

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-184

Judge:	No. 1064214696A
Complainant:	No. 1064214696B

ORDER

The complainant alleged three appellate court judges failed to follow the law, denied him the right to be represented by counsel, improperly favored the opposing party, distorted trial testimony, and based their decision on the findings of a disgraced judge who resigned.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judges 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 appellate court decision, the commission found no evidence of ethical misconduct and concluded that the judges did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of court rulings. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: August 21, 2013.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and judges on August 21, 2013.

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

COMPLAINT AGAINST A JUDGE

Respecting the high office of a judge in our venerable republic, cognizant of the nature of man, and recognizing that this commission oversees the ethical conduct of judges in Arizona both on and off the bench, and that judges enter and continue in their office prerequisite upon the oath of office, and that judges are attorneys, and are thus also still bound by all the ethical rules governing attorneys, I respectfully submit the following complaint against the three judges that adjudicated my appeal and cross-appeal case identified above. I also recognize that all complaints against judges do not come under the purview of the State Bar Association, but under this State Commission.

Of the five areas within the scope of authority of the Commission on Judicial Conduct, Complainant alleges three apply: Willful and persistent failure to perform duties, a violation of the Code of Judicial Conduct, and Conduct that brings the judiciary into disrepute. All the following allegations pertain to Canon I and II of the Arizona Code of Judicial Conduct (2009) and find parallel grounds under the Ethical Rules of the Supreme Court, the state and American Bar Association Model Rules of Professional Conduct, the Arizona Oath of Admission to the Bar, Lawyer's Creed of Professionalism of the State Bar of Arizona, and Regulation of the Practice of Law, including Rule 54, Grounds for Discipline.

The following allegations are based upon ethical conduct evidenced in the written record of the proceeding, and are not based solely on the basis of the judges' decisions.

I. DENIAL OF THE RIGHT TO AN ATTORNEY.

I fired my attorney for gross negligence and other cause shortly after he filed the opening brief. He was later disbarred. The brief was a complete debacle, and so in a panic I hastily composed an amended opening brief and filed it. I then obtained counsel of a competent attorney who advised me that I cannot file an amended brief without leave of the court, and so I withdrew it until the court agreed to let me file an amended opening brief. A month passed and the judges granted leave, but they refused to let me prepare an amended brief drafted by a competent attorney. Instead, they ordered that the only amended brief they would allow was the one which I had written myself and withdrawn. As a consequence I was denied the right to an attorney. This decimated my case. Further, I was denied my right to be heard. With my limited knowledge, I would suggest that this action violated Canon I and Canon II, especially Rule 2.2 (comment #4), Rule 2.5 (comment #4), and Rule 2.6 (comment 2, #2 and 5). I look to the Commission to find other rules and standards that may apply, and so throughout this complaint.

II. NEGLIGENCE AND SUPPRESSION OF EVIDENCE.

My divorce court judge was the Honorable Howard D. Hinson, Jr. The Judicial Commission conducted an investigation (JC 09-002) and determined that he lied on at least 11 affidavits to the Supreme Court, repeatedly violated the constitutional rights of many parties, including mine (P1300 DO 2006-0917), and numerous other findings. Rather than face expulsion from office, he resigned. The investigation was going on during this appeal proceeding and was concluded

before the decision of the court of appeals. These judges knew, or else had a duty to know, that Judge Hinson had committed some 40 violations of ethics. If a man lies to you once, you will be reluctant to believe him next time. But what if he lies to you ten times? Common knowledge dictates that the man is a liar and cannot be trusted. This does not mean that everything he says is false; but it does mean that nothing he says can be relied upon as true. This is universal experience. Yes, to my dismay, the judges of this court turned a blind eye to the facts, and assumed the veracity of the trial court, and reviewed the entire proceeding from that standpoint. No child would trust such a one; how could the judges be otherwise?

Furthermore, I notified the court and provided the judges with a full copy of the findings and outcome of this Judicial Commission's investigation. The judges refused to receive it and did not file it or consider it. Their memorandum decision affirms their reliance upon the Hinson court. To me this is a flagrant suppression of evidence and an example or reckless conduct of these three judges.

