

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-275

Judge:

Complainant:

ORDER

January 28, 2020

The Complainant alleged a municipal court judge improperly acted on his criminal case after he was disqualified, made a judicial assignment to curry favor, and suffers from mental and physical issues that affect his ability to perform judicial duties.

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 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 members Denise K. Aguilar, Gus Aragón, Roger D. Barton and Christopher P. Staring did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on January 28, 2020.

2019 - 275

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.

On _____ Judge _____ was **disqualified for cause from this case.**

See **Attachment 1:2;4-8** Judge _____ determined that Judge _____ had a conflict of interest in this case because of his relationship with key witnesses.

_____ had moved to disqualify Judge _____ on _____ on Due Process grounds with a Rule 10.1 motion for an actual conflict of interest, an appearance of bias and prejudice, and an unconstitutional potential for bias that made it impossible to maintain the appearance of justice and receive an impartial trial. The Rule 10.1 Affidavit is on pp. 4 -8 of **Attachment_01.**

On **Aug. 1, 2017** Judge _____ transferred this case out of _____ court to the _____ Court system for judicial reassignment. **Attachment 1: 3.** On _____ Judge _____ of the _____ Court transferred this case back to Judge _____ because the _____ Courts lacked subject matter jurisdiction to hear an alleged violation of _____

On _____ Judge _____ granted the State's motion to set a trial date and set a trial date for _____ was never given notice of the State's intent to set a trial date, and learned of **Judge _____** actions after receiving his ruling in the mail on _____

Judge _____ set the trial date despite knowing that outstanding discovery motions were pending and that _____ had not received notice of the intent to set a trial date.

Judge _____ granted the State's motion to set a trial date despite knowing that a petition for special action was pending in _____ Court seeking to dismiss the case for lack of subject matter jurisdiction of the _____ Court. **Judge _____** also knew that this petition sought a declaration that none of the disqualified judges in _____ could participate in any manner in this prosecution.

Judge _____ violated several rules of the Arizona Code of Judicial Conduct by granting the State's motion to set a trial date and then setting a trial date, after he was disqualified for a conflict of interest. **Judge _____** also violated Art. 6.1, Sect. 4 of the Arizona Constitution , by engaging in conduct prejudicial to the administration of justice that brings the judicial into disrepute.

On [redacted] filed an Emergency motion to stay all proceedings in court with the [redacted] Court. See [redacted]. On [redacted] [redacted] went to [redacted] court seeking to serve Judge [redacted] with a copy of the emergency motion to stay. Court personnel told [redacted] that Judge [redacted] did not keep regular business hours and that he was not scheduled to be in Court on [redacted] or any other day in the near future.

[redacted] left a copy of the Emergency Motion to Stay with [redacted] Judge [redacted] assistant. [redacted] indicated to [redacted] that she was authorized to accept service on behalf of Judge [redacted]. [redacted] explained to [redacted] that Judge [redacted] was very sick and that he did not regularly preside over cases in [redacted] court. Based upon this information, it appears that Judge [redacted] actions accepting a transfer and ruling on motions is very unusual and far outside of his normal activities.

In February 2017, Judge [redacted] assigned Judge [redacted] to hear this case in [redacted] court. Between [redacted] Judge [redacted] was interviewing with [redacted], the [redacted] attorney and other members of the [redacted] in order to have his contract extended for another [redacted] and the [redacted] attorney planned to prevent [redacted] from speaking at open public comment on [redacted] and had him arrested for trespassing after he attempted to give a prepared presentation at open public comment.

[redacted] arrest at the [redacted] was carried widely in the news. [redacted] arrest sparked visible public outrage for the entire month of [redacted]. [redacted] knew that Judge [redacted] had a conflict of interest, and assigned him to this case so that he could curry favor with the [redacted] office. This would ensure that Judge [redacted] contract would be renewed.

Judge [redacted] was **disqualified for a conflict of interest** after [redacted] Rule 10.1 motion on [redacted] by Judge [redacted].

[redacted] has learned from others in [redacted] that Judge [redacted] is suffering from very serious [redacted] Judge [redacted] does not have personal knowledge of Judge [redacted] is seeking information from others with verifiable facts who are willing to testify about Judge [redacted] will provide more information, including witness names to the commission after he can prove the accuracy of the information. It is my understanding that [redacted] Judicial Appointments Advisory Board has extensive records and knowledge of the nature of Judge [redacted]. Some members of the JAAB thought that Judge [redacted] reappointment was ill advised, because he clearly cannot perform his duties to a normal standard of care.

I. Judge [redacted] Actions Ruling on Motions After He is Disqualified Violates Several Provisions of the ACJC and the Arizona Constitution.

All judges know or should know that they cannot participate in a case after they have been disqualified. See in **Re** [redacted] Judge [redacted] is a very experienced judge and lawyer, so he should know that a judge with a conflict of interest cannot take actions in a case after disqualification. Judge [redacted] appears to be mentally incompetent, [redacted] which explains this odd decision.

