

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 08-068

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Complainant: No. 1331210223A

Judge: No. 1331210223B

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**ORDER**

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

Because the contents of the complaint do not support the claims, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: June 30, 2008.

FOR THE COMMISSION

\s\ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on June 30, 2008.

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

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COMPLAINT AGAINST A JUDGE

Date: 3/16/08

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.

Violation of Canon 3(B) 7 during the course of  
case # (consolidated with cases

Judge has not performed the  
duties of his judicial office, impartially pursuant  
to Canon 3 of the Arizona Code of  
Judicial Conduct.

For particular Judge has violated  
Canon 3(B) 7 by engaging in "ex  
parte communications" with attorney.  
who represents  
in the above cases.

Mr. attempted to have an amended  
plan in a Chapter 11 Bankruptcy case  
dismissed so that he could  
obtain additional clients in his state court  
action. Mr. actually testified before

Judge that Judge could handle  
the pending cases more expeditiously and  
efficiently in the state court. However when  
when the issue of rotation of judges was  
bracketed up Mr. testified Judge  
would keep the case and we  
we should handle the case but he and

Again Mr. [redacted] admitted to multiple "ex parte" conversations with Judge [redacted] stating that Judge [redacted] would again take all cases with him.

"(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. 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 except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond. 1,

unfortunately none of the exceptions known apply to the confidential ex parte communications requirement apply as they certainly appear to pertain to substantive matters and Judge could not honestly believe the communications were not solely to gain both a "procedural advantage" or a "tactical advantage."

Furthermore, neither Judge ~~staff~~ or his ~~discouraged~~ <sup>ex parte</sup> ~~confidential~~ communication, nor did Judge ~~ever~~ disclose it to all parties as required in Canon 3(B)(7)(2) and 3(B)(7)(b).

### II Violation of Canon 10.

In addition such promises to attorney were clearly violative of Canon 10.

" (10) 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. )"

### III Violation of Canon (3)(E)(1)(a)

Judge ~~should~~ be disqualified from all proceedings with above referenced cases because he has demonstrated his personal bias and favoritism related to Attorney ~~in all~~ court proceedings with above referenced cases, including those where Mr. ~~was~~ not even the attorney of record, Judge ~~appeared~~ to have decided all motions and given all rulings in favor of according to his direction.

One example, of the many instances in which I am personally aware, Attorney <sup>State court Attorney</sup> ~~for the~~ ~~retiree~~ in the above referenced cases had motions pending before judge. Mr. ~~was not even involved in the~~ particular matter at issue would come into Judge ~~Court room and~~ would be seated with Mr. ~~appearance with any~~ particular counsel of record seemed to be an ironclad guarantee for the favorable outcome of that Attorney's particular request and defeat for the opposition.

" E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding; "

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clearly, Judge ~~should~~ should be disqualified from the allowed remaining above referenced case?

Since he certainly meets the test set forth in the Arizona Judicial ethics advisory committee opinion 98-02 which is set forth as follows,

"The test is whether an objective disinterested fully informed observer would reasonably question the impartiality of the judge"

Unfortunately it is highly unlikely that any of the lawyers found themselves on the losing side of the

alliance would submit a formal judicial complaint since they will be assigned to Judge repeatedly in the future.

However I believe your investigations should go well beyond this complaint, and cover all cases in which

to Judge ~~should~~ should be examined for bias, prejudice, and fraud on the judicial system