

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-085

Judge: Gerald A. Williams

Complainant: Wayne F. Jackson

ORDER

The complainant alleged a justice of the peace conducted a debtor's exam in violation of a bankruptcy stay and made demeaning and/or derogatory comments to him.

Rule 2.8(B) of the Code of Judicial Conduct requires that a judge "shall be patient, dignified, and courteous to litigants" Additionally, Rule 1.2 states that "a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary" Finally, Rule 1.1 requires that a "judge shall comply with the law"

Judge Williams, by his own admission, was "terse" with the litigants at the start of a judgment debtor's examination, and then made comments to the judgment debtor that were mocking and demeaning. The judgment debtor had filed for bankruptcy prior to the hearing date and the judgment debtor exam was conducted in violation of the automatic stay provision of the bankruptcy code.

To his credit, Judge Williams took responsibility for his unprofessional demeanor in this case. The commission is nevertheless deeply troubled by the fact that Judge Williams has been previously publicly reprimanded for improper demeanor (Case No. 06-068). Judge Williams should be fully aware that any future complaint of a similar nature may lead to the filing of formal charges against him and the imposition of more serious discipline, including censure, suspension, or removal.

Additionally, while the commission acknowledges that extenuating circumstances existed as to why Judge Williams did not initially know the judgment debtor had filed for bankruptcy protection, once that knowledge came to light, a better practice would have been to terminate the hearing altogether, rather than attempting to continue the hearing on the non-filing spouse.

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

Accordingly, Justice of the Peace Gerald A. Williams is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judge's response, and this order shall be made public as required by Rule 9(a).

Dated: June 22, 2015

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on June 22, 2015.

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

MAR 30 2015

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2015-085

COMPLAINT AGAINST A JUDGE

Name: WAYNE F. JACKSON Judge's Name: GERALD WILLIAMS

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 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.

ORIGINAL ISSUE:

I WAS SUMMONED OCT. 23, 2013 TO COURT - A JUDGEMENT WAS FILED AGAINST ME FOR A PAST DUE LEASE, OF WHICH MY WIFE'S SIGNATURE WAS FORGED BY THE LANDLORD.

ALSO THE LEASE WAS IN NAME OF DAVID TOBISON - THE PROPERTY BELONGS TO NANCY KOZEL.

(SHE NEVER ATTENDED HEARING)

JUDGE WAS MADE AWARE AND HE ARROGANTLY RESPONDED "TOO BAD"
"YOU LIVED ~~THEIR~~ THERE."
"NEXT CASE PLEASE"

Then on Nov. 23, 2013 I WAS NOTICED TO GO TO A DEBTOR'S EXAM.

(I WAS THE ONLY ONE THERE,)
PLAINTIFF ON PHONE

(ACT. OWNER NOT THERE)

(AFTER MANY MONTHS)

THEN ON: FEB 23, 2015 I FOUND OUT BY A FLUKE THAT ANOTHER DEBTOR EXAM WAS ISSUED FOR ME.

I WAS (NEVER) SERVED BY ANYONE!

NEXT →

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2015-085

COMPLAINT AGAINST A JUDGE

Name: WAYNE F. JACKSON Judge's Name: GERALD WILLIAMS

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 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.

ON FEB. 27, 2015 I FILED A
 CHAPTER 13

(A NOTICE WAS SENT TO ME NOT
 TO APPEAR) (ATTACHED)

Then: On MAR 20, 2015 MY WIFE REC'D
 PHONE CALL BY CTS. TO APPEAR. MAR. 23

KEEP IN MIND: ALL OF THE
 OTHER MEETINGS ONLY INVOLVED
 MY SELF.

NOTE: I AM 74 YEARS OLD AND
 A VETERAN (VIETNAM)

I DO NOT HAVE DISRESPECT
 for the COURTS.

HOWEVER: I FEEL TREATED
 UNFAIRLY.

Wayne F. Jackson

(SEE ATTACHED COPIES)



RESP
APR 20 2015

NORTH VALLEY
JUSTICE COURT

Gerald A. Williams
Justice of the Peace

16 April 2015

April P. Elliott
Staff Attorney
Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, AZ 85007

Re: Response to Complaint; Case No. 15-085

Dear Commission Members,

I remember the Complainant. He made a series of apparently false excuses for nonpayment of rent and then had made no effort to pay anything toward the 2013 judgment. Even so, that is no excuse for my demeanor during most of the 19 minute JDE on 23 March 2015.

The Complainant's hearing was scheduled; but my involvement in it was not. I began the hearing frustrated and in the wrong state of mind. I apologized later; but during the Judgment Debtors Exam (JDE) my demeanor and many of my comments were completely inappropriate and were painful for me to hear when I listed to the recording. (The volume may seem especially loud because I have a naturally deep voice and because there are two microphones directly in front of me. However, it is not the volume that is the problem.)

I do not get involved in JDEs unless there is a problem and I went into the courtroom that morning frustrated because I was interrupted as I was preparing for a set of civil pre-trial conferences (which are now more difficult due to all of the newer cases being paperless and organized into a format that is not designed for use at pre-trial conferences.) I did not read the entire case file before I went into the courtroom and was unaware of the bankruptcy until the Complainant testified that he had filed for bankruptcy protection.

