

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

---

Disposition of Complaint 09-294

---

Complainant: No. 1350710572A

Judge: No. 1350710572B

---

**ORDER**

The commission reviewed the complaint and transcripts of the hearing and decided to dismiss the case with a comment reminding the judge of her obligation to comply with Rule 2.5 (b) which requires a judge to be competent in the law particularly when advising litigants about what they are permitted to do in the court system. Further, the commission reminded the judge of her obligation to comply with Rule 2.8 which requires judges to be patient, dignified, and courteous to litigants. Accordingly, the complaint is dismissed pursuant to Rules 16(b) and 23.

Dated: March 16, 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 March 16, 2010.

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

This is a complaint of judicial misconduct against Judge \_\_\_\_\_ a Justice of the Peace Pro Tempore for All Precincts, Yavapai County. (Exhibit 1.)

### BACKGROUND

Based on her statements at trial (excerpts of transcript, attached) and my own examination of the court file afterward (with witnesses present), Judge \_\_\_\_\_ engaged in ex parte communication with a party at trial. As a minimum, she knowingly allowed—and considered as evidence—documents in the court file, submitted by the Plaintiff, which were not lawfully filed with the court nor served on the opposing party, in violation of Rule 5(a) of the Rules of Civil Procedure.

Worse, it appears from various clues and deductive reasoning that Judge \_\_\_\_\_ suborned this ex parte communication. (She had been assigned to the case only a few days before trial and one does not easily approach a judge asking to slip documents into a court file.) If so, then she violated criminal law, as well as causing the Plaintiff and very probably a court clerk to engage in criminal activity also.<sup>1</sup>

Whether Judge \_\_\_\_\_ suborned ex parte communication or not, by knowingly considering Plaintiff's documents in the court file which had not properly been filed or served, Judge \_\_\_\_\_ violated the Rules of Civil Procedure for the Superior Courts and the Rules of Evidence (16 A.R.S. Rules of Civil Procedure and 17A A.R.S. Rules of Evid., respectively), both required by A.R.S. §22-211. Since Judge \_\_\_\_\_ considered ex parte documents, including a "secret" document—not mentioned at trial—as evidence (it was a non-jury trial), she considered hearsay then as "evidence."

Also, there is evidence to suggest that Judge \_\_\_\_\_ may have met with the Plaintiff and Plaintiff's witnesses & potential witnesses in the judge's chambers immediately prior to trial. (Affidavit from independent witness, attached.)

As I am not privy to judge's or clerk's notes in the court file, which could offer more evidence, and as I cannot interview witnesses, I leave it for the Commission to thoroughly investigate this extremely serious matter.

Now, ex parte communication with a party at trial is, by definition, prejudicial, requiring immediate disqualification sua sponte, per Rule 2.11 of the 2009 Code of Conduct. Not surprisingly, Judge \_\_\_\_\_ did not recuse herself from the proceeding.

Furthermore, Judge \_\_\_\_\_ called two witnesses for Plaintiff and attempted to make Plaintiff's case in a trial where it falls to the Plaintiff to present a preponderance of evidence to make their case. Ignoring for now the legal / procedural issues of whether a judge can call witnesses for a party, since Judge \_\_\_\_\_ did not ask any exculpatory questions on behalf of the Defendant, she demonstrated clear bias toward a party. She added insult to injury by slapping an unlawful Brady

---

<sup>1</sup> A.R.S. §13-2810 (A) (2) "Interfering with judicial proceedings" and A.R.S. §13-2407 "Tampering with a public record." Class 1 misdemeanor and Class 6 felony, respectively.

Notification on the Defendant after the trial, further demonstrating bias. (Defendant successfully challenged later causing the court to rescind its unlawful Order.)

All these violations, and more, stem from one trial, 2008-1215J in the Prescott Justice court. This was ostensibly a hearing to determine if a Temporary Injunction against Harassment was valid and should be sustained. In the interest of full disclosure, I am the Defendant in this matter, and, as of this writing, am still appealing in Superior Court as P-1300 CV-20091145. But even if I had prevailed at trial, I would still file this complaint, given the blatant misconduct.

