

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-165

Complainant: No. 1320610881A

Judge: No. 1320610881B

ORDER

The complainant alleged that a pro tem superior court judge who served as opposing counsel in a civil case engaged in improper ex parte contacts with the judge assigned to the case. After reviewing the complaint and the response, the commission found no evidence of ethical misconduct on the part of the pro tem judge. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: September 8, 2010.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on September 8, 2010.

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

JUN 22 2010

June 21, 2010

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

State Bar of Arizona
Bar Charge Intake
4201 N. 24th Street, Suite 200
Phoenix, Arizona 85016-6288

Re: In Re The Member of the State Bar,

Dear Sirs and Mesdames:

I have been a lawyer for 30 years. At times relevant to this charge, I was the attorney for The Funding Group in a case captioned *The Funding Group v. Silver King Mining Company*, Pinal County Superior Court No. CV 2007. The opposing counsel was

. I am credibly informed that Mr. was a judge pro tem during relevant times.

During the pendency of the proceeding, I noticed that Mr. enjoyed privileges not available to other counsel or litigants. For example, he had access to the private court chambers. During at least one occasion I noticed Mr. coming out of the Court's private chambers just prior to the Judge and just prior to the hearing related to the above referenced case. It appeared to me that and the Judge had a discussion about the case just prior to their entry into the courtroom.

After the hearing, I asked Mr. what gave him the authority to access judge's chambers *ex parte*. Mr. pointed to what appeared to be a laminated ID card hung around his neck and responded, "I have this badge". Mr. did not disclose that he was a judge pro tem, and that the reason he had "this badge" was because of his special status with the court.

On July 10, 2009, by letter of even date, I specifically asked Mr. [redacted] whether he had any special relationship with the Court. I wrote:

Dear Mr. [redacted]

Can you please disclose what relationship, if any, you, your office or your family have with the Pinal County Superior Court?

Exhibit 1. Mr. [redacted] did not respond, nor did he ever disclose his special relationship with the Court and the judge assigned to the case. At no time did Mr. [redacted] (or the Court) disclose Mr. [redacted] function as a judge pro-tem.

Mr. [redacted] deception with respect to his capacity as the Judge Pro Tem, and subsequent events, raise a significant appearance of impropriety. See *State v. Salazar*, 182 Ariz. 604, 898 P.2d 982 (App. 1995); *McElhanon v. Hing*, 151 Ariz. 403, 411, 728 P.2d 273, 281 (1986), cert. denied, 481 U.S. 1030 (1987); *Kay S. v. Mark S.*, 213 Ariz. 373, 142 P.3d 249 (App. 2006).

Sincerely

PS: pjs
Encls. *as indicated*