

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-216

Judge:

Complainants:

ORDER

January 28, 2021

The Complainants alleged a superior court judge violated Rules 1.1, 1.2, 2.2, 2.6(A), and 2.15.

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
2020-216

Commission On Judicial Conduct
1501 West Washington St., Suite 229
Phoenix, AZ 85007

From: Judge _____ of _____ County

Regarding: Judicial Complaint against Judge _____ Court Judge of _____

Dear Members of the Commission,

On behalf of _____ Courts,
obligated to file a formal complaint against Judge _____ per Commission Rule 2.15 C.

On _____ the _____ received a proposed
between the respective cities and county. _____ there is a sentence that takes away a Magistrate's
right, per ARS § 22-403, to be able to negotiate his/her salary with a city. All of the _____ County Justices of
the Peace have serious concerns with it.

ARS § 22-402 requires that every city or incorporated town have a Municipal Court.

ARS § 22-402 states:

- A. *In each city or town incorporated under the general laws of the state, there shall be a municipal court.*
- B. *Every court established pursuant to subsection A, and every court established in a city incorporated under the provisions of title 9, chapter 2, article 5 or incorporated under the provisions of a special act or charter, has jurisdiction of all cases arising under the ordinances of the city or town, and has jurisdiction concurrently with the justices of the peace of precincts in which the city or town is located, of violations of laws of the state committed within the limits of the city or town.*
- C. *Notwithstanding subsections A and B and in lieu of establishing or maintaining a municipal court, a city or town may enter into an intergovernmental agreement as authorized by title 11, chapter 7, article 3 to provide the services of municipal court, including the jurisdiction of all cases arising under the ordinances of city or town, with either:*
 1. *A justice of the peace in whose jurisdiction the city or town is located and the county in which the city or town is located.*
 2. *Another city or town located within the same county as the city or town.* (See attachment #1)

Each city or town has established ordinances. _____ magistrate ordinance is # _____.
This ordinance specifically states _____ will appoint their own Magistrate, what term it will be for, that the city will determine the Magistrate salary and the powers of the Magistrate.
(See attachment #2)

ARS § 22-403 states:

- A. *The presiding officer of the municipal court shall be a magistrate, who shall be selected in a manner provided by the charter or ordinances of the city or town. The magistrate shall receive such compensation as provided by the governing body of the city or town.*
- B. *A justice of the peace in the city or town shall be eligible to the office of magistrate without thereby forfeiting his office as justice of the peace.*
(See attachment #3)

ARS § 22-403 A clearly states that the magistrate **shall** receive compensation by the city or town.

The previous _____ Inter Governmental Agreement,
_____ reads as follows:

"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 Consolidated Court as it deems appropriate and shall have exclusive authority and control over the hiring, firing and supervision of all judicial staff". (See attachment #4)

The proposed _____ Inter Governmental Agreement,
_____ reads as follows:

*"The COUNTY shall staff this Consolidated Court as it deems appropriate and shall have exclusive authority and control over the hiring, firing and supervision of all court staff. The County shall be responsible for the administration and management of all compensation, payroll and employee benefits of Justice Court **judicial officers and court employees**". (See attachment #5)*

The previous _____ Inter Governmental Agreement allowed the city to establish the compensation for a Magistrate per ARS § 22-403. _____ reads as follows:

"The CITY shall have the sole authority to appoint the City Magistrate pursuant to A.R.S. § 22-403, et seq. and to establish the compensation for the appointee as provide for under separate agreement. Compensation of the City Magistrate shall be the sole responsibility of the CITY".

_____ was **completely** left out of the new Inter Governmental Agreement.

The JP's believe it was left out in an attempt to circumvent ARS § 22-403, to prevent a Justice of the Peace from negotiating their Magistrate salary, with the cities. Instead of dialog being held in advance, the _____ were submitted on _____ only _____ business days before the start of the new fiscal year. When the _____ were questioned, the JP's were all threatened with ethical violations, if they were not immediately signed. The previous _____ was not signed by the _____ until _____

was not signed, until by Judge Judge the County
Attorney, or by the

At on before the start of the new fiscal year, Judge set up a
telephonic meeting with the JP's to discuss our concerns. The meeting took place, at After raising
our concerns Judge made it known that should the Justices of the Peace of not sign
the Inter-Governmental Agreements, as written, that he would file an ethical violation complaint with the Arizona
Commission on Judicial Conduct, against all the JP's attending the meeting, for ethical violations.