What Happened at the JDE. The judgment debtors' exam itself followed more of a committee meeting format. I called him as a witness, but when he stated that he had filed for bankruptcy protection, I excused him and called his wife as a witness, based on his representation that she was not protected by his bankruptcy. Everyone then just had a general conversation and oddly, not many questions were really asked to his wife. When a question was asked to his wife, the Complainant would give the answer. His wife volunteered that she had actually brought some of the required documents that had been requested and they were given to the Plaintiff after the

GERALD A. WILLIAMS
Justice of the Peace

PHIL HAZLETT
Constable

Social Security number was redacted. Although I started the JDE in an inappropriately bad mood, it became conversational. At one point, everyone was laughing.

I apologized for being “terse” at the beginning of the JDE. The court appearance concluded shortly after the Complainant admitted to his wife that he really had not paid rent for three months (in the case that resulted in the eviction judgment). At the end of the JDE, the Plaintiff launched into a personal attack against the Complainant, which I should have stopped. The JDE started at 8:50 a.m. and stopped at 9:09 a.m.

Response to Specific Alleged Quotes

a. “You act as though you are proud of being broke.” I said that that our country does not work when people “think they don’t have to pay their bills.” I stated that he seemed “proud” that none of his property could be attached “or at least that is what I am getting from you.” None of this sequence was appropriate and I apologize.

b. “You should not be living where you are living. You don’t deserve that.” Neither of those comments were made by me. Similar comments were made by the Plaintiff. The Complainant stated that they had to live in the gated community at the Anthem Country Club and pay rent of \$1,300.00 per month because “they could not live any place else without being robbed.” In response, I very calmly said, “That’s simply not true.” The Plaintiff claimed that at the time they rented the residence, the Complainant showed him bank statements with an income, including a pension, of approximately \$4,000.00 per month. The Complainant denied doing so. Later, I did note that they indicated that their only income was Social Security but that they maintained they “couldn’t possibly live anywhere other than the Anthem Country Club; that’s an astounding statement.” The Complainant then acknowledged that he could live someplace else; but that he did not want to do so. Shortly after that, the Plaintiff told the Complainant that he “was living well beyond his means and at the expense of others.” My statements concerning the Complainant’s choice to live in a country club were also inappropriate and I apologize.

c. “You were driving a BMW and it was repossessed? (Made fun of him). The Plaintiff asked about the Defendant’s two cars. [The Complainant’s wife was on the witness stand but the Complainant was the one that kept volunteering information.] The Complainant said that one had been repossessed. The Plaintiff said that he saw two cars at the Complainant’s residence after the date of the alleged repossession. In response, the Complainant said, “You can call BMW and find out.” In response, I said, “You had a Beamer, really? That was pretty good.” The Complainant then denied that he had a BMW. Again, my comment was not appropriate and I apologize.

Response to Allegation that JDE was Held in Violation of Bankruptcy Stay. A review of the case file reveals the following. The Plaintiff filed a request for a JDE on 19 February 2015. It was scheduled for 23 March 2015. It was apparently served on the Complainant because on 2 March 2015, the Court received a handwritten ex parte letter from the Complainant dated 26 February 2015. In it, he claims a financial hardship, a variety of problems with the 2013 judgment, and states that he is *going* to file for bankruptcy protection. In response, I issued a Minute Entry that provided a copy of the letter to the other side and stated that the JDE would proceed as scheduled. (Atch 1).

On 9 March 2015, the Court received another handwritten letter from the Complainant. It contained the bankruptcy document that was attached to the Commission Complaint. Based on that, a pro tem judge signed our Court’s bankruptcy notice form on 11 March 2015. At that point, the JDE should have been vacated. Unfortunately, on the date of the JDE, this notice was under 12 other pieces of paper in the court’s case file and I did not see it before I started the hearing. (The other documents involved the Complainant’s wife’s 2015 motion to set aside the 2013 landlord tenant judgment.) *After* the JDE, the Court did receive a notice from the bankruptcy court (the first page of which is attached) on 30 March 2015 that the Complainant had filed for bankruptcy protection. (Atch 2).

The Complainant appears to have filed for bankruptcy as an individual only. Consequently, perhaps his wife’s separate property (if any exists) and perhaps some of their community property would not be subject to bankruptcy protection. While it was technically

was not improper to hold the JDE at least as to the Complainant's wife, it would have been more appropriate to cancel it and to require the Plaintiff to establish why a JDE should be held in light of the recently filed bankruptcy.

Eviction Action. FTR recordings from 2013 are no longer available; but based on the judgment, I can determine a few things. (Atch 3). Either the Complainant, his wife, or both of them appeared and admitted that they owed the amount due. This is indicated by me documenting that a Defendant entered a plea of "guilty" to the special detainer action.

Prior to the lawsuit, the landlord delivered a five-day notice. (Atch 4). The complaint indicates that the Complainant owed \$4,875.00 in rent, not including unpaid deposits, late fees, and court costs. (Atch 5). Neither Defendant filed an Answer. The Complainant apparently moved into the residence and lived there for three months without paying any rent or a security deposit.