The Commission knows its Code and Rules better than I do, and can compile a list of violations better than I. But for the sake of completeness and for the benefit of Internet readers, as a minimum, Judge \_\_\_\_\_ has violated Rules 1.1, 1.2, 2.2, 2.3, 2.4, 2.6, 2.9 and 2.11 of the Code of Conduct, as I'll detail later.

## FACTS AND ANALYSIS

### I. EX PARTE COMMUNICATION

Trial was set for me on the morning of Thursday, April 9, 2009. When I was served with the Temporary Injunction months before, Plaintiff's original petition included only five documents: an anonymous letter the Plaintiff told the police she received in the mail; a copy of a Cease and Desist letter I wrote to Plaintiff; a copy of a private letter I wrote to a \_\_\_\_\_; and one police report, DR 08-50969 plus its Supplement -001, both about the anonymous letter.

I first became aware of new material in the record when Judge \_\_\_\_\_ herself mentioned it early in the trial. "... the only thing that I recall being new in the material that was submitted this week by Ms. \_\_\_\_\_ was a copy of a letter that allegedly you sent to her church." (Transcript excerpts, Exhibit 2, p 7, line 5-8; hereinafter simply designated as p7, line 5-8.)

Thus, Judge \_\_\_\_\_ admits to knowing 1) that "new material" was put in the court file 2) what that material was, 3) that the Plaintiff (Ms. \_\_\_\_\_) submitted it and 4) that Plaintiff did it "this week." Interestingly, Plaintiff filed her only paperwork for the trial (three Motions to Oppose) early in the week, on Monday, April 6.<sup>2</sup> Judge \_\_\_\_\_ says this material was submitted on April 6. (p 7, line 11-14) Plaintiff works across the street from the Courthouse, making a personal appearance with the judge easy on short notice.

In court, when I said I hadn't received this new material, Judge \_\_\_\_\_ tried to cover by claiming "Then maybe that was, maybe that was something that was sent out further." (p 7, line 9-12) But

---

<sup>2</sup> Also interestingly, I received a most unusual unsolicited call that same day from \_\_\_\_\_, a clerk for the Consolidated Court. Much like a doctor's office, she said she was making a "courtesy call" to let me know the trial was on for Thursday and that Judge \_\_\_\_\_ would be presiding. I know of no one else who has ever gotten a courtesy call from a clerk and this is a first for me. The Commission may wish to investigate if Judge ordered the clerk to call me and for what purpose.

Judge \_\_\_\_\_ said she had read the entire court file. (p 10, line 23-25<sup>3</sup>) She knew that this material was not included in Plaintiff's Motions to Oppose, that there was no Notice of Filing for this "new material," nor was there any Certificate of mailing associated with it.

Legally speaking, Judge \_\_\_\_\_ correctly described this new material as "a copy of a letter that **allegedly** [I] sent..." (p 7, line 5-8) It was never entered into evidence. I was never given opportunity to inspect it or object to it. But even though acknowledging this copy of a letter I "allegedly" sent, Judge \_\_\_\_\_ referred to it as evidence throughout the trial and in her summation anyway. (p 15, line 14-19 & p 17, line 19-24 & p 66, line 1-2)

Again I told Judge \_\_\_\_\_ I was troubled by other "new evidence" introduced by Plaintiff in her last minute Motion. Namely, she cited a faxed pleading of an Expedited Motion I had filed earlier for this trial. (p 8, line 20-25). Judge \_\_\_\_\_ implied this "new evidence" was allowable (p 9, line 1-7) even though nothing was entered as evidence to support it. I later discovered, when I inspected the court file, that a Supplement -005 to Petitioner's original police report, about the faxed pleading, had been slipped into the court file without a Notice of Filing or a copy sent to me. Nonetheless, Judge \_\_\_\_\_ referred to "faxing" in her summation, proving she considered this ex parte material as evidence anyway. (p. 66, line 12)

