

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-271

Judge:

Complainant:

ORDER

November 20, 2019

The Complainant alleged a superior court judge failed to timely rule on a request for injunctive relief.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission member George H. Foster, Jr. did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on November 20, 2019.

2019 - 271

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 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.

I filed a petition for injunctive relief on _____ No ruling has been made. This is judicial misconduct in violation of Rule 2.7 (Responsibility to Decide) and Rule 2.5 (performing duties promptly).

I called the Judge _____ assistant to ask about the delay. _____ the assistant, asked me if an injunction was something that required a judge's ruling.

I spoke with an employee in _____ to ask about the delay in ruling. _____ in Case Management at _____ Court told me it was possible that more than _____ would pass before a ruling was made on my petition, and to not use his statements as any sort of reference that a ruling should be completed in less than _____ also told me that a petition for injunctive relief was something that could be easily overlooked by a judge as a filing that required a judge ruling, as the judges were used to pre-trial motions.

On _____ I filed a pre-hearing motion with the clerk of the _____ court repeating my request for injunctive relief, this time including a proposed court order.

On _____ I called Judge _____ chambers to ask about the status of my case. _____ told me that the reason there was no ruling is that Judge _____ required I serve summons on the defendants. I explained that my case was not a civil lawsuit and that is was an ex parte injunction. _____ affirmed that Judge _____ was requiring summons for an ex-parte filing.

On _____ I called the civil presiding judge's chambers to ask if my memo had been received. I left a voicemail explaining that Judge _____ judicial misconduct constituted grounds for him to be disqualified from being assigned to my case. _____ the assistant to Judge _____ returned my call and left me a message telling me that Judge _____ was not the judge assigned to my case so she forwarded the memo to Judge _____ violated Rule 2.12 by denying his supervisory duties.

On _____ I next called the chambers of the judge presiding _____ court, Judge _____ I explained to his assistant my concern about discriminatory behavior perpetrated upon me by _____ assistant lied to me by saying that Judge _____ had absolutely no supervisory duties and his position was administrative only. She told me that if Judge _____ was requiring that I serve summons on defendants in an ex-parte filing, that I had no other recourse but to do as he instructed.

(Rule 2.12 (C) A judge shall require staff, court officials, and others subject to the judge's direction and control to comply with the provisions of the Code of Conduct for Judicial Employees adopted by the supreme court.

Enclosed: Petition for Injunctive Relief, Legal Memorandum in Support of Petition, Pre-Hearing Motion, Memo to _____ Court, Rules Broken

CONFIDENTIAL

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

FOR OFFICE USE ONLY

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RULE 2.7. Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

RULE 2.5. Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently, diligently, and promptly.

Comment

4. In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

5. Article 2, § 11 of the Arizona Constitution requires that “Justice in all cases shall be administered openly, and without unnecessary delay.” Article 6, Section 21 provides that “Every matter submitted to a judge of the superior court for his decision shall be decided within sixty days from the submission thereof. The supreme court shall by rule provide for the speedy disposition of all matters not decided within such period.” See Rule 91(e), Rules of the Supreme Court; A.R.S. § 12-128.01. In addition, A.R.S. § 11-424.02(A) prohibits a justice of the peace from receiving compensation if a cause “remains pending and undetermined for sixty days after it has been submitted for decision.” These and other time requirements are discussed in depth in Arizona Judicial Ethics Advisory Committee, Advisory Opinion 06-02

RULE 2.9. Ex Parte Communication

(A)(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

Rule 2.12. Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge’s direction and control to act in a manner consistent with the judge’s obligations under this code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

Comment

1. A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge’s direction or control. A judge may not direct court personnel to engage in conduct on the judge’s behalf or as the judge’s representative when such conduct would violate the code if undertaken by the judge.

2. Public confidence in the judicial system depends upon timely justice.

RULE 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Comment

4. Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

5. If a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to influence the judge indirectly. A judge should remind family and household members of the reporting requirements imposed upon judges by Rule 3.15 and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

RULE 2.11. Disqualification

Comment

1. Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply.

Rule 3.6. Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

Comment

1. A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary.

RULE 2.10. Judicial Statements on Pending and Impending Cases

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

Self-represented petitioner

ARIZONA

CIVIL DEPARTMENT

Equitable Relief from Danger of False Imprisonment:

An Ex-Parte Prohibitory Injunction

(a concerned citizen)

PLAINTIFF

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**