Someone, presumably the Plaintiff, filed (at our front counter) a stack of e-mails between the Complainant and the landlord. They became part of the court's case file and indicate an ongoing dispute. (Atch 6). They are relevant because in his complaint to this Commission, the Complainant claims that I ignored his claims of forgery and an improper party. None of the e-mails (which are repetitive; but have been provided in full) indicate that there was such an issue. In short, the Complainant's allegations that I ignored allegations that his wife's signature was forged on the lease and/or that David Tobison was not a proper plaintiff appear to be recent fabrications. (Neither Defendant filed any type of appeal.)

Some Additional Thoughts.

A reasonable review of the case file could result in a conclusion that the Complainant was simply someone I did not like because he had caused me grief and extra work over a significant period of time; however, such a conclusion would be false. I work in a fairly high volume court. I sign my name to documents either with a pen or electronically approximately 50 to 80 times per day. By way of example, the North Valley Justice Court had the following types

of incoming cases filed in March 2015: 21 DUIs, 114 additional criminal traffic cases, 39 additional misdemeanor cases, 324 civil traffic citations, 28 small claims cases, 104 eviction actions, 264 civil lawsuits, 12 orders of protection, and 19 injunctions against harassment. The Court also collected \$63,015.80 in fines that month. In terms of the Complainant, I have no independent memory of his eviction case and I did not remember the first (March 6) Minute Entry until I saw it when I was responding to this Complaint.

Perhaps a key mitigating factor to demeanor allegations would be to provide some type of evidence that my JDE statements that day were an aberration (beyond me saying so). However, justice courts do not collect Judicial Performance Review data on temperament. Somewhat in the alternative, however, I have provided some information on my judicial background and service. (Atch 8).

Literally every day, I encounter people who are unable to pay their financial obligations. Many of these people are in that situation through no fault of their own. In the context of criminal and civil fines, I am always willing to work with them if they are willing to pay something. In the context of wage garnishment hearings, I do not think that I have ever refused a request to reduce the amount being withheld to 15%. (It is not difficult to establish a valid hardship.) I also encounter people, at least weekly, who have made no effort to pay anything over a period of years. I cannot explain what about the Complainant's JDE caused me to display animosity. I am sorry that I did and have no excuse for doing so.

With self-represented litigants, it is not just important that they receive due process. It is almost just as important that they feel that they were treated fairly. In this case, the Complainant understandably feels that he was not treated fairly. I recognized this and had set this case aside to transfer any further collection actions to another judge. In doing so, I felt that he likely would just be mad at me rather than the court system as a whole. I did not get back to it quickly in part because there was nothing really pending in the case and in part because I attended an all day CLE on 3 April 2015. Other than the transfer order (which I did not sign so that I had no input into which judge would receive this case), my final action in the case is a Minute Entry dated 6 April 2015. (Atch 7). (The transfer order was delayed until 8 April 2015 because after I

received the Commission Complaint, I needed to review and copy documents from the case file prior to it going to another court.)

I recognize and acknowledge that many of the statements I made during the JDE were completely inappropriate. The purpose of a JDE is simply to collect information (e.g. debtor's income, expenses, and assets) so that a judgment can be enforced. JCRCP 147(b). It is not to make or to announce value judgments. I am usually able to maintain self-control and am embarrassed that I did not do so on this occasion. I felt bad about what had happened before lunch that day and had decided that I could minimize any damage by simply transferring the case to another judge, even if the chance that any additional court proceeding would occur was highly unlikely. I am truly sorry.

If you have any questions, would like me to appear before the Commission, or need any additional information, please feel free to contact me at . Thank you.

Sincerely,



GERALD A. WILLIAMS
Justice of the Peace

Attachments:

1. Minute Entry dated 6 March 2015
2. First page of notice from Bankruptcy Court received 30 March 2015
3. Eviction judgment dated 21 October 2013
4. Five-day notice
5. Eviction Complaint
6. E-mails from Complainant
7. Minute Entry dated 6 April 2015
8. List of Biographical Information

Enclosure
FTR of JDE

Judge MR

JUL 02 2015

Gerald A. Williams
Arizona Bar No. 018947
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85301

STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

In the Matter of:)
) Motion for Reconsideration
Commission Complaint)
Case No. 15-085)

Requested Relief

In accordance with Commission Rule 23(b)(1), I respectfully request that the reprimand I was given be reduced to a warning (with admonishment type language) for the reasons stated in this pleading. I am willing to appear before the Commission and request to do so. I am not requesting any type of hearing.

NO DUE PROCESS OR OTHER PROCEDURAL RIGHTS OF THE COMPLAINT WERE IMPACTED DURING THE EVENTS IN QUESTION.

