

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-202

Judge:

Complainant:

ORDER

January 28, 2021

The Complainant alleged a justice of the peace had received improper compensation.

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 concluded that the issues identified in the complaint raise questions of law and statutory interpretation, as opposed to ethical misconduct under the Arizona Code of Judicial Conduct. Because there is no clear and convincing evidence of ethical misconduct under the Code, the complaint in this matter is dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Denise K. Aguilar and Louis Frank Dominguez did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on January 28, 2021.

Comp
2020-202

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

Re: Justice of the Peace

I am
Conduct complaint against Justice of the Peace,
That Justice Court is located in
payment from to Judge for

Court. This is a Judicial
County Justice Court
This complaint relates to the
in the amount of
per year.

A.R.S. §22-402(B) provides that justice courts and magistrate courts share concurrent jurisdiction, with one exception. A magistrate court has exclusive jurisdiction over cases arising under the ordinances of the city. Hereinafter, any reference to "magistrate case(s)" means any case which could be filed in a magistrate court and not a justice court.

and the entered into a
for a term between and . A copy is
attached hereto as Exhibit A. There has been no agreement between the since
are negotiating which is attached hereto as
Exhibit B.

The Justice Court assumed jurisdiction of all magistrate cases under the previous
A formula determined the cost sharing between the public entities. It
should be noted that the number related to " " include both justice court and magistrate
cases. For example, there could not be a felony charge in a magistrate court. The formula is
even harder to follow because the was appointed as a but
paid exclusively by The numbers are not relevant to the issue presented.

Judge entered into a for under which he
would " " After
cost of living allowances, Judge is paid \$ each year plus certain employee related
expenses. is attached hereto as Exhibit C.

There have been magistrate cases from filed within the
preceding In other words, had
original jurisdiction over every case filed within the last year. There were
filed under the authority of the All cases filed within the last

year were included in Judge [redacted] judicial productivity points upon which his salary is based. Judge [redacted] was still paid the full amount from [redacted] even though [redacted] were filed.

Judge [redacted] reports all cases under the [redacted]. It is therefore very difficult to obtain information on any magistrate cases filed within the years prior to [redacted]. However, I believe very few, if any, magistrate cases have been filed within the last several years.

Constitutional and statutory provisions prohibit a Justice of the Peace from receiving any fee, salary or emolument in excess of the salary established by law. See, Art. 22 §17 Arizona Constitution; A.R.S. §38-601. Judge [redacted] performed no work to warrant the payment of \$ [redacted]. His receipt of those funds is contrary to law.

By definition, the consideration received by [redacted] was “ [redacted] ” to the amount paid to Judge [redacted] because no work was performed. Under those circumstances, the payment may be considered a gift. See, *Cheatman v. Diccio*, 240 Ariz. 314, 379 P.3d 211 (2016). The payment from [redacted] would still be “ [redacted] ” even if a handful of magistrate cases were filed in previous years.

[redacted] attached as Exhibit B, addresses the fact that few, if any, magistrate cases are, or will be, filed in Justice Court, [redacted] specifically tracks the language in A.R.S. §22-402(C). [redacted] would be entered “ [redacted] ” This does away with the fiction which allows Judge [redacted] to collect \$ [redacted] for absolutely no work.

Judge [redacted] has not executed [redacted] and has indicated a clear reluctance to do so. There can be no mistake regarding Judge [redacted] knowledge and intent under these circumstances.

Judge [redacted] used his superior bargaining position to create an extraordinarily unfair [redacted]. His actions undermine the integrity and public perception of the local judiciary.

The [redacted] is [redacted]

I affirm, under penalty of perjury, that the foregoing information and allegations are true.

Exhibit A

THIS IS AN AGREEMENT, made and entered into by and between
a body politic, [hereinafter "COUNTY"] and the a
municipal corporation [hereinafter "CITY"] and is approved by the

as authorized by the powers and authority granted
by the laws of the State of Arizona.

RECITALS

WHEREAS,

WHEREAS, provides a coordinated judicial system to
provide cost effective services

WHEREAS, for this purpose pursuant to A.R.S. §§ 11-951 *et*
seq., 11-952, 22-101 *et seq.*, and 22-402,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. PURPOSE

The purpose of this Agreement is to amend the current
Agreement to further define the duties of the Parties related to operation of the

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II. NAME AND LOCATION

III. DUTIES OF THE COUNTY

A. The COUNTY and will also be responsible for the performance of the following related functions:

1. All prosecution and defense of criminal cases which arise under the Arizona Revised Statutes, where the offense is committed on or after the effective date of this Agreement, and during the existence of this Agreement.
2. Transportation and incarceration of defendants appearing before the court, except that the CITY's police department shall be responsible for initial transportation to a County jail facility upon arrest by the police department. Charges to the City for incarceration of defendants pursuant to A.R.S. § 31-121(D) shall be accounted and billed separate from this Agreement.
3. Service of process as required by law for parties appearing before the court as a result of citations or long form complaints.
4. Service of process as required by law for parties appearing before the court for all Orders of Protection, Injunctions Against Harassment and other civil matters.
5. Issuance of Search Warrants, Civil and Criminal Arrest Warrants as required or authorized by law or by Court rules for parties appearing before the court.

B. The COUNTY shall have jurisdiction over any pending City Municipal Court cases and Magistrate files and all new case filings. The COUNTY shall staff this as it deems appropriate and shall have exclusive authority and control over the hiring, firing and supervision of all judicial staff.

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**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.**