

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 16-160

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Judge: Timothy A. Forshey

Complainant: Commission on Judicial Conduct

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**ORDER**

The commission initiated an investigation into allegations that a pro tem municipal court judge did not afford a litigant the opportunity to be heard, prejudged a case, and engaged in improper demeanor during a protective order proceeding.

Rule 1.2 of the Code of Judicial Conduct 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 . . . .” Rule 2.2 requires that “a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Additionally, Rule 2.6(A) states that “a judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.” Finally, Rule 2.8(B) requires that a judge “shall be patient, dignified, and courteous to litigants . . . .”

Pro Tem Judge Forshey failed to provide a father, who was seeking a protective order on behalf of his minor child, a full opportunity to explain the nature of his child’s disability and the need for the order. Pro Tem Judge Forshey exhibited a dismissive demeanor toward the father and made comments that could reasonably be interpreted as disparaging of persons with disabilities. He also appeared to have prejudged the case by making a blanket statement about the lack of credibility of the minor child. Pro Tem Judge Forshey has been previously publicly reprimanded for improper demeanor (Case No. 16-011) and should be fully aware that any future substantiated 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.

Accordingly, Pro Tem Judge Timothy A. Forshey 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).

Commission members Christopher W. Ames, Roger D. Barton and George H. Foster did not participate in the consideration of this matter.

Dated: September 22, 2016

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez  
Commission Chair

A copy of this order was mailed  
to the judge on September 22, 2016.

## Complaint

Pro Tem Judge Timothy Forshey

16-160

Pursuant to Rule 20, the commission initiated an investigation upon receiving information regarding alleged improper demeanor by Pro Tem Judge Timothy Forshey of the El Mirage Municipal Court.

An attorney had concerns about Judge Forshey's demeanor during a protective order proceeding, obtained a copy of the audio recording from that hearing, and sought advice from a retired superior court judge on how to address the situation. The retired superior court judge forwarded the audio recording to the commission which commenced an investigation on its own motion after reviewing the recording. The judge's conduct during the protective order proceeding raised concerns about not letting a litigant be fully heard as well as demeanor issues in how the judge characterized the victim's age and disability status.

Resp Judge Forshey

AUG 17 2016

2016-160



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TIMOTHY A. FORSHEY  
\* LICENSED IN ARIZONA, COLORADO AND ILLINOIS

August 17, 2016

Via email correspondence – aelliott@courts.az.gov

April Elliott  
Commission on Judicial Conduct  
1501 West Washington Street  
Suite 229  
Phoenix, Arizona 85007

**Re: Complaint/Case No. 16-160 – Timothy A. Forshey**

Dear Ms. Elliott:

Thank you for your extension of time to allow me to consult with counsel prior to responding in this matter. Having had the chance to speak with my attorney, I have been advised that, in his opinion, this matter stems from some sort of misunderstanding, and it would be appropriate for me to respond to the Commission directly.

I am in receipt of the Commission's correspondence of June 28, 2016 regarding the above-referenced matter. At the time of the Hearing on \_\_\_\_\_ Petition for an Injunction against Harassment as to \_\_\_\_\_ in El Mirage City Court on \_\_\_\_\_, it appears from the audio that I may have not let Plaintiff fully explain himself and my use of "colloquial language" may have given at least one observer the impression I was disrespectful. I will attempt to explain my use of that language and why no disrespect for the Plaintiff or his family member(s) was intended, or (as per my explicit memory) perceived by the litigant, through my statements or conduct that day.

At the time this hearing occurred, \_\_\_\_\_, I was the only Judge at El Mirage City Court. I was tasked with completing all scheduled hearings, as well as any/all walk-ins, in the allotted time of between 1:30 p.m. and 4:30 p.m. Since almost all of the parties appearing in that Court (including \_\_\_\_\_) are not represented by counsel, it often becomes necessary to move

things along, not leaving much time to be as polite as I would like by allowing the parties go on about whatever they'd like to say. It is my experience that stories are repeated multiple times when I proceed in that manner, and it gets quite difficult from a time-management perspective with a Courtroom full of people awaiting their turn to present their issues.

In this particular case, allegations had been made that were very detailed and of an explicit sexual nature that I was trying to avoid stating or hearing out loud. By cutting off a few times, I was merely attempting to keep control of the direction and duration of the testimony. I can see, upon re-listening to the audio transcript, that my doing so may have come across as harsh to people who were not actually part of the conversation. I do not believe that himself took any offense that day—he and I were only a few feet apart and our mutual non-verbal communication would not have been visible to others in the Courtroom. I was sympathetic to the plight of both him, and I believe I conveyed that to him throughout the proceedings that day.

As I explained to, I was concerned for safety and well-being, I was also concerned about the potentially irreversible damage to the Defendant's reputation associated with simply granting the request for the IAH. The evidence before me was, in fact, hearsay evidence conveyed to a

, later in the hearing, revealed that the particular developmental disability was deafness. I explained to him that a translator might be a way of addressing that concern at the pre-issuance hearing.

I am sensitive to matters of developmental disability—I have a family member who is developmentally disabled, and I have been helping him cope with similar problems for 30 years. I would not disrespect anyone, and certainly not a party in Court, who is coping with a similar challenge.

In attempting to explain to that it is difficult to take testimony from a especially through a third party, I tried to explain that children of such an age may not fully understand the concept of truth, oaths, etc. by stating that "...my own daughters believed in Santa Clause until they were 13." I meant absolutely no disrespect by this statement, which, by the way, is true. I was simply trying to explain my ruling to in more colloquial terms than I would have used to make the same point to counsel.

For the reasons I explained on the record, I opted to neither grant nor deny request, instead setting the matter to a pre-issuance hearing. I also advised him that, in a matter this serious, it might well behoove him to retain counsel to assist. He appeared to take all of that in the manner in which it was intended. I wished him and his son the best and assumed I would be seeing them at the time of the pre-issuance setting, which was set for, exactly two weeks later, when I would be the Judge hearing the matter.

Instead, came back to Court the next day, and withdrew his Petition for an Injunction versus Harassment. I am told by the El Mirage City Court staff that he was very polite and did not give the reason for that withdrawal. I can only hope and assume that it became a moot point after the authorities successfully pursued the allegation criminally.

At no time that day (or any other) did I intend to show any disrespect to anyone in the Courtroom. If the anonymous attorney who feels that I was disrespectful (who submitted the matter to a Judge for his/her opinion prior to submission of the Complaint to the Commission) had spoken to me that day, perhaps I could have better explained my statements and avoided the misperception.

If I have given offense to anyone in Court that day, or anyone listening to the audio transcript, I wholeheartedly apologize.

I appreciate the Commission's consideration of this matter, and would of course make myself available if necessary to answer any additional questions or concerns as to same.

Again, thank you for your consideration.

~~Sincerely~~

Timothy A. Forshey

cc: Kevin Neal  
TAF/mj