were married by the Judge earlier this year if he charged a fee for his services and they said "no but they tipped him \$40.00."

The second issue which came to my attention involves an incident which took place on October 5 of this year. On that day the Judge called in sick claiming "severe allergy problems." Later that afternoon, I called the Ajo Justice Court, (520) 387-7684 and was told that Judge West was filling in as a pro-tem that afternoon. This was further verified by a message which was given to me (copy attached) and had been taken by a court employee for the Judge on the afternoon of the 4th. The call was from "Arlene" with the Ajo Court who called to say that the "morning session was cancelled but the afternoon was still on." On the Judge's timesheet for that week the Judge marked himself out sick and approved his own leave request for 8 hours of sick time (attached).

(Attach additional sheets as needed)

CJC-07-288

COMPLAINT AGAINST A JUDGE

Your name: Cedric Hay Judge's name: James West Date: 10-26-07

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

I have not called back to the Ajp court to ask for other dates that he has been there but these could easily be cross-referenced with his time sheets which are on file with the Town.

Finally, I was told by court employees that as recently as two or three weeks ago the Judge presided over a case involving a fellow member of his rotary club. The individual was charged with a civil traffic violation and the Judge "convinced" the officer to amend the citation to a simple violation of the Town Code so that the Judge would not have to refuse himself. This also resulted in a lower fine and no points on the individual's license.

This information has come to me from various members of our court staff as well as from our interim HR Director and our prosecutorial staff. Specific names and contact information can be made available if necessary.

I hope that you will investigate these matters thoroughly so that we can know if they are isolated incidents or a pattern of conduct or if they can be verified at all.

Senior Assistant Town Attorney
Town of Marana, Az

(Attach additional sheets as needed)



MUNICIPAL COURT

NOV 29 2007

JAMES R. WEST
PRESIDING MAGISTRATE

11/28/07

Re: Case # 07-283

Dear Commission Members:

I know that office politics is the real reason for this complaint and I'm not offering that as an answer to this complaint, but it might help you understand why two of the three situations Mr. Hay described are so lacking in substance in my opinion. I'm going to address each event as Situation 1, 2 and 3.

Situation 1

October 12, 2007, the alleged wedding never took place. The couple was coming from Phoenix and cancelled earlier in the day. I have attached my Court Executive Assistant's letter on that situation. I have also enclosed the log that is required to be kept for all couples taking out marriage licenses. No marriage license was issued for that couple or anyone else on that date. As my Assistant explained, couples without licenses must come in before 5:00 p.m. to obtain a license which can take 30-45 minutes to get done. I then do the wedding at 5:00 p.m. whether I am compensated or not. Town employees and police officers are not quoted a fee even though I could do their weddings during court hours, if it did not interfere with court hearings, I still do not do these weddings until 5:00 p.m. Couples must arrive before 5:00 p.m. with witnesses or they will not be able to get into the building. Mr Hay obviously never verified the facts of this situation.

Situation 3

I have provided you with a copy of that hearing. That hearing took place on 8/27/07 not 2 or 3 weeks before 10/26/07 as Mr. Hay states. We record all hearings in our Court which Mr. Hay should know. As you can hear, I immediately disclose that the Defendant is a member of my Rotary Club. There are several Cortornos in Marana so I was not sure this was the Cortorno I knew until I got into court. After telling the parties I would have to get a pro-tem judge and a new court date unless an agreement could be reach on their own, the officer raised her hand as I was leaving the Court. That is when you hear her saying that the charge could be changed to a Town Code violation. The Defendant agrees. I imposed the standard fine for a Town Code

traffic violation which is \$154.00. I've enclosed our bond card that shows the equivalent Title 28 violation would be \$135.00. This was also a standard plea that many officers offer to defendants either before I take the bench or during the hearing when Defensive Driving School is not available to a defendant (i.e. CDL licenses). Prosecutors in Mr. Hay's own office have amended Title 28 violations to Town Code violations on several occasions. This was not an unusual plea agreement.

Officer Judy Fragomeni is a 10-year veteran in the Marana Police Department. I could not have "convinced" this officer to do anything even if I had tried. The tape shows I said nothing until the officer told me what Town Code violation she wanted the defendant to plead to. Had Mr. Hay listened to the tape or even contacted Officer Fragomeni, as I did, I doubt he would consider this an ethics violation.

