

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-246

Judge:

Complainant:

ORDER

November 9, 2023

The Complainant alleged a superior court judge made biased and legally erroneous rulings in an election contest.

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 member Colleen E. Concannon did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on November 9, 2023.

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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.

On _____ the case aforementioned was heard by Judge _____ During the hearing the Judge engaged in direct debate with my counsel for _____ minutes of our allotted _____ hearing minutes, demonstrating that she was not at all a neutral arbiter, but by her behavior acted as counsel for the Contestees. Furthermore, the Judge treated the Contest as if it were a run of the mill civil litigation, which it is not.

At issue first and foremost is an Article I "Separation of Powers" action.

In a CONTEST the Court has certain duties that are unequivocal, and detailed as specific under the doctrine of separation of power, which are further detailed under Arizona Rule 7 "Contests", not Rule 8, which deals with "civil litigation." The two should not be confused or conflated, and in this case they have been.

Rule 7 deals with CONTESTS only, it exclusively and directly related to elections brought before the court.

A.R.S. §16-676. "Time for hearing contest; continuance; findings of the court; judgment"

A. In any contest brought under the provisions of section 16-672 or 16-674, upon the filing of the answer, or if no answer is filed, upon the expiration of the time specified in the summons, the court shall set a time for the hearing of the contest, not later than ten days after the date on which the statement of contest was filed, which may be continued for not to exceed five days for good cause shown.

B. The court shall continue in session to hear and determine all issues arising in contested elections. After hearing the proofs and allegations of the parties, and within five days after the submission thereof, the court shall file its findings and immediately thereafter shall pronounce judgment, either confirming or annulling and setting aside the election.

Judge _____ by her time consumptive actions denied a hearing of the proofs and allegations beyond the filed brief by Contestant. By her actions I was denied equal protection under the law. Moreover, after the fact Judge _____ alleges that Contest was brought in bad faith. How can such a determination be made if the proofs and allegations could not be presented due to the Judges intervention on behalf of Contestees counsel?

According to the legislative manual a judicial officer can be impeached for, among other reasons, "malfeasance", this includes an act that a person knew or should have known exceeded his or her authority. Here, _____ as a judicial officer, overstepped the clear framework of election contest architecture set forth by the legislature to allow a quick, direct and inexpensive process designed for electors of this State with a grievance to be able to seek redress without any need to implement numerous complex roadblocks contained in the Arizona Rules of Civil Procedure, such as Motions to Dismiss, Summary judgment motions, discovery and other time consuming complicated rules, clearly reserved for civil actions that in most instances take years to conclude. (See attached for remainder of complaint)

The legislature specifically deemed an election contest as a special action which was codified primarily within the comprehensive Title 16 statutory framework which is intended to expedite election contests so as not to delay the swearing in ceremony of representatives actually elected by existing, qualified registered voters. The process was intended to keep the process simple enough for an aggrieved elector to seek redress without the burden and expense of hiring an attorney.

Title 16 Article 13 states that an aggrieved elector must file a verified statement of contest under penalty of perjury. Article 13 also states “[t]he contest may be brought in the superior court of the county in which the person contesting resides or in the court of county” in order to review the grounds for, and alleged facts underlying the contested election. The putative contestee is required to file a verified answer setting forth his or her facts within five days after service. Then, within ten days after the statement of contest was filed, the court must hold a hearing of the contest (ex parte if no answer was timely filed), and consider the testimony of witnesses, review exhibits and render a decision.

When the Statement of Contest was assigned to this judicial officer she allowed the putative contestees to file motions to dismiss rather than the requisite verified answers. The contestor(s), who hired an attorney, brought it to the attention of the Judge that the motions to dismiss were beyond the purview of the statutory contest architecture which she simply ignored and authorized expensive motion practice to commence based on selective Superior Court Rules while excluding others. Not only was it costly, but under the time limits set forth in Title 16, and Judge selective authorization of the Civil Procedure Rule that authorizing filing the motion to dismiss there was no time available to adequately prepare for the statutorily required hearing. After it was brought to Judge attention that when the legislature passed Title 16 into law it specifically sidestepped the traditional, time consuming and expensive litigation under the Arizona Rules of Civil Procedure, she deemed the idea foolish and said so in the Court Order.

Title 16 was deliberately enacted to make the contest accessible to any elector who believed the election contest was improperly conducted or the candidate was not qualified for the election. It was intended by the Legislature to be a quick and inexpensive process for contesting questionable elections to be evaluated by impartial judicial officers. It was understood that it was too costly and impractical for an elector to have to pay tens of thousands of dollars in legal fees just to get past a Motion to Dismiss and secure the requisite Answer and hearing, notwithstanding that if all the Rules of Civil Procedure were followed as they should be, rather than just partially or selectively as done here, it could take months if not years to determine the results of an election which is the obvious reason the Rules of Civil Procedure were not intended by the Legislature to apply to an election contest.

While it is not uncommon for the legislature to promulgate statutes and courts to determine the rules governing disagreements, that is not the case here. While Title 16 has been in effect for decades, the legislature revisited the statute after the controversy surrounding the election. Again, for the second time the legislature maintained the uniqueness of Title 16 election contests and specifically did not include the Rules of Civil Procedure since an Election Contest is not an issue of Law or equity but is a form of special action with its own comprehensive rules.

This judicial officer ignored the procedures codified in our election regulating legislation. Instead, she overrode, without authority, the statutory process and subjectively picked and chose specific Civil Rules of Procedure to apply and ignored the others.

