

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 11-078

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Complainant: No. 1415500421A

Judge: No. 1415500421B

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**ORDER**

The complainants alleged that a superior court judge was biased, issued rulings before allowing the parties to be heard, and engaged in improper ex parte communications with expert witnesses. The commission reviewed the allegations and the judge's response and found no evidence of ethical misconduct on the part of the judge. The complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: July 20, 2011.

FOR THE COMMISSION

/s/ George Riemer

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Executive Director

Copies of this order were mailed to the complainant and the judge on July 20, 2011.

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

Attachment to Judicial Complaint

(“Brad”) is the petitioner in a case currently pending in California, entitled *in re the* *Residuary Trust fbo* and bearing California case number BP

Pursuant to Brad’s request, the California Superior Court issued commissions to take out-of-state depositions, which were filed with the Superior Court for the County of Maricopa on February 7, 2011 as part of an Application for the Issuance of Subpoenas. The court assigned an Arizona case number (CV2011- ) as a formality and the subpoenas were issued. On February 22, 2011, in response to the subpoenas, the law firm of Burch & Cracchiolo, P.A., filed a Motion for Protective Order and a Motion to Transfer Related Cases, which requested the transfer of the Motion for Protective Order to a currently pending Arizona probate proceeding completely unrelated to the currently pending California proceedings. The Arizona probate proceeding, entitled *In the Matter of* *an Adult*, and bearing case number PB2009- is currently assigned to the Honorable As the Arizona probate proceeding is the lower numbered case, Judge has the authority to decide the Motion to Transfer.

Pursuant to the Arizona Rules of Civil Procedure, an opposition is due ten court days after service plus five extra days for mailing. Ariz. R. Civ. P. 6(a), (e), 7.1(a). Therefore, since the Motion to Transfer was served by mail on February 22, 2011, the opposition to that motion is due on March 14, 2011. However, with no opposition yet due or on record, Judge ordered the cases consolidated on March 4, 2011. Such an order is a gross violation of the due process rights of the parties and in violation of the Arizona Code of Judicial Conduct. Specifically, Judge conduct violates the Arizona Code of Judicial Conduct Rules discussed below:

*Rule 1.1*

Rule 1.1 states that “A judge shall comply with the law, including the Code of Judicial Conduct.” Judge has clearly violated this rule by refusing to follow the provisions of the Rules of Civil Procedure.

*Rule 1.2*

Rule 1.2 states that "A judge shall...avoid impropriety and the appearance of impropriety." Comment 5 to this rule explains that "actual improprieties include violations of law." Judge [redacted] has failed to follow the provisions of the law providing time for oppositions to be filed and has therefore violated the due process rights of the parties.

*Rule 2.2*

Rule 2.2 states that "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." As discussed, rather than upholding and applying the law, Judge [redacted] has intentionally disregarded the law.

*Rule 2.5*

Rule 2.5 states that "A judge shall perform all judicial and administrative duties competently, diligently, and promptly." Comment 4 explains that "a judge must demonstrate due regard for the rights of parties to be heard." Judge [redacted] has not demonstrated due regard for the rights of the parties to be heard. To the contrary, Judge [redacted] actions have silenced the parties completely by ruling on motions before any opposition is filed or even due. He has completely disregarded all due process considerations and prejudiced the parties in violation of this rule.

*Rule 2.6*

Rule 2.6 states that "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." Comment 1 further explains that the "right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed." Judge [redacted] did not accord each party the right to be heard according to law. Instead, he decided the motion more than a week before any opposition was even due, in complete disregard of the procedures protecting the right to be heard. Judge [redacted] ignored "an essential component of a fair and impartial system of justice" to the detriment of the party who was not heard.