

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 11-177

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Complainant: No. 14224 00144A

Judge: No. 1422400144B

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**ORDER**

The complainant alleged that a superior court judge lied about a political campaign donation he made, was biased, and made incorrect rulings. The complainant further alleged the judge started a business that relied on his judicial position for financial benefit.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After thoroughly reviewing all of the information provided by the complainant, along with the judge's response, the members of the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission has no jurisdiction to review the judge's legal rulings or his post-retirement business activities. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: October 12, 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 October 12, 2011.

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

SWORN STATEMENT OF MADE IN SUPPORT OF  
COMPLAINT AGAINST JUDGE FILED WITH  
ARIZONA COMMISSION ON JUDICIAL CONDUCT

For a more complete understanding of what has transpired regarding my allegations of misconduct and unethical behavior by Maricopa County Superior Court Judge \_\_\_\_\_ an Arizona judge not unknown to controversy or this commission, I would encourage you folks to obtain the entire record of my lawsuit. In lieu of that, to place my complaint in a proper perspective, I have attached the two Notice for Disqualification of Trial Judge for Cause that I found necessary to file against Judge \_\_\_\_\_

Of course I am not pleased with his recent granting of defendants Motion for Summary Judgment dismissal in my defamation of character lawsuit against former State Superintendent of Instruction Tom Horne, the Arizona State Board of Education, and eight other board members and SBE employees, but the main purpose for this complaint is not retaliation, it is to have this duly-appointed forum for judicial misconduct examine what transpired here in hopes that some sort of finding will be made to serve as a deterrent to other judges should you find something awry here.

.....

*I hereby swear under threat of perjury, as affirmed by my affixed signature, that the following statement is the truth to the best of my knowledge and belief.*

I am proceeding with this statement that the merit of my lawsuit against Tom Horne and others is of no interest to this esteemed commission. My assumption is that the examination to follow from this complaint is solely based upon the conduct of Judge \_\_\_\_\_

Judge \_\_\_\_\_ was the fifth judge assigned to my lawsuit. The first two were, from what I have been told, the result of the random assignment modus operandi the Maricopa County Superior Court has implemented as its policy. The first judge was removed due to a request for judge change. The second, Judge Bethany Hicks, served as trial judge until there was a docket rotation. The third judge disqualified himself after a motion for judge change was filed by me after he rightly disclosed that his spouse is employed by the law firm that represented the defendants, that being the Arizona Office of Attorney General. The fourth assigned judge disqualified himself for reason(s) unknown. The fifth, Judge \_\_\_\_\_ whose docket at the time was probate court, was hand-selected by Presiding Civil Judge Robert Oberbillig.

Judge [redacted] had previously resigned as presiding judge of the criminal courts. This was precipitated by his having been accused of taking a bribe and being corrupt by former Maricopa County Attorney Andrew Thomas and current Maricopa County Sheriff Joe Arapaio<sup>1</sup>. Mr. Thomas went to great lengths to get a criminal indictment against [redacted] but ultimately it proved futile. I am certain this body is aware of the controversies and scandals, as well as how this all factored in the recent election for Arizona Attorney General, that these accusations both sides were hurling at one another served as a catalyst for.

I have a parallel action to the civil torts lawsuit [redacted] was assigned to. It concerns the judicial review of an administrative decision. Tom Horne's conduct serves as the foundational piece for this action as it does for the slander and libel suit [redacted] was assigned to. This is mentioned as it involves another hand-selected trial judge by Judge Oberbillig. This time, however, he brought in a retired judge who I vehemently protested about given the political figures involved<sup>2</sup>.

This particular hand-selection was precipitated by the previously assigned judge, Crane McClennen, disqualifying himself following the media attention and my motion for change of judge brought about by his repeatedly referring to the rules and statutes that govern a judicial review of an administrative decision by the State Board of Education as being "schizophrenic".

This deviation from Judge [redacted] is necessary, I believe, to support my suspicion that Oberbillig factors into everything [redacted] did. It also serves as background information that [redacted] was cognizant of the fallout McClennen encountered by his schizophrenic statements about rules and laws, and the articles written about it in the press. I cannot prove it but I am of the opinion that Oberbillig had an agenda of sorts when he hand-selected both judges. But I digress, back to

[redacted] was assigned to the lawsuit on July 19, 2010. On August 9, 2010 he ordered a hearing be held on my Motion to Examine Evidence Tampering and on if Tom Horne has lied under oath in his deposition of April 14, 2010. Accompanying the motion was a true copy of the audio CD made of the May 19, 2008 State Board of Education where I allege, based upon the

<sup>1</sup> Judge [redacted] has filed a lawsuit against Maricopa County, Mr. Thomas, Sheriff Arapaio and others for defamation. The suit is currently pending in US District Court of Arizona.

