

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-184

Judge:

Complainant:

ORDER

June 28, 2023

The complainant alleged a superior court judge presided over a civil case in which the judge had a conflict of interest.

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 Michael J. Brown, Colleen E. Concannon, and Scott C. Silva did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on June 28, 2023.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

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.

Telephone:

Facsimile:

VIA EMAIL AND U.S. MAIL

Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007
cjc@courts.az.gov

Re: Judicial Commission Complaint

To Whom It May Concern:

It has come to my attention that Maricopa County _____ recently presided over a case in which he had an apparent conflict of interest that he knew or should have known about but did not disclose to the parties or their counsel, and at the minimum made no effort to determine before presiding over and deciding contested hearing(s) in the case. The case is _____ Case No. _____.

_____ . I am not counsel or a party to the case. The defendant (_____) lawyers are _____ and _____ , and the plaintiff's lawyer is _____.

After _____ and _____ discovered the conflict and filed a motion to disqualify _____ – to which the (acting) presiding judge requested a response from the other party – _____ entered a defensively-worded minute entry recusing himself from the case before the acting presiding judge could enter a decision on the motion. A copy of the order of recusal is attached, as well as a copy of the Complaint filed in the matter. (I do not have a copy of the motion to disqualify.)

In summary, the case was filed against _____ concerning _____ conduct in the last (_____) election. _____ has been an incumbent _____ for many years, reaching back to well before the _____ election. (He has been a _____ since _____.) In the _____ primary election, _____ contributed to a Democratic challenger seeking to unseat _____ . _____ knew or should have known about his contribution, and at the minimum should have identified the potential appearance of impropriety in presiding over a case involving _____ campaign conduct (albeit in a later campaign). In his order of recusal, _____ admits to making the contribution and to not disclosing it, but claims that he did not need to disclose it because it was to the Democratic primary candidate, which he claims he did not “associate” with _____ (because _____ “was not a participant” in the Democratic primary, he writes). This is not credible given that _____ is the long-time incumbent and


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that _____ was contributing to a candidate running to unseat him. He also fails to acknowledge or address that he contributed to a PAC that campaigns against _____ (“_____”), and whose website refers to _____ as an “_____.” Moreover, _____ has decided to become actively engaged in politics by making numerous political contributions while on the bench, and the _____ case had obvious political overtones. _____ made no apparent effort to assess whether he might have a perceived conflict in the matter due to his unusual history of political contributions, or to disclose the same to the parties or their counsel. He also fails to acknowledge (and in fact disputes) the necessity of doing so, in his order of recusal.

I do not represent _____ in any capacity; in fact, my partner _____ is engaged in other litigation adverse to _____ (and against _____, who represents _____ in that matter as well).

Sincerely,



Enclosures as stated above.

HONORABLE

CLERK OF THE COURT

Deputy

MINUTE ENTRY

The Arizona Code of Judicial Conduct treats small political contributions as permissible civic participation, like voting. The Federal Election Commission record showing this judicial officer's contributions (Exhibit 2 to the defendants' Motion to Disqualify Judicial Officer for Cause) has been circulating in the _____ county legal community for over a year. Several litigants have cited it, unsuccessfully, as grounds for disqualification. Denying one such motion, the _____ presiding judge's designee said:

The Plaintiff _____ offers evidence of contributions to organizations which, it argues, shows he cannot be fair in this political case. Arizona judges at all levels are allowed to support political causes and even attend political events under certain circumstances. . . . So long as they do so consistent with the Code of Judicial Conduct, this does not disqualify them from hearing political cases or create an appearance of impropriety.

No. Minute Entry dated
After reviewing the same information, the Arizona Commission on Judicial Conduct confirmed that no violation of the judicial ethics rules had been shown.

The fact that one of the contributions happens to have been made to a one-time political opponent of does not make this case different. The amount of the contribution was *de minimis* in this context. The contribution was made more than three years and two election cycles ago, in . The recipient was one of several candidates in a contested primary election in which was not a participant. After winning the primary, a year later, that candidate ran against in the general election. The act of contributing was so thoroughly *not* an expression of opinion about the Congressman personally that the Court literally has no memory associating him with the contribution.

Moreover, this case is not about an election in which was involved, or a matter of public policy that he has addressed as a Member of Congress. Though the backdrop is the primary campaign, the causes of action are defamation and related torts. The plaintiff was a private citizen, not a political candidate, at all relevant times. He is described by the defendants as “aggressively demanding the compelled disclosure of confidential internal campaign materials,” Motion at 3, a softer form of their accusation in response to discovery requests that he is abusing discovery to obtain campaign data for future political use against . So far, however, the defendants have presented no actual evidence that the plaintiff is misusing the discovery process for political purposes, let alone anything even remotely justifying the insinuation that the Court might permit bad-faith litigation because of a “preference” that “cease to be a member of Congress.”

Having said all that, the Court is acutely aware of the political and social conflicts that divide our community. The defendants’ motion reflects the perspective of those who have come to mistrust key community institutions, including the courts. Regardless of whose view is right or wrong, the loss of confidence among *any* substantial number of our citizens, for *any* reason, undercuts the function of the judiciary and the ability of individual judges – including this one – to do their jobs well. For that reason, even though this Court is confident that the adjudication of this case has been and would continue to be ethically sound in all respects, the Court recuses itself from this case.

IT IS SO ORDERED.

**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.**