A few months after the trial, I inspected the court file in the presence of two witnesses. We made an exhaustive inspection of the file, looking at every page. (The court file appeared substantially thinner when I reinspected it again in October.) Per my Affidavit, Exhibit 3, I discovered a total of four documents had been added to the court file prior to trial without any Notices of Filing or without copies being sent to me, in violation of Rule of Civil Procedure 5(a). One was a "secret" document, a copy of an email I wrote to Plaintiff's husband that had been misdirected to Plaintiff's son. "Secret" because there was no mention of this email at trial. I had no idea it was being used against me by Judge \_\_\_\_\_ who said she read the entire court file. (p 10, line 23-25).

I discovered apparent copies of two private letters I wrote to two individuals, not to the Plaintiff. Neither were filed with Notices of Filing nor copied to me, as required by Rule 5(a) of Rules of Civil Procedure. Ignoring the legal issues of staleness for one and foundation for both, they were both mentioned at trial by Judge \_\_\_\_\_ despite not having been entered as evidence. (p 17, line 19-24) One was referred to as evidence, the basis for her decision against me, in her summation. (p 65, line 25, continuing p 66, line 1-2)

I discovered a police report Supplement -005, written seven weeks after Plaintiff's initial petition. Even though it was not filed lawfully (no Notice of Filing nor a copy sent to me) nor entered into evidence, Judge \_\_\_\_\_ considered it as evidence anyway. (p 34, line 10-11)

In light of this prima facie evidence of ex parte communication between Judge \_\_\_\_\_ and the Plaintiff, I also ask the Commission to proactively investigate whether Judge \_\_\_\_\_ met with Plaintiff and Plaintiff's party on the morning of the trial.

---

<sup>3</sup> The "Laughter" on p 11, line 1 is where Judge \_\_\_\_\_ had made a disparaging face.

On that morning, a friend and I were sitting in the hallway, waiting for the courtroom door to be unlocked. We both observed the Plaintiff, one of Plaintiff's witnesses and several potential witnesses greeted by \_\_\_\_\_ (clerk of the court) and let into the Clerk's office. (See Affidavit from \_\_\_\_\_ Exhibit 4.) This is most unusual and unnecessary.

While Plaintiff had a Temporary Injunction against Harassment against me, it was not an Order of Protection and has no language defining a protected proximity. Only that I have no contact with her. Furthermore, none of her party who entered the clerk's office have an Injunction against me, making their passage into the Clerk's office wholly unwarranted and unnecessary. The judge's chambers are accessible via this entrance (as I personally observed when I inspected the court file in the Clerk's office later) and I am concerned that Judge \_\_\_\_\_ may have had an ex parte meeting with Plaintiff and her party, including a witness and potential witnesses, while I was waiting outside the courtroom.

All those who went into the Clerk's office are members of the First Baptist Church of Prescott, a "mega-church" (600+ members) located right next to the courthouse. I am not a member of that organization. May I suggest the Commission investigate Judge \_\_\_\_\_ relationship to that church and its leadership? I had previously requested recusal for this (and for membership in the Church of Jesus Christ of Latter-day Saints) in my Rule 42(f) Motion for Recusal (Exhibit 5), which Judge \_\_\_\_\_ says she read. (p. 10, line 23-25) Code of Conduct Rule 2.11 requires disqualification for this, even if I hadn't formally made a Motion.

## **II. VIOLATION OF CRIMINAL LAW**

Now, it is my observation and actual experience that court clerks are very diligent. They will not allow improper or incomplete documents to be filed, especially by Pro Se litigants. They won't accept filings for even minuscule errors such as having the wrong color cover sheet. So it's inconceivable that a law-abiding court clerk would add paperwork into a court file without the proper Notices of Filing and Certificates of Mailing. Since this was a non-jury trial, the court file, a public record, is essentially physical evidence. Tampering with a court file is criminal. At the least it's a Class 1 misdemeanor, per A.R.S. §13-2810 (A) (2) "Interfering with judicial proceedings." At the worst, it's a Class 6 felony, per A.R.S. §13-2407 "Tampering with a public record." Someone committed a very serious criminal act.

