

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-193

Judge:

Complainant:

ORDER

The complainant alleged seven appellate court judges violated federal law.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judges 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.

The commission does not have jurisdiction to review the legal sufficiency of the judges' rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judges did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

Dated: October 4, 2017

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were distributed to all appropriate persons on October 4, 2017.

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

Comp

2017-193

Vs.

Docket No. _____

“COMPLAINT”

Involving of the controlling ethical standards defining proper professional conduct of members of the _____ include the Rules of Professional Conduct, contained in Rule 42, Ariz.R.S.Ct., as well as Rule 31, Ariz.R.S.Ct. (Regulation of the Practice of Law); Rule 41, Ariz.R.S.Ct. (Duties and Obligations of Members); and Rule 43, Ariz.R.S.Ct. (Trust Accounts).

(1.) _____ et al., asserts to the honorable _____ to place ultimate constitutional responsibility on the Defendants (2.) I the Plaintiff am asserting to the honorable _____ to provide effective and conflict-free counsel at public expense to indigent defendants in all critical phases of a civil complaint & prosecution,

18 U.S. Code § 1963 - Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, and shall forfeit to

the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

18 U.S.C. § 1961(4).

The Supreme Court has squarely held that the term “enterprise” encompasses both legitimate and illegitimate enterprises.

Prosecution under RICO, however, does not require proof that either the defendant or the enterprise was connected to organized crime.

1. RICO’s Definition of Enterprise Broadly Encompasses Many Types of Enterprises

Courts have given a broad reading to the term “enterprise.” Noting that Congress mandated a liberal construction of the RICO statute in order to effectuate its remedial purposes and pointing

to the expansive use of the word “includes” in the statutory definition of the term, courts have held that the list of enumerated entities in Section 1961(4) is not exhaustive but merely illustrative. Thus, the term enterprise includes commercial entities such as corporations (both foreign and domestic), partnerships, sole proprietorships, and cooperatives; benevolent and non-profit organizations such as unions and union benefit funds, schools, and political associations. The term enterprise also includes governmental units such as the offices of governors, mayors, state and congressional legislators, courts and judicial offices, police departments and sheriffs’ offices, county prosecutors’ offices, tax bureaus, fire departments, and

executive departments and agencies, as well as municipalities. Indeed, in *United States v. Warner*, 498 F.3d 78 79 666, 694-97 (7th Cir. 2007), the Seventh Circuit held that the State of Illinois was properly charged as the RICO enterprise that was the victim of corrupt office holders' pattern of racketeering activity. Establishing that the members of the enterprise operated together in a coordinated manner in furtherance of a common purpose may be proven by a wide

variety of direct and circumstantial evidence including, but not limited to, inferences from the members' commission of similar racketeering acts in furtherance of a shared objective, financial ties, coordination of activities, community of interests and objectives, interlocking nature of the schemes, and overlapping nature of the wrongful conduct. Moreover, such evidence of the existence of the charged enterprise may be based on uncharged unlawful conduct. The First, Second, Ninth, Eleventh, and District of Columbia Circuits have rejected the more rigid Bledsoe/Riccobene approach, holding instead that an enterprise need not have an ascertainable structure distinct from the pattern of racketeering activity, and that the existence of an enterprise should be evaluated on the totality of the evidence under the principles of *Turkette* and may be inferred from the evidence establishing the pattern of racketeering activity.

An Individual May Constitute a RICO Enterprise

RICO's definition of "enterprise" explicitly "includes any individual." 18 U.S.C. § 1961(4). Indeed, in *Salinas v. United States*, 522 U.S. 52, 65 (1997), the Supreme Court indicated in dictum that a sole individual could also be a RICO enterprise, stating "though an 'enterprise' under § 1962(c) can exist with only one actor to conduct it, in most instances it will be conducted by more than one person or entity" Therefore, an individual may be a RICO enterprise, provided that the individual is not both a RICO defendant and the alleged RICO enterprise. See *United States v. DiCaro*, 772 F.2d 1314, 1319-20 (7th Cir. 1985) For example, suppose individuals A and B hired individual C, who operated as a professional "hitman" over a period of time, to murder several persons. In these circumstances, individual C could be the RICO enterprise and individuals A and B could be charged as the RICO defendants. However, as a practical matter it is unnecessary to charge an individual as the RICO enterprise, because in such circumstances the Government could charge A, B, and C as an association-in-fact enterprise.

1. Continuity and Relationship - - *Sedima, S.P.R.L. and H.J. Inc. v. Northwestern Bell Tel. Co.* In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), the Supreme Court stated that the RICO pattern element required more than merely proving two predicate acts of racketeering. The Court pointed to RICO legislative history indicating that the RICO pattern was not designed to cover merely sporadic or isolated unlawful activity, but rather was intended to cover racketeering activity that demonstrated some "relationship" and "the threat of continuing [unlawful] activity." *Id.* at 496n.14. Accordingly, the Supreme Court ruled that proof of such "continuity plus relationship" was required to establish a RICO pattern in addition to proof of two acts of racketeering.

The Supreme Court held that RICO does not require proof of multiple schemes, stating, in part:

We find no support [for the Eighth Circuit's position] . . . that predicate acts of racketeering may form a pattern only when they are part of separate illegal schemes. Supreme Court stated: A "pattern" is an "arrangement or order of things or activity," It is not the number of predicates but the relationship that they bear to each other or to some external organizing principle that renders them "ordered" or arranged. "[C]riminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events." To Constitute a Pattern, it is Not Necessary that the Alleged Racketeering Acts Be Similar or Related Directly to Each Other, Rather A Pattern May Consist of Diversified Racketeering Acts Provided that they are Related to the Alleged Enterprise.

In accordance with the foregoing evidence of Congress' intent underlying RICO, every court of appeals that has decided the issue has held that racketeering acts need not be similar, or directly related to each other; rather, it is sufficient that the racketeering acts are related in some way to the affairs of the charged enterprise As the Third Circuit explained in *United States v. Eufrazio*, 935 F.2d 553 (3d Cir. 1991).

Nevertheless, courts have repeatedly found that the requisite continuity was established where a scheme to defraud involved more than one victim and multiple mailings or wire transmissions spanned a substantial period of time, or the scheme posed a threat of continuing unlawful activity.

Likewise, pursuant to *H.J. Inc.*'s fourth illustration, courts have found that the requisite continuity was established where the racketeering acts were "a regular way of conducting defendant's ongoing legitimate business." *H.J. Inc.*, 492 U.S. at 243.

Moreover, a single RICO count may include both alternative grounds for liability, i.e., a pattern of racketeering activity and collection of unlawful debt, or each alternative ground may be the basis for a separate RICO count.

Another issue that arises in connection with Section 1962(a) prosecutions involves the tracing of investment money. Although a defendant may argue that the Government must trace to the enterprise any monies charged as being invested in violation of Section 1962(a), rigorous tracing is not required.

For example, in *United States v. Marino*, 277 F.3d 11 (1st Cir. 2002), the court upheld a jury instruction that a person is associated with an association-in-fact enterprise if he knowingly participates, directly or indirectly, in the conduct of the affairs of an enterprise. One need not have an official position in the enterprise to be associated with it. One need not formally align himself with an enterprise to associate with it. Association may be by means of an informal or loose relationship. To associate has its plain meaning "Associated" means to be joined, often in a loose relationship, as a partner, fellow worker, colleague, friend, companion, or ally.

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NUMBER IN YOUR REQUEST.**