<sup>2</sup> I had sought a change of venue to another state on both legal undertakings given the concerns about influence-peddling and possible political favors that could interfere with my right to a fair trial. I have always been deeply concerned about what goes on behind closed doors as I once clerked for a judge as well as interned in a public defenders office, experiences not lost upon me and the reason why I decided to not go to law school. My attempts at moving my suits to a neutral court were not successful.

contents of this audio record and the transcript made of it, of Horne making defamatory statements about me. I also provided as an exhibit a copy of the transcript composed of Horne's April 14, 2010 deposition to proffer as evidence supporting my allegation that he was at least guilty of false swearing under oath.

The hearing addressed these issues. Judge [redacted] indicated the tampering with evidence was a criminal matter that needed to be taken to law enforcement. As for what Tom Horne said or did not say as evidenced on the CD, Judge [redacted] indicated it was a fact question that he was leaving to a jury. Opposing counsel James Bowen concurred that this case was to go to a jury as there was a genuine issue of material fact in dispute.

What is central to this complaint is how [redacted] conducted himself from the date he was assigned up until his resignation effective June 30, 2011.

Upon the commencement of the September 7, 2010 motions hearing by trial judge [redacted] he stated that he had a disclosure to make. He went on to state that he had made a donation to Tom Horne's then opponent in the general election for attorney general, Felicia Rotellini. He claimed it was in the amount of \$200. He asked if either side had a problem with this. Of course I did not as if anything it suggested a judge who was not a friend or supporter of the key player in my lawsuit, Tom Horne. And besides, I had researched [redacted] after he was hand-selected by Oberbillig and learned he was a democrat.

Opposing counsel did not ask that he recuse himself for partiality or bias. Judge [redacted] went on to say if anyone changed their mind about his being trial judge that they were free to indicate it, suggesting he would recuse himself.

Although Judge [redacted] ruled that he was leaving it to a jury to make a finding of what the evidence shows, I became troubled that he subsequently would not allow crucial evidence to be seen by the jurors.

We all have had an experience with that 'little voice in the back of our head' telling us something isn't right, that you need to re-examine or take a closer look at it. The unexpected statement by [redacted] about the campaign contribution kept vexing me.

When I read what Casey Newton reported in the *Arizona Republic* about Tom Horne having received a lifetime ban from the Securities Exchange Commission for what is tantamount to white-collar crime, and that he had made false statements on four applications he submitted to the Arizona Corporation Commission for his private practice law firm, I was committed to

making sure the man was not elected attorney general, not in a state I love and where my family lives.

I offered my assistance to the Rotellini Campaign and worked closely with her right hand, her administrative assistant from her private practice as well as when she was assistant attorney general, Mary Alice Donnelly. At this point in the chronology of events I learned of the allegations of corruption made against Judge \_\_\_\_\_ and I had to verify his statement from the bench that he made the \$200 contribution.

The campaign was adamant no such donation was ever made. I sought reassurance. Again, Mary Alice Donnelly, after personally researching it as a favor to me for my help, stated no such donation was made. She then provided me with a website link to the Arizona Secretary of State where I could review for myself all financial reports filed by the campaign regarding donations. The evidence was irrefutable that his claiming to have made this donation was simply not true.

I then found myself wondering why he would lie. The only logical conclusion deduced from it all is that he was helping Horne out of the embarrassment of the lawsuit as the evidence is irrefutable that he accused me of some rather ugly things that simply are not true, no basis in reality whatsoever. I discussed my belief about his 'tanking' my case to either benefit the State or Horne, or both with Donnelly. She was more taken back, based upon what she told me was seventeen years work as a paralegal and legal assistant at the AG's Office, that Asst. AG Bowen did not object to the obvious bias and partiality that this conveyed. It was her belief that the whole thing was choreographed, and she concurred with me that the statement was made to disarm my concerns and hyper-vigilance about a biased trial judge.