In this case, there was nothing before the court to adjudicate. The complainant's residential eviction was long since decided and he made no attempt to appeal it. He made no effort to pay rent during his tenancy and he made no effort to pay anything toward the \$4,875.00 judgment during the subsequent two years. He was not ordered by me to do anything and I attempted to minimize the damage caused by my comments by immediately transferring the case, in the unlikely event any collection action was even possible. His situation and status before and after the 19 minute court appearance were exactly the same. While none of this excuses the inappropriate statements I made, a reprimand would perhaps be more justified if the

proceeding in question was a trial, a hearing, or something that could have resulted in some type of judgment, some type of garnishment order, or some type of settlement.

THE PRIOR REPRIMAND IS RELEVANT BUT IS EXTREMELY REMOTE BOTH IN TIME AND IN THE NUMBER OF CASES BETWEEN EVENTS.

On June 14, 2006, I received an informal reprimand from the Arizona Commission on Judicial Conduct because I lost my temper with an extremely difficult litigant in a residential eviction action. (A SWAT team was subsequently required to remove him from his residence). In so doing, I violated then Canon 3B(4) which required a judge to be patient and courteous to litigants. I was a new judge at the time and had not yet developed tactics to respond to litigants who scream at me. I did recuse myself from the subsequent civil litigation (the security deposit apparently was not sufficient to cover the forced entry into the residence by the SWAT team and damage from the stun grenades). I even wrote about the reprimand in my newspaper column and used it as an example of how real courtrooms are different than "Judge Judy" type shows where television judges harass litigants prior to making a decision. In both my private and public life, I almost never lose my temper; but I did so in the courtroom again on March 23, 2015. Those events triggered the second reprimand.

The previous reprimand was for events that occurred on April 28, 2005, which is nearly ten years from the date of the second event, March 23, 2015. The language in the second reprimand makes it sound as if these two events are part of some type of ongoing pattern. To help put things in perspective, the following table shows the total number of cases filed during this time frame (including DUI, other criminal traffic, other misdemeanors, civil traffic, small claims, residential evictions, other civil lawsuits, orders of protection, and injunctions against harassment).

Cases Filed in North Valley Justice Court

Year	Total Number of Cases
FY2005	22,625
FY2006	19,003
FY2007	18,686
FY2008	19,972
FY2009	19,586
FY2010	16,684
FY2011	17,897
FY2012	15,921
FY2013	13,093
FY2014	11,362
FY2015 (July 2014 - May 2015)	9,528
Total	184,357

While the prior reprimand is certainly relevant, I have heard more cases in eleven years than many if not most judges will hear in their entire judicial career. If I had a constant and consistent courtroom demeanor problem, then there would have been much more data in support of such an allegation, especially given the significant passage of time and the high volume nature of my court. Perhaps to add additional perspective on how a significant the passage of time is viewed in connection with other judicial matters, as a general rule, even a prior felony conviction would usually not be admissible to impeach a witness if it was over ten years old. Ariz.R.Evid. 609(b).

While the Commission has always had a special interest in demeanor cases, I respectfully submit that this second reprimand is not consistent with other Commission actions. For example, there is at least one fact pattern that appears from the position of an outside observer to be more serious because there, a judge made a deliberate decision to violate the Code of Judicial Conduct. In that case, a judge with a significant recent disciplinary history received only a dismissal with comment/warning letter for actively soliciting financial sponsors for his

nonjudicial activities and for failing to fix prior problems in this and in other areas as promised in a response to the Commission, in connection with a prior complaint during that same year. Although the fact patterns are very different, it is difficult to reconcile the outcome of these two cases.

MY WILLINGNESS TO BE ESPECIALLY INVOLVED IN COMMISSION ACTIONS SHOULD BE A MITIGATING FACTOR

In one case, working with the Commission's prior staff attorney has made both me and my wife a target in a lawsuit. I am a named Defendant in *Woolbright v. Williams*, Maricopa County, CV2014-070074. The Plaintiff is a former justice of the peace and is one of the few judges in the history of the state to be actually removed from office upon recommendation from the Arizona Commission on Judicial Conduct. He, through his attorneys, filed suit alleging defamation and a violation of his federal rights against me, against Judge Steven McMurry, against Maricopa County, and against Maricopa County Justice Courts (as if it was a legal entity).

The Plaintiff is upset that I reported his misconduct to the Arizona Commission on Judicial Conduct, requested his reassignment, and that the Chief Justice administratively reassigned him as a result. When he had agreed to a stipulation that would have returned him to the bench, I co-authored an amicus curiae brief objecting to his return. *Inquiry concerning: Phillip Woolbright, Supreme Court No. JC-11-0004*. At the subsequent hearing, I testified in support of the Commission's case. I made no public statements about the case and am being defended by Deputy County Attorney J. Kenneth Mangum because everything happened in my official capacity as a judge and because I had an ethical duty to report the actions and inactions of former Judge Woolbright. In addition, I also forwarded some concerns that an attorney

brought to my attention and am listed on the Commission's web page as the complainant in Case 12-051.