As a single judge court, I do not have the luxury of sending a conflict case to the judge next door. My next door judge is 15 miles away.

If the commission feels that even though I gave full disclosure to both parties, and did not participate in the plea negotiation except to accept the plea, that I still needed to have the change of plea done before a pro-tem, I will do that from now on. The Commission is aware that this would cause great additional expense to the Court (i.e. pro-tem fees, staff time, etc.), to the Town (i.e. over-time paid to the officer), and to the defendant.

Situation 2

I am not disputing the facts as set out by Mr. Hay except to say that I never told anyone that I was having severe allergies. Apparently this was the only situation he actually investigated himself. I do dispute that this situation is an ethics violation.

I work for the Supreme Court of Arizona with my direct boss being Jan Kearney, the Presiding Judge of Pima County. She has appointed all magistrates in Pima County as Justices of the Peace pro-tem. Judge Avillar, the Ajo Justice of the Peace, contacted me in September and asked if I could preside over a conflict case she had. She nor any local pro-tems could hear the case because the defendant and alleged victim were so well known. The case could not be transferred to Tucson because the defendant, victim, witnesses and prosecutor were all from Ajo. I told Judge Avillar that I could only come to Ajo on a Friday, if then. We leave Fridays open for Protection and Harassment hearings, overflow cases and 2nd day of a jury trial for our Thursday jury trials.

On Monday afternoon, October 1, I informed Judge Avillar that I had no scheduled hearings or trials for October 5th and no jury was going October 4th. I made the 3-hour trip to Ajo and conducted a couple of pretrials and a civil hearing for Judge Avillar. I conducted a hearing on the same conflict case some 5 weeks later on a Friday, as well. In neither situation did I have to alter my own calendar to be in Ajo.

When I was a Justice of the Peace for 20 years, I handled many conflict cases for judges across

the state. I spent many days in Flagstaff and Prescott at the request of the local judges. I'm sure this still occurs today. As a Magistrate for the last 8 years, I have also sat in other courts. Twice in the last 2 years, I've gone to the Oro Valley Court when Judge Dunscomb became ill during the day and I was able to finish his calendar for him because my own calendar allowed me to do so. Oro Valley Court has also called me at times when my own calendar would not allow me to help them out.

I am not aware of any ethics opinion on this subject or any decision your commission has made that concerns this situation. I believe the Town of Marana is my funding source, but I work at the direction of the Supreme Court. Much in the same manner that Superior Court judges receive half their compensation from the county, but no one would argue that they are county employees. I don't believe that I even needed to show any time off but did, so that no one could say that I was trying to work for two different courts at the same time. I know there are several judges in this state that are employed as both a magistrate and a justice of the peace at the same time.

Judge Kearney is my direct boss. If the Commission decides that I need to get her prior approval to hear matters in another court, I will get that prior approval. This, however, has never been required in the past.

I never have and never would cover another court if it conflicted with trials or hearings in my own court. I will, however, not accept conflict cases that involve going to a different court until I have either gotten direction from your Commission or an opinion from the Judicial Ethics Advisory Committee.

I do ask that the complaint be dealt with in an expedited manner. My reappointment before the council and mayor will be decided in the next two or three months. I believe Mr. Hay's real motivation for this complaint was either to block my reappointment or at the worst to delay it.

Thank you for your attention to this matter.

James R. West



MUNICIPAL COURT

DEC 14 2007

JAMES R. WEST
PRESIDING MAGISTRATE

December 12, 2007

COMMISSION ON JUDICIAL CONDUCT
1501 w. Washington, Suite 229
Phoenix, Arizona 85007

Re: Case No. 07-283

Dear Commissioners,

Our Court uses a recording system called Liberty Court, that is about 3 years old. I did get our IT department to convert the CD to a system you can hear.

In hindsight, I do acknowledge that my use of sick leave in this situation was not proper. In my own defense, I do want the Commission to know that this is not something I have done in the past. In six years, I have used less than 12 days total of sick leave which includes the two days in question. I have over 5 weeks of vacation leave and in 3 months, I will either have to use vacation leave or lose it. It was not a financial benefit for me to use sick leave instead of vacation leave since I'm within a few hours of capping my vacation leave.

In my discussion with the Town, they seem more concerned that their town magistrate is hearing a conflict case in another court, and not with the type of leave used.

I await your direction on these issues.

Yours Truly,

James R. West
Magistrate