If you smell a skunk then there is likely one in the area but if you don't actually see it then it is impossible to absolutely prove it. An objective finding requires empirical evidence. I am certain that your task carries with it a preponderance of the 'evidence', not beyond a shadow-of-a-doubt. And that the level of discipline you apply is predicated on the degree of preponderance in conjunction with the violations of the rules governing judicial conduct. My complaint is weaved together with circumstantial evidence found in the court record.

The findings of Judge \_\_\_\_\_ are now up to the appellate courts to review. How he conducted himself is your responsibility.

So where am I going with this long-winded sworn statement? To this: the attached notices of disqualification speak for themselves. They are exhibits to my complaint. When I filed the first one based upon discovering that [redacted] had lied he was ordered by his supervisor and close colleague, Judge Oberbillig, to produce proof that he made the donation. He could not provide the cancelled check but did submit a sworn declaration along with a carbon copy of the bank check and his bank statement. These exhibits were sealed by Judge Oberbillig and my efforts to get them unsealed in the best interest of judicial transparency have been futile. Surely the key personal information such as bank balances and account number can redacted.

Of course there are all sorts of theories as to how a \$200 check got lost by the Rotellini Campaign, which is what [redacted] is claiming. Thus far Rotellini has refused to comment on it as the media has taken an interest in this given [redacted] recent controversies. This is just one of many.

Here is the synopsis you are likely hoping I get to: Following the disqualification of two judges, [redacted] is hand-picked by Oberbillig to be trial judge that has a key Arizona career politician named as a defendant in it, someone with ties to the legislature and courts. He is assigned on July 21, 2010. On August 9, 2010 he orders a hearing to be conducted after I accuse Horne of perjury in a deposition and that evidence has been tampered with. He clearly knows by that date who the defendants are. On August 18, 2010 he goes to a fundraiser that concerns a defendant in a sensitive lawsuit where allegations of wrong-doing and influence-peddling have been made. I won't go into what this constitutes, my two notices speak for themselves and are incorporated herein. Besides, you know better than I.

The timeline continues as such: following my first notice for disqualification, this one based upon the alleged lie, Oberbillig orders on March 31, 2011 [redacted] to produce evidence to refute my allegation. He does on April 2, 2011. One day following the order and the day preceding his turning submitting his declaration, he files articles of incorporation to operate a custom jewelry business that is directly related to his position as judge, "Rings of Court". This is an ethics violation, benefiting financially from his position of judge. On April 4, 2011 Oberbillig refuses to disqualify him and [redacted] refuses to recuse himself. Repeated efforts by me to obtain the declaration are ignored by both [redacted] and Oberbillig's assistants, and it is not available thru E-filing or the court clerk. I eventually receive it from a persistent reporter who kept bugging Oberbillig's assistant for it.

Upon my reading of it I am outraged at \_\_\_\_\_ unethical behavior in attending the fundraiser after being assigned to the lawsuit. And I don't for a moment believe he intended to make the donation, that is was a ruse all along. But this can't be proven only deduced from the circumstantial evidence examined against the backdrop of the politics and influence involved.

I file another notice to disqualify. Oberbillig rules there is nothing new in it. Unknown to me previously, on May 5, 2011, Judge \_\_\_\_\_ tendered his resignation. I then plead with the court that \_\_\_\_\_ should recuse himself from my lawsuit or otherwise wait for his replacement to make a ruling on the motion for summary judgment. I hear nothing. I request oral arguments, emailing \_\_\_\_\_ Oberbillig and Presiding Judge Norman Davis a true copy of the mailed filing on June 7, 2011. On June 8, 2011 Judge \_\_\_\_\_ issues the attached ruling granting defendants' motion for summary judgment based upon his finding that defendant Horne meant to say one thing and instead said something else. In other words he could read the mind of a defendant and decide upon a motive, something that only a trier of fact is suppose to do. His bias in the case is obvious, he is only human and for me to accuse him of lying and then making comments to the press about it surely didn't go over well with him, it wouldn't with any normal person.

So there you have it. Perhaps this is something you don't look into but I am just doing what the US Justice Dept. advised me to do.

On behalf of myself and the good citizens of Arizona let me thank you for your efforts in this matter. I am available for any further comment, addendum to my sworn statement, or documentation you require.

\_\_\_\_\_  
SUBSCRIBED AND SWORN to before me this 15<sup>th</sup> day of July, 2011 by

\_\_\_\_\_  
commission expires: 11/16/2014

