

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-122

Complainant: No. 0308110082A

Judge: No. 0308110082B

ORDER

A superior court judge voluntarily reported that he inadvertently delayed ruling on a matter beyond the 60-day deadline. The parties filed briefs with the court clerk but had not provided copies to the judge's division. The commission decided to dismiss the complaint with a private comment reminding the judge of his obligation to comply with statutory and constitutional time limits on resolving pending matters. The complaint is dismissed pursuant to Rules 16(b) and 23(a).

Dated: July 26, 2011.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on July 26, 2011.

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

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

FILED PINAL COUNTY
SUPERIOR COURT
CHAD A. ROCHE

APR 20 2011

DATE: 4/19/2011

THE HON _____

By, Phyllis Yedica, Judicial Administrative Assistar

**PINAL COUNTY SHERIFF'S
OFFICE,**

CASE #S1100CV2009

Plaintiff(s),

NOTICE/ORDER

vs.

**PINAL COUNTY EMPLOYEE
MERIT COMMISSION; et al.,**

Defendant(s).

On Tuesday, April 12, 2011, Pinal County Superior Court Presiding Judge, Robert C. Olson, notified the Honorable _____¹ that he had learned that this matter had been pending for over sixty (60) days, ostensibly, in violation of Arizona Rules of the Supreme Court, Rule 91(e). On April 12, 2011, this Court was presiding over Jury selection in a Civil case² and was only able to ask staff to pull the file for review. That evening, the Court reviewed volume 4 of the file and confirmed that the Reply from Plaintiff on its Appeal from an Administrative Ruling had been filed on October 13, 2010.

On April 13, 2011, this Court asked the Clerk of the Court staff to pull volumes 1-3 for the Court to review the entire file. In conducting that review, the Court found that it did fail to set Oral Argument and/or rule on Plaintiff's Appeal within sixty (60) days of the submission of the Reply. However, both parties have requested Oral Argument and this Court agrees, based on its review of the file, that Oral Argument is appropriate to clarify the parties' respective positions regarding what role they believe this Court must exercise in this case.

From the Pleadings, it appears that each party may have an opposing view of the extent of the review this Court can conduct.

¹ Judge Robert Carter Olson contacted this Judge while this Judge was on a break from jury selection.

² The Civil Trial is scheduled to run five days a week through May 6, 2011.

While not expressly saying so, Plaintiff Pinal County Sheriff's Office seems to be asking this Court to, at least in some fashion, weigh the evidence the Commission (and/or the Pinal County Sheriff's Office) considered in issuing its Ruling. Oral Argument from Plaintiff may be helpful in clarifying the Plaintiff's position.

Defendant's position, on the other hand, seems to be that while the Court cannot weigh the evidence presented to the Commission, the Court has an obligation to review the record and to look at the Commission's Rulings to determine if the Rulings are supported by the evidence presented. Again, Oral Argument may be helpful to clarify Defendant's position. The Defendant notes that, as a quasi judicial body, the Commission can determine credibility, reconcile conflicts in the evidence and can weigh the sufficiency of the evidence presented. Both parties seem to agree that this Court's review is to be guided by ARS §12-901 et seq.

This Court has reviewed ARS §12-901 et seq., the cases cited by the parties and has read the entire record submitted by the parties. The Court having agreed that Oral Argument is necessary, **IT IS HEREBY ORDERED** setting this matter on MONDAY, MAY 9, 2011 at 1:30 p.m. before Honorable _____ The Court acknowledges the fact that by scheduling Oral Argument, a final decision will be further delayed.

In regard to the delay noted above, first, this Court apologizes to the parties, accepts responsibility for the delay and will forward a copy of this Notice/Order to the Judicial Commission as a self-report. However, the Court notes that in its review of the files (all 4 volumes) the Court found that the Plaintiff's Opening Brief was mailed to the Pinal County Clerk of the Court, but a copy was not delivered to this Court.

Also, the Court noted that Defendant's Response Brief was mailed to the Pinal County Clerk of the Court, but not copied to and not received by this Court. Further, Plaintiff's October 13, 2011, Reply Brief was also mailed to the Pinal County Clerk of the Court, but not copied to the Court.

The Court signed at least three (3) stipulated Orders granting the parties extensions to file their briefs (one was signed by Commissioner /Judge Pro Tem, Craig Raymond). All of which indicate that copies were sent directly to the Court and all of which were timely signed.

This Court has acknowledged that it has the overall responsibility to comply with Rule 91(e). The Court cannot explain how this case, literally, "fell through the cracks" for such an extended period. While this Court must admit that there have been other occasions where the Rule 91(e) deadlines have been missed by this Court, this Court cannot recall any occasion where the delay was anywhere near the delay which has occurred in this matter.

The Court has conferred with its staff to try to develop a better tickler system to prevent/avoid this type of event in the future.

DATED this 19th day of April, 2011.

Hon.
Division 4

Mailed/e-mail distributed copies:

DENIS M FITZGIBBONS
Fitzgibbons Law Offices, PLC
P O Box 112088
Casa Grande AZ 85230

DONNA AVERSA
Leonard & Felker PLC
7440 North Oracle Road, Bldg 2
Tucson AZ 85704

JAMES M JELLISON
Special Deputy County Attorney
3101 North Central Avenue
Phoenix AZ 85012

GINA GUTIERREZ
Deputy County Attorney
P O Box 887
Florence AZ 85132

COMMISSION ON JUDICIAL CONDUCT
Attn: Keith Stott
1501 W Washington St Ste 229
Phoenix AZ 85007