

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 11-028

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Complainant: No. 1411010699A

Judge: No. 1411010699B

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**ORDER**

The complainant alleged that two superior court judges violated his rights by issuing erroneous child support orders. The commission reviewed the allegations and found no evidence of ethical misconduct on the part of either judge. Whether the orders regarding child support arrearage and payments were appropriate or supported by the evidence is a legal issue outside the jurisdiction of the commission. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: April 28, 2011

FOR THE COMMISSION

/s/ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on April 28, 2011

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

## STATEMENT OF FACTS

Your name:

Judge's name:

Date: December 31, 2010

I. Willful misconduct in office.

1. On January 6, 2010 Judge \_\_\_\_\_ knew and so did Petitioner's lawyer that the official Court's docket (DR 1998-\_\_\_\_\_) shows that "Full Satisfaction of Judgments" were previously completed and subsequently filed with the Court on March 16, 2005, and were recorded at the Maricopa County Recorder's Office, Number: 2005-\_\_\_\_\_ on March 22, 2005 at 4:57:20 p.m., See copy attached hereto.

2. Judge \_\_\_\_\_ knowingly and willfully violated Complainant's rights by entering findings and assessing Complainant \$11,589.40 plus \$4,640.47 for a total of \$16,238.47 effective January 6, 2010 and statutory interest beginning upon entry of the judgment, effectively resulting in double assessments of child support and arrearages that was not true or correct.

3. Judge \_\_\_\_\_ conduct is prejudicial to the administration of justice and brings the judicial office into disrepute, or is a violation of the code of judicial conduct.

4. The Court held in the *Randi v. Muroc Joint Unified School District*, 929 P.2d 582, 592, case:

**"... half of the truth may obviously amount to a lie, if it is understood to be the whole."**

Citing Prosser & Keeton, *The Law of Torts* (5th ed.1984) Misrepresentation and Nondisclosure, §106, p. 738, italics added in citation.

5. For such willful misconduct in office, Judge \_\_\_\_\_ should be reprimanded or removed from office.

II. Conduct that brings the judicial office into disrepute.

1. By issuing a child support Order for double assessment of child support and back child support and interests thereon, when there was a "Full Satisfaction of Judgments" eventually filed with the Court on March 16, 2005, recorded at the Maricopa County Recorder's Office, Number: 2005-\_\_\_\_\_ on March 22, 2005 at 4:57:20 p.m., See copy attached hereto, Judge \_\_\_\_\_ brings the judicial office into disrepute, dishonor, disgrace, ignominy, infamy, shame and/or scandal.

2. Judge \_\_\_\_\_ knowingly and willfully violated Complainant's rights by entering findings and assessing Complainant \$11,589.40 plus \$4,640.47 for a total of \$16,238.47 effective January 6, 2010 and statutory interest beginning upon entry of the judgment, effectively resulting in double assessments of child support and arrearages that was not true or correct.

3. Judge \_\_\_\_\_ s conduct is prejudicial to the administration of justice and brings the judicial office into disrepute, or is a violation of the code of judicial conduct.

4. For such willful misconduct, Judge \_\_\_\_\_ should be reprimanded or removed from office.

III. A violation of the Arizona Code of Judicial Conduct.

1. Issuing a wrongful child support Order for double assessment of child support and back child support and interests thereon, when there was a "Full Satisfaction of Judgments" previously created and eventually filed with the Court on March 16, 2005, recorded at the Maricopa County Recorder's Office, Number: 2005- on March 22, 2005 at 4:57:20 p.m., See copy attached hereto: Judge violated the Arizona Code of Judicial Conduct:

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3. Judge conduct is prejudicial to the administration of justice and brings the judicial office into disrepute, and is a violation of the code of judicial conduct.

4. For such willful misconduct, Judge should be reprimanded or removed from office.

List of Canons violated:

**CANON 1**

**A Judge Shall Uphold the Integrity and Independence of the Judiciary**

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this code are to be construed and applied to further that objective.

**CANON 3**

**A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently**

A. **Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

**B. Adjudicative Responsibilities.**

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This

Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(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.

(b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.

The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(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.

(11) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(12) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(13) A judge shall participate actively in judicial education programs and shall complete mandatory judicial education requirements.

### **C. Administrative Responsibilities.**

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory responsibility for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments.

A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

**D. Disciplinary Responsibilities.**

(1) A judge who has knowledge or who receives reliable information that another judge has committed a violation of this code shall take or initiate appropriate action. 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.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Sections 3D(1) and 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

**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;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law within the preceding seven (7) years served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(e) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to:

(i) an issue in the proceedings; or

(ii) the controversy in the proceedings.

