

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-041

Complainant:	Maria Felix	No.
Judge:	Ann Segal	No.

AMENDED ORDER

This case involves the conduct of Justice of the Peace Ann Segal that was brought to the attention of the Commission on Judicial Conduct by the presiding judge of the Consolidated Justice Court in Pima County. After reviewing the complaint, the evidence gathered during preliminary investigation, and the judge's responses, the Commission found that Judge Segal violated Rule 1.3 of the Code of Judicial Conduct which prohibits a judge from abusing the prestige of judicial office to advance the personal interests of the judge or others.

Shortly after taking the bench, Judge Segal approached a court administrator about a traffic case that had been filed in the justice court involving a member of her immediate family. Acting in her judicial capacity, Judge Segal also approached a hearing officer and directed him to take action in her family member's case. Concerned that Judge Segal's continued involvement in the case could be perceived as an attempt to influence its outcome, the presiding judge instructed Judge Segal to cease any further involvement. Judge Segal disregarded this instruction and continued to inject herself in the case. This conduct is unacceptable.

Accordingly, the judge is hereby reprimanded for her conduct pursuant to Rule 17(a), and 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 June 17, 2010.

FOR THE COMMISSION

\s\ William Brammer

J. William Brammer, Jr.
Commission Chair

Copies of this order were mailed to the complainant and the judge on June 17, 2010.

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

Pima County
Consolidated Justice Courts
TUCSON, ARIZONA 85701-1199

FEB 23 2009

HONORABLE MARIA LILIA FELIX
PRESIDING JUDGE
PRECINCT NUMBER NINE

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TELEPHONE (520) 740-3505
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February 20, 2009

Commission on Judicial Conduct
1501 W. Washington
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Phoenix, Arizona 85007

TO THE COMMISSION:

This letter is written in my capacity as Presiding Judge of Pima County Consolidated Justice Court over an incident involving Judge Anne Segal, newly elected to the bench as Justice of the Peace serving a two-year term effective December 29, 2008.

This is about Judge Segal's continued involvement in her son's civil traffic case, (Joseph Segal, TR08-047742) in this court's jurisdiction. Our policy is to transfer such conflict cases to Tucson City Court. Upon proceedings for transfer of this case, our staff noticed that Mr. Segal was already registered for Defensive Driving School, which meant that this case would be dismissed upon completion of said school without having to see any of our judges, and hence, it was determined we no longer had a conflict. Mr. Segal, however, did not attend the school, and procedurally, the ticket went into default.

On January 27, 2009 Judge Segal approached one of our Traffic Hearing Officers and asked him to "fix" this problem, lift this suspension, and vacate the default as she felt her son would now be able to go to Defensive Driving School by mid-February 2009. Judge Segal asked that person not to tell our Court Administrator about this. Our Hearing Officer became extremely uncomfortable knowing this was a conflict case, yet felt coerced to comply since this order came from a judge. This incident was reported to the Hearing Officer's supervisor thereafter.

That same day, Judge Segal went to the staff lunchroom and was talking about challenging the constitutionality of certain traffic citations, and how she had to talk to the civil traffic supervisor about "fixing" her son's ticket. Several staff members were present and heard Judge Segal's comments. This was also reported to our Court Administrator, and both employees were asked, and completed, a written report on the incident witnessed.

Ms. Royal reported these events to me immediately, and on the same day, I called a meeting in my chambers with Ms. Royal and Judge Segal. I asked Judge Segal to tell me what happened regarding her son's citation, and she freely stated that his driver's license was suspended, and that he had not received notice that it had been transferred to City Court, so he did not go to Defensive Driving School. Ms. Royal explained that since her son had signed up for defensive driving school prior to transfer, it was no longer a conflict, and she assumed that Mr. Segal had this situation under control.

Judge Segal stated that her son did not register for the school, despite our records indicating differently, and that she was only trying to help her son out by lifting his suspension. I told her as clearly as I could that this was unacceptable, and most of all, unethical of her for taking any action in her son's case. She replied, "well, report me." I told her I would not report her but needed to know from her what happened.