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If Judge _____ is not mentally disabled, then he committed willful misconduct in office. " Bad faith, as an element of willful misconduct in office, means "that the judge `intentionally committed acts which he knew or should have known were beyond his lawful power' " *Broadman v. Comm.*, 959 P. 2d 715, 18 Cal 4th 1079 (1998) Because transgressing the limits of a judge's lawful authority is not the faithful discharge of judicial duties, a judge who performs such acts with no regard at all for whether they are legally permitted cannot be said to be acting with a purpose to faithfully discharge judicial duties. Thus, a judge's reckless or utter indifference to whether judicial acts being performed exceed the bounds of the judge's prescribed power is a state of mind properly characterized as bad faith."

By taking actions in a case after he has been disqualified for a conflict of interest, Judge _____ violated the following rules of the Ariz. Code of Judicial Conduct:

Canon 1, A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Rule 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

Judge _____ has an obligation to learn and know the law and to make a good faith effort to apply it in this case, and all cases. There was no need for him to participate in this case. There was no necessity for him to participate in this case. His disqualification prohibited him from taking any further actions in this case. The law, both Arizona and Federal prohibits judges with a conflict of interest, or with a significant relationship with witnesses or parties in the litigation from participating in cases. Several very high profile U.S. Supreme court cases in recent years have made it very clear that when an unconstitutional potential for bias exists the judge must not participate in that case. See *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016) ; *Rippo v. Baker*, 137 S. Ct. 905 (2017) ; *Echavaria v. Filson*, 896 F. 3d 1118 (9th Cir. 2018)" The Constitution requires recusal where 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" Actual bias was acknowledged by Judge _____

If Judge _____ knew these cases, he would know that he cannot participate in this proceeding at all. Due Process standards under the Fourteenth Amendment are less stringent than the Ariz. Code of Judicial Conduct.

When a disqualified judge rules in a case after having been disqualified, he creates an appearance of impropriety, and engages in actual improprieties. Judge _____ has an acknowledged conflict of interest and by definition cannot be impartial. His actions create the impression that the impartiality of the judiciary does not matter to him, which erodes public confidence in the judiciary.

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Canon 2 A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

has been a very active Defendant in this case, and has never ignored or not responded to any motion filed by the State. If **Judge** reviewed the docket, he would have known that would object to his participation in this case and setting a trial date without knowledge or consent. had argued to Judge that the case could not be transferred back to the judge's, because of their disqualification status. has also argued that Judge had only one option, to dismiss the charge for lack of subject matter jurisdiction. If Judge discussed the status of this case with Judge at all, he would have known that was already seeking special action relief from this decision.

Judge appears to be trying to coerce or trick into waving his Due Process right to an impartial judge, by ruling and setting a trial date without seeking input. Every judge knows that making decisions without input from both sides is unfair and biased. Judge actions were intentional, for an unlawful purpose, which establishes impropriety, or at the very least an appearance of impropriety.

Actual improprieties include violations of law, court rules, or provisions of the ACJC.

Judge violated the plain and obvious meaning of Rule 10.1 and ignored clearly long established legal precedent in Arizona and the U.S.

I will file an amended complaint in the near future to demonstrate the violations of Rules 2.2 to 2.15.

Rule 2.2 Impartiality and Fairness

Rule 2.3 Bias, Prejudice and Harassment

Rule 2.4 External Influences on Judicial Conduct

Rule 2.5 Competence, Diligence and Cooperation

Rule 2.6 Ensuring the Right to be Heard

Rule 2.11 Disqualification

Rule 2.15 Responding to Judicial and Lawyer Misconduct

II. Judge [redacted] - Actions Selecting Judge [redacted] to Preside Over This Case in [redacted] Violated Several Provisions of the ACJC and the Arizona Constitution.

Given Judge [redacted] desire to have his judicial contract extended and the ongoing interviewing process with the [redacted] normal due diligence would have alerted Judge [redacted] to Judge [redacted] conflict of interest in this case. No one has ever been arrested and charged with trespassing at open public comment in a [redacted] in the history of [redacted] Almost everyone in [redacted] was aware of the ongoing ballot initiative and the high profile constroverial nature of the [redacted] issue.

Judge [redacted] actions in [redacted] appear to be motivated by a desire to curry favor with the [redacted] and to ensure Judge [redacted] continued employment, rather than a desire to protect [redacted] Due Process right to an impartial judge. Judge [redacted] does not appear to have given any thought to the public perception of Judge [redacted] involvement in this case, while his contract was under active review by two of his colleagues that caused [redacted] arrest.

Judge [redacted] immediately saw the conflict of interest and disqualified [redacted] and herself. How could [redacted] not have seen it? Judge [redacted] oversight shows callous disregard for his obligations to the ACJC and the Arizona and U.S. Constitutions.

Judge [redacted] violated Rule 1.1 and 1.2 of the ACJC by appointing Judge [redacted] to this case in [redacted] Judge [redacted] violated Rules 2.2, 2.3 , 2.4, 2.5 and 2.6 by appointing Judge [redacted] to this case

This complaint shows a pattern of legal error regarding Rules 1.1, 1.2 and 2.2. All [redacted] of these decisions by Judge [redacted] show a callous disregard for [redacted] Due Process rights and a belief that the right to an impartial judge in appearance and reality is not part of Judge [redacted] habits and normal practices with litigants.

I will write more on this issue in a later complaint.

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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.**