

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 12-283

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Complainant: No. 1453810291A

Judge: No. 1453810291B

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**ORDER**

The complainant alleged a municipal court judge may have violated the Code of Judicial Conduct by failing to report an attorney to the state bar or take other appropriate action concerning alleged unethical conduct by the attorney.

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 reviewing the information provided by the complainant and the judge's response, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: January 11, 2013

FOR THE COMMISSION

/s/ George Riemer

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George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on January 11, 2013.

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

CONFIDENTIAL

State of Arizona  
Commission on Judicial Conduct  
1501 W. Washington Street, Suite 229  
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2012-283

COMPLAINT AGAINST A JUDGE

Your name: \_\_\_\_\_ Judge's name: \_\_\_\_\_ Date: 10/16/12

**Instructions:** You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

I believe Judge \_\_\_\_\_ may have violated Arizona Code of Judicial Conduct, Rule 2.15(B) and/or (D) by failing to inform the appropriate authority or take appropriate action when confronted with information that an attorney may have displayed a lack candor to her court or violated other Rules of Professional Conduct.

Relevant Summary of events: (Re: State v Michelle Moore, Phoenix Municipal Court #14113219, Judge \_\_\_\_\_)

On August 17, 2012, I verbally informed the Judge of possible improper conduct of the defense attorney in the State v Moore case that had come to my attention just prior to that date. (See Exhibit I (Unofficial Transcript of 8/17 hearing) to States Notice of Alleged Improper Conduct of Defense Counsel, enclosed herewith; and/or DVD Audio recording of 8/17/12 hearing also enclosed). Based on my presentation Judge \_\_\_\_\_ set the matter for an OSC on October 12, 2012 and ordered briefing of the issue by both parties. Id. On August 21, 2012, Judge \_\_\_\_\_ vacated the OSC and set the matter for a no-witness hearing. (See, Minute Entry, "Motion to Preclude/Vacate Hearing/Set No-Witness Hearing", enclosed herewith). Because I was unaware the Judge had vacated the OSC and because I believed it needed to be written, on August 27, 2012 I filed, pursuant to the original briefing schedule, the enclosed "State's Notice of Alleged Improper Conduct of Defense Counsel".

On September 6, 2012, the no-witness hearing was held before Judge \_\_\_\_\_ (See enclosed, "Unofficial Transcript, Thursday, September 6, 2012", which was prepared by my office; or DVD recording of the hearing, which is also enclosed. At that hearing the State, based on the strong allegations in the Notice of Alleged Improper Conduct, requested that the court reset the OSC and/or investigate whether the allegations are true or not. Id. The court declined to inquire whether a attorney may have lied to the court. Id., Transcript Page 3, lines 4-11.

The court stated, "that's something for the um, State Bar to investigate. And so, I don't think it's the Court's rule (sic) to get in the middle of those types of accusations." Id., p. 2 line 22 - p. 3 line 2. When Judge \_\_\_\_\_ was asked if she was reporting the matter to the Bar to investigate, she stated that she doesn't have to, "(a)I have is your allegations." Id., page 7, lines 13-16. I would agree they are allegations, but they are supported with good evidence and at the end of the August 17th hearing, I believe defense counsel actually admitted that the improper contacts with the witness did occur. See, " States Notice of Alleged Improper Conduct of Defense Counsel" ,

(Attach additional sheets as needed)

## COMPLAINT AGAINST A JUDGE

By: Judge 10/16/12 PAGE 2

Page 7, lines 10-17. Furthermore, Judge even stated that even if the allegations of misconduct by the defense attorney to her court were true, she doesn't "really think that's an issue for (her)." See, Unofficial Transcript, September 6, 2012, page 4, lines 16-18. That position was a 180 degree switch from her position on August 17, 2012 when then State first orally presented its allegations of defense attorney's lack of candor or material misrepresentations to the court. On August 17, Judge reset the matter for an OSC and to give defense counsel an opportunity to hire his own counsel. See, Unofficial Transcript, August 17, 2012, attached to State's Notice of Alleged Improper Conduct of Defense Counsel as Exhibit I, page 12, lines 4-10. Judge also stated at that time that the allegations being made against defense counsel are "much bigger than this case (criminal charges against his client) right now." Id. page 12, line 4.

I have done my duty pursuant to the Arizona Rules of Professional Conduct regarding the allegations I made to Judge in the above referenced case. I believe the allegations are well supported by the evidence. It is also my opinion that the party in question in the allegations even admitted the knowledge of or the making of improper contacts with a witness. And that same party lacked candor or made misrepresentation to the court regarding those contacts. After reading the Arizona Code of Judicial conduct, I also believe that Judge has obligations regarding the allegations that have been made to her. For that reason, I submit this complaint.

Additional Information regarding the underlying case that this complaint references:

The case is set for non-jury trial in Division 506 (Judge Division) of the Phoenix Municipal Court on October 30, 2012 at 8:30 a.m. I will not be appearing on this case at that time. Eric Van Buskirk of the Phoenix City Prosecutor's Office is scheduled to be the trial attorney on the case that day. On August 17, 2012, the State asked Judge to recuse herself from the case for trial. Judge took the request under advisement. I do not know if she has made a ruling on that request yet.

Sincerely,