She responded that she was "just acting as a mom." I responded by saying that she is a judge, at all times and that she should have brought this matter to me or to Ms. Royal. I also stated that this was her son's case and for him to handle as he saw fit, not for "mom" to handle. She mentioned a few other times that she was just "acting as a mom" helping her son, and I again emphasized that her duty was to act as a judge, report a conflict, stay away from her family's case, and that it was her son's responsibility to proceed in managing his case, not hers. I tried to make her see that this is not judicial conduct to actively participate in any orders on behalf of her son in our court. I did not feel that she understood.

She recalled an incident in New Mexico when a judge had sentenced her own son and when I asked what happened, Judge Segal replied that the New Mexico judge had been fired. I asked her if she saw any similarities. She shrugged and said something to the effect that she could see how her actions could be misconstrued. I explained to her that her entire conduct was witnessed by staff, and perceived wrong; and that her conduct was indeed wrong. I was still not convinced she understood.

I asked why she had instructed the Traffic Hearing Officer not to tell Ms. Royal about this incident. Judge Segal explained that she did not want to embarrass Ms. Royal since Ms. Royal had not transferred this case. Again, I explained to her why it was not transferred, and that if she had any questions, she should have asked me or Ms. Royal, not staff. In fact, I told her that any questions about this case should have been raised by her son, not her. I again tried to explain how the staff felt under duress to do her bidding, as she used her position as a judge to change a citation to benefit her son. I told her this was clearly unethical. I still was not convinced she understood the severity of her actions or her judicial responsibilities.

I then asked her what happened in the lunchroom, and Judge Segal said she was just trying to have a conversation with staff. I told her what I had heard, and Judge Segal's response was about how disappointed she was with staff for their lack of "camaraderie." I explained that our staff was extremely loyal and their camaraderie, or lack of, had nothing to do with her conduct.

On February 3, 2009, Judge Segal again actively participated in her son's case. She took to the court administrator's office a copy of the "Notice of Entry of Judgment" in his case, with a yellow sticky attached which stated, "I hope this was vacated. He's enrolled in defensive driving school. Extension?" (See attached.) By so doing, Judge Segal invoked procedures of the court which effectively requested orders on her son's behalf. This occurred despite the fact that I had explicitly mentioned the applicable Canons of Judicial Conduct and ethics with Judge Segal before this event, and had expressly told her that she was not to manage her son's case in Justice Court, which was his own responsibility.

After that last incident, I now had to follow up with a letter to Judge Segal (dated 2/6/09, see enclosed), outlining our conversation of January 27, and in particular, addressing her latest involvement of February 3, 2009. I concluded that her continued actions were of grave ethical concern and urged her to read the Code of Judicial Conduct.

As Presiding Judge of the Pima County Consolidated Justice Court, and as an elected official, I have a duty to instill public confidence in the integrity and impartiality of the judiciary. I have considered this matter and my duties in light of the Code of Judicial Conduct in its entirety, and under Canon 2A, Canon 3C(3), 3D(1), and 3D(3).

I have discussed this situation with our Presiding Judge, Jan Kearney, and with Keith Stott of the Commission on Judicial Conduct. After reviewing the Code of Judicial Conduct, my documentation of the events and that of staff, and considering my conversations with Judge Segal, I am concerned that the above conduct violates provisions of the Code of Judicial Conduct including the following:

- Canon 2A and B
- Canon 3A
- Canon 3B(1), (7), and (8)
- Canon 3C(2), and (5)
- Canon 3E(1)(a), (c), and (d)

Should you need any further information, please do not hesitate to contact me.

Sincerely,

Marla Lilia Felix
Presiding Judge
Pima County Consolidated Justice Court

Cc: The Hon. Anne Segal
Encs.

