

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-230 and 10-259

Complainant: James Haas

Judge: Frank Johnson

ORDER

After reviewing the allegations, the commissioner's response, and the recordings of the hearings, the commission finds that the commissioner's conduct in this case violated the Code of Judicial Conduct.

Rule 2.8 of the code requires judges to be patient, dignified, and courteous. The commissioner voluntarily reported two occasions when he lost his temper and behaved improperly. A public defender then subsequently filed a more detailed complaint alleging the commissioner lost his temper, made improper statements, and behaved inappropriately on several occasions. He provided the relevant recordings of the hearings showing the commissioner berated defendants, attorneys, and individuals in the courtroom gallery. The commission concluded that the commissioner's behavior was egregious and unacceptable.

Accordingly, the judge is hereby reprimanded for his conduct pursuant to Rule 17(a), and the record in this case, consisting of the complaint, the judge's response and this order, shall be made public as required by Rule 9(a).

Dated: March 18, 2011

FOR THE COMMISSION

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed
to the complainant and the judge
on March 18, 2011

This order may not be used as a basis for disqualification of a judge.

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

COMPLAINT AGAINST A JUDGE

Your name: Frank A. Johnson **Judge's name:** Frank A. Johnson, self-report **Date:** 9/9/10

Instructions: Use this form or plain paper of the same size to file a complaint. Attach additional pages, as needed. Please describe in your own words what the judge said or did that you believe constitutes judicial misconduct. To help us understand your concern, be specific and list all of the names, dates, times and places where the conduct occurred. Include only copies of original documents or court recordings that are relevant to your allegations. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

My name is Frank A. Johnson, and I am a Commissioner with Maricopa County Superior Court. I have been employed by Maricopa County for 15 years, and have been a Commissioner for the past 5 years, with a record of being fair, patient, and reliable. I have been assigned to the Probation Violation Court for the past 2.5 years, a demanding calendar situated in the basement of the Fourth Avenue Jail. Unfortunately, after almost two and a half years of no windows, loud slamming jail doors, the commotion of a fast paced criminal calendar, I lost my temper. Most recently, on September 1, 2010, the courtroom was particularly busy. I found myself getting agitated at the noises made mostly by the gallery of people in the back of the courtroom. After a difficult sentencing, a family member of the defendant was motioning to the defendant, standing up in the back, and appeared to be coming through the gates towards the bench. I stood up and used poor judgment by saying that if he wouldn't heed my bailiff's directive to leave the courtroom then I would throw him out myself. I ripped off my robe, stormed out of the courtroom, and contacted security. I was visibly upset, and I am tremendously sorry and regret the way in which I acted. The other incident occurred a couple of months ago, involving a defense attorney, Dan Raynak. Mr. Raynak represents a defendant charged with molesting my daughter, and it has been a contentious case. Mr. Raynak was retained on a case that was set in my courtroom. He did not file a Notice of Appearance or a Notice of Change of Judge, nor did he make any attempt to notify my division that he would be appearing. Inside the courtroom, he was asked by the Public Defenders if they could appear for him for the sole purpose of transferring the case to the other probation Commissioner. Mr. Raynak refused. Seeing him made me uncomfortable, and agitated. Instead of taking a recess and having my staff take care of the situation, I yelled at Mr. Raynak in front of a full courtroom, stating that I just couldn't believe he had the nerve to appear in front of me knowing I am the victim. Mr. Raynak complained to the Presiding Criminal Judge Doug Rayes. Judge Rayes called me into his office and rightfully reprimanded me for my actions. Things settled down until several other problems arose in my personal life including the victimization of my daughter again. I did not take the proper outlet for my emotions and it culminated into an avalanche of emotion in court on September 1. Please understand that I am in no way making excuses for my actions. I know the duty I have not only to the members of the bench, but to the people as a public figure. I acted in a manner unbecoming of our profession. I take full responsibility, and I am embarrassed. I have taken steps to ensure that this type of behavior will not happen in the future, including seeing a counselor on a weekly basis. If the commission decides I need further counseling, I am willing to take any classes that are deemed necessary. I am confident that I will return to my calm and patient Judicial-like demeanor that I once possessed.

2010-259
OCT 07 2010

OFFICE OF THE PUBLIC DEFENDER
MARICOPA COUNTY

JEREMY D. MUSSMAN
Deputy Director

JAMES J. HAAS
Public Defender

DIANE J. TERRIBILE
Administrator

October 5, 2010

Mr. Keith Stott
Executive Director
Commission on Judicial Conduct
1501 West Washington, Suite 229
Phoenix, Arizona 85007

RE: Complaint against Maricopa County Superior Court Commissioner Frank Johnson

Dear Mr. Stott:

As required by Ethical Rule 8.3(b) of the Arizona Rules of Professional Conduct, the Office of the Maricopa County Public Defender hereby informs the Commission on Judicial Conduct that Maricopa County Superior Court Commissioner Frank Johnson has violated the rules of judicial conduct in ways that raise a substantial question as to his fitness for office. As demonstrated by the audio/video records submitted with this complaint, Commissioner Johnson has repeatedly violated Canons 1.2, 2.3, 2.4, and 2.8 of the Arizona Code of Judicial Conduct.

In the enclosed video clips, Commissioner Johnson is heard and seen raising his voice and making rude, condescending, demeaning and even threatening comments to people in the courtroom. On two occasions, he left the bench threatening to personally eject someone from the courtroom.

Video 1: September 1, 2010 - 10:40:40 – 10:42:02 a.m.

