

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-304

Complainant: No. 1350710104A

Judge: No. 1350710104B

ORDER

The complainant alleged that a presiding judge of the superior court failed to report ongoing and repeated misconduct by another superior court judge who was later censured and resigned. The commission reviewed the complaint and the judge's response and found no evidence of ethical misconduct on the part of the presiding judge. Upon learning of the judge's delay in making decisions, the presiding judge took appropriate steps to resolve the situation. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: March 10, 2011.

FOR THE COMMISSION

/s/ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on March 10, 2011.

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

This is a complaint of judicial misconduct against Superior Court Judge _____ currently the Presiding Judge in _____ County. Judge _____ repeatedly violated Canon 3(D)1 of the (then current) 1993 Code of Judicial Conduct from 2006 through 2008. Arguably, there are a minimum of fourteen violations.

Specifically, during these years, Judge _____ failed to report former Judge Hinson to the Commission on Judicial Conduct when he (Hinson) falsified fourteen affidavits, as documented in Count II in Commission Case 08-308. Likewise, Judge _____ failed to report former Judge Hinson for his repeated failure to comply with the Arizona Constitution's 60-day Rule. (Twenty five times, as documented in Count I in Case 08-308.)

Canon 3(D)(1) states, in part, "A judge who has knowledge or who receives reliable information that another judge has committed a violation of this code that raises a substantial question as to the judge's honesty, trustworthiness or fitness as a judge in other respects shall inform the appropriate authority."

The fact that the Commission censured Judge Hinson in 2009 for these violations proves there were violations of the code that raised substantial questions as to the judge's honesty and trustworthiness. Yet, according to the Commission's report on Judge Hinson, Judge _____ never informed the appropriate authority, the Commission.¹ In fact, had it not been for a concerned citizen who reported Judge Hinson to the Commission, Judge Hinson's malfeasance might well continue to this day.

While it appears from the data (see Exhibit 1, attached) that Judge _____ may have tried informal discipline in Q3 2007 by making Judge Hinson temporarily forfeit a paycheck— a nice gesture for a colleague—that is not what the Code of Judicial Conduct calls for. Worse, if Judge _____ did try informal discipline, then he is even more culpable for not acting afterward in Q1 & Q3 2008 when the informal discipline failed.

Judge _____ was a member of the Commission on Judicial Conduct during former Judge Hinson's three year violation spree. Yet he did not act to enforce his own code, making his non-feasance especially egregious.

¹ I do not know for certain that Judge _____ did not file a complaint against Judge Hinson because complaints were confidential prior to 2006. He may have filed a complaint in 2004 (Case 04-059). It seems more likely, though, that it was the outgoing presiding judge who filed that complaint instead of the incoming presiding judge, Judge _____. But the Commission knows. Either way, it's a lose-lose. If it was the outgoing presiding judge who filed the complaint, then Judge _____ was on notice that Judge Hinson had a pattern of violating the 60-day Rule and falsifying salary affidavits. If Judge _____ filed a complaint in 2004, then he is even more culpable, since he knew firsthand of Judge Hinson's violations.