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October 7, 2009

OCT 08 2009

Via email and First Class Mail

Keith Stott, Disciplinary Counsel
Commission on Judicial Conduct
1501 W. Washington Street, Ste. 229
Phoenix, AZ 85007

Re: Case No. 09-041
Anne Fisher Segal

Dear Keith:

This Firm represents Judge Anne Fisher Segal in the above-referenced complaint filed by Judge Maria Lilia Felix. We are aware that John Tully, Esq. has already submitted a response dated April 22, 2009, which sets forth in detail the underlying facts giving rise to the complaint. For that reason, this letter does not reiterate those facts. Rather, this response will serve to supplement Mr. Tully's by focusing on those provisions of the Code of Judicial Conduct¹ that Judge Felix cites as pertinent to these facts.

I. Judge Segal's Background

Judge Segal was born and raised in Arizona. She graduated from the University of Arizona and received her Juris Doctorate from the University of San Diego School of Law in 1979. She began her legal career as an Assistant Public Defender in San Diego, where she worked for four years. Judge Segal then went on to work as a prosecutor for several years. From 1994 through 2008, Judge Segal's work shifted towards legal education. She taught in the Dona Ana County (New Mexico) Community College's Paralegal Program and later as an adjunct professor at New Mexico State University and the University of Arizona.

In 2000, Judge Segal was elected to the Dona Ana Magistrate Court, a New Mexico court of limited jurisdiction. She was the first attorney and second woman to be elected in Dona Ana County. During her tenure, from 2000 until 2004, in addition to initiating new alternative sentencing procedures and calendaring systems, Judge Segal was also appointed to serve on the

¹ As you are well aware, effective September 1, 2009, Arizona adopted revisions to the Code of Judicial Conduct. Among other changes, the Canons are now re-numbered and referred to as Rules. This letter refers to and analyzes the Judicial Canons in effect before September 1, 2009, as the underlying events occurred before that date.

New Mexico Supreme Court Rules Committee for limited jurisdiction. She also served as the liaison for the new court building committee and received training in court design.

Judge Segal is extremely active in the Tucson community. She is co-chairing the Pima County Bar Association's joint meeting with the Medical Society, actively participates in her children's schools (both college and high school), and is also very involved in the Jewish community.

II. The Judicial Canons

We analyze below the Judicial Canons cited by Judge Felix. In short, Judge Segal did not violate any of her ethical duties. Indeed, we see only one Canon, Canon 2, as even arguably applicable to these facts. A close examination of that Canon, and case law interpreting it, makes clear that Judge Segal's conduct, even if imperfect, is not violative of that duty. We hope this response assists the Commission in closing this investigation.

Canon 2: Avoiding Impropriety and the Appearance of Impropriety

Judge Felix cites Canons 2(A) and 2(B). In general terms, Canon 2 imposes a duty on judges to avoid impropriety or the appearance of impropriety. Canon 2(A) requires that a judge respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2(B) provides that a judge "shall not allow a family . . . relationship to influence the judge's judicial conduct or judgment," and also prohibits a judge from lending the prestige of judicial office to advance the private interests of the judge or others.

The test for whether a judge's conduct creates the appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. [Commentary, Canon 2A]. For example, it would be improper for a judge to allude to her judicial position to gain a personal advantage such as *deferential treatment* from a police officer for a traffic offense. [Commentary, Canon 2B (emphasis added)]. Similarly, a judge should not use her position to gain *advantage* in a civil suit involving a member of the judge's family. *Id.* (emphasis added).

"Ticket-fixing" is not an uncommon scenario in cases addressing judicial misconduct. Most ticket cases involve actually getting a ticket dismissed. The annotations to the Model Code of Judicial Conduct note that such conduct is a violation of Canon 2(A). *See e.g., Mississippi Comm'n on Judicial Performance*, 611 So.2d 849 (Miss. 1992) (judge engaged in roughly 100 violations of ticket fixing); *In re Inquiry Concerning a Judge*, 570 S.E.2d 102 (N.C. 2002) (judge disciplined for dismissing two cases of DUI); *In re Heiple*, No. 97-CC-1 (Ct. Comm'n of Ill. April 30, 1997) (Illinois Supreme Court Chief Justice avoided speeding tickets by producing judicial identification credential instead of driver's license and stating "don't you know who I am?"). Such conduct violates Canon 2 because judges engaging in such conduct are by-passing the judicial system and "fixing" tickets in a very real sense — by getting them dismissed.

