

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-279

Judge:

Complainant:

ORDER

The complainant alleged a pro tem superior court judge delayed rulings, failed to be competent and diligent, failed to afford her an opportunity to be heard, and improperly declared the complainant to be a vexatious litigant.

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.

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

Commission member Colleen E. Concannon did not participate in the consideration of this matter.

Dated: December 13, 2017

FOR THE COMMISSION

/s/ Margaret H. Downie

Margaret H. Downie

Executive Director

Copies of this order were distributed to all appropriate persons on December 13, 2017.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

COMPLAINT AGAINST A JUDGE

Name: _____ **Judge's Name:** _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

Please see attached complaint with 9 pages of the complaint and 18 exhibits.

This is a complaint of judicial misconduct against _____ (serving in _____). Based on the copies of court documents (attached) for the currently open case listed on this complaint, _____ has violated the Arizona Constitution Article VI Section 21 no less than 4 times in this case since its first ruling on _____.

By repeatedly violating the Arizona Constitution, _____ has, by extension, violated his oath of office. Both, severely affect the Judiciary's role in society. ("If a Judge won't obey the law, why should we?") And then there's the small matter of violating the Constitutional rights of litigants and the irreparable damage that results when Constitutional rights are violated.

_____, falsifying his affidavit to receive pay is a prima facie Class 3 misdemeanor, per A.R.S. 12-128.01 (C): "Any person who issues or causes to be issued any check, warrant or payment to a judge or commissioner knowing that, pursuant to this section, such judge or commissioner should not receive his salary is guilty of a class 3 misdemeanor." The "*any person*" here who caused the State to issue a check to a judge who should not receive his salary is _____ himself!

This may also rise to a felony. _____ falsified his affidavits to the Court to receive money not yet due him, for work not yet fully rendered. Therefore, he defrauded the _____ by appropriating his monthly salary under false pretenses. Considering the sums of money involved, this is felony theft per A.R.S. 13-1802 (_____). Also, this may be a stretch, but a staffer with the _____ office suggests this is also forgery, a class 4 felony. A.R.S.13-2002:

A. A person commits forgery if, with intent to defraud, the person:

1. Falsely makes, completes or alters a written instrument;

It shouldn't be necessary to say, but, in light of the above, _____ has committed gross violations of the Code of Judicial Conduct. Any one of these violations erode public confidence in the Judiciary. Taken together they constitute a flood that sweeps away public confidence in the Judiciary. Any criminal charges, guilty verdicts and bad public relations that may accrue from _____ defacto criminal conduct can only cause more damage. In this particular case it involves the safety of a minor child from the DCS substantiated sex abuse by the biological father. Child safety is supposed to be the most important subject to be advocated for in any judicial proceeding. But since the Commission narrowly focuses on violation of the Code, I state for the record that _____ has, as a minimum, violated Canon 1, Rule 1.1, Rule 1.2, Canon 2, Rule 2.5 (A)(B), Rule 2.6(A), Rule 2.7, & Rule 2.15(B)(D) of the Code of Judicial Conduct. I will clarify later.

Since the Code of Conduct is codified as Rule 81 in the Arizona Court system, and since this is yet another violation of the Rules, overall disregard for the Rules seems contemptuous. As this case, complaint and the Commission's response to it becomes searchable by Google on the Internet, any unchecked conduct will completely undermine public confidence in the Judiciary.

For these reasons, I ask the Commission to thoroughly investigate for these numerous offenses and respond with the appropriate discipline.

HISTORY

This case was initiated on with a filing for a Petition for Dissolution of Marriage with Minor Child by the Petitioner (Filer of this Complaint). was assigned to this case and on a Motion for Temp Orders for Parenting Time and Legal Decision Making was filed by Petitioner and granted by for the Respondent exposing minor child to adult content.

On the initial Evidentiary Hearing was continued due to the Respondent being under criminal investigation and invoking his 5th Amendment. The hearing was continued to with the current Temp Orders from still in place along with an Order of Protection that was granted on .

On , the Evidentiary Hearing resumed but needed to be continued to finish with all the witnesses and exhibits. The hearing was continued to with original Temp Orders and Order of Protection still in effect.

On , the Evidentiary Hearing continued and Court Orders were given to both Petitioner and Respondent and the hearing was continued to , in order for the Court to get updates on the completion and or progress of the Court Orders. The Orders were self-reporting orders as left it up to the litigants to get these done and did not require the entities performing the evaluations and therapeutic family counselors to report to the Court as did not put those instructions in the Order. Based on the safety of the minor child being in question, and an order for a psychosexual evaluation of the Respondent in this matter, this unclear order by and self-reporting by the litigants is nothing short of a violation of *Canon 2, A judge shall perform the duties of judicial office impartially, completely and **diligently.*** (Exhibit 1)

On _____, Petitioner filed a Motion for Temp Child Support and Attorney Fees as the Petitioner is now going on 6 months of sole protective custody of minor child with no support from the Respondent as allowable and required by law. (Exhibit 2)

On _____ docketed the Motion for Temp Child Support (but not attorney fees) to be heard on _____ along with the continuation of the Evidentiary Hearing already on the docket from the _____ hearing. (Exhibit 3)

