

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 21-365

Judge:

Complainant:

ORDER

August 10, 2022

The Complainant, a justice of the peace, alleged another justice of the peace improperly granted a motion for change of judge. Complainant further alleged that granting the motion was retaliatory.

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 members Roger D. Barton, Joseph C. Kreamer, and Christopher P. Staring did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on August 10, 2022.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2021-365

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.

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Complaint Attached

Commission on Judicial Conduct
1501 W. Washington St., Ste. 229
Phoenix, Az 85007

RE: Complaint against _____ County _____ Justice of the Peace

Members of the Commission on Judicial Conduct:

On _____ Judge _____ engaged in unprofessional and unethical behavior in his role as _____ Justice of the Peace of _____ County. With a pending ruling on a 10.1 motion, he contacted myself to berate, threaten, and attempt to coerce me into recusing. Upon my non-compliance with his demand, Judge _____ proceeded to change his original denial of the motion without the findings necessary to support his ruling. His lack of knowledge on the rule combined with his bias regarding case management practices led to a ruling inconsistent with the rules with the ultimate effect of eroding confidence in the integrity, fairness, and impartiality of my court.

The following is background on events leading up to the basis of this complaint. Frequently there is a perceived inconvenience working in a rural setting, almost every time matters are resolved with a conversation about the importance of being present and the understanding it will not happen again. This was not the first instance hearings on conduct were scheduled for this individual, and counsel was progressively counselled in several regular and _____ hearings leading up to the current matter, once being found in contempt after hearing where he did not provide a defense to the allegation of not complying with an order of the court. Issues included communication with clients, not appearing for hearings, not providing initial disclosure after being ordered to do so and failing to comply with orders of the court. Counsel has filed special actions, to my knowledge they have been denied. In this instance, the contract public defender attorney was issued orders to show cause regarding why he did not give prior notice or appear on the day of trial, instead sending separate counsel in his place, which led to a continuance as counsel who appeared was unprepared to proceed with the trial. Rather than addressing it at this level, counsel filed a special action that contained his defense. It was denied for lack of jurisdiction, and the Superior Court Judge indicated that the more appropriate filing based on his memorandum would be a 10.1, which counsel subsequently filed on _____. The court followed rule, issuing the order to stay the proceedings and transferring the case to _____ Justice of the Peace for _____ County.

Upon the filing, there was some confusion, as the attorney filed it in Superior Court, then it was moved over to the _____ Justice of the Peace. I do not know details, however there seemed to be scuttle among the different clerks to sort it out. Judge _____ contacted me _____ I believe it was after he was advised he needed the order regarding timeliness, staying proceedings, and transferring the matter to his court. He stated once he received everything he would rule. That statement made me ask Judge _____ (paraphrased) “_____” He did not have any idea what I was talking about, I told him to read the rule, and he would get the minute entry shortly. There was no discussion about the case, or any further communication until _____

Judge _____ denied the 10.1 motion on _____. In his ruling Judge _____ cited “_____”, but there was no finding of prejudice or bias. I was preparing to go through the motions that were filed prior to the 10.1 and _____

set a hearing to get the case moving forward. Due to the 10.1 filing, to avoid any appearance of impropriety pro-tem availability to travel to our court had been determined, and planned to address it at the next setting.

Subsequently, I believe Judge _____ called to give advice that I enlist a pro-tem to finish the case, otherwise I may have to spend a long time preparing a response to a complaint the attorney could file with this board. He did state that he did not think it would have merit, but in his experience, it was worth avoiding the time that would be needed to respond. The conversation was post-ruling, I do not believe it was improper, I thanked him for his suggestion, told him I had already made the preparation, and planned on addressing any decisions on the case the following week. To acknowledge my thought process, Judge _____ has criticized my decisions in the past on the basis he recommends that I stop treating everyone like they are voters, subsequently I give his opinions the weight I feel they deserve, and never take them at face value. Also, when analyzing factors on what appropriate course is, possibly having to take time to respond to an ethics complaint does not factor heavily into a decision.

Or _____ I did not return to work the remainder of the week due to a possible COVID exposure the week before, however prior to leaving for the day I saw that the attorney filed a Motion to Reconsider the 10.1 ruling. Therefore, I returned to not considering any part of the case.

On _____ I received several messages to call Judge _____ one indicating urgency. I found time to return the call at approximately _____ hat evening and we had a _____ conversation. Judge _____ had a rage in his voice during the call, it quickly escalated to a voices raised argument. My impression was that I was dealing with an inebriated bully who would not allow me to get a word in. He was abusive and in an unreasonable condition that I had not witnessed from him before. He demanded that I remove myself from the case or he would be forced to rule on a Motion to Reconsider the 10.1 motion. I asked him where this was coming from, he stated that by requiring attorneys to do things they do not like is equivalent to picking a fight with them, I should never have appointed a public defender in the first place, and I have no authority to require them to do anything. He stated requiring them to do things is equivalent of picking a fight, and I should have let this attorney withdraw when he motioned to. When I said I denied it due to the basis for the withdrawal being ' _____ ' was not good cause shown with pending trial, he told me how no other judge he has ever seen would require them to follow the rule. He had already told me what to do and I needed to do what he said. Furthermore, he stated that he would be willing to assign any judge I wanted, just have my clerk " _____ " it to his. He repeatedly stated that I recuse myself by the following morning or he would make the decision. I repeatedly asked why he thought it was appropriate to make threats and try to coerce action from me, and his response was simply demanding me do what he said. To be accurate, I did not take lightly to this tone and responded in kind, any attempt to deescalate the tone was unsuccessful, it only emboldened his attack. For the purposes of complete candor, I did tell Judge _____ what he could do with himself.

