

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 17-127

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Judge:

Complainant:

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**ORDER**

A superior court judge self-reported that he missed a deadline and may have inaccurately answered a question on his judicial application.

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 found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the commission's file in this matter has been closed, pursuant to Rules 16(a) and 23.

Commission members Art Hinshaw and Roger D. Barton did not participate in the consideration of this matter.

Dated: August 15, 2017

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer  
Executive Director

Copies of this order were distributed to all appropriate persons on August 15, 2017.

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

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

Re: Self-Reporting

Dear Commission Members:

I am a Judge on the

As a judicial candidate, I was subject to the Arizona Code of Judicial Conduct, Rule 81, Ariz. R. S. Ct. Consistent with Comment 1 to Rule 4.3, I recognize that every judge and candidate for judicial office must be honest in all statements the judge makes, and must not make false or misleading statements.

In I applied, but was not selected, to fill a vacancy on the

As part of that application, I avowed that “[a]ll the statements made in this application are true and correct to the best of my knowledge. . . .”

In I applied to fill another vacancy on that bench. I provided supplemental answers in to my prior application. Although I was not selected for that position, my application remained pending through approximately

I also applied in to fill a vacancy

The application had the same attestation. I was ultimately selected, and on I was appointed by the Governor to be a in effective

In the applications that I had submitted, question number 53 asked “[w]ithin the last five years, have you failed to meet any deadline imposed by a court order . . . ?” When I submitted my applications, I honestly answered that question “no” to the best of my

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<sup>1</sup> I had submitted an application for another vacancy on  
Upon learning of my appointment, I withdraw that application.

knowledge. Unfortunately, as I since have learned, the answer likely should have been "yes." I also have reported this matter to

As part of , I reviewed all of my files in an attempt

I looked online, and was surprised to see that there had been a Notice/Order apparently issued by the

My discovery surprised me because I had not received notice of the

I was at that time, and was a His case was assigned to and I were the

I had the primary responsibility for the within

Both and I were listed

I informed of my discovery on , and he obtained a copy of the Notice/Order from and I had never seen the Notice/Order until The mailing list on the Notice/Order does not include my name.

The Notice/Order was not signed by a judicial officer, although it purported to place the case on the court's dismissal calendar. A copy of the Notice/Order is attached. It states that if the "

The Court had not otherwise set a deadline for an amended Scheduling Order to be submitted, the ostensible reason for the Notice/Order. The Notice/Order preceded the dates on which I submitted or supplemented my judicial applications, although I was unaware of its existence on those dates.

I was and am aware of my obligation to keep advised of the status of cases in which I had appeared. Rule 5.1(b), Ariz.R.Civ.P. (2016). I believed policies and procedures described below were sufficient to record and track any notice received that placed a case on the dismissal calendar, and permitted and me to protect that

deadline. During my entire career, I had never let an active, open case<sup>2</sup> be dismissed for non-prosecution. During my time at [redacted] I considered [redacted] file to be an active, open case.

Although not relevant to the truthfulness of my answer to the Application's question, I do not yet know for sure whether there is an order signed by a judicial officer that establishes the [redacted] deadline contained in the Notice/Order or that any order has been entered dismissing the [redacted] case – that investigation continues. Technically, I may not have “ [redacted] ” And, although again not relevant to the specific matter I report here, I cannot know whether [redacted] case has been dismissed, nor whether my failure to meet the deadline in the Notice/Order has caused him any legal harm.

However, notwithstanding these uncertainties, had I known of the existence of the Notice/Order at any time, including the times I submitted any judicial vacancy application or updates to the same, I would have addressed the Notice/Order and done everything within my legal means to resolve and clear any pending issue. But, had I been unable to resolve satisfactorily the issue and not been able to prevent dismissal of the case – something that may not have occurred yet - I would have reported the accurate status of the matter within the application materials. I never would have knowingly included any false statement in those materials.

As further background information to permit an understanding of my thinking and practices, and [redacted] policies and procedures which I believed would have prevented the existence of the Notice/Order to have eluded my attention, I will report to you the steps [redacted] took and has taken regarding court orders that could have case-termination implications.

[redacted] conducted an exhaustive review of [redacted] file, both electronic and paper, including all relevant email files, and that review has uncovered no evidence that [redacted] ever received the Notice/Order in either electronic or paper form before [redacted]

See attached Affidavits of [redacted]

See also *Thompson v. Mecey*, 101 Ariz. 125, 416 P.2d 558 (1966) (holding that a [redacted])

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<sup>2</sup> I had, on occasion, allowed a settled case or a case that a [redacted] not wish to pursue to be dismissed for lack of prosecution.