On Judge sent an email to Judge of the stating:
"

"
(See attachment #6)

On Judge sent Judge an email stating:
"

"
(See attachment #7)

On Judge sent an email to Judge of the stating
"

"
(See attachment #8)

On Judge sent an email to Judge of the stating
"

"
(See attachment #9)

Following the meeting the JP's then understood that Judge _____ was concerned that case filings from the Magistrate Courts are being submitted in such a way, that they are being counted toward the JPC's that dictate the JP's salaries. This practice has been ongoing in _____ County for decades. The JP's have been informed that due to converting from AZTEC to AJACS , figures cannot be obtained for case filings in past years. Case filings for FY _____ statistics reveal that cases being filed in the _____ JP courts are as low as _____ to as high as _____. In some courts this would lower the JP's' salary to the next level and in other courts it wouldn't affect the JP's' salary. Judge _____ is contending that the JP's are receiving undue enrichment from the cities, due to the minimal ordinance cases that are actually filed in the Municipal Courts, **notwithstanding** the work that is actually being performed for the cities for the civil and criminal cases filed in the Justice Courts. While the cities do not use the percentage pay scale that ARS § 22-125 provides, using the lowest JP's of _____ that would qualify a judge to receive a salary of \$ _____. As such no JP can be accused of undue enrichment for the work they are performing for the cities.

The JP's have contacted the _____ which is attempting to intercede and to craft an IGA as used in other Counties, so the cities are still able to file cases in the Justice Court, thus preventing the cities from having to pay jail fees and operational costs, while submitting filings to _____ that separate the Municipal Court filings, from the Justice Court filings. This will maintain the integrity of complying with ARS § 22-125 for a JP's salary and the integrity of complying with ARS § 22-403 that allows a Magistrate to negotiate directly with the cities for a salary. _____ has spoken with Judge _____ personally regarding this issue, in an attempt to resolve it.

Notwithstanding that the JP's of _____ County and the _____ are attempting to resolve this matter in an orderly fashion, Judge _____ is continuing to push forward with his unilateral agenda against the JP's of _____ County.

On _____ Judge _____ notified the JP's of a possible _____ meeting on _____ Judge _____ ordered the JP's to be prepared to discuss the following items at the session:

- 1.
- 2.
- 3.

(See attachment #10)

On _____ Judge _____ contacted her _____ County Supervisor, _____ and requested a meeting with her to discuss the IGA's. _____ responded back and stated:

“

”

(See attachment #11)

It is the belief of the JP's that Judge _____ is using the _____ forum to retaliate against the JP's publicly for not signing the agreements, so that it will have political consequences.

On _____ sent notification of the agenda for the week of _____ A " _____ " has been scheduled for _____, The only thing on the agenda is " _____ "; for Judge _____ to air his concerns publicly. _____ (See attachment #12)

It is our opinion that Judge _____ has violated the following Judicial Canons:

RULE 1.1. Compliance with the Law

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

By removing _____ which reads as follows:

"The CITY shall have the sole authority to appoint the City Magistrate pursuant to A.R.S. § 22-403, et seq. and to establish the compensation for the appointee as provide for under separate agreement. Compensation of the City Magistrate shall be the sole responsibility of the CITY".

and inserting in the proposed _____ Inter Governmental Agreement, which reads as follows:

*"The COUNTY shall staff this Consolidated Court as it deems appropriate and shall have exclusive authority and control over the hiring, firing and supervision of all court staff. The County shall be responsible for the administration and management of all compensation, payroll and employee benefits of Justice Court **judicial officers and court employees**".*

Judge _____ is clearly violating A.R.S. § 22-403.

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.

Utilizing his power as the _____ County, Judge _____ has threatened the JP's with judicial complaints should they not sign his proposed Inter Governmental Agreement.

All the JP's felt threatened by Judge _____ during the phone meeting on _____. Additionally, both Judge _____ and Judge _____ felt threatened again upon receipt of emails on _____.

RULE 2.2. Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Comment

1. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.
2. Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

**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.**