Here, Judge Segal was not attempting to “fix” her son, Joseph’s, ticket. In fact, she was trying to assure that it would be handled outside of the court in which she is a judge. In this regard, it is extremely important to note that it was Judge Segal who affirmatively brought to the attention of Ms. Royal, the Pima County Justice Court Administrator, the fact that Joseph’s traffic case was pending in that court. In fact, Judge Segal brought the matter to Ms. Royal’s attention so that the case would be transferred in order to assure that no conflict or impropriety — or the appearance of either — would arise. Judge Segal informed Ms. Royal of Joseph’s traffic case on January 7, 2009. Ms. Royal told Judge Segal that Ms. Royal would transfer Joseph’s case to Tucson City Court.

For whatever reason, however, the case was *not* transferred.² Importantly, Judge Segal was *never informed* by Ms. Royal or anyone else that the case did not get transferred. She and her son thus persisted in their (reasonable) belief that upon transfer, Joseph would receive notice of the transfer and presumably a new case number in Tucson City Court. (Because Joseph is a college student, his address of record is still at Judge Segal’s residence.). They never received any notice — because unbeknownst to them the case simply remained pending at Pima County Justice Court — and believing that the transfer was in process, Joseph did nothing to press his case forward. In the meantime, unfortunately, the case went into default in Pima County Justice Court.

Upon learning of the default and communicating with Ms. Royal and other court personnel, Judge Segal was not “fixing” Joseph’s traffic case. To the contrary, she never urged dismissal of the case or any other favorable disposition. Instead, she was attempting to *restore the status quo* and allow her son’s ticket to *proceed normally* through the judicial system. Put differently, she was merely attempting to set the case back on track after it was derailed as the result of either (1) a mistake by Ms. Royal, the court administrator, who never transferred the case, or (2) an admittedly unusual set of circumstances (which Judge Segal herself set in motion by flagging Joseph’s case as a conflict in the first instance).

These circumstances are thus distinguishable, on a basic level, from those cases in which violations of Canon 2 have been found for actual ticket-fixing. Judge Segal did not “use her position to gain *advantage* in a civil matter involving a member of [her] family.” [Commentary, Canon 2B]. Rather, her goal was to restore the status quo after what she reasonably perceived to be an inadvertent error by court staff.

Canon 3: Adjudicative Role. A Judge Shall Perform the Duties of
Judicial Office Impartially and Diligently

Judge Felix cites Canon 3(A) and Canon 3(B). Canon 3(A) states that judicial duties of a judge take precedence over all the judge’s other activities. Canon 3(B) addresses adjudicative responsibilities of judges, including (as cited by Judge Felix) the duties: (1) to hear and decide

² Again, Mr. Tully’s response exhaustively sets out the facts relating to how and why Judge Segal came to be involved in attempting to discern the current status of her son’s traffic case. We do not reiterate those facts here, but to the extent there is any question about those facts, we urge the Commission to refer to Mr. Tully’s response letter.

matters except where disqualification is required (the “duty to sit”), (2) to dispose of all judicial matters promptly, efficiently, and fairly, and (3) to not initiate or permit *ex parte* communications.

As a preliminary matter, we note that Canon 3 governs a judge’s substantive duties in the performance of her role as judge. It addresses duties of a judge *in hearing the cases before her*. Here, as noted, Judge Segal’s son’s case was never in her courtroom, and so she did not preside over her son’s traffic case and somehow behave incompetently or improperly in adjudicating it. Moreover, Judge Felix has not alleged that Judge Segal’s conduct with regard to her son’s traffic case negatively affected, in any way, her attention to those cases that *were* before her. Judge Felix does not contend that Judge Segal’s docket, or her competence in her own courtroom, suffered as a result of the conduct at issue. In short, Canons 3(A) and (B) simply do not apply to the present facts.

