State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-136

Complainant: No. 1350710974A

Judge: No. 1350710974B

ORDER

The complainant alleged a justice of the peace intentionally ignored the law in issuing an injunction against harassment and improperly aided the plaintiff in presenting a case to support the issuance of the injunction.

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 review, the commission decided to dismiss this matter with a private warning urging the judge to be more deliberate in the process of issuing protective orders to ensure that the orders are appropriately issued and fully comply with legal requirements. The case is dismissed pursuant to Rules 16(b) and 23(a).

Dated: August 20, 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 August 20, 2012.

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

This is a complaint of judicial misconduct against Justice of the Peace of the Justice Court.

This complaint arises out of several violations of the Arizona Code of Judicial Conduct from Case No. HR , where, by her own admission, Judge issued a baseless ex parte civil Injunction against Harassment against a defendant. (Per "the Injunction against Harassment does not conform to Arizona statute or case opinion." Please jump to Exhibit F.)

In support of this complaint is the paperwork served on the defendant and a CD copy of the audio from petitioner's ex parte hearing, the latter as posted on YouTube.

As brief background to set the stage, per the National news report enclosed (Exhibit A), this is the famous case of , whose Second Amendment right was unlawfully revoked by Judge for calling Town Councilman a "turd." Calling your elected official a name, while impolite, is an honored American tradition, protected by the Constitution. On its face, then, Mr. engaged in First Amendment protected speech. So there was never any cause to issue an Injunction against Mr. It follows then, that there was similarly no cause to revoke Mr. Second Amendment right. You don't need to be a judge to know this and Americans were outraged and the Arizona judiciary ridiculed over Judge actions.

With that background in mind, Judge violated Rules 1.1 when she entertained Councilman petition (Exhibit B) because the petition was defective on its face at several places.

First, did not check the box for the type petition he was seeking. Traffic tickets are thrown out for such defects.

Second, lists Mr. as a "political agitator." That, by itself, should have alerted Judge that this was a frivolous petition, infringing on the First Amendment right to free speech. Impolite political speech has routinely been upheld by the U.S. Supreme Court as "protected speech." See the landmark case of *Cohen v. California*, where the U.S. Supreme Court upheld the right to vulgar political free speech. ("F" the Draft!, 469 U.S. 879; 105 S. Ct. 243;83 L. Ed. 2d 182; 1984 U.S.)

Third, lists only ONE instance of alleged harassment. But A.R.S. § 12-1809 requires a "series of acts" and the Arizona Rules of Protective Order Procedure define a "series" as "two." (ARPOP 6.E.1) Consistent with this, A.R.S. § 12-1809(C)(3) requires "A specific statement showing events [plural] and dates [plural] of the acts [plural] constituting the alleged harassment." Winslow did not do this.

Thus, petition did not meet the minimum legal standards at three places. Judge

acknowledges this in the audio CD and should have been summarily dismissed. By issuing the Injunction anyway, Judge violated the law and Rule 1.1.

Turning to the audio of ex parte hearing, Judge continued to violate the Code of Conduct.

She begins the proceeding by reading some computer printouts has provided, screen shots from a blog. See Exhibit C. has scribbled "Postings by (
)" on the last page of his printouts.

Scribbling your opinion (or Police Chief opinion) that is is not evidence. It is hearsay. And speculation. There is no way to prove the defendant wrote the posts. (Anyone can sign a name to a post on an Internet blog.)

But even if it could be proved at an ex parte hearing that the defendant wrote certain posts, these posts, even if allowable evidence, constitute protected speech. supplied posts from "The Daily " As in " ," Congressman and Presidential candidate. You don't have to be a judge to know that postings in "The Daily " constitute political speech. Thus, Judge demonstrates gross incompetence in her knowledge of basic law, invoking Comment 1 of Rule 2.5.

One cannot help be aware of the infamous Westboro Baptist church and its right to free speech. In March 2011, the U.S. Supreme Court ruled 8-1 that "Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate." (Quoting Justice Roberts in *Snyder v. Phelps*, et al. 562 U. S. ____ (2011)) This famous ruling was months before Judge ruled in this incident.

