State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-039

Complainant: No. 1386010867A

Judge: No. 1386010867B

ORDER

The complainant alleged a judge was biased and made incorrect rulings. The commission reviewed the complaint and found no evidence of ethical misconduct on the part of the judge. The issues raised involve legal and procedural matters outside the jurisdiction of the commission and within the judge's discretion. Therefore, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: April 20, 2009.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed
to the complainant and the judge
on April 20, 2009.

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

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COMPLAINT AGAINST A JUDGE (Continued)

Your Name: **Judge's Name:** **Date:** 11 Feb 2010

I believe that Judge has violated Canon 1 (first part) and Canon 3 of the Code of Judicial Conduct by his rulings and other misconduct in handling the Justice Court case of *Hammond v.* That is, he has failed to uphold the *integrity* of the judiciary and has failed to perform the duties of judicial office *impartially*. His result-oriented decision against Defendant in *Hammond*, which he essentially announced before any evidence was taken, appeared to be supported by the evidence which he admitted, but his evidentiary rulings were tailored to the result and consistently favored the Plaintiff and prejudiced the Defendant.

I do not here seek to reverse the Judge's decision; that will be dealt with by the Superior Court on my pending appeal. I ask only that after due consideration, the Commission at least admonish for his misconduct and place him on probation so that others will not be subject to the kind of discrimination that befell me in his courtroom. I believe that has more-than-adequate knowledge of the law but that he does not use that knowledge fairly or properly. He also failed to introduce himself when he entered the courtroom; this resulted in confusion, since everyone was expecting a woman, namely Judge Rachel Torres Carrillo.

Historically, has served as a judicial officer in Chino Valley and Yavapai County, and is now serving in Maricopa County.

Page and line references to the transcript (record) of the hearing on January 13, 2010 will be in the following form: R at page #: line# - line#; [line numbers may be omitted at times]. True copies of all cited pages are attached.

I. THE JUDGE FAILED TO UPHOLD THE INTEGRITY OF THE JUDICIARY.

A. The Judge Announced His Probable Decision Before the Hearing Began. (R at 8-10)

In ruling on Defendant's Motion to Dismiss because there was no "series of acts" as required by the applicable statute (A.R.S. Section 12-1809(R)), he failed to permit any argument, pretending a need to hear the facts. (R at 9:5-13) This will be discussed further under the next subdivision (B). He also indicated his inclination to remove restrictions regarding "the motel and the park". (R at

9:19-22) He used an often repeated phrase, "To be quite honest". (R at 9:21) As they say, a guilty conscience needs no accuser. (See also R at 10:6 ("quite honestly"), 11:12, 23:17, 99:14, 100:21, 102:6, 107:5, and 113:5 ("I'll be honest with you").

The Judge also gave short shrift to Defendant's brief opening statement (R at 10:13-19), in which he attempted to inform the Judge that the Injunction Against Harassment was largely motivated by Plaintiff opposition to Defendant opposition to a project of the Board of Directors of the Willo Neighborhood Association. That is, did not really feel "seriously alarm[ed], annoy[ed] or harass[ed]" by statements during the argument in the Park, as required by the above statute.

B. In Questioning Plaintiff, the Judge Led Him to Testify About "Facts" in Order to Contrive "Separate" Verbal Acts of Defendant That Occupied a Total of One Minute. (R at 8-9, 17-18 and 24-33)

This is the most serious example of the Judge's misconduct in the *Hammond* case. Under direct examination by his own attorney (R at 8-9), Plaintiff testified only that Defendant threatened to use his guns against him and "the board members" (R at 18:2-5), that Plaintiff advised Defendant to stop talking about guns (R at 18:16-17), and that Defendant then mentioned guns for a third time (R at 18:18). During that short argument, the subject matter was always "guns". Plaintiff himself repeatedly said that guns were discussed for no more than one minute. (R at 29:8, 30:6 and 30:14)[1]

But Judge was not satisfied. He embarked on a detailed examination of Plaintiff designed to "prove" that the argument about guns was broken by a short change in the subject matter of that argument. The Judge did so even in the face of admission that the entire discussion of guns occupied no more than one minute. During this minute (or perhaps two, see R at 28:20 – "less than a couple of minutes, I guess"), I said that the subject changed for a few seconds, in which he said that he complained of actions "against the neighborhood" and his "suing the City". (R at 28:9-11) But during all of this testimony, the Judge repeatedly said that he wanted to "slow down" the discussion of the passage of time during the argument. (R at 24:24-25 and at 27:8-9) When he got to testify about the change of subject, the Judge

[1] This testimony is false. Defendant mentioned his guns only once at the end of the argument in self-defense to Plaintiff's increasing verbal and almost physical hostility. However, that issue will be resolved on appeal. Here we assume *arguendo* that Plaintiff's testimony was correct.

appeared to be satisfied that there were at least two separate "acts" by Defendant that would satisfy the statutory requirement for a "series of acts" in Section 12-1809(R).

However, the Judge's comments on again denying Defendant's oral motion to dismiss (R at 31:22 to 33:8, comments at 33:3-8) are quite revealing (emp. added):

> THE COURT: Thank you. The statute talks about these acts occurring over a period of time, but it also says any time. So it doesn't say it has to be separate by so many minutes. **It doesn't have to be separate**. It's just any time. They **have to be separate** acts. And at this stage of things, I am going to deny your motion."