Following a disposition hearing in the case of *State v. Nancy Lynn Holloway*, as Ms. Holloway was being processed by the court before being transported back to jail, an attorney asked the court to call another case. Commissioner Johnson made the following comments:

“Yeah, we can try that. I’m about tempted to call Ms. Holloway’s case back again now that she’s upset me so much, with all her antics and all her (unintelligible) antics here that hopefully won’t affect the rest of the cases today. But I’m not sure, Ms. Holloway, you may have put yourself in a situation here where *the rest of the chain might suffer because of your stupidity.*”

When Ms. Holloway started to respond, Commissioner Johnson waved his hand at her and said, “Shut up!”

LAW FIRM

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As Ms. Holloway was being escorted from the courtroom by a deputy, Commissioner Johnson said, "Get her outta here, please. Get her outta here." He then said, "If you ever come in front of me again, you're gonna be revoked."

When Ms. Holloway mistakenly walked toward the wrong door and had to be redirected by the deputy, Commissioner Johnson said, "Why don't you write her up for an escape charge, Deputy? Go ahead."

Finally, when Ms. Holloway was out of the courtroom, Commissioner Johnson stated, "Now that that *piece of work* is out of the courtroom, it's not going to affect the rest of the calendar."

Commissioner Johnson's comments to and about Ms. Holloway were outrageous, unbecoming to a member of the bench, and potentially dangerous. Commissioner Johnson intentionally put Ms. Holloway in fear for her safety by telling the other inmates present in the courtroom that they may suffer because of her actions. The fact that Commissioner Johnson waited until Ms. Holloway was out of the courtroom to tell the inmates that they would not so suffer is a clear indication that Commissioner Johnson's intent was to place Ms. Holloway in fear of what may happen to her when she got back to jail. And, despite his retraction of the comment, he may still have placed her in danger. His conduct was inexcusable for a judge, no matter what the provocation.

Video 2: September 1, 2010 - 10:38:19 – 10:38:46 a.m.

As an attorney began to make his argument, Commissioner Johnson interrupted and addressed the following comments to a person in the gallery of the courtroom:

"Can you please leave the courtroom? Apparently you can't read the sign there that says you can't communicate with inmates. Do you want me to throw you out or do you want me to have him throw you out? Okay, I'll throw you out."

Commissioner Johnson then left the bench and went through a door behind the bench, presumably to personally physically eject the person from the courtroom.

Video 3: July 1, 2009 - 02:25:00 - 02:28:25 p.m.

As he starts a proceeding, Commissioner Johnson had the following exchange with an unidentified person in the gallery of the courtroom:

"Sir, are you trying to say something to me? Why do you come into a courtroom and start mouthing off like that?"

(Unintelligible response)

"Okay, well, why don't you step outside and look at the calendar before you come in here and start mouthing off?"

(Unintelligible response)

“You can step outside or I’ll hold you in contempt. You got two seconds to step outside.”

(Unintelligible response)

“One thousand one!”

(Unintelligible response)

After a pause, Commissioner Johnson gets up from the bench and says, “I’ll walk him out then.” He then left the bench and walked toward the person in the courtroom, returning a short time later.

A few minutes later, when the person apparently comes back into the courtroom, Commissioner Johnson says, “I’m looking at the *circus* back here that just came back in the courtroom.”

Video 4: May 17, 2010 - 08:37:42 – 08:42:05 a.m.

As Commissioner Johnson is hearing a matter, he appears distracted and has a couple of brief asides with a member of his staff. When he finishes the matter at 8:41 a.m., the following exchange occurs:

Commissioner Johnson: “Mr. Raynak, you got some nerve to come in here. I’m the victim of a case involving my daughter, you represent the defendant. You’re trying to come in here to violate victims’ rights under the constitution. Sir, you’re getting reported to the Bar and I’m moving your case over to Commissioner Mulleneaux. Please get out of my courtroom. You know that I’m a victim of a case where you’re representing the defendant. You got some balls to come in here and appear in front of me and get me all shaken up like this.”

Attorney Dan Raynak: “I’m not here to get you shaken up, I was going to ask that it be...”

Commissioner Johnson (interrupting): “You got some nerve even showing your face in my courtroom, sir. I’m the victim in a case that’s being prosecuted by the county attorneys. I want the Victim Advocate notified of this, and some repercussions are going to be made from this.”

As he stands and leaves the bench, Commissioner Johnson mutters, “Some nerve.”

Violations of Judicial Canons

Judicial Canon 2.8 requires that "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the court deals in an official capacity . . ."

Canon 1.2 provides that "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." Comment 5 to this canon states that "Actual improprieties include violations of law, court rules, or *provisions of this code*. The test for appearance of impropriety 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." (Emphasis added.)

The Preamble to the Arizona Code of Judicial Conduct states that "Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives."

Commissioner Johnson clearly falls far short of the aspirations of the Preamble and has repeatedly violated the above-cited Canons. His violations of the rules of judicial conduct raise a substantial question as to his fitness for office, and we are therefore required to inform the appropriate authority under ER 8.3(b) of the Arizona Rules of Professional Conduct.

We ask the Commission to take appropriate action.

Sincerely,

James J. Haas
Public Defender

Attachments: 2 CDs containing files in Windows Media format named Video 1-4
2 CDs containing files in FTR format as follows:

Video 1 = FTR File – JAILBC48_20100901-1040_01cb49c21ef0ed20
FTR File – JAILBC48_20100901-1041_01cb49c22ce1a6e0

Video 2 = FTR File – JAILBC48_20100901-1038_01cb49c1cae608a0

Video 3 = FTR File – JAILBC48_20090701-1425_01c9fa57b73f0870

Video 4 = FTR File – JAILBC48_20100517-0837_01caf59c37648bc0