If Judge \_\_\_\_\_ suborned ex parte communication and caused "new material" to be unlawfully submitted into the court file, then Judge \_\_\_\_\_ violated criminal law. She also would have caused Plaintiff and (I presume) at least one court clerk to violate criminal law by being parties to this act.

If Judge \_\_\_\_\_ did not suborn ex parte communication and subsequent criminal activity, she indicated at trial that she knew there was "new material" submitted into the file. Thus she appears to be aiding and abetting criminal activity by Plaintiff and a court clerk, acting as an accomplice.

Even in the best case, improbable as it is since Judge \_\_\_\_\_ knew "new material" had been submitted into the record, if the clerk of court, without the judge's knowledge, had conspired with the Plaintiff to slip new material into the court file (I have observed they know each other by

sight), Judge            should have been outraged that criminal tampering with the record occurred in her court compromising the entire proceeding. She should have declared a mistrial, held the wrong-doers in contempt and notified law enforcement. But to the best of my knowledge, no criminal charges have been brought against Plaintiff or clerk as of this writing.

### III. VIOLATION OF CIVIL LAW

Justice Courts are bound by the Rules of Civil Procedure for Superior Court. (A.R.S. §22-211) Rule 5(a) of Civil Procedure is clear: "**every** paper relating to discovery required to be served upon a party unless the court otherwise orders, **every** written motion other than one which may be heard ex parte, and **every written notice**, appearance, demand, offer of judgment, designation of record on appeal, **and similar paper shall be served upon each of the parties.**" Whether Judge            suborned ex parte communication or not, she knew "new material" had been submitted into the record. I objected at trial to not receiving notice, as required by law. (p 7, line 9-10 & p 8, line 20-25) Therefore, she knowingly violated civil law, directly or indirectly, depending on her complicity.

Now, A.R.S. §22-211 specifically states "The law governing procedure and practice in the superior court so far as applicable and when not otherwise specially prescribed, shall govern procedure and practice in justice of the peace courts." As to procedure, while the court's official written record, titled "Notice of Proceedings" (Exhibit 6) portrays a typical trial, in reality, it was very irregular. The Rules of Evidence (17A A.R.S. Rules of Evid., Rules 101 to 1103) were suspended. I have already documented these violations. Ironically, the only evidence that was properly entered into evidence was evidence that I entered. Judge            took all of Plaintiff's documents in the court file, those known to me and those not, as de facto "evidence" and used them in her summary to justify her ruling. Plaintiff had an opportunity to object when I introduced evidence. Judge            allowed me no such opportunity with Plaintiff "evidence."

As to practice, Judge            violated A.R.S. §22-211 when she said, "This isn't a trial type proceeding . . ." (p 11, line 19-25. See also p 12, line 10-12) I was not allowed to Object (p 11, line 14-15) and I assumed that extended to Objecting to procedure by the judge as well as making oral Motions. I was not allowed direct exam of the Plaintiff. (p 16, line 18-21) I was told there was no cross exam (p 12, line 3-4), even though the Notice of Proceedings purports there was. Even a judge in a misconduct proceeding has the right to examine and cross-examine witnesses in a formal process! But I was effectively denied this basic right.

Further, the Nature of Proceedings states "Officer            was not subject to recall." (Also see transcript p 51, 19-20.) Thus Judge            effectively prevented me from calling him as a Defense witness. This is also prejudicial.

