

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-138

Complainant: No. 0308110357A

Judge: No. 0308110357B

ORDER

A superior court judge voluntarily reported that he inadvertently delayed ruling in a matter that involved multiple parties and attorneys and three requests. Two matters were resolved timely while the third was mistakenly missed because it appeared that the other rulings resolved all pending matters. The judge promptly ruled on the third matter when he received notice and then changed his tracking procedures with his staff to avoid problems in the future.

The commission reviewed the matter and found no evidence of ethical misconduct on the part of the judge. Accordingly, the commission dismissed the matter in its entirety pursuant to Rule 16(a) and 23. In keeping with the commission's customary practice in similar cases, it would have issued an advisory letter to the judge had it determined the judge violated the sixty-day rule (Rule 91(e) of the Rules of the Arizona Supreme Court).

Dated: July 20, 2011.

FOR THE COMMISSION

/s/ George Riemer
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.

SUPERIOR COURT OF ARIZONA
Maricopa County
201 West Jefferson Street, Phoenix AZ 85004-6292

MAY 23 2011

May 13, 2010

Mr. Keith Stott
Executive Director (acting)
Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix AZ 85007

RE: Self Report – Inadvertent Delayed Ruling on Application for Attorneys' Fees and Objection to Entry of Judgment.

Dear Mr. Stott:

It has come to my attention that I inadvertently delayed a ruling on an application for attorneys' fees and costs and objection to the entry of judgment in connection with a case that was tried in my court within the time frame required by the Arizona Constitution Article VI, section 21. Upon learning of the error I reviewed the matter, ruled on it, investigated the cause of the error and instituted certain measures to eliminate future such occurrences.

I held a status conference/oral argument on several applications for attorneys' fees and costs and forms of judgment in cause number _____ In this case, a jury returned a defense verdict for all the defendants in a case. The amended complaint which began as a fraud action against two parties expanded into allegations of fraud and other tortious conduct as well as a breach of contract involving five parties. By the time of trial the breach of

contract claims applied to three of the defendants. Two of these defendants were a married couple represented by a single attorney. Accordingly, three separate judgments were submitted but only two included applications for attorneys' fees and cost.

The case had been pending prior to my rotating onto the civil assignment. There had been at least one interim award of attorneys' fees as a sanction for discovery violations as well as a fair amount of ancillary litigation involving motions to disqualify counsel, the appointment of a guardian for one of the parties, all of which were unsuccessful. Accordingly, the fee applications were rather extensive as each sought fees in excess of \$80,000.00. At a status conference held on February 2, 2011, I ordered one of the parties to provide supplemental briefs because upon review of the application the numbers simply did not add up. The other two parties did not request any extensive argument and rested on the written arguments submitted to the court.

I ruled on two of the judgments, one where only costs, but no attorneys' fees, were requested, and the other where the additional briefing/adjustment of the fees was ordered. Somehow I did not timely rule on the second application for fees and costs and had not realized it until that party, Defendant _____ submitted a "Second Request for Entry of Judgment" on April 26, 2011. Defendant _____ had filed her first request on or about March 31, 2011 at about the same time I had ruled on the objections and entered judgment for the other defendants. It appears that because these events were contemporaneous the first request was not processed, apparently, believing judgment had been already entered. I do not recall seeing the first request. I received the second request on Friday, April 29, 2011 and after researching the docket and reviewing the fees for reasonableness, I ruled on the application on Wednesday, May 4, 2011 and in that ruling apologized for the delay in the matter. I summoned my staff regarding the matter that had not been ruled on to determine where our system had failed.

Our procedure for handling matters taken under advisement is that following a hearing all motions, responses and replies and exhibits if any are returned to the clerk or judicial assistant so that they may be placed on the under advisement log, noted in our computer, and then

placed in a file folder and returned to me for ruling. All matters placed under advisement are tickled in my computer for 30 and 58 days. The computer normally also shows when the judicial assistant sends fully submitted matters into my office for review and ruling. In this case apparently the matter was not placed on the under advisement log, nor was it tickled in the computer for ruling, nor was it noted in the computer that it was sent to me for ruling. We can only surmise that because there were two large applications for attorneys' fees, that one was ruled on and the other judgment had been entered then all matters had been resolved.

The applications in question were electronically filed and they were large documents. In our system, generally, documents can be printed on paper and physically sent in to me for review or they can be put electronically into the "Judge's Review" folder in the computer. Motions are usually printed on paper when they are sent for my review because they are easier to work with in that form. When we have large documents we generally don't print them out until absolutely necessary because otherwise it wastes a lot of paper. We can review those documents or portions of them in the computer on screen in our judges review folder but that requires the document to be put into the folder by the judicial assistant or the bailiff.

In this case apparently the application for Defendant and the first request for entry of judgment were not sent to me on paper nor were they placed in the electronic judge review folder. And as stated above, because the application for fees not placed on the under advisement log it also missed our tickle system. We have since changed how we process these things by placing everything into the judge's electronic review so there is no question whether it is sent to me or not. That folder is reviewed by me daily and all items must be approved by me. Notwithstanding our system, I probably should have realized that one of the judgments was outstanding in that having ruled on two of them I should have inquired about the third. I have met with my staff to review all of our procedures and to better communicate to prevent this from happening again.

Please know that I and my staff work diligently to make sure we rule in a timely

manner. This is why we thought we instituted a "fail safe" tickle system to prevent violations of the 60 day rule. We are also cognizant that matters that can reasonably be ruled on prior to 60 days should be as stated in JEAC Advisory Opinion 06-02 and we endeavor to do that as much as possible. If you have any questions or concerns or need any more information on this matter please feel free to contact me.