Judge Felix also cites Canon 3(C), addressing a judge’s administrative responsibilities. Canon 3(C)(2) states that judges shall require staff subject to the judges direction to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias in the performance of their official duties. We assume this is cited because of Judge Felix’s assertion that Judge Segal’s conduct with Traffic Hearing Officer Holguin caused him to feel “under duress to do her bidding.” (Felix letter of February 20, 2009, at 2).

First, Judge Segal will never again even *inquire* directly with court personnel about the status of any matter affecting a family member. In the future, she intends to bring any such concerns to the presiding judge for direction on how to move forward. In fact, as stated in Mr. Tully’s letter, her juvenile daughter received a traffic citation a few weeks later and the entire matter was handled by a third party. The citation was sent to another court by Hearing Officer Holguin.

That said, contextualizing Hearing Officer Holguin’s role in the Pima County Justice Court should shed light on whether he would have reasonably felt he was being “ordered” to take action by Judge Segal. First, Judge Segal never explicitly directed Hearing Officer Holguin to do anything. She inquired about the status of her son’s matter while at Tucson City Court (because she had been led to believe it would be transferred to that court). A City Court clerk called Hearing Officer Holguin and during that conversation learned — and relayed to Judge Segal — that the ticket was never transferred to Tucson City Court and in fact Joseph’s license was now suspended. Hearing Officer Holguin suggested that Judge Segal come back to Justice Court and speak with him. Judge Segal did. It was as a result of that conversation that Judge Segal understood him to say that he would lift the suspension.

Second, to the extent Judge Felix states there was some sort of implied understanding by Hearing Officer Holguin that he must do Judge Segal’s “bidding,” we respectfully disagree that this would be a reasonable understanding by Hearing Officer Holguin, given his role in the Pima County Justice Court. We note that Hearing Officer Holguin, in practical respects, is not a subordinate to Judge Segal. He wears a black robe, has his own office, and adjudicates matters. Moreover, he has been a Hearing Officer for four years and an employee of the court for

eighteen. Judge Segal had been working at the court a mere five days at the time she made what she thought was an innocent inquiry of him.

Canon 3E: A Judge Shall Disqualify Herself In a Proceeding In
Which the Judge's Impartiality Might Reasonably Be Questioned

This Judicial Canon does not apply. It requires a judge to disqualify herself where her impartiality might reasonably be questioned "in a proceeding." This means in a proceeding actually pending before that judge. See Jeffrey M. Shaman, Steven Lubet, and James J. Alfini *Judicial Conduct and Ethics*, at § 4.06 (4th ed. 2007) (addressing disqualification in context of family relationships and noting "judges are required to disqualify themselves when parties *who appear before them* are close relatives) (emphasis added).

Here, it has not been alleged – because it is not true – that Judge Segal's son's traffic case was ever assigned to her. It was never a proceeding over which she would preside. To the contrary, as noted above, Judge Segal, affirmatively, voluntarily, and without any direction, brought the existence of Joseph's traffic citation to the attention of the court administrator *precisely to avoid any conflict or any possibility that it would be assigned to her*.

III. Conclusion

As the analysis above demonstrates, Judge Segal's conduct was intended to avoid a conflict or the appearance of impropriety and she obviously did not lend the prestige of her office to "fix" her son's traffic case. She realizes in retrospect that her informal inquiries about the status of Joseph's case, and her later attempt to restore the *status quo* due to a court error, apparently created an erroneous impression with court personnel or Judge Felix. As a result of this experience, Judge Segal will diligently avoid such conduct in the future.

In view of the fact that Judge Segal's conduct did not violate any provision of the Code of Judicial Conduct, we urge the Commission to dismiss this complaint. However, if you have any questions or require any further information, please do not hesitate to contact either me or my colleague, Sara S. Greene, who is also familiar with this matter.

Sincerely,

Mark I. Harrison

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