To be quite honest, Your Honor, do the acts have to be separate or not? Finding "facts" in order to support a pre-ordained conclusion damages the integrity of the judiciary and brings it into disrepute.

II. IN CONSISTENTLY FAVORING PLAINTIFF AS AGAINST DEFENDANT, THE JUDGE FAILED TO ACT IMPARTIALLY.

A. The Judge Excluded Evidence from Defendant's Investigator on the Character and Reputation of Plaintiff for Confrontational and Argumentative Behavior with His Neighbors. (R at 69-75)

In attempting to show that Plaintiff treated his neighbors with the same hostility with which he treated Defendant, Defendant called his investigator to testify about Plaintiff's reputation for confrontation and argument. (R at 69:14 to 71:4) Rappleyea was assigned "to contact residents of the block of Street, with the exception of Mr. to inquire about any and all knowledge they may have about the dispute which developed between you and Mr. " (R at 71:21-15) Plaintiff's attorney immediately objected to Rappleyea's testimony regarding statements made by neighbors about his hostile conduct. (R at 72:10 and 72:1) When Defendant finally asked the investigator "What did you learn from those interviews [of neighbors] about reputation?" (R at 73:24-25), Plaintiff's hearsay objection was immediately sustained, despite Defendant's citation to Rule 803 (21) and Rule 405(a) of the Arizona Rules of Evidence. (R at 74:1-15)

The Judge was not moved at all by Defendant's argument (R at 75:1-25). In response to his statement "for the record that I was trying to get at the facts that the neighbors found him

confrontational", the Judge responded "if that's what you're trying to do, that's not evidentiary whatsoever". (R at 75:17-22)

Just one example of the potential testimony of the investigator will show how crucial this evidence was to Defendant's defense (emp. added):

> "At 518 | |, I contacted Robert Robert knows and described him as argumentative. Robert's wife, works with on the Home Town Tours. apparently called the City of Phoenix complaining about weeds in Robert's front yard. also ***called the police*** concerning their vehicle which was ***allegedly parked near a fire hydrant***. Robert advised that would confront them about various issues. He said complains a lot and generally described ***as confrontational, argumentative, overbearing and demanding who has made life miserable for a lot of people***. Robert has not had any conversation with regarding this dispute."

In any event, the Judge's ruling was incorrect, *State v. Jessen*, 134 Ariz. 458, 463 (Ariz. 1982) ("Jessen II"), and this case will be presented to the Superior Court on Defendant's appeal.

B. The Judge Admitted Prejudicial Exhibits of Defendant's Published Letters to Editors About Guns That Actually Opposed Violent Behavior. (R at 81-86)

In attempting to prejudice the Judge against Defendant, Plaintiff's attorney offered two letters written to editors of newspapers. (R at 81:16 – 84:2 and 84:5 to 86:20) Regarding the first letter, the Judge admitted a copy as Plaintiff's Exhibit 1. (R at 84:1-2) He also admitted a quotation from the second letter. (R at 86:5-11) The Judge repeatedly overruled Defendant's objections based on the First Amendment. (R at 82:4-5 and 83:15-16 ("political discourse")). The purported relevance of these letters was Defendant's [non-existent] penchant for violence. (R at 82:2-3 and 83:17-20, the latter by the Court) Judge admitted this evidence despite the fact that the first letter expressly described "silence or violence" as "unacceptable options" (R at 81:23-24) and the second letter referred to Defendant's "respect for the law and [his] rejection of violence". (R at 86:6-7)

It is clear that the Judge admitted this evidence of Defendant's character and rejected Plaintiff's evidence of Defendant's character in order to support his pre-ordained conclusion that Plaintiff's testimony was more credible than that of the Defendant regarding the content of the argument in the Park. (R at 99:14-17)

C. The Judge Interpreted A.R.S. Section 12-1809(R) so as to Find Several Separate Verbal Acts by Defendant That Occupied a Total of About One Minute. (R at 98-101)

Please refer to discussion under I.B, above.

The Judge's contrivance of the "series of acts" required by the statute is frightening. (R at 100:4-15) He found that "there was conversation in between the threats" (R at 100:11), even though this conversation was limited to much less than one minute (since the entire gun-related argument lasted no more than two minutes). "And whether they be separated by a minute or two minutes as the Plaintiff testified, I believe that satisfies the requirement any time". (R at 100:8-10, where "any time" probably refers to the statutory provision that harassment requires "a ***series of acts*** over ***any*** period of time", emp. added.)

CONCLUSION

a judge *pro tempore* of the Justice Court, should be disciplined for his prejudicial and disgraceful misconduct in the case.

It is unacceptable for a judicial officer to give significant help to one side against the other, especially when the favored side is represented by an experienced Arizona attorney. Such behavior also unbalances the adversary system. Perhaps the Judge was attempting to strike a compromise, but a compromise based on false testimony by a plaintiff cannot be justified.[2]

I wish to make clear that I am not here seeking a reversal of the Judge's decision in the case. I have attached copies of the record in that case only to illustrate how he struggled to create and mold evidence to support his pre-ordained result. He effectively acted as an attorney for Plaintiff

I thank the Commission for considering this Complaint.

Dated: February 11, 2010 Respectfully submitted by,

[2] As stated above, Plaintiff's conduct was largely motivated by his desire to punish Defendant for his opposition to projects of the Willo Neighborhood Association.