Court's notice of mailing creates only a rebuttable presumption of receipt). I have thoroughly reviewed my email account that I had provided to the Court in the matter, and have no record of having received the Notice/Order.

Further, [redacted] has reviewed the court's [redacted] file with the [redacted] and found no signed, court order dismissing the case. *Campbell v. Dedders*, 93 Ariz. 247, 379 P.2d 963 (1963) holds that a dismissal for lack of prosecution is not self-executing, and Rule 58 applies such that a signed, appealable order must be issued. If one is not issued, then the case remains on the dismissal (inactive) calendar, and even an untimely filing, allows the case to proceed. *Id.*, 93 Ariz. at 250, 379 P.2d at 965. Recently, [redacted] has presented these authorities to the Court in the [redacted] case, and has submitted a proposed Third Amended Scheduling Order.

[redacted] filings in the [redacted] case had my address listed as at [redacted]. In addition, my email address was listed as [redacted]. I had also listed the email address of an assistant [redacted] along with my email address; her email is [redacted] an [redacted] and [redacted] and a [redacted] with whom I had worked my entire career [redacted].

[redacted] has policies and normal procedures in place as to how mail is handled. Mail at the [redacted] is normally opened and routed by [redacted], who reviews and then routes the mail to [redacted] the files. After any mail is reviewed by [redacted] the mail is filed into [redacted] physical file, and sometimes scanned into the electronic copy of the file. Regarding emailed communications from a court, the normal practice was for me to forward those to the applicable assistant who would then save the emails [redacted] and then print off a hard copy for the physical file. Again, [redacted] both electronic and paper, has uncovered no evidence that [redacted] ever received the Notice/Order in either electronic or paper form before [redacted].

I and [redacted] had been pursuing [redacted] case both before and after [redacted].

also took ongoing efforts to \_\_\_\_\_ after \_\_\_\_\_ are more complex than initially perceived. He suffered a \_\_\_\_\_ as a result of the \_\_\_\_\_; however, it was also discovered that he had a \_\_\_\_\_; that required subsequent \_\_\_\_\_. It is that issue that was the focus of my attention \_\_\_\_\_ after the \_\_\_\_\_ over \_\_\_\_\_ was resolved. My goal was to get a better handle on the \_\_\_\_\_ in the case, and then reach out to \_\_\_\_\_ to try to resolve the matter through an \_\_\_\_\_ or submit a new, realistic Scheduling Order. As such, I had asked \_\_\_\_\_ to obtain updated \_\_\_\_\_ which was somewhat complicated by \_\_\_\_\_ multiple moves between various states. We had continued to provide supplemental disclosures of \_\_\_\_\_ including a Seventh Supplemental Disclosure in \_\_\_\_\_, an Eighth Supplemental Disclosure in \_\_\_\_\_, and a Ninth Supplemental Disclosure in \_\_\_\_\_.

I also had retained and consulted with a \_\_\_\_\_ to potentially testify regarding the link between \_\_\_\_\_ As I was leaving \_\_\_\_\_, I had \_\_\_\_\_ to prepare a Tenth Supplemental Disclosure to include additional \_\_\_\_\_ that \_\_\_\_\_ obtained.

\_\_\_\_\_ has policies and procedures in place regarding dealing with critical deadlines that may result in a case being dismissed. \_\_\_\_\_ specifically tracks dismissal calendar deadlines. Any dismissal deadline is calendared in \_\_\_\_\_ separate places (in the physical file, in \_\_\_\_\_ and in a separate notebook) in addition to the \_\_\_\_\_ calendar. These deadlines are tracked by both the \_\_\_\_\_ to the file, as well as others in \_\_\_\_\_ who must assure that the deadline has been covered.

In the \_\_\_\_\_ case, there was no dismissal deadline calendared other than the original, default dismissal deadline under Rule 38.1, Ariz.R.Civ.P. \_\_\_\_\_ had covered that initial deadline by submitting a timely \_\_\_\_\_ and initial Scheduling Order. In addition,

**THE COMMISSION'S POLICY IS  
TO POST ONLY THE FIRST FIVE  
PAGES OF ANY DISMISSED  
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE  
REMAINDER OF THE  
COMPLAINT IN THIS MATTER,  
PLEASE MAKE YOUR REQUEST  
IN WRITING TO THE  
COMMISSION ON JUDICIAL  
CONDUCT AND REFERENCE  
THE COMMISSION CASE  
NUMBER IN YOUR REQUEST.**