

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-213

Judge:

Complainant:

ORDER

January 28, 2021

The Complainant alleged a justice of the peace received improper compensation.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission concluded that the issues identified in the complaint raise questions of law and statutory interpretation, as opposed to ethical misconduct under the Arizona Code of Judicial Conduct. Because there is no clear and convincing evidence of ethical misconduct under the Code, the complaint in this matter is dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Denise K. Aguilar and Louis Frank Dominguez did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on January 28, 2021.

Comp
2020-213

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

Re: Justice of the Peace

I am
Conduct Complaint against Justice of the Peace,
That Justice Court is located in
the payment from to Judge for
of

Court. This is a Judicial
County Justice Court
This complaint relates to
in the amount
per year.

It is clear that a Justice of the Peace may serve as a pursuant to A.R.S. §22-403(B). Advisory Opinion 06-04 recognizes this possibility but cautions that the Justice of the Peace must “avoid the potential problems involving dual compensation.” *Id* at page 2. The current complaint presents both the issue of dual compensation and the issue of grossly disproportionate compensation.

A.R.S. §22-402(B) provides that justice courts and magistrate courts share concurrent jurisdiction over any case arising within the city, with one exception. A magistrate court has exclusive jurisdiction over cases arising under the ordinances of the city. Hereinafter, any reference to “magistrate case(s)” means any case which could be filed in a magistrate court but not a justice court.

and entered into a
for a term between A copy of is
attached hereto as Exhibit A. There has been between the
are negotiating a new agreement which is attached hereto
as Exhibit B.

under the previous
A formula determined the cost sharing between
For the last year of the agreement,

Judge entered into a separate with under which
he would “
” The most recent
between Judge and was entered in After

cost of living allowances, Judge [redacted] is paid \$ [redacted] plus certain employee related expenses. [redacted] is attached hereto as Exhibit C.

[redacted] was in place at the time Judge [redacted] entered into [redacted] with [redacted]. There is still [redacted]. Despite this, Judge [redacted] continues to demand payment from [redacted]. Judge [redacted] has specifically taken the position that he is entitled to payment from [redacted] even though there is [redacted].

There were [redacted] cases from [redacted] filed within the preceding [redacted]. All of those were [redacted].

[redacted] magistrate cases were filed in [redacted] and [redacted] magistrate cases were filed in [redacted]. All of those appear to be [redacted] cases as well.

Over the past [redacted] Judge [redacted] has received over \$ [redacted] in exchange for handling [redacted] cases. The amount he charged is “[redacted]” to the work he performed. Under those circumstances, the payment should be considered a gift. See, *Cheatman v. Diccio*, 240 Ariz. 314, 379 P.3d 211 (2016).

Judge [redacted] reports all magistrate cases under the [redacted]. All magistrate cases are included in the calculation of Judge [redacted] salary under A.R.S. §22-125. Specifically, subsection (K) of the statute includes “civil local ordinance” cases and “each misdemeanor and petty offense count that is filed in a complaint or uniform traffic ticket and complaint.” Judge [redacted] Justice Court salary includes all magistrate cases filed in his court.

Constitutional and statutory provisions prohibit a Justice of the Peace from receiving any fee, salary or emolument in excess of the salary established by law. See, Art. 22 §17 Arizona Constitution; A.R.S. §38-601. Judge [redacted] receipt of \$ [redacted] from [redacted] in addition to his Justice Court salary under these circumstances is contrary to law.

Attorney General opinions emphasize that §38-601 prohibits a public officer or employee from collecting additional compensation from public funds for the performance of the same work or duties. Ariz.Op.Att.Gen. No. 70-7-L; Ariz.Op.Att.Gen. I87-049. In other words, additional compensation is warranted only if the work or duties of a second position are distinct from the officer’s primary work or duties. If the work or duties are distinct, then the “duties performed in the second position must not be performed during the normal working day of the first position unless the (officer) is on vacation or leave time.” Ariz.Op.Att.Gen. No. I78-91. See also, Ariz.Op.Att.Gen. No. I88-032 (the additional work must not “trespass upon the ordinary business hours” of the officer’s primary position).

[redacted] attached as Exhibit B, addresses the fact that few magistrate cases will be filed in Justice Court, [redacted] specifically tracks the language in A.R.S. §22-402(C). [redacted] would be entered “in lieu of establishing or maintaining a municipal court.” This does away with the fiction which allows Judge [redacted] to collect \$ [redacted] for minimal work done during regular justice court hours.

EXHIBIT A

THIS IS AN AGREEMENT, made and entered into by and between
a body politic, [hereinafter "COUNTY"] and the a
municipal corporation [hereinafter "CITY"] and is approved by the

as authorized by the powers and authority granted
by the laws of the State of Arizona.

RECITALS

WHEREAS,

WHEREAS, provides a coordinated judicial system to
provide cost effective services

WHEREAS, for this purpose pursuant to A.R.S. §§ 11-951 *et*
seq., 11-952, 22-101 *et seq.*, and 22-402,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. PURPOSE

The purpose of this Agreement is to amend the current
to further define the duties of the Parties related to operation of the

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**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.**