

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-014

Judge:

Complainant:

ORDER

November 17, 2022

The Complainant alleged a superior court judge was biased and considered information outside the court record when ruling on a civil dispute.

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 Barbara Brown and Michael J. Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on November 17, 2022.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2022 - 014

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.

Please see attached.

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2022-014

COMPLAINT AGAINST A JUDGE

Name. _____ **Judge's Name:** _____

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This Complaint is filed based on information discovered during a hearing as well as in public-records searches conducted by undersigned counsel the following day and the weekend of

Relevant Ethical Rules

Rule 2.9(A) and Rule 2.9(C) governing *ex parte* communications and extrajudicial investigations are implicated, as well as Rules governing political activities by a judge including but not limited to 1.2, 2.11, 2.3, 2.4, 3.1, and 4.1 of the Arizona Code of Judicial Conduct (referred to herein as the “ACJC” or “Canon”).

General Factual Background

What follows is a general factual background. The facts that undersigned counsel recently discovered, and which directly give rise to the instant Complaint, are contained in the next section.

is registered as a for-profit corporation. In the Arizona Senate contracted to produce an audit report regarding the election. former CEO is named In County Superior Court Case No. (the “”), Plaintiff sued originally contending that was a public agency subject to public records law and seeking various audit-related documents belonging to The suit was filed on

At the beginning of the suit, moved to disqualify Judge for cause.¹ The grounds were that before being assigned to the Judge had made a *sua sponte* negative comment about the Senate audit in an unrelated case to which was not a party, Case No. (the “”). In the the had asked Judge to order that County redo its post-election “’ of ballots, based on a violation of the statutory process for performing the hand-count. In general, the Judge’s orders and conduct in that case showed an

¹ See page of filing, attached as Exhibit “B” hereto.

unacceptable degree of intemperance. In a lengthy ruling, he claimed that he was being “

” he called the arguments “ ” and he sanctioned the and its undersigned counsel in a decision that remains under appeal.² At no time did Judge disclose any actual or potential conflict or bias with respect to him serving as the judicial officer on the case. prior Motion to Disqualify was denied on the grounds that “

” A request to disqualify him without cause that was made as part of the same Motion was also denied. chose not to appeal the motion to disqualify for cause.

Subsequently, Judge strongly signaled to all parties in the initial hearings on the that he would be granting the Plaintiff’s claims. He signed a lengthy Order that the Plaintiff’s counsel wrote and first presented him with immediately before a hearing that he scheduled only weeks after service of the suit, granting the Plaintiff’s claims. In part, Judge ruled that is a public agency/officer. On appeal, the Court of Appeals declined to adopt Judge reasoning but accepted a new argument that was independently raised by the Plaintiff on appeal. appealed the decision to the Arizona Supreme Court, which

² The negative comment about the audit was contained in footnote 3 of his final Ruling in the case:
“

” Judge made this comment *sua sponte*, as no party had raised the audit or Judge ruling(s) in the case. Judge language – including describing the purposes of the audit as “ ” and “ ” – expressed skepticism of the audit, and there was no reason to mention the “ ” of the “ ” other than to express doubt about whether it was wise. The comment also strongly indicated that Judge felt a personal political interest in these matters and was independently investigating/reading news reports about them, as the audit was not raised by any party and was not involved in the case.

subsequently issued a series of *en banc* orders including an order acknowledging that the Order Judge signed (and from which appealed) expressly allowed for to withhold documents; and therefore “

.” On the Supreme Court denied petition for review “

”
Despite these strong indications that the Supreme Court believed was still entitled to raise objections to production of documents until Judge issued a final order, Judge went ahead and set an evidentiary hearing on at which he found in contempt and began fining it \$ a day for alleged noncompliance with his Order(s). He declined to enter a final order or rule on objections before finding it in contempt. The Judge set the hearing for without consulting anyone’s calendars, suggesting that it was a deliberate choice of date.³

At the beginning of the hearing, Judge made a comment that “
.”⁴ Given the objectively narrow public-records issues in the counsel interpreted this comment to be of a political nature. The issues before Judge are primarily whether private records – consisting almost entirely of the company’s privately-owned emails/communications – are “ ” and who is going to pay for the cost of searching/editing/producing them on its behalf. During the hearing, counsel argued in part that the records were not government-owned but also that the company lacked the money to pay for records review because the failed to pay the \$ balance of its \$ contract; the review would cost around \$ and the company is in debt and laid off all of its employees. (Unlike an

³ See Declaration, paragraph 18.

⁴ See hearing audio at the mark (), found at

**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.**