On the same day Judge issued the injunction, the Ninth Circuit reversed a criminal conviction of a man who blogged about 50 caliber bullets and a presidential candidate. Ostensibly real, serious "death threats." But as Chief Judge Kozinski wrote, "Taking the two message board postings in the context of all of the relevant facts and circumstances, the prosecution failed to present sufficient evidence to establish beyond a reasonable doubt that Bagdasarian had the subjective intent to threaten a presidential candidate . . . given any reasonable construction of the words in his postings, those statements do not constitute a "true threat," and they are therefore protected speech under the First Amendment." *United States v. Bagdasarian*, 2011 WL 2803583 (9th Cir. July 19, 2011)

So even if there were anything in the blogs directed at Councilman (and there was not,

per Judge below[1]), taking the blog posts in the context of all of the relevant facts and circumstances, given any reasonable construction of the words in the postings, the statements in the blog do not constitute a "true threat," and they are therefore protected speech.

Eventually Judge realized these blog pages wouldn't be enough to hang Mr. so she let Councilman verbally add to the petition. This is wrong. The law requires the court to "review the petition and any other pleadings on file and any **evidence** offered by the plaintiff" to support the petition. Adding to a petition after it is served is a violation of the defendant's right to due process. How can a defendant defend against something new for which there's no discovery? A defendant is expected to defend the allegations listed against him **in the petition**. Not afterthoughts. Strict adherence to the rules is required to ensure a defendant's due process rights, so a defendant can defend against the charges as noticed at petition. Thus, Judge violated the defendant's Fourteenth Amendment right, violating Rule 1.1 and 1.2.

Now, at 3:00 in the audio, Judge asked "Is there anything specifically in these documents that are going to point directly at you?"

"In those two, I don't believe so."

This answer from should have ended the ex parte hearing. Even if calling someone a "turd" could be called harassment, there were no other acts by Mr. against But Judge let go on.

At 5:00 Judge acknowledges that whatever she's looking at cannot be correlated to the defendant. By continuing the hearing beyond this point, Judge continues to violate the defendant's constitutional right to due process.

At 07:00 Judge states "Ummm . . . you list the one item. Usually with harassment injunctions we need more than one incident and I know you're sittin' there telling me this, that and the other, but you are not giving me anything specific he's done towards you."

USUALLY with harassment injunctions? The law ALWAYS requires more than one incident and specific "acts directed at a person." Judge admits she knows the law but isn't going to comply with it. How is the public supposed to have confidence in a law breaking judge? She violated Rules 1.1, 1.2, 2.2, 2.3, 2.4 and 2.5.

In answering says, "I can't do that because it hasn't happen until now." By admitting there is only one incident, admits there is no basis for an injunction.

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[1] In fact, the discussion was about the flagrant false arrest of in that had gone viral on YouTube, when was arrested for speaking during a Call to the Public, criticizing the Town Council. It was Councilman who "ordered" her arrest.

But instead of gaveling the hearing over, Judge lets ramble on for another 15 minutes about political uprisings in an attempt to make his case, adding beyond what was written in the petition. This favoritism gives the appearance that Judge harbors a bias toward Councilman and against Mr. in violation of Rules 1.2 and 2.2.

At 8:32 states, "I'm not a psychologist or psychiatrist, but I have been involved with.... uh . . . I have been diagnosed with PTSD and I am a member ... member of DAV [apparently "Disabled American Veterans"] . . ." and goes onto say that he, is concerned that HE may react violently to the defendant.

This raises the question of "soundness of mind" for an Injunction. A.R.S. § 12-2202 says "Persons who are of unsound mind at the time they are called to testify shall not be witnesses in a civil action." Mr. admitted to JP that he is suffering from PTSD. According to Town Attorney in a press release of his, PTSD is a "mental illness." (Mr. also admitted to suffering from PTSD in his Press Release.) This was a civil action. Arguably is not of sound mind and not allowed to testify. Based on his ramblings to the judge, he arguably suffers from paranoia too. In addition to all the other reasons for stopping the proceeding, Judge should have stopped the proceeding until the results of a Rule 35 mental examination would be available. Thus, JP failed to uphold the law.

Despite this, Judge leads the witness in an attempt to find something to hang the defendant. When says he may react without thinking, offers "It's a possibility that's on your mind." (9:03) So now an Injunction is to stop the crazy petitioner from going crazy?