(2) A judge shall keep informed about the judge's personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

**F. Remittal of Disqualification.** A judge disqualified by the terms of Section 3E may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If the parties and their lawyers after such disclosure and an opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement should be incorporated in the record of the proceeding.

## APPLICATION OF THE CODE OF JUDICIAL CONDUCT

**A. Judge.** Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, hearing officer or referee, is a judge within the meaning of this code. All judges shall comply with this code except as provided below.

### 2. Disqualification of judge

Section 2. A judge is disqualified from acting as a judge, without loss of salary, while there is pending an indictment or an information charging him in the United States with a crime punishable as a felony under Arizona or federal law, or a recommendation to the supreme court by the commission on judicial conduct for his suspension, removal or retirement. *Added, election Nov. 3, 1970, eff. Nov. 27, 1970; amended, election Nov. 8, 1988, eff. Dec. 5, 1988.*

### 3. Suspension or removal of judge

Section 3. On recommendation of the commission on judicial conduct, or on its own motion, the supreme court may suspend a judge from office without salary when, in the United States, he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Arizona or federal law or of any other crime that involves moral turpitude under such law. If his conviction is reversed the suspension terminates, and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final the supreme court shall remove him from office. *Added, election Nov. 3, 1970, eff. Nov. 27, 1970; amended, election Nov. 8, 1988, eff. Dec. 5, 1988.*

### 6. Article self-executing

Section 6. The provisions of this article shall be self-executing. *Added, election Nov. 3, 1970, eff. Nov. 27, 1970.*

## RULE 6. GROUNDS FOR DISCIPLINE

The grounds for judicial discipline include willful misconduct in office, willful and persistent failure to perform judicial duties, habitual intemperance, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the code.

## RULE 7. MISCONDUCT DISTINGUISHED FROM ERROR

The commission shall not take action against a judge for making erroneous findings of fact or conclusions of law in the absence of fraud, corrupt motive, or bad faith on the judge's part, unless such findings or conclusions constitute such an abuse of discretion as to otherwise violate one of the grounds for discipline described in these rules or the code.

Four things belong to a judge: to hear courteously;  
to answer wisely; to consider soberly; and to  
decide impartially.

—Socrates—

Judge                      did not do his duty in this case.

Sent this day to:  
Commission on Judicial Conduct  
1501 W. Washington Street, Suite 229  
Phoenix, AZ 85007

## STATEMENT OF FACTS

Your name: \_\_\_\_\_ Judge's name: \_\_\_\_\_ Date: December 31, 2010

### I. Willful misconduct in office.

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2. Judge \_\_\_\_\_ knowingly and willfully violated Complainant's rights by entering findings and assessing Complainant \$575 per month effective June 1, 2004 and an additional \$50 per month for Child support arrearages, eventually resulting in double assessments of child support and arrearages that was not true or correct.

3. Judge \_\_\_\_\_ conduct is prejudicial to the administration of justice and brings the judicial office into disrepute, or is a violation of the code of judicial conduct.

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(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the proceeding;

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## **3. Suspension or removal of judge**

Section 3. On recommendation of the commission on judicial conduct, or on its own motion, the supreme court may suspend a judge from office without salary when, in the United States, he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Arizona or federal law or of any other crime that involves moral turpitude under such law. If his conviction is reversed the suspension terminates, and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final the supreme court shall remove him from office. *Added, election Nov. 3, 1970, eff. Nov. 27, 1970; amended, election Nov. 8, 1988, eff. Dec. 5, 1988.*

## **6. Article self-executing**

Section 6. The provisions of this article shall be self-executing. *Added, election Nov. 3, 1970, eff. Nov. 27, 1970.*

## **RULE 6. GROUNDS FOR DISCIPLINE**

The grounds for judicial discipline include willful misconduct in office, willful and persistent failure to perform judicial duties, habitual intemperance, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the code.

## **RULE 7. MISCONDUCT DISTINGUISHED FROM ERROR**

The commission shall not take action against a judge for making erroneous findings of fact or conclusions of law in the absence of fraud, corrupt motive, or bad faith on the judge's part, unless such findings or conclusions constitute such an abuse of discretion as to otherwise violate one of the grounds for discipline described in these rules or the code.

Four things belong to a judge: to hear courteously;  
to answer wisely; to consider soberly; and to  
decide impartially.

—Socrates—

Judge                    did not do his duty in this case.

Sent this day to:  
Commission on Judicial Conduct  
1501 W. Washington Street, Suite 229  
Phoenix, AZ 85007