

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-061

Judge:

Complainant:

ORDER

September 14, 2022

A superior court judge self-reported a delayed ruling in a criminal matter.

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, Roger D. Barton, and Colleen E. Concannon did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on September 14, 2022.

From:

Sent:

To: Commission on Judicial Conduct <CommissionJudicialCo@courts.az.gov>

Subject: Self-reporting a violation

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To Whom it May Concern:

I am writing to self-report a violation of the judicial code – specifically by signing the judicial certification pursuant to A.R.S. §12-128.01 that no cause had been submitted to me for decision which remained pending undetermined for sixty days or more since the date of submission for decision.

On _____, I learned that some Notices of Post-Conviction Relief for cases that had proceeded to trial had been e-filed but the assigned division had not received that notice. On _____, I decided to audit all trials dating back to _____ to the present day in an effort to determine if any of my cases had been effected. It was during that audit that I discovered the case that is the subject of this email.

In _____, a defendant by the name of _____ had _____ cases assigned to me with two separate case numbers – _____ went to jury trial in _____ and the defendant was convicted. After the mandate issued for that case a notice of Post-Conviction Relief was filed on _____. On _____, the _____ for this division prepared a notice advising who had been appointed to represent the Defendant in this case and advising the deadline to file the Petition was _____. On _____, counsel for the Defendant filed a Notice of Review and Motion to Extend time for a Pro-Se Rule 32. On _____ this Court issued an order granting counsel's request and ordering that any Pro-Se Petition must be filed by _____. On _____ the matter was dismissed because the Defendant had not filed a Pro-Se Petition.

_____ went to trial in _____. Defendant was convicted at trial and appealed. The mandate issued and a Notice for Post-Conviction Relief was filed on _____. The Notice indicates that it was delivered to chambers. Indeed, it was "_____" in as received on _____. No action was taken by me when this Notice was filed to appoint counsel, ensure transcripts were prepared or to set a deadline to file the Petition. That is the violation that I am reporting as more than 60 days has passed to issue those orders.

The procedure this division has in place once a Notice of Post-Conviction Relief is filed is that this pleading goes first to the [redacted]. It would be her responsibility to issue a notice advising which attorney was appointed to represent the Defendant, issue a deadline to provide any trial transcripts to Rule 32 counsel and to advise of the deadline to file any Petition. As part of the protocol that existed for my division at that time, I would not personally see this notice. This Notice does not require my signature. At the time of these events, I would generally see any Post-Conviction filing for the first time if a substantive pleading is filed or if a pleading is filed that requires I rule on a request. My law clerk keeps all orders issued by me or notices prepared by her as well as other relevant documents in a file she creates for chambers. Each Rule 32 we receive will have its own chambers file prepared. This allows us to have easy access to documents if they are needed. When I was investigating what had happened in this case, I found a copy of the Notice that had been filed in [redacted] had been placed in the chamber file created for the Defendant's case in [redacted].

As I continued to look into the matter, I spoke with my [redacted] (who is the same [redacted] that would have handled these matters in [redacted]) and my [redacted]. None of us have any independent recollection of what transpired in this case or these specific documents. However, I believe what likely happened is given the fact the same Defendant had two cases with very similar cause numbers and the over-lap in timing of documents being filed in each case, my [redacted] probably thought the Notice filed in [redacted] was in error or duplicative. I think that is supported by the fact she filed the Notice submitted in [redacted] in the chambers' file for the Defendant's separate Post Conviction matter in [redacted]. Clearly, she and I recognize this happened because of the lack of proper attention to detail to both the cause number and the title of the pleading.

I have been a [redacted] since [redacted]. Throughout the years my staff and I have tried to develop an accurate, efficient, and fool-proof system to ensure that all matters submitted to me for my decision are ruled on in a timely fashion. We have developed a system of checks and double checks in an effort to make sure that nothing falls through the cracks and that human error is minimized as much as possible. Specifically with Rule 32's my division has developed a system of safeguards and checks to make sure all rulings are made in a timely fashion. Unfortunately, those fail safes did nothing to prevent this error. This error was caused by not carefully checking the cause number and the pleading name. I regret this deeply.

Since discovering this error, action was immediately taken to begin the process that is initiated once a Notice of Post-Conviction Relief is filed. A notice was issued appointing counsel, ordering transcripts and setting deadlines for filing in [redacted]. Additionally, I have discussed with my staff the importance of paying careful attention to the cause number and title of a pleading – especially in cases where the Defendant may have multiple cases pending review in my division. The procedure has also changed once a Notice of Post-Conviction Relief is filed in that I will be provided a copy of that Notice once it is received.

I can assure you at the time I signed each of the judicial certificates indicating nothing submitted to me for decision was pending for over 60 days, I honestly believed it to be true. I honestly believed nothing was pending. In addition to relying on my own knowledge of what matters are pending

before me and when they can be timely ruled on, I also ask both my _____ and _____ if they are aware of anything pending my decision that is over 60 days old. I will not sign the certificate until I have checked with them as well.

I am truly sorry for my error. I have done all within my power to address the error as it relates to the aggrieved Defendant and to ensure this type of mistake is not made in the future. If there is any other information or concerns you have that we can assist you with, my staff and I will be more than happy to help.

Respectfully,