The lawsuit against me was removed to federal district court. In an especially well written eight page opinion, Judge Susan Bolton granted our motion to dismiss the federal civil rights claims. *Woolbright v. Williams*, CV-14-01433-PHX-SRB. Unfortunately (but correctly), she sent the state law claims back to state court. The case was then transferred to Pinal County, where a motion to dismiss the remaining allegations was denied. Discovery is now beginning. On June 29, 2015, I was asked to help provide information for the initial disclosure statement. Also on June 29, the trial judge held that Maricopa County Justice Courts and Maricopa County were not proper Defendants. He also held that punitive damages were not available. However, the lawsuit against me moves forward.

In addition to the *Woolbright* case, fairly recently I watched dozens of hours of FTR footage and then drafted a performance improvement plan for another justice of the peace who was essentially incompetent. After our training and rehabilitative efforts failed, I forwarded our concerns that this former judge was not performing her judicial duties competently and diligently in accordance with the requirements of Rules 1.2 and 2.5(A) for the Arizona Code of Judicial Conduct. I prepared and attached appropriate documents for the presiding judge's signature. Although the Commission chose to take no adverse action based on this information, I believe I was correct in spending a substantial amount of time and resources to forward this information to you.

THIS REPRIMAND IS INCONSISTENT WITH THE PURPOSE OF JUDICIAL DISCIPLINE BECAUSE IT WILL RESULT IN A UNIQUELY SEVERE PUNISHMENT

“The purpose of judicial discipline is not to punish the individual judge, but to maintain the high standards of the judiciary and the proper administration of justice.” *In the Matter of*

Haddad, 128 Ariz. 490, 492, 627 P.2d 221, 223 (1981)(Held censure was appropriate for JP who dismissed civil traffic tickets and DUI cases shortly before he was up for re-election; and, who filed collection cases in his own court for his business and entered judgments and garnishment orders on those cases).

It is possible to count the judges who have more than one reprimand in Arizona on one hand. If the Commission feels that my statements during that 19 minute hearing were absolutely unforgiveable, then so be it. They were, by any objective standard, cringe-worthy. It has taken me ten years to recover from the prior reprimand I received and I generally have a very good reputation throughout the judicial branch. I am constantly asked to serve on significant committees am frequently sought after as a presenter at judicial education classes and conferences.

However, especially over the last year, I have become notably over tasked. Doing so has frequently cased me to go into a courtroom on less than five hours of sleep. Accordingly, I declined nominations to serve another term as the Associate Presiding Justice of the Peace for Maricopa County and as Chairman of the Professional Standards and Policy Committee. In fact, I will no longer even be serving on that committee. I am also looking at other obligations with a view toward whether my continued participation is worth the strain. After receiving the Commission's correspondence dated June 22, 2015, I decided to resign from my position on the Constable, Ethics, Standards, and Training Board and did so (and recommend a replacement) in a letter to the Chief Justice dated June 25, 2015. I made a commitment to help teach a class at the upcoming state JP conference; but after that, I will reevaluate what, if any, service on committees and teaching assignments are appropriate.

Perhaps in part because of my significant efforts to improve the judicial branch (including serving on the committees that wrote the Rules of Procedure for Eviction Actions and the Justice Court Rules of Civil Procedure and serving as the only author of the Rules of the Arizona Constable Ethics, Standards, and Training Board and the only author of the ten RAJI (Civil) jury instructions on residential evictions) , I was recently interviewed for a Superior Court position by the Commission on Trial Court Appointments. To the best of anyone's recent recollections, I am the first justice of the peace to ever make it the to interview stage in Maricopa County.¹ Doing so was viewed by many as not just an accomplishment for me, but as an accomplishment for the justice court bench. My name was not forwarded to the Governor, but I had hoped to be competitive in the future. The fact pattern that resulted in the second reprimand will not repeat itself in my court. However, I cannot guarantee anyone that at some point during the next 185,000 cases, that I won't become frustrated with a litigant and say something inappropriate. I can, however, promise that I will make every effort not to do so. I have literally taped signs at my bench reminding me always to treat everyone with dignity and with respect. I wish that there was some way I could present evidence that 99.9% of the time, no such sign is needed.

While I realize that the Commission apparently thinks differently, I would be willing to hire any employee who only has had only two less than twenty minute periods, over the last ten years where, for whatever reason, he or she simply failed to display anything resembling verbal self-discipline while at work. I genuinely do not believe that two major mistakes in ten years should generate documentation that would bar any hope of promotion. Such a result would be

¹ There is one Superior Court Judge in Maricopa County who previously served as a Justice of the Peace; but he served for several years as a Commissioner prior to his appointment as a Superior Court Judge.

inconsistent with generally agreed upon standards for progressive discipline. Perhaps ironically, I also wrote the Maricopa County Justice Court's Policy on Progressive Discipline.

For the reasons stated, I respectfully request reconsideration of the reprimand I received.

Thank you.



GERALD A. WILLIAMS
Justice of the Peace

JUN 30 2015

Date

Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200

FILED

JUL 06 2015

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning

Judge Gerald A. Williams
North Valley Justice Court
Maricopa County
State of Arizona,

Respondent.

} Case No.: 15-085

} **ORDER DIRECTING THE FILING**
} **OF A RESPONSE**

Respondent Judge Gerald A. Williams filed a Motion for Reconsideration of the public reprimand issued on June 22, 2015.

