

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-052

Complainant:	No. 1436610960A
Judge:	No. 1436610960B

ORDER

The complainant alleged that a superior court judge issued untimely rulings.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or 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 review, the commission decided to dismiss this matter with a private advisory comment reminding the judge of his obligation to comply with relevant statutory and constitutional time limits. The case is dismissed pursuant to Rules 16(b) and 23(a).

Dated: May 31, 2012.

FOR THE COMMISSION

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on May 31, 2012.

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

*The Law Office of***CONFIDENTIAL**

State of Arizona
 Commission on Judicial Conduct
 1501 West Jefferson St., Suite 229
 Phoenix, AZ 85007

February 21, 2012

Ref:

Judge pro tempore
 Pima County Superior Court

Dear Members of the Commission:

I am uncomfortable and uncertain about writing this letter. However, I believe I should bring my concern to the attention of the Commission for your decision rather than making a decision myself whether the Commission would have an issue. While I was not treated discourteously by the above judge, nor do I feel there was any personal animosity at issue here, I was stunned several years ago by the matter involving Judge [redacted] from Yavapai County, a judge I appeared before, admired and respected. The situation I will report seems of similar nature, though I have no idea how isolated the issue in my matter may be. So I will leave that for the Commission to resolve.

I recently had a very serious criminal case in Pima County Superior Court which was presided over by Judge [redacted]. Although my client faced four mandatory and consecutive life terms in prison if convicted, he was acquitted of all charges by the jury and that matter is now resolved and closed. In that same cause, there was also a Special Action proceeding before Division Two of the Court of Appeals with a defense ruling in the opinion. This is the only case I have ever handled involving Judge [redacted].

I enclose copies of two UNDER ADVISEMENT RULINGS issued by Judge [redacted] CR2010. This matter was scheduled for trial to a jury for January 4, 2012.

The first RULING, dated December 16, 2011, related to a Motion to Preclude [Expert] Testimony Pursuant to New Evidentiary Standards filed in the case on behalf of the Defendant. This Motion was filed in anticipation of the then-recent amendment to Rules 702 and 703 of the Arizona Rules of Evidence, which were to take effect January 1, 2012. The motion was mailed for filing with the Clerk on November 3, 2011, with an e-mail copy to Court and Counsel that same date. The Clerk actually filed the motion on November 7, 2011. In its first RULING, without any hearing on the motion, the Court

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issued its PROPOSED FINDING, apparently after taking judicial notice of the operative facts, and scheduled a hearing of this fundamental motion for the morning that was scheduled for jury selection in the trial. This motion dealt with a core issue in the case, and the scheduling of the hearing effectively precluded any appellate review of the decision, since there would be no final decision to review until the morning of trial. Although the prosecution in the case subsequently withdrew their noticed expert witness from their list of witnesses, that was done on the eve of trial which kept the defense expert on call, and precluded preparation of an opening statement or a draft of closing argument by the defense until that time.

The second RULING relates to the " issue". As the RULING itself states, the Motion in Limine at issue was heard on September 19, 2011 and taken under advisement. No further action was taken until upon arrival at the Court to commence jury selection in this case, a copy of this RULING (dated January 04, 2012) was waiting on counsel table. Once again, an issue of substantial consequence to the trial was left unresolved, this time for the 107 days the matter was "under advisement". Again, this tardy decision precluded timely appellate remedy, kept out-of-state witnesses on hold regarding travel plans, and precluded preparation of opening statement and a draft of closing argument until the morning of trial.

Very truly yours,

JET/hs

Encl: Ruling of 12-16-2011
Ruling of 01-04-2012