State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-485

Judge:

Complainant:

ORDER

February 12, 2024

The Complainant alleged a superior court judge failed to recuse himself when he had a conflict of interest hearing a civil case.

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. A judicial officer's appearance on an election ballot does not automatically disqualify that judicial officer from deciding controversies related to that same election. The Commission determined the circumstances described in the complaint did not demonstrate that "the judge's impartiality might reasonably be questioned" under the standards set forth in Rule 2.11, Disqualification. The Commission particularly noted that the underlying litigation involved claims over access to certain election-related records and the legality of audit procedures and was not a challenge to the result of the election itself. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Michael J. Brown and Regina L. Nassen did not participate in the consideration of this matter.

Copies of this order were distributed to all
appropriate persons on February 12, 2024.

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2023-485

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

Judge's Name:
Court: County Court
Case pending: No
Case numbers:

Dear Commission:

An election challenge impacts not just the candidates who file challenges and their direct opponents on the ballot. A court challenge to the results of an election, if successful, potentially affects the entire election, calling into question the legitimacy of every seat and every ballot initiative.

County Court Judge _____, who successfully retained his seat in the general election, presided in _____ _____. ( ). According to a press release on the plaintiff's website, , the suit "

" Judge ruled in favor of the county, holding that

Judge also presided over _____ (, an action seeking production of from the general election. Judge granted the county's Motion to Dismiss, and his order was affirmed in the Arizona Court (_____). Two of the three judges on the panel, Judge _____ and Judge _____ had been retained on the ballot.

This disturbing, too-often-repeated fact pattern in County Court implicates Canons 1, 2 and 4 of the Arizona Code of Judicial Conduct which "establishes standards for the ethical conduct of judges and judicial candidates" [Preamble]. Rule 1.2 "Promoting Confidence in the Judiciary" reads in part: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.... Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary." The test for "appearance of impropriety," laid out in the rule's Comment 5, "is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

Every elected official has inherent professional and financial interests in preserving the legitimacy of his or her own election. Judges who sit for retention are no different. These interests give rise to the appearance of partiality when ruling in cases that touch on the very ballots upon which their names are printed. As articulated in the Code's Preamble, judges "should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity and competence." *For an elected judge whose own seat is up for retention to preside over a case challenging the election upon which his own seat depends, or to rule in matters pertaining to the disclosure of records related to his own retention ballot, creates in reasonable minds the objective appearance of impropriety.*

Rule 2.11 on Disqualification states a judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned...." Specifically, circumstances where the judge knows that he or she is "a person who has more than a *de minimis* interest that could be substantially affected by the proceeding" [Rule 2.11 (A)(2)(c)], or where the judge "has an economic interest, as defined by this code or Arizona law, in the subject matter in controversy" [Rule 2.11 (A)(3)] are instances where disqualification is mandatory. A judge's seat is clearly a more-than-*de-minimus* pecuniary interest. According to the court's website, Maricopa County Superior Court judges receive an annual salary of $148,220.80.

The onus to raise the matter of disqualification is upon the judge, not the litigants: "a judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed." [Rule 2.11, Comment 2]. Even if the judge does not believe disqualification is warranted, he or she is nevertheless obligated to "disclose on the record information that the judge believes the parties or their

lawyers might reasonably consider relevant to a possible motion for disqualification." [Rule 2.11, Comment 5].

Rulings in election-related matters may also implicate Rule 2.3 (B) which specifies, "A judge shall not ... manifest bias or prejudice ... based upon ... political affiliation." Although the comments to this rule provide examples of harassment, participation in adjudicating election-related cases in 2020 and 2022, viewed collectively, could be perceived as organized political discrimination since rulings in every case (that I have seen) came down against those who challenged Democrats or government officials.

Because a judge standing for retention is a candidate for office, Canon 4 is also implicated: "A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity or impartiality of the judiciary." The mandate that a judge "shall not ... use court staff, facilities, or other court resources in a campaign for judicial office" [Rule 4.1 (A)(8)] is particularly troubling and illustrates the true absurdity of the behavior of these Maricopa County judges. Ruling in cases that have a direct impact on an election's outcome when one's own seat depends on that outcome is a brazen and outrageous abuse of court resources to further that judge's campaign for office.

The people of Arizona rightly demand transparency and accountability from their elected officials — particularly when the proper administration of elections is at issue. Therefore, the people of Arizona deserve a thorough review of the actions of the court officer named herein and of any others who have taken it upon themselves to enter orders and make rulings in cases touching on their own ballots and their own elections in violation of the Arizona Code of Judicial Conduct.

Sincerely,