IT IS ORDERED that Disciplinary Counsel for the commission shall prepare and file a response to Respondent's motion by July 21, 2015. Disciplinary Counsel shall provide a copy of her Response to Respondent on or before July 21, 2015. Absent a request from the commission, Respondent may not submit a written reply brief or any additional materials.

Dated this 6th day of July, 2015.

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this pleading were delivered on July 6, 2015, via electronic mail, to:

Hon. Gerald A. Williams
North Valley Justice Court
14264 W. Tierra Buena Lane
Surprise, AZ 85374
geraldwilliams@mcjc.maricopa.gov

Respondent

April P. Elliott
aelliott@courts.az.gov

Disciplinary Counsel

By: /s/ Kim Welch
Kim Welch, Commission Clerk

April P. Elliott (Bar #016701)
Disciplinary Counsel
Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200
Email: *aelliott@courts.az.gov*

FILED

JUL 15 2015

ARIZONA COMMISSION ON
JUDICIAL CONDUCT

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning)	Case No.: 15-085
)	
Judge Gerald A. Williams)	Response to Motion for
North Valley Justice Court)	Reconsideration
Maricopa County)	
State of Arizona,)	
)	
Respondent.)	

On June 22, 2015, the Commission on Judicial Conduct (Commission) publicly reprimanded Justice of the Peace Gerald A. Williams (Respondent) for violations of the Arizona Code of Judicial Conduct (Code). Respondent filed a Motion for Reconsideration on July 2, 2015. Undersigned Disciplinary Counsel submits this response pursuant to Commission Rule 23(b), respectfully requesting that the Commission deny the motion.

I. Good Cause Exists for the Imposition of the Reprimand

The Commission's reprimand was based on a finding that Respondent violated Rules 1.1, 1.2, and 2.8(B) of the Code, as he engaged in improper courtroom demeanor and conducted a debtor's examination in violation of a bankruptcy stay.

In inverse order, Rule 2.8(B) of the Code of Judicial Conduct requires that a judge "shall be patient, dignified, and courteous to litigants. . . ." Additionally, Rule

1.2 states that a “judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary. . . .”

Finally, Rule 1.1 requires that a “judge shall comply with the law”

At a judgment debtor’s examination, Respondent was “terse” with the litigants, and made comments that were mocking and demeaning. The examination was conducted in violation of the automatic stay provision of the bankruptcy code. Respondent did take responsibility for his unprofessional demeanor, however, the Commission noted concerns about his prior discipline for the same behavior. Respondent previously received a public reprimand in Commission Case No. 06-068. The concept of progressive discipline could have resulted in the filing of formal charges against Respondent in this matter, exposing him to censure, suspension or removal. The Commission took into consideration the passage of time between the prior reprimand and the current, similar, misconduct by imposing another reprimand, but warning Respondent of the potential for formal proceedings if similar alleged misconduct is again brought to its attention.

II. Factors Supporting a Sanction

The Scope section of the Code sets forth several factors for the commission to consider in determining whether a sanction is appropriate in a particular case. On balance, those factors support the issuance of the reprimand in this case.

A. Seriousness of the Transgressions

By his own admission, Respondent called his comments “cringe-worthy.” He also admitted to not fully reviewing the file before assuming the bench that morning. Had he done so, he would have seen the bankruptcy notice and likely vacated the

hearing altogether. Instead, Mr. Jackson, complainant in this matter, had to endure a judge mocking and demeaning his failure to pay a judgment. Such conduct clearly does not promote public confidence in the judiciary.

This factor weighs in favor of a sanction.

B. Facts and Circumstances Existing at the Time of the Transgression

Judges often are not involved with judgment debtor examinations. When they do become involved, it is often because one or more of the parties is a difficult litigant, and the judge's presence is needed to ensure the hearing is conducted properly, and that the judgment creditor is able to ask and obtain the information needed. At the time Respondent began the hearing, he was "frustrated and in the wrong state of mind" by his own admission. He could not provide an adequate explanation for the animosity he displayed during the hearing. Additionally, Respondent admitted to not fully reviewing the file before taking the bench, and that failure caused him to miss the notice of bankruptcy in the file which should have vacated the hearing altogether. Therefore, the judge was not fully prepared, failed to follow the law, and conducted himself in an unprofessional manner. Such conduct also does not promote confidence in the judiciary.

This factor weighs in favor of a sanction.

C. Extent of Any Pattern of Improper Activity or Previous Violations

Respondent has previously been publicly disciplined for conduct of this nature. In Case No. 06-068, the Commission publicly reprimanded Respondent for not remaining patient, dignified and courteous with a litigant. Respondent argues that

his prior reprimand is remote, and further argues that he has handled a significant number of cases since that reprimand without incident. Respondent states, “[i]f I had a constant and consistent courtroom demeanor problem, then there would have been much more data in support of such an allegation” Disciplinary Counsel disagrees with this assertion, noting that the absence of a judicial conduct complaint does not necessarily equate to the absence of unprofessional demeanor.

