

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-031

Judge:	No. 10515 1487014871A
Complainants:	No. 10515 1487014871B

ORDER

The complainants alleged that a justice of the peace improperly dismissed their case.

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 found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of the judge's ruling. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: May 14, 2014.

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainants and the judge on May 14, 2014.

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

2014 031

COMPLAINT AGAINST A JUDGE

Name:

Judge's Name: _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

See Attached Complaint + Exhibits A to F

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Judge of County Court by her actions and lack thereof in the case v Phase II violated the Arizona Code of Judicial Administration and Rules of Conduct for Judicial Employees. These actions or lack thereof have resulted in a lack of confidence in her independence, integrity and impartiality leading to the appearance of impropriety.

Facts

v Phase II J transferred to Court and assigned to Judge
v Phase II Complete Bench Trial before Judge (full day)
Plaintiff Counsel: At Law, and appearing
Defense Counsel: The Offices of appearing

Judge dismisses complaint without prejudice and directed Defendants counsel to file an application for attorney's fees **citing no findings of fact or conclusion of law. (Exhibit A)**

files an Affidavit of Attorney's Fees (*Exhibit B*) indicating "Defendant has incurred as attorneys' fees and as costs in this matter for the below itemized items. **After reviewing the time records maintained by affiant and the billings to Defendant in this matter, and evaluating the efforts necessary to conduct the services rendered, affiant believes that amount to be reasonable and appropriate** for an award by this Court." Said billings include items clearly marked and/or related to v.

Counsel for Plaintiff file a Response To Defendant's Application For Attorney's Fees.

Counsel for Defendants fail to respond to Plaintiff's Response

Judge issues Judgment on Plaintiffs Appellate Memorandum, again dismissing the case without prejudice and awarding Defendants attorney fees and court costs, **citing no findings of fact or conclusion of law. (Exhibit C)**

Plaintiffs file an Appellate Memorandum in County Court outlining inconsistencies in the lower courts order to award fees including:

- a. Judge erred in awarding attorneys fees under ARS 12-341.01 in that the descriptions provided by Defendants in their request does not assist the court

in assessing and evaluating the reasonableness of the work performed and time expended, many were in fact incomplete (note: several relate to BOD a separate suit, were not participants).

- b. Counsel for the Defendants **failed to respond** to Plaintiff's lower court appeal
- c. Defendants application failed to meet the requirements of Rule 7.1.

Court Judge states "The dismissal **appears to be an error by the lower court** because there was no pending Motion to Dismiss, an actual trial where evidence was presented and the case was submitted to trial court to render a decision on the merits. Unfortunately, **the lower court order does not make any findings of facts or conclusion of law.**" (Exhibit D)

Related Facts

Attorney Arizona Bar Assn. probation complete Case
appointed Magistrate by the Counsel, Attorney
solicited volunteers for the committee, and prepared her
contract. (Exhibit E)

Attorney suspended by Arizona Bar Case "charging
unreasonable fees, converting client funds and other issues. aggravating factors
were found: prior disciplinary offenses, dishonest or selfish motive pattern of
misconduct, multiple offenses and substantial experience in the practice of law."
(Exhibit F)

Attorney serves as Counsel
elected as of the Peace

Conclusion

Judge actions and the above mentioned facts lead Plaintiffs to believe that there was a conscious decision by Judge to rule in favor of Defendants Counsel, Offices of Leknowksy, with whom she has had a long term professional relationship. In fact she benefited directly from that relationship when appointed as Magistrate in by a committee formed by Attorney The fact that she twice rendered judgment in Defendants favor yet provided no findings of fact or conclusion of law for her decision is compelling and lends credence to the Plaintiffs impression of impropriety and/ or favoritism towards The Offices of and his associate

We believe that the facts presented herein illustrate that Judge

- a. permitted financial interests to influence her judgment (appointment as Magistrate)
- b. failed to perform her duties in a competent manner, exhibit the knowledge and thoroughness and preparation necessary to perform her judicial duties (failed to provide finding of fact or rule of law).
- c. failed to perform her duties competently, diligently, and promptly (failed to provide finding of fact or rule of law).

- d. failed to demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. Her failure to monitor, supervise and respond to V resulted in avoidable delays, and unnecessary costs in time and money for Plaintiffs, Defendants and County Court.
- e. failed to provide findings of fact and conclusion of law which would substantiate a decision in favor of Defendants counsel which led to the appearance of conflict of interest with Defendants counsel.

And more importantly, the manner in which Judge conducted her findings has negatively impacted the Plaintiffs trust and confidence in the County legal system. An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether litigants or their Counsel are popular or the judge's friends. Article 2, § 11 of the Arizona Constitution requires that " in all cases shall be administered openly", rendering judgment without findings of fact or rule of law" is not "open".

Judge actions in this matter violated all standards of Judicial discretion. A reasonable person with possession of the facts stated herein would have made every effort to document their decisions with finding of fact and conclusions of law. The fact that Judge failed to do so not once but twice and failed to require compliance with the Rules of Civil Procedure by Defendants Counsel lends credence to Plaintiffs belief that her actions were improper.