On _____ Petitioner filed a Motion for Contempt of Court against the Respondent and their attorney for violating the Preliminary Injunction of hiding earnings and violation of Rule 31 against the attorney per the original filing of the Dissolution of Marriage. This motion as of the date of this complaint has never been ruled on or addressed or even acknowledged by _____ since its filing on _____. This is a direct violation of the Arizona Constitution Article VI Section 21, Canon 1, Rule 1.1, Rule 1.2, Canon 2, Rule 2.5 (A), Rule 2.6(A), Rule 2.7, & Rule 2.15(B)(D) of the Code of Judicial Conduct. _____ is more than 90 days late on ruling on this Motion not including the original 60 days to rule. He has signed his monthly Affidavit (June, July, Aug & Sept), for his pay stating that he has no open motions to rule on and therefore is entitled to his pay. This is a direct violation of A.R.S. 12-128.01 (C): *"Any person who issues or causes to be issued any check, warrant or payment to a judge or commissioner knowing that, pursuant to this section, such judge or commissioner should not receive his salary is guilty of a class 3 misdemeanor.* As well as, defrauding the _____ by appropriating his monthly salary under false pretenses. Considering the sums of money involved, this is a felony theft per A.R.S. 13-1802. It is also a violation of A.R.S.13-2002: (Exhibit 4) (exhibits to the original court filing are not attached).

On _____, Petitioner filed a Motion for Contempt of Court for Respondent violating the Court Orders dated _____. This motion as of the date of this complaint has never been ruled on or addressed or even acknowledged by _____ since its filing on _____. This is a direct violation of the Arizona Constitution Article VI Section 21, Canon 1, Rule 1.1, Rule 1.2, Canon 2, Rule 2.5 (A), Rule 2.6(A), Rule 2.7, & Rule 2.15(B)(D) of the Code of Judicial Conduct. _____ is more than 90 days late on ruling on this Motion not including the original 60 days to rule. He has signed his monthly Affidavit (June, July, Aug & Sept), for his pay stating that he has no open motions to rule on and therefore is entitled to his pay. This is a direct violation of A.R.S. 12-128.01 (C): *"Any person who issues or causes to be issued any check, warrant or payment to a judge or commissioner knowing that, pursuant to this section, such judge or commissioner should not receive his salary is guilty of a class 3 misdemeanor.* As well as, defrauding the _____ by appropriating his monthly salary under false pretenses. Considering the sums of money involved, this is a felony theft per A.R.S. 13-1802. It is also a violation of A.R.S.13-2002 (Exhibit 5) (exhibits to the original court filing are not attached).

On _____ unilaterally and with no explanation reset the _____ hearing to be heard on _____. This further delayed all open Motions including the Temp Child Support of which _____ was aware that the _____ was paying for the minor child. This unsubstantiated delay caused further harm to the _____ and the Petitioner by not ruling on the much needed child support for the sole protective custody of the minor child by Petitioner, as well as the burden on the State for paying for the child that should be paid for by the Respondent by law. This again is a blatant violation of Canon 1, Rule 1.1, Rule 1.2, Canon 2, Rule 2.5 (A), Rule 2.6(A), Rule 2.7, & Rule 2.15(B)(D) of the Code of Judicial Conduct. By setting the date for the hearing past the 60 day ruling requirement, _____ once again violated the Arizona Constitution Article VI Section 21. (Exhibit 6)

On _____, Petitioner filed additional documents supporting the Motion for Contempt of Court filed on _____, further reminding _____ that the original Motion had not been ruled on or acknowledged and was getting close to the 60 day ruling mark. _____ still failed to rule or acknowledge the filing. Again, this only further supports _____ blatant violations of the Code of Conduct. *Canon 2, A judge shall perform the duties of judicial office impartially, completely and diligently.* (Exhibit 7 & 8). (exhibits to the original court filing are not attached).

On _____, once again, _____ did NOT hear, mention or acknowledge the Temp Child Support Motion that was on the docket for the hearing on this day per the Order dated _____. In fact, the hearing was set to continue on _____ and per the attached Order, the continued hearing did NOT include the Temp Child Support Motion. _____ completely removed anything related to that Motion and only continued the Evidentiary Hearing for the original Temp Orders granted on _____ for Temp Parenting Time and Temp Legal Decision Making. Thus leaving the Temp Child Support Motion never being ruled on in the required 60 day ruling time frame per AZ Constitution and completely removing it from the docket altogether. This is a direct violation of the Arizona Constitution Article VI Section 21, Canon 1, Rule 1.1, Rule 1.2, Canon 2, Rule 2.5 (A), Rule 2.6(A), Rule 2.7, & Rule 2.15(B)(D) of the Code of Judicial Conduct. _____ is more than 90 days late on ruling on this Motion not including the original 60 days to rule. He has signed his monthly Affidavit (June, July, Aug & Sept), for his pay stating that he has no open motions to rule on and therefore is entitled to his pay. This is a direct violation of A.R.S. 12-128.01 (C): "*Any person who issues or causes to be issued any check, warrant or payment to a judge or commissioner knowing that, pursuant to this section, such judge or commissioner should not receive his salary is guilty of a class 3 misdemeanor.* As well as, defrauding the _____ by appropriating his monthly salary under false pretenses and knowingly allowing the _____ to pay for a child that _____ should have ordered child support for per the filed Motion. Considering the sums of money involved, this is a felony theft per A.R.S. 13-1802. It is also a violation of A.R.S.13-2002: (Exhibit 9)

**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.**