

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-128

Complainant: No. 1415510156A

Judge: No. 1415510156B

ORDER

The complainant alleged that a superior court judge was disrespectful, sarcastic, and repeatedly admitted that he does not follow procedural rules. After reviewing the complaint and listening to the recording of the hearing, the commission found insufficient evidence to justify a finding of ethical misconduct on the part of the judge. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: September 7, 2011.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on September 7, 2011.

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

Attachment to Judicial Complaint

is the petitioner in a case currently pending in California, entitled *in re the Residuary Trust fbo* and bearing California case number BP 126 196. Pursuant to 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 Robert D. Myers. As the Arizona probate proceeding is the lower numbered case, Judge Myers had the authority to decide the Motion to Transfer and decided to consolidate the cases prior to the due date of opposition and without any notice or opportunity to be heard, the subject of a prior judicial complaint. This turn of events led to the filing of a recusal affidavit seeking to remove Judge Myers from the case. Other recusal affidavits were also filed by other parties to the case, and opposing counsel filed a motion for leave to file a consolidated response as well as the actual consolidated response. The consolidated response was accepted by the court without allowing the proper time for opposition. At the hearing, Judge asked the representative of each party if he or she objected to the consolidated response, but, as the judge explained later, this question was meant only to exemplify how rarely the judges actually followed the rules and not to actually give counsel the opportunity to object.

The recusal affidavit, as well as other recusal affidavits filed by other parties in the case, was heard by Judge on April 11, 2011 at 10:00 a.m. At this hearing, Judge treated the attorneys with extreme disrespect, spoke with sarcasm, and admitted that he often did not follow the rules of procedure and in fact was not following the rules at that very hearing! Judge was extremely rude to Mr. counsel for when it was his turn to speak. He

blatantly mocked counsel, spoke with intense sarcasm, and clearly showed that he did not care about what Mr. said. He further explained that he was violating the Rules of Civil Procedure by granting the opposing firm's motion to file a consolidated response without allowing time for opposition. He also stated that violation of such rules was commonplace and acceptable and therefore Judge Myers did nothing wrong in violating the same timing rules, which are essential to protecting the due process rights of parties.

Specifically, Judge conduct violates the Arizona Code of Judicial Conduct Rules as follows:

Rule 1.1

Rule 1.1, entitled "Compliance with the Law," states that "A judge shall comply with the law, including the Code of Judicial Conduct." Judge has intentionally failed to comply with the law by not allowing the proper amount of time for opposing a motion, as he himself admitted. He also treated counsel with extreme disrespect and failed to take action against a judge he knew to have violated the rules of judicial conduct.

Rule 1.2

Rule 1.2 provides that a "judge shall 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." Comment 5 to this rule states that "Actual improprieties include violations of law, court rules, or provisions of this code." Judge has committed actual improprieties by not only intentionally refusing to act in accordance with the law, but in explaining that violations of the law are an acceptable course of action. Judge stated that "we do rule on things, procedurally, that don't go to the merits, all the time around here, without waiting for a response." Such a blatant disrespect for and disregard of the law should not be tolerated in the judiciary. Also, treating counsel for one side with total disrespect, when they are before him on a motion to disqualify in court causes a lack of perceived fairness.

Rule 2.2

Although Rule 2.2 states that “a judge shall uphold and apply the law,” Judge _____ has refused to do just that. Comment 3 to this rule provides that “an intentional disregard of the law may constitute misconduct.” Such is exactly the case here: Judge _____ intentionally disregarded the law.

Rule 2.8

Rule 2.8 states that “a judge shall be patient, dignified, and courteous to litigants...lawyers...and others with whom the judge deals in an official capacity.” The requirements of this rule could not be farther from the reality of the way in which Judge _____ conducts himself in his courtroom. Judge _____ spoke with an extremely sarcastic tone, and mocked Mr. _____ stating “We all appreciate when people tell us how many years they practiced in another state and in this jurisdiction. We appreciate that...You can sit down now. I appreciate knowing you have been in practice 23 years.” Multiple witnesses can testify to the sarcastic and demeaning tone used by Judge _____

Rule 2.15

Rule 2.15(A) states that “a judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge’s honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.” Rule 2.15(B) further states that “a judge who receives information indicating a substantial likelihood that another judge has committed a violation of this code shall take appropriate action.” Judge _____ was provided with information indicating a substantial likelihood that another judge has committed a violation of this code. Instead of making any attempt to protect the integrity of the judiciary, Judge _____ mocked the attorneys bringing the violations to his attention and stated that he and others violate the law “all the time.”