On _____ I called, intentionally during business hours, to explain to Judge _____ that his attitude was unacceptable, we will not have a conversation like that again, my viewpoint that it was an improper ex-parte conversation, and he created a conflict that would require my recusal. Most of this conversation was spent with him trying to redirect the conversation, and he seemed to have difficulty or unwillingness to recall much of what he said the night before. However, I was satisfied that my message was delivered regarding future communications. He was not told, but I did prepare the minute entry to recuse myself due to the ex-parte communication in the event he denied the motion to reconsider. Furthermore, I reached out to Judge _____ that day to express my displeasure with the situation. This is not retaliation for an adverse ruling, raising my disdain began immediately following the occurrence.

On _____ Judge _____ granted the Motion to Reconsider. Once again, there were no findings of conduct that would show a prejudice. Based on his rant, it gives possibility that he made a retaliatory decision based upon longstanding different views on non-relevant issues he has with this court and used this as an opportunity to impose some self-perceived authority over another court.

In the ruling, he references the requirement for a judge to recuse even when there is an appearance of impropriety. Obviously, I would agree. However, forcing that recusal based on the attorney's feelings in the 10.1 motion is inappropriate. At no point was there prejudice towards counsel, there were case management practices and rulings counsel disagreed with. All attorneys on both sides are required to comply with initial disclosure, expected to communicate with clients, and required to appear for substantive matters. That seemed not to be the expectation when I began, and friction has been overcome by consistency. If that is not how things are done in _____ which I do not know if they are or not, I do not have any opinion or desire to get involved. Remedy would be special action or appeal. If there is a situation where I should recuse and choose not to, then the proper remedy is the ethics complaint or 10.1. Judge _____

subverted the process by deciding there was an ethics violation when there had not yet been the opportunity to have one, finding that recusal would be appropriate due to the feelings of the attorney. Do I believe there could be a perception now due to the 10.1 filing of the attorney? Yes, accommodations were in the works to address counsel's concerns and get the case to resolution. Do I believe there was one prior to this motion? No. Do I think he overstepped by granting the motion when there was no finding of bias or prejudice? Yes.

The finding in the ruling is as follows: “

”. There was no finding, just that the attorney had feelings, which is why the motion was filed. The motion was granted on the feelings of the attorney, not any action or finding that the court had shown bias or prejudice that would prevent fair trial or give that perception.

In the order granting the motion to reconsider, Judge _____ remanded the matter back to me for further action. As stated previously, his entire handling of this has been unsystematic eroding any confidence I have in his competency. He was unaware of the need for a hearing, he threatened an unfavorable ruling if I did not take an action I was not permitted to, the ruling did not outline any findings necessary to support the decision, and he sent it back to the court which is averse to what is required. A decision was made arbitrarily outside the requirements of the rule and is clouded by unethical behaviors by the magistrate, and I thoroughly understand a remedy is unavailable. I take no issue with the ruling either way it came out if substantiated, I take great issue with the ethics of how it was done. Now there is a finding of prejudice where none existed, diminishing the integrity of our court. Furthermore, the actions of the _____ Judge take away any confidence one could have in the judicial process in this county involving Judge _____. If he had shown diligence, character and impartiality, the decision would be acceptable, and we would not be doing this today.

I do not find it appropriate for the _____ Justice of the Peace to believe bully tactics are appropriate methods for resolving pending legal rulings. I do not find it appropriate for the _____ Justice of the Peace of the County to initiate a conversation with me on a pending matter under his authority. I do not find it appropriate for the _____ Justice of the Peace to form decisions based upon his disagreement with case management practices that are within the discretion of my court. I expect for decisions to be made based upon what is provided through a hearing, not biases regarding differing case management views. I do not find it appropriate for the _____ Justice of the Peace to attempt to indulge me by going “ _____ ” on the moving attorney. I do not find it appropriate for the _____ Justice of the Peace to threaten or imply adverse action on a pending ruling if I choose not to comply with his demands. I do not find it appropriate for the _____ Justice of the Peace not to take the time to understand the process and apply the facts and law. That is what I do my best to do, and expect the confidence that other judges have those same ethics when reviewing my cases.

I question his ability or desire to conduct a fair hearing and gather facts to apply to his decision, as well as when he decided to inappropriately address the situation, he should have disqualified himself from any further consideration in the matter. I expect that decisions are made by a competent, impartial, ethical, and unbiased tribunal. Mistakes happen, preparation and integrity diminish them. Events through this matter demonstrate a lack of diligence or integrity. Thank you for your time. I have been forthright and detailed regarding my actions in this matter. I believe there is a requirement to self-report when a 10.1 motion is granted. If this does not serve that purpose, please advise.

Please feel free to contact me if you have any questions.

Justice of the Peace
Justice Court Precinct