Respondent also argues, on the remoteness issue, that as a general rule, a prior felony conviction is typically not admissible to impeach a witness after 10 years. Using Respondent’s choice of analogy, Disciplinary Counsel points out that A.R.S. §13-703 essentially allows any felony to become a forever prior for sentence enhancement purposes. Respondent’s prior public reprimand for improper demeanor is relevant for purposes of determining the appropriate discipline in this subsequent case of improper demeanor.

Additionally, Respondent argues that his reprimand is not consistent with other Commission actions. He indicates that another judge received a warning in a matter that would appear to an outside observer to be more serious than his misconduct in this case. That matter did not involve improper demeanor and there are plenty of examples of public reprimands for misconduct that is arguably less serious than Respondent’s misconduct in this case (separate and apart from Respondent’s prior public reprimand for similar misconduct). For example, in Case No. 14-165, the Commission found that then Pro Tem Justice of the Peace Adam W. Watters appeared in a photograph on his law firm’s website in a judicial robe and advertised himself on the website as an active part-time judge pro tem in the Arizona

court system. These instances were an abuse of the prestige of the judicial office to advance his own personal and/or economic interests in violation of Rule 1.3. The Commission issued a public reprimand. In Case No. 14-398, the Commission found that Justice of the Peace Joe “Pep” Guzman had delayed three rulings past 60 days notwithstanding his periodic certification that he had no pending or undetermined cause for more than 60 days. One ruling was unreasonably delayed for over three months. The foregoing conduct violated Rule 1.1, which requires a judge to comply with the law, including the Code; Rule 1.2, which requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary; and Rule 2.5 which requires a judge to perform his judicial and administrative duties competently, diligently, and promptly. The Commission issued a public reprimand.

Respondent’s proportionality argument lacks a factual basis and without a factual basis, its legal basis need not be further explored in this memorandum. This factor weighs in favor of a sanction.

D. The Effect of the Improper Activity Upon the Judicial System or Others

The success of our judicial system requires that the public have trust in the independence, integrity, and impartiality of the judges who serve on the bench. When a judge behaves in an unprofessional manner, such behavior undermines that trust. Respondent argues that his reprimand is not justified because no due process or procedural rights of the complainant were impacted by his conduct. Disciplinary Counsel disagrees. Mr. Jackson had a right to expect that the law would be followed

in his case. Mr. Jackson had a right to be treated fairly by the Respondent, and not be mocked or demeaned for his failure to pay a judgment. Respondent's logic appears to be that a judge should not be punished publicly if no one was harmed. Mr. Jackson did in fact suffer harm, and public confidence in the judiciary also suffered. Respondent fails to take a step back and think about how his conduct would have been perceived by a member of the public sitting in his courtroom that day.

This factor weighs in favor of a sanction.

All four factors that the commission must consider weigh in favor of issuing a sanction (a dismissal with an advisory comment or warning is not a sanction).

Respondent asserts that he has been overtasked with responsibilities beyond his normal judicial duties, and he is cutting back on those extra activities. Respondent alleges "[t]he fact pattern that resulted in the second reprimand will not repeat itself in my court. However, I cannot guarantee anyone that at some point during the next 185,000 cases, that I won't become frustrated with a litigant and say something inappropriate. I can, however, promise that I will make every effort not to do so." He also argues that the reprimand is inconsistent with the purposes of judicial discipline because it will result in a uniquely severe punishment. Specifically, Respondent alleges that it will prevent him from advancing to a higher court.

When Respondent received his first public reprimand in 2006, he also sought reconsideration of that decision and it was denied. He recycles many of his same arguments in this case, including that a public reprimand will adversely affect his judicial career. Respondent also argues the concept of progressive discipline and that "two major mistakes in ten years should [not] generate documentation that would bar

any hope of promotion.” Disciplinary Counsel is very mindful of the concept of progressive discipline, and points out that Respondent’s conduct has already risen to the level of a public reprimand once before, and that if anything, perhaps the sanction this time should have been more serious. However, taking into account all the facts and circumstances surrounding this incident, the imposition of a public reprimand protects the public “by assuring that the judge will refrain from similar acts of misconduct in the future.” Commission Rule 5 (Purpose of Judicial Discipline).

III. Aggravating and Mitigating Factors

Rule 19 of the Commission Rules sets forth 10 aggravating and mitigating factors for the commission to also consider.

A. Nature, Extent and Frequency of the Misconduct

Approximately nine years separate the two incidents in which the Commission has publicly reprimanded Respondent for failing to remain patient, dignified, and courteous. Respondent has handled thousands of cases in between. The repetitive nature of the conduct, even though separated by years, tends to give more weight to this being an aggravating, rather than a mitigating, factor.

B. Judge’s Experience and Length of Service on the Bench

Respondent has been a judge for approximately 11 years. During his tenure on the bench, he has served on various committees, taught various courses, authored articles for various publications, and served as a mentor. Prior to becoming a judge, he was disciplinary counsel for the Commission. He has substantial experience, and should be well-versed in his ethical obligations under the Code. Therefore, this is an aggravating factor as well.

