

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-279

Complainant: No. 1399110955A

Judge: No. 1399110955B

ORDER

An attorney alleged that a municipal court judge ignored the law and improperly threatened to sanction him.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the complaint, the judge's response, and related documents, the commission decided to dismiss this matter with a private warning reminding the judge of his obligation to allow litigants the opportunity to be heard pursuant to Rule 2.6(A). The complaint is dismissed pursuant to Rules 16(b) and 23(a).

Dated: March 15, 2012.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on March 15, 2012.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2011-279

COMPLAINT AGAINST A JUDGE

Your name:

Judge's name:

Date: 11/3/2011

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

I have represented numerous defendants in Civil Traffic matters (Photo Enforcement) before the Tempe Municipal Court. My complaint is regarding the conduct of _____ in three cases, State v. 11-_____, State v. 11-_____, and State v. 11-_____.

In each case, on behalf of the defendant, I filed pleadings challenging the Court's jurisdiction.

Orders subsequent to the pleadings admonished me for these pleadings, and variously threatened Rule 11 sanctions, contempt, or being reported to the State Bar.

In each case, I filed a Motion for Reconsideration, requesting _____ to reconsider his Order, and explaining in significant detail the law and facts applicable, and how none of my pleadings supported admonishment, any sanction, contempt, or reports to the State Bar, and how the pleadings were warranted by existing law or a good faith argument for the extension of existing law, were reasonable and interposed to advance the legitimate, substantial, and justified legal rights of the defendants, and not for improper purposes.

In each case, my Motion for Reconsideration was _____ ignored, dismissed, or denied.

I have here attached the following documents:

I believe _____ conduct, as briefly outlined above, violated the Code of Judicial Conduct. In particular, I believe that _____ violated a number of the Rules, and that his conduct is such that likely brings the judiciary into disrepute. I will briefly review the violations of the relevant rules which I perceived, below.

RULE 1.2. Promoting Confidence in the Judiciary

admonishments and repeated threats to sanction counsel, or hold counsel in contempt, or to report counsel to the State bar, for challenging the exercise of personal jurisdiction for lack of personal service before personal service was had, for asserting that the issue of personal jurisdiction should be resolved before the court sets a hearing on the ultimate issues, and for challenging the complaint as defective, each are intended to chill defendants from asserting the claims in defenses properly set forth in the pleadings, is conduct that may shake the public's confidence in the judiciary.

As a fundamental principle of our legal system, defendants are entitled to due process, including the right to a fair hearing by an impartial hearing officer. Due process also includes the right to present legal argument. I was shocked by admonishments and repeated threats to sanction counsel, or hold counsel in contempt, or to report counsel to the State bar, for my justified and well-pled arguments that were warranted by existing law or a good faith argument for the extension of existing law, were reasonable and interposed to advance the legitimate, substantial, and justified legal rights of the defendants, and not for improper purposes.

The pleadings and the Orders speak for themselves.

RULE 2.2. Impartiality and Fairness. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

admonishments and repeated threats to sanction counsel, or hold counsel in contempt, or to report counsel to the State bar, appear based on gross misapplications of the law and rules, and upon inferences giving rise to potential violations of the rules, where the plain language of the pleadings provides no basis for such, and therefore create at least the appearance of unfairness and an absence of impartiality.

RULE 2.6. Ensuring the Right to Be Heard. (A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

admonishments and repeated threats to sanction counsel, or hold counsel in contempt, or to report counsel to the State bar, appear to violate this rule. conduct here may be interpreted as actions intending to prevent defendants from fully asserting their legal rights, claims, and defenses, warranted by existing law or a good faith argument for the extension of existing law, and which are reasonably interposed to advance the legitimate, substantial, and justified legal rights of the defendants, and which are not presented for improper purposes.

RULE 2.8. Decorum, Demeanor, and Communication with Jurors. (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

admonishments and repeated threats to sanction counsel, or hold counsel in contempt, or to report counsel to the State bar, may have violated this Rule. Orders set forth an interpretation of, and inferences from, the pleadings which I wrote, which readings do not fairly represent what was written, and as such also appear to violate this rule.

Rule 2.10. Judicial Statement on Pending and Impending Cases. (A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

I believe that admonishments and repeated threats to sanction counsel, or hold counsel in contempt, or to report counsel to the State bar, should I file similar pleadings with which he has taken issue, appears to have violated this Rule. actions are reasonably read as intending to chill defendants from asserting the claims and defenses properly set forth in the pleadings which are warranted by existing law or a good faith argument for the extension of existing law, were reasonable and interposed to advance the legitimate, substantial, and justified legal rights of the defendants, and not for improper purposes

Please communicate with me regarding any action upon my complaint.