I also submitted two other motions. In one I expose seventy (70) factual errors and false statements in the decree of dissolution. 22 of the 36 findings of fact are not factual. The judges refused to receive the affidavit. In the final pleading I showed nineteen incidents of denial of due process, and numerous violations of constitutional rights. Again, these judges refused to consider the evidence and would not file these significant pleadings.

After these three pleadings were rejected (#52-53, 56, 57), Appellee filed an answering brief (#64) and a "surrebuttal" (#63).

III. JUDICIAL BIAS, VIOLATION OF IMPARTIALITY

I filed a motion for withdrawal of counsel, but the judges took a full month to grant it. At about the same time, appellee filed a motion for extension of time and the court granted it within two days. As mentioned at the end of II above, these three judges rejected my three crucial and pivotal motions, claiming that it was too late in the proceeding; yet *after* rejecting my motions, they still accepted the other party's brief and motion. Too late for one party but not for the other.

Although the court allowed me to file my withdrawn amended opening brief, and they allowed appellee to file an answering brief, yet they forbade me from filing a reply brief. I was denied the final opportunity to be heard.

Judges had a duty to protect parties from harassment and such debased actions as smear tactics, character assassination, demeaning statements and personal attacks, baseless and irrelevant speculations, general verbal abuse. The record is replete with examples of these actions. Yet, even after I repeatedly defended myself against appellee and her attorneys, the court refused to order a stop or even to order sanctions. This is despicable behavior and should have been censured or reported to the bar association for disciplinary actions, but the court did nothing. No citizen should be vilified and abused by attorneys. Rule 2.8(B), Rule 2.15 (B,D, E), and others.

The court received hearsay testimony from a psychologist and incorporated her opinions as if factual, and based its decision in part upon her unexamined opinions (Para. 6, 20). This psychologist never appeared in court, her "study" was not under oath, and she was never cross-

examined. If this were the venue, many structural flaws and biases could be pointed out, including religious bigotry. Rule 2.5(B).

These judges made my religion an issue in their decision (para. 5, 6 and other). This violates my state and federal constitutional rights and violates Rule 2.3(B) and 2.11.

To hold a known dishonest trial court judge as honest and reliable is simply imprudent, reckless and irresponsible behavior.

My former wife filed a cross-appeal and lost. Yet these judges ordered me to pay her attorney fees. When does the winning side ever pay attorney fees for the loser?

Moreover, these judges came to the conclusion that I *still* was in a superior financial position to pay her attorney fees for my failed appeal. Over \$30,000. This is a ludicrous claim. The decree crushed me financially. In my motion for reconsideration I proved that this was not so. The financial affidavits and five minutes of simple arithmetic could have shown that her monthly effective income was about \$72,000 and mine was about \$36,000. The truth is just the opposite of what the judges claimed.

IV. DISTORTION OF MY TRIAL TESTIMONY.

Appellee made false accusations that I actually asked for a divorce, so that she could forever claim the moral high ground. Being a genuine Christian, to me this is unthinkable and abominable and a violation of my sacred oath to God. I never asked for it. To the contrary, as the court transcript recorded, I was still seeking reconciliation up to the very day of trial. I merely refused to accept legal separation, which is a legal invention and a metaphysical fiction and nowhere in Scripture. Contrary to the whole of my testimony, these judges dismissed my appeal, much on the claim that I “asked for a divorce anyhow” (Para 6, 31, 36-38). I filed an affidavit exposing this as a lie (#69). Despite all this, and against the truth, the judges maintained the falsehood. They affirmed a falsehood and based much of their decision upon it.

V. FAILURE TO COMPLY WITH THE LAW.

The judges failed to enforce the law regarding the process of dissolution (25-313 and 316, etc.) and the determination of custody (ARS 25-403)(Para 24-26, etc.) At least Rules 1.2 (comment #5), Rule 2.2 (comment #3) come to bear here. A plain reading of the text of the statute and the text of the memorandum decision shows that the judges misconstrued the law in order to evade it in their decision.

The statute requires the trial court to make findings of *all* relevant factors. Ten are included, but these are not exhaustive. No list of factors was ever made by the trial court. And the record shows consideration of only a very few, certainly not the ten, and clearly no additional factors. Contrary to the claim by the appellate court judges, there was never any custody investigation at trial. Instead, the entire 1 ½ days was comprised almost entirely of financial issues. A cursory scan through the transcript bears this out. So these judges spoke falsely here.