Judge            called two witnesses for the Plaintiff and attempted to make the Plaintiff's case. (p 42, line 3 continuing to p 45 & p 51, line 23, continuing to p 54) I do not know what constitutes allowable Superior Court practice, but isn't it improper and unethical for a Judge to call witnesses? Especially for one party? Even the transcript transcriber is confused about this and lists the "Court's witnesses" as Witnesses for the Plaintiff! (Compare the listing of Court's Witnesses in the Index with list of Plaintiff's witnesses in the Appearances, transcript, Exhibit 2)

#### IV. PREJUDICE

It goes without saying that engaging in ex parte communication, whether a judge suborns it or not, is prejudicial. The Arizona Supreme Court concurs, saying, in a Special Action<sup>4</sup>,

Ex parte communications with a judge are prohibited for several reasons. They “cast doubt upon the adversary system and **give the appearance of favoritism.**” *McElhanon v. Hing*, 151 Ariz. 403, 411, 728 P.2d 273, 281 (1986). Ex parte communications also

deprive the absent party of the right to respond and be heard. **They suggest bias or partiality on the part of the judge . . . At worst, ex parte communication is an invitation to improper influence if not outright corruption.**

Jeffrey M. Shaman et al., *Judicial Conduct and Ethics* § 5.01, at 149-50 (2d ed. 1990) (footnotes omitted)

I have already documented that Judge [redacted] called witnesses for the Plaintiff. I also note that Judge [redacted] lead her witnesses when she didn't get the answers she wanted. (p 53, line 17-25; p 60, line 25) She solicited hearsay from her witnesses. (p 53, line 3-6) Judge [redacted] did not ask her two witnesses any exculpatory questions on my behalf, but left me to question her witnesses to defend myself. She tried to make a case for the Plaintiff, soliciting "testimony" from the Plaintiff that goes well beyond harassment law. And was more hearsay to boot. (p 59, line 18-25)

Furthermore, while Judge [redacted] advised at the end of trial that I would be given the paperwork for an appeal, they were not forthcoming. (p 69, line 17-22) But she was quick to give me an unlawful Brady Disqualification, unlawfully suspending my 2<sup>nd</sup> Amendment Constitutional Right.

I challenged this later and the court rescinding its unlawful order. (Exhibit 7 and 8)

If this Brady Notification was an isolated incident, one might give a judge the benefit of the doubt, saying it was an "innocent" error. However, given Judge [redacted] pattern and practice, this is simply more evidence of prejudicial conduct.

#### VIOLATIONS OF THE CODE

Clearly Judge [redacted] has violated Rule 2.9, prohibiting ex parte communication with a party at trial, since she stated that she knew the Plaintiff had submitted "new material" before trial. The only questions lacking hard proof is whether Judge [redacted] suborned the ex parte communication herself and whether Judge [redacted] met with the Plaintiff and her party immediately before trial. I encourage the Commission to investigate how the ex parte communication came to be, as I have reason to believe it may involve another member of the judiciary.

---

<sup>4</sup> *The San Carlos Apache Tribe, et al v. Judge Bolton, et al*, Supreme Court No. CV-98-0143-SA (Emphasis mine.)

Likewise, Judge \_\_\_\_\_ has violated Rule 2.11, which requires disqualification sua sponte (per Comment 2) "in any proceeding in which the judge's impartiality might reasonably be questioned." Ex parte communication requires disqualification because it is extremely prejudicial, per the Supreme Court citation above.

Rule 2.11 also requires disqualification if "(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding." While I think it's clear from her actions that Judge \_\_\_\_\_ demonstrated a bias toward the Plaintiff and against me, the clearer violation is that because she had a secret document in the court file that is attributed to me, she had personal knowledge of "facts that are in dispute in the proceeding." She had personal knowledge I did not have. I did not know, nor could I have known, the judge had an alleged copy of an email I wrote to Plaintiff's husband.

If Judge \_\_\_\_\_ suborned ex parte communication, causing documents to be slipped into the court file, then she committed criminal acts, which could rise to a Class 6 felony. She then caused others to commit felony as well. This is a violation of Rule 1.1.

Even if she did not suborn ex parte communication, she violated the Rules of Civil Procedure and the Rules of Evidence, and A.R.S. §22-221 which requires both of the former. Of course, since the Code of Conduct is Supreme Court Rule 81, that is further violation of A.R.S. §22-221 and your Rule 1.1.

