

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 13-154

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Judge:	No. 1102113507A
Complainant:	No. 1102113507B

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**ORDER**

The complainant alleged a superior court judge improperly delayed the reassignment of a case from which the judge had to recuse.

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 complaint 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: August 20, 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 August 20, 2013.

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

This is a complaint of judicial misconduct against \_\_\_\_\_ )

In the best case \_\_\_\_\_ has violated Rule 1.2, Canon 2, Rule 2.1, 2.5 & 2.6.<sup>1</sup>

In the worst case, \_\_\_\_\_ has also falsified his sixty-day judicial certification, violating Canon 1 and Rule 1.1, *Compliance with the Law*.

In either case, \_\_\_\_\_ arguably violated Rules 2.2 and 2.3.<sup>2</sup>

### FACTS

This complaint arises out of three concurrent appellate cases, \_\_\_\_\_ 7  
 \_\_\_\_\_ ) which came up, uncontested, from the \_\_\_\_\_ Municipal Court  
 to the \_\_\_\_\_ County \_\_\_\_\_ )

At that time, Judge \_\_\_\_\_ was the judge in \_\_\_\_\_ County, but was retiring on Friday, December 14. Governor Brewer appointed \_\_\_\_\_ County Prosecutor \_\_\_\_\_ as replacement.

Presumably, then, \_\_\_\_\_ matter was submitted to \_\_\_\_\_ on Monday, December 17. That started the 60-day clock for \_\_\_\_\_ to act. Yet, it was not until 85 days later, after complainant — in the interest of justice — contacted \_\_\_\_\_ the \_\_\_\_\_ (on February 25, 2013) that \_\_\_\_\_ finally reassigned \_\_\_\_\_ cases. \_\_\_\_\_ he did not act until March 11.

Now, reassignment should have been quick and easy. There was never any question that \_\_\_\_\_ had to recuse from \_\_\_\_\_ cases. For when he had been the \_\_\_\_\_ County \_\_\_\_\_, \_\_\_\_\_ office had prosecuted \_\_\_\_\_ for a felony arising out of similar free speech issues in \_\_\_\_\_ . (Not guilty by jury on the felony, two misdemeanors vacated on appeal, as below.)

Some time later, while he was still Prosecutor, [redacted] eyes were opened to the corruption in [redacted]. Subsequently, [redacted] filed a complaint with the FBI alleging a pattern and practice of false arrests by public officials in [redacted]. Among other things, [redacted] had cited bogus felony charges against [redacted] brought by the same [redacted] f who had charged [redacted] in the matter under appeal. Thus, disqualification was perfunctory.

### ALLEGATIONS

In the best case, by not reassigning this case within 60 days, [redacted] violated the Arizona Constitution and court rules. (Rule 91(e).) See Comment 5 of Rule 1.2.

Similarly, by failing to act diligently, [redacted] violated Canon 2, Rule 2.1, 2.5 and 2.6.

In the worse case, if [redacted] signed his sixty-day affidavit, certifying in February that he had no matters extending beyond 60 days, then [redacted] falsified a public document (a felony), defrauded the State of his salary, and committed a Class 3 misdemeanor. As such, he also would have violated Canon 1, Rule 1.1 by not complying with the law.

As an aside (anticipating a defense by [redacted]), although the Clerk of the [redacted] did not cite [redacted] for a 60-day violation in her Q1 Quarterly Report of Submitted Matters [redacted] that is not dispositive. After briefly discussing the matter with [redacted], the technical issue seems to be whether [redacted] case was "assigned" to [redacted] according to the Case Management Software. But this is hairsplitting and skirts around the definition of "submitted" as defined in the Quarterly Report itself.

"A matter is reported as submitted on the date when all that is required . . . has been completed and the disposition of the matter awaits only the decision of the court." Since the Town of [redacted] did not respond to the appeal, all briefs and papers had been submitted to [redacted] by December 17.

Whether a case is or is not assigned internally according to the CMS does not matter to the litigant or to the public. Such a distinction should not be a technicality for judges to get off the hook for failing to act within 60 days. [redacted] case was assigned to

[redacted] me the papers were "in judge's chambers." (Recording of call available on request.) That is, this was not a clerical error. Therefore, [redacted] was obligated to move on [redacted]'s matter within 60-days or forfeit his pay until compliance.

Last, assuming that \_\_\_\_\_ is not incompetent, there must be another reason for his delay in \_\_\_\_\_ matter. Ignoring their prior interpersonal relationship<sup>3</sup>, looking only at their prior legal history, it is reasonable to believe that \_\_\_\_\_ motive for delaying justice for \_\_\_\_\_ was out of spite. That is, bias against \_\_\_\_\_.

For, after \_\_\_\_\_ lost the felony charge against \_\_\_\_\_, he tried for a second bite of the apple, charging \_\_\_\_\_ again in Justice Court. (Dismissed.) And it's reasonable to believe \_\_\_\_\_ is sore at \_\_\_\_\_ after losing soundly to \_\_\_\_\_ on appeal for the two remaining misdemeanors.<sup>4</sup>

Moreover, after \_\_\_\_\_ criminal charges were vacated by the Court of Appeals, \_\_\_\_\_, an outspoken individual who is not bashful about making his feelings known, publicly expressed his feelings toward \_\_\_\_\_