Impeachable Offense I: Malfeasance, failure to take care to strictly construe

The Judicial officer's acts constitute malfeasance in that the judicial officer knew or should have known that when a court is to rule on a statute the judicial officer must first review the statute and strictly construe it to fulfill the legislative intent. She did not, in fact, she consciously decided not to carry out the legislative intent, overrode the statute and breached the separation of powers as set forth in Article III of the Arizona Constitution.

Impeachable Offense II: Violation of Judicial Conduct Cannons

The judicial officer breached numerous Judicial Conduct Cannons during the Election Contest process committing added malfeasance as follows:

1.2 Promoting Confidence in the Judiciary. Here the judicial officer did not exhibit impartiality as required under the Cannon and generated an appearance of impropriety. She interfered in the statutorily defined contest process under mining public policy and insulting the public's image of a statute's legitimacy and rigger. She assumed a roll for herself and above the power of the Legislature by overriding the defined process.

First, she allowed the aforementioned Motion to Dismiss. Then she applied an almost impossible timetable to respond to same to meet the express train timetable in Title 16.

Second, she conducted a hearing on the Motions to Dismiss wherein she opened the Motion to Dismiss hearing by addressing the Movants' counsel which took about 10 minutes. Then, when Contestant's attorney was about to present his case she interrupted and ultimately denied him any presentation. Instead, she acted as a prosecutor and argued Movants' case for an entire hour. Her assuming the role of prosecutor, hammering Contestant's counsel with non-stop questions – to the point of argument, including regarding the substance of the case, is not her purpose. In the process for hearing a Motion to Dismiss the judge must take the facts as alleged by the person against who the motion to dismiss was directed. She ignored this duty completely and prosecuted the case instead. This is malfeasance in that she superseded the statute and ignored the proper motion to dismiss process. Despite this fact, she offended the statute by even entertaining it and undermined the public perception of the sanctity of Title 16. This judicial officer clearly evidenced her bias in favor of the alleged election winners and took an open position favoring one side over the other.

Third, this judicial officer produced an extensive Order with a very angry tone dismissing Contestant's case. She did this despite having a duty to take Contestant's facts as true. She argued with Contestant's counsel for of the minutes allotted for the hearing, despite the fact that the Contestees did not even file an Answer nor allege their own facts. in other words Movant Contestees presented absolutely no facts or evidence, just a Motion to Dismiss - this judicial officer based her entire dismissal on lawyer talk and personal bias - an absolute breach of duty.

She insulted the public perception of neutral arbiter and impartiality required to maintain the integrity of both the judicial and legislative branches and generated an appearance of impropriety. Public confidence in the judiciary is eroded by such improper and outrageous conduct.

Impeachable Offense III: Impartiality and Fairness

Pursuant to the judicial Cannons, a judge is required to uphold and apply the law and shall perform all duties of judicial office fairly and impartially.

1. The judge was required to ensure impartiality and fairness to all parties, she had a duty to objective and open-minded. As stated above she was not.
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. As outlined above she did not.
3. A good faith error of fact or law does not violate this rule. However, a pattern of legal error or an intentional disregard of the law may constitute misconduct. She intentionally ignored the law – Title 16 – and confused and drove up the coast of the Election Contest process.
4. It is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard in fact it is required. The Judge made the process more cumbersome, time consuming and expensive deliberately defeating the intent of the statutory architecture.

Impeachable Offense IV: Bias, Prejudice, and Harassment

Here, the judge clearly failed to perform her duties of judicial office, including administrative duties, without bias or prejudice. The judicial Cannons prohibit a judge, in the performance of his/her judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon ... political affiliation. (Emphasis added).

As outlined above, the Judge clearly allowed her political bias to transgress into Contestant's Contest by ignoring the basic processes for Motions to Dismiss by not assuming respondent's facts as true and then embracing a prosecutorial role and arguing with respondent as opposed to requiring the movant to prove their case. This bias was obvious, deliberate and apparently politically motivated.

Impeachable Offense IV: Ensuring the Right to Be Heard

In this case, the judge failed to accord to Contestant (a person who has a legal interest in a proceeding, or that person's lawyer) the right to be heard according to law. Pursuant to the comments in the judicial Cannons, the right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

Contestant filed a Contest, Title 16 requires Contestees file a verified Answer. This did not happen here. Contestees filed a Motion to Dismiss. If the judge was going to entertain such a Motion, she should have assumed all of Contestant's facts as true and forced the Contestee movants to support their Motion. Instead, the judge spent about 10 minutes asking a few basic questions to Contestee Movants' counsel, then the better part of an hour arguing with Respondent's counsel – never allowing him to actually "be heard" but only to defend why Respondent should survive the Motion to Dismiss. This hearing was obviously designed by the judge to not allow the Contest to move forward. Clear malfeasance, judicial impropriety and a violation of the judicial Cannons.

In conclusion, while the judge brutalized my lawyer and absolutely refused to give him any time to state his case, she openly showed her favoritism to the other side. In her Ruling denying the Motion for Reconsideration she pilloried my attorney because she didn't like his pleading. On the other hand, she took the majority of her Ruling to scold the opposing counsel for grossly over-billing; in other words - for theft. The over-billing was so blatant, she felt compelled to reduce their legal fees from [redacted] to [redacted]. This is not a trivial amount. This [redacted] reduction accounts for about [redacted] of their fee request. This is not a trivial finding. A theft as great as [redacted] is a class 1 felony in Arizona. After determining the severity of this over-billing, she had a duty to report those attorneys to the [redacted] which she has not. This failure is a definite breach of her duties and ethics. Moreover, it evidences her clear bias in this case.

Aside from citing irrelevant —old law that has been superseded by new law— this judicial officer went out of her way to argue that sanctions should be imposed against me and my attorney - just for filing my case. However, the attorneys whom she declared grossly overcharged their own clients (by [redacted]) are not subjected to the same scrutiny.