C. Whether the Conduct Occurred in the Judge's Official Capacity or Private Life

The conduct occurred in Respondent's official capacity. When a judge fails to remain patient, dignified, and courteous on the bench, it reflects negatively on the judiciary. A member of the public observing the proceedings may believe the judge cannot be fair and impartial. This is an aggravating factor.

D. Nature and Extent to Which the Acts of Misconduct Injured Other Persons or Respect for the Judiciary

The complainant believes he received unfavorable treatment from Respondent. Respondent's conduct also clearly impacted the public's perception and respect for the judiciary, and casts the judiciary in a negative light. This is an aggravating factor.

E. Whether and to What Extent the Judge Exploited His or Her Position for Improper Purposes

While Respondent's improper conduct on the bench itself does not trigger this factor, one of Respondent's arguments does. Respondent argues that imposition of another public reprimand will affect his ability to be promoted to a higher court. Clear violations of the rules cannot be mitigated in this fashion. Misconduct has adverse professional consequences. Respondent has been on crystal clear notice to conform his conduct to the requirements of Rule 2.8(B) since his 2006 public reprimand. The unfortunate situation Respondent now finds himself in could have been completely avoided had he fully implemented corrective measures concerning his temper following his prior public reprimand. His improper demeanor in this case demonstrates he has not fully addressed that issue.

F. Whether the Judge has Recognized and Acknowledged the Wrongful Nature of the Conduct and Manifested an Effort to Change or Reform the Conduct

Respondent did apologize to the litigants toward the end of the hearing, acknowledging his earlier conduct as “terse.” In his motion for reconsideration, Respondent admitted his comments to be “cringe-worthy”, and took responsibility for his action. He expresses a willingness to make every effort not to repeat the conduct.

As to the other issue of conducting the debtor’s examination in violation of the automatic stay, Respondent admitted that he had not reviewed the file prior to the hearing. However, neither his initial response nor his motion for reconsideration addresses what efforts he will make to better train or supervise his pro tem judges or his clerks to ensure that a notice of bankruptcy is prominently displayed in a file. He also does not address what efforts he will make to better prepare for such hearings.

Therefore, Disciplinary Counsel cannot find this to be either an aggravating or mitigating factor.

G. Whether There Has Been Prior Disciplinary Action Concerning the Judge, and if so, its Remoteness and Relevance to the Present Proceeding

As stated previously, Respondent has prior public discipline for similar conduct. Thus, this is an aggravating factor.

H. Whether the Judge Complied with Prior Discipline or Requested and Complied with a Formal Ethics Advisory Opinion

Disciplinary Counsel does not deem this factor as applicable.

I. Whether the Judge Cooperated Fully and Honestly with the Commission in the Proceeding

Respondent has fully cooperated and has been honest as best as Disciplinary Counsel can determine. This is a mitigating factor.

J. Whether the Judge was Suffering from Personal or Emotional Problems, or from Physical or Mental Disability or Impairment at the Time of the Misconduct

Although not initially noted in his response to the complaint, Respondent asserts in his motion for reconsideration that he has been overtasked with responsibilities, and he is not getting enough sleep. Respondent indicated that he would be cutting back on his activities. This is a mitigating factor.

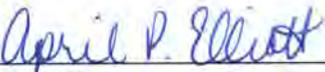
While the aggravating factors outnumber the mitigating factors numerically, the commission is free to assign whatever weight it chooses to the factors. Again, given the prior similar conduct, Respondent's substantial experience, the injury to the complainant, and the injury to the public perception of the judiciary, Disciplinary Counsel argues that the overall balance is in favor of upholding the prior sanction.

IV. Conclusion

Disciplinary Counsel respectfully requests that the commission deny Respondent's motion and leave in place the public reprimand order issued June 22, 2015, in this case.

Dated this 15th day of July, 2015.

COMMISSION ON JUDICIAL CONDUCT

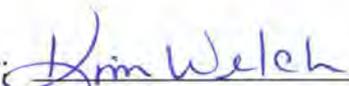


April P. Elliott
Disciplinary Counsel

Copies of this pleading delivered via first class U.S. mail and email on July 15, 2015,
to:

Hon. Gerald A. Williams
North Valley Justice Court
14264 W. Tierra Buena Lane
Surprise, AZ 85374
geraldwilliams@mcjc.maricopa.gov

Respondent

By: 

Kim Welch, Commission Clerk

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-085

Judge: Gerald A. Williams

Complainant: Wayne F. Jackson

**ORDER DENYING RESPONDENT JUDGE'S
MOTION FOR RECONSIDERATION AND
REQUEST TO APPEAR BEFORE COMMISSION**

The respondent judge filed a request to appear as well as a motion for reconsideration of the commission's reprimand as set forth in its previous order. Pursuant to Commission Policy 23, disciplinary counsel was requested to file a response to the motion, and did so.

On August 7, 2015, the commission denied the request to appear and motion for reconsideration. As provided in Commission Policy 23, the respondent judge's motion for reconsideration, disciplinary counsel's response, and this order denying the motion for reconsideration shall be made a part of the record that is posted to the commission's website with the other public documents (the complaint, the judge's response, and the reprimand order).

Dated: August 14, 2015

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on August 14, 2015.

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