The Code's Rule 1.2 requires judges to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Knowing about "new material" that has been submitted by a party before trial does not promote public confidence in the impartiality of the judiciary, as the speed at which this story is sent around the Internet will aptly demonstrate.

Rule 2.2 is similar to Rule 1.1. Since Judge \_\_\_\_\_ has not upheld the law, not even abiding by the court's own Rules of Procedure and Rules of Evidence, she has violated this Rule also. While point 3 of the Rule allows that "A good faith error of fact or law does not violate this rule," it also says, "However, a pattern of legal error or an intentional disregard of the law may constitute misconduct." The trial transcript demonstrates such a pattern and practice of intentional disregard of the law by Judge \_\_\_\_\_

Rule 2.3 requires "(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice." Even if Judge \_\_\_\_\_ did not suborn ex parte communication with Plaintiff, the fact that Judge \_\_\_\_\_ knew there was "new material" submitted by Plaintiff the week of the trial proves she did not conduct her administrative duties without bias or prejudice. She knew the court file had been corrupted. She should have declared a mistrial, sanctioned the perpetrators of the crime (Plaintiff. And clerk?) and called the appropriate law enforcement authorities for a criminal investigation, since tampering with a court file is a serious criminal matter.

Judge \_\_\_\_\_ has violated Rule 2.4. Depending on what the Commission discovers during



investigation, if Judge \_\_\_\_\_ is a member of the First Baptist Church of Prescott<sup>5</sup>, or is affiliated with the church or its leadership, she has violated part B, "A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment." She has certainly violated part C, "A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge." While this Rule probably has extortion, bribery or other quid pro quo in mind, Judge \_\_\_\_\_ left no question that the Plaintiff had the judge twisted around her finger. To the point the Judge acted as attorney and Prosecutor for the Plaintiff!

Rule 2.6.(A) says "A judge shall accord to every person who has a legal interest in a proceeding... the right to be heard according to law." Since Judge \_\_\_\_\_ shut me out of the proceeding by telling me I had no right to Object, no right to make Motions, didn't allow me an Opening Argument and offered no clear procedure delineating direct or cross exam, even preventing me from recalling a potential witness (Officer \_\_\_\_\_) on my behalf, she violated my right to be heard. She suspended the laws during trial, namely the Rules of Evidence and the Rules of Civil Procedure, denying me the right to be heard according to law.

### CONCLUSION

I take it as Providential that only a week ago I saw Supreme Court Justice Breyer on C-SPAN explaining to Brian Lamb how we have rules prohibiting ex parte communication. In addition to what our Arizona Supreme Court has said about it, the Florida Supreme Court has said, "Nothing is more dangerous and destructive of the impartiality of the judiciary than a one-sided communication between a judge and a single litigant." *Rose v. Florida*, 601 So. 2d 1181 (Fla.1992).

Judge \_\_\_\_\_ is no neophyte to the legal system. She has been an attorney since 1990. She has been appointed a judge pro tem for a few years since her retirement from the bar. Yet she told me at trial that I needed an attorney if I wanted to sue the Plaintiff (or anyone) in Superior court. (p 67, line 2-17) Ignoring for now the 14<sup>th</sup> Amendment implications (she is denying me equal access to law), that is not true. One can come Pro Se to Superior Court. It is inconceivable Judge \_\_\_\_\_ could be this incompetent, not knowing basic law and procedure, especially about ex parte communication. All these violations stem from only one trial. We must assume this is not atypical for her. It is more conceivable that she is biased and willfully violated the law.

Therefore, since "nothing is more dangerous and destructive" to the judiciary, I ask the Commission to investigate these matters thoroughly and as the facts bear out, sanction Judge \_\_\_\_\_ in the strongest possible way. Judge \_\_\_\_\_ should be removed from office.

---

<sup>5</sup> Or the Mormon Church, per my Rule 42(f) Motion for Recusal. (Exhibit 5)