

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 12-324

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Complainant: No. 1456710995A

Judge: No. 1456710995B

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**ORDER**

The complainants alleged a superior court judge failed to provide notice of a proceeding, engaged in an improper ex parte communication, and altered or directed staff to alter court records.

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 all of 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: February 19, 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 February 19, 2013.

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

# COMPLAINT AGAINST A JUDGE

2012-0001

Judge

November 27, 2012

(hereinafter have access to Maricopa County Clerk of the Court's Electronic Court Record (ECR) online, and were confident that they were privy to all Court activity in their case. However, when was at the East Superior Court in Mesa, she decided to look at the court records at the courthouse. She was surprised to find that the records of their ECR access and the records at the courthouse do not match. Specifically, found an entry for an "Event: TELEPHONIC CALL/DOCUMENTATION" for July 20, 2012. There were no additional comments. took screenshots of the records, (See Exhibit "A" attached hereto." The had not been aware of any scheduled Telephonic call/hearing for that date.

called Judge assistant to find out what the hearing was about, since the were never invited to this ex parte Telephonic Call Hearing with the Judge and Plaintiff's Counsel. Judge assistant told that the Telephonic Call was regarding an "Objection to Lodging Form of Judgment and Application for Award of Attorney Fees and Costs Against (hereinafter "Objection"). The had filed an Objection with that title with the Court on July 17, 2012, or 3 days before the ex parte communication between the Judge and the Plaintiff's counsel.

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Judge

November 27, 2012

Not only were the                    never invited to the telephonic call hearing, they were never informed or advised of the Telephone Call Communication/Hearing at any time or in any way, not by Motion, Notice, phone, mail, or any other type of pleading either before or after the hearing.

This participation of Judge                    in this ex parte communication gives the appearance that she was not an impartial party in this proceeding but rather trying to impede and/or obstruct the due administration of justice by officers of a court in this matter, by holding an ex parte telephonic hearing without the benefit of the Defendants knowledge, consent, reply, contribution, involvement, response or participation.

Since this ex parte Telephonic Call Hearing was regarding Attorney Fees, **it appears as though** there is an undisclosed conflict of interest and/or a financial incentive that would deprive the Defendant of any fair ruling and their constitutional right to due process. Also, as the telephonic Call Hearing was not recorded, Plaintiff's Attorneys and Judge                    can offer no reasonable defense for the ex parte communication because the Pilats were **never** informed. Neither Judge                    nor Plaintiff's attorneys promptly communicated any information about the Telephonic Call Hearing to absent parties

The                    were not afforded an opportunity to respond.

The                    filed a Motion to Change Judge for Cause. When denying the Motion, the Honorable                    put the following in his Minute Entry.

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Judge

November 27, 2012

“Note Date:	7/20/2012
Note Type:	Event Note
Note Content:	FOUND ON DOCKET: OBJECTIONS TO LODGING FORM OF JUDGENT AND APPLICATION FOR AWARD OF ATTORNEYS’ FEES AND COSTS AGAINST FILED 07/17/12 – FWD TO ASSIGNED TRIAL JUDGE”

The entry in question for July 20, 2012 reflects a phone call or documentation was placed by Civil Court Administration to Judge [redacted] division to forward (FWD) the Objection. There was no hearing, telephonic or otherwise, by Judge [redacted] or her staff with any party. Consequently, Defendants are mistaken in concluding Judge [redacted] engaged in any ex parte communication.

The [redacted] are in possession of a **recorded** telephone call with “Tracy” who confirmed to [redacted] that she was Judge [redacted] assistant. She read the contents of the “note” above as it appeared that day, October 12, 2012. (See CD - Exhibit ‘B’ ) Based on the contents of the “note” now available for review, the Defendants allege that the “note” which was in the system when the Honorable [redacted] read it is **NOT** the same “note” that was in the System when it was “read” to [redacted] on October 12, 2012 by “Tracy” in Judge [redacted] office.

The **recorded** telephone call (see CD -EXHIBIT “B” that [redacted] had with “Tracy” on October 12, 2012, in which “Tracy” specifically said that she was **reading from the Note** that was attached to the “Telephonic Call” differs dramatically from the Note that Judge [redacted] listed in his Minute Entry of November 8, 2012.

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Judge

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“Tracy” read from the Note: “It looks like there was an *Objection to Lodging Form of Judgment and application for award of Attorneys’ fees and costs against* ”

said there was also a telephonic call that day. Tracy said: “That’s the note that I am reading to you, that’s what that is. That’s the **only thing** under the 20<sup>th</sup> of July.” When asked if there was a telephone call about the Objection, she stated “Apparently there was. That’s the way it is listed and then **what I just read to you is what’s under that heading.**” This is very different from the note attached to the Minute Entry. On October 12, 2012, there was NO note that said: **FOUND ON DOCKET or FORWARD TO ASSIGNED TRIAL JUDGE.** And, “Tracy” plainly said there was a telephone call about the Objection.

The allege that the “note” was changed/altere d by Judge /court personnel on or after October 12, 2012. Given the content of the call with “Tracy”, who again identified herself to be Judge Assistant, any reasonable person involved in this lawsuit who was not informed about the call, would know that the Telephonic Call was ex parte and this confirmed by the fact that the need was felt for the Court to alter the record.

In addition, and two witnesses went to the Civil Court Administrative Office to investigate and they were told by two (2) employees that the “note” attached above is **not** the way the Civil Court Administration does their business, and that they

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had never seen anything like that. This is confirmed by comparing the various entries attached as Exhibit "A".

This is not the first instance of what appears to be judicial misconduct in this case, as the entire record of the 28 minute hearing on the Plaintiff's Motion for Summary Judgment, at which Defendants were represented by counsel, and which was determining in this case, was mysteriously "disappeared". The Defendants' subsequent Motion for a new Hearing was denied with some **self-serving explanation that the absence of a record was not important, and did not constitute a violation of the Defendants right to due process. The Court's ruling on the Plaintiff's Motion for Summary Judgment, the record of which is not available in violation of Rule 43(k)(1), A.R.C.P.- Preservation of verbatim recording of court proceedings - constitutes the basis for the Plaintiff's noticing of a Sheriff's Sale of the Defendants' home, which is scheduled for December 5, 2012.** This Sheriff's Sale purports to sell the home even though all obligations against the home have been discharged in full and that the Sheriff's sale to be held on December 5, 2012 will sell at auction a Property against which no money is due, except for the doing of Judge

Following the above travesty of justice, we had the ex parte telephone call which is the subject of the altered note and now this cover-up by alteration of the record. Accordingly, because not only misconduct, but the appearance of misconduct, is under the purview of the Code of Judicial Conduct, are now

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2012-004

Judge

November 27, 2012

filing this Complaint against Judge \_\_\_\_\_ with the ARIZONA COMMISSION ON JUDICIAL CONDUCT. "Tracy" is disclosed in the Complaint and the \_\_\_\_\_ believe that she should be called as a witness under oath. They may also be others in Judge \_\_\_\_\_ office and in the Court Administration office that should be questioned about the "cover up". (Copies of Motions and Exhibits enclosed).