Then she solicits testimony from in an attempt to make his case for him, asking "Has he gotten in your space?" (9:15) What is she doing? Judges are not to make a case for a litigant.

After offers one silly allegation of Mr. getting in his space, Judge asks if there were other times. cites something from three or four months before, that the defendant was "glaring" at him, but had not said anything to him. (10:00) "Glaring" at someone does not constitute "an act of harassment. . . directed at a person." In fact, says that he ( ) was the one who established contact with the defendant in that prior incident.

These two solicitations from Judge where she leads a witness to make a case, are prejudicial. She is fishing on behalf of trying to make case for him. Such prejudicial behavior does not promote public confidence in the judiciary. (Violates Rule 1.2, 2.1, 2.2 and 2.3.)

then perjures himself before at 12:06. testifies under oath that the defendant has had injunctions against him before. Yet in his verified (sworn) written petition, he says he doesn't know if the defendant has had any injunctions before. Judge did not charge with perjury.

repeatedly asks that the defendant be prohibited from possessing firearms. Initially Judge got it right and told at 17:50 "I know if this was a domestic violence thing, I could take away the firearm." This is colloquially known as a "Brady Disqualification."

Judge was correct here and would have done well to stay with law. Only under criminal domestic violence law, A.R.S. 13-3602(G)(4) can a judicial officer can prohibit firearms. There is no provision in Arizona law allowing a judicial officer to prohibit firearms. The words "firearm" or "weapon" do not appear in A.R.S. § 12-1809. Nevertheless, Judge unlawfully issued a civil Injunction which prohibited the defendant from possessing firearms. (Exhibit D.)

Upon information and belief then (verifiable with the county sheriff's office), Judge issued an ex parte Brady disqualification against the defendant, putting his name on the FBI's National Crime Information Center database as "Brady Positive." (The Injunction paperwork prohibited the defendant from owning firearms, ordered him to turn firearms over to the County Sheriff, and the Order vacating indicates the paperwork was faxed the Sheriff, presumably to inform the Sheriff to remove defendant's name from the NCIC.) But, quoting Judge chair of the pursuant to 18 U.S.C. § 922(g)(8), "Brady cannot apply to an ex parte hearing." (See Judge comment in the Supreme Court's public forum in the matter of R-09-0045, posted in the spring of 2010.) Nevertheless, Judge apparently applied Brady unlawfully to an ex parte hearing.

When taken as a whole, Judge violations appear biased and politically motivated. The on-going feud between Town officials and a few vocal citizens is well known in County. Mr. was recently named a "self-styled" activist, per a Press Release. (Exhibit E) A judge whose decisions are biased and politically motivated violates Rules 2.2, 2.3 and 2.4 and is not independent nor impartial.

While it's true that Judge dismissed her wrongful injunction sua sponte-ish after this particular case made national headlines (but ONLY after Mr. hired an attorney to challenge the Injunction), her wrongful action violated the constitution and irreparably harmed the reputation of the defendant. (Exhibit F)

Worse, when she denied Mr. application for attorney fees, Judge did not allow Mr. to present evidence. Instead she merely ASSumed evidence.

To wit, in Exhibit G, Judge details how the court served notice on Mr. of the Injunction hearing. What Judge didn't know (or may not have wanted to know)—because she failed to let Mr. tell his side of the story—is that Councilman purposely waited until Mr. was out of town for a week before filed his

petition.[2] Thus, Mr. reports he did not know he had been served.

Judge made this ruling a week after being thoroughly humiliated in the National press. (About a week after vacating her unlawful order.) So again Judge violated Mr. constitutional right to due process. It's reasonable to believe she did it for revenge.

Your rules do not provide for the "eye for an eye" justice God calls for, and the Commission would probably say it isn't interested in justice—it's only interested in standards for judges. Nevertheless, the Commission should punish judge to the fullest extent of the rules in an effort to restore public confidence in the judiciary. Especially in this nationally reported news story.

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[2] is a small town where everyone knows everyone else's business. knew Mr. would be out of town for a week and purposely waited until July 19, almost three weeks after the alleged one incident on July 1, before filing for an Injunction. (Exhibit H)