

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-140

Judge:

Complainant:

ORDER

August 21, 2019

The Complainant alleged a superior court judge should have disqualified herself from his case.

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 reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Rules 16(a) and 23(a).

Copies of this order were distributed to all appropriate persons on August 21, 2019.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2019 - 140

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.

28 U.S. Code § 455. Disqualification of justice, judge, or magistrate judge

U.S. Code
Notes

- (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:
 - (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

RULE 2.2. Impartiality and Fairness A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially. Comment 1. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded. 2. Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question

RULE 2.3. Bias, Prejudice, and Harassment (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice

RULE 2.11. Disqualification (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances: (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

Hon. Judge _____ failed to recuse herself in the matter of Petitioner's motion for Disqualification of Hon. _____ filed on _____ Judge _____ denied the motion on _____ Judge _____ has personal knowledge of the disputed facts in this matter because she is the original Judge for _____ Hon. Judge _____ was the tier of fact prior to becoming Presiding Judge of the _____ Division for the _____ Court or _____ While the trier of facts in the matter of _____ the author of this document at one time in the past filed a complaint with Judicial Committee regarding Hon. _____ These facts that Hon. _____ has prior knowledge of the disputed facts and the facts that the petitioner had filed a complaint prior leave serious concerns the Hon. Judge _____ can be impartial and should have recused herself as Presiding judge to decide if the current trier of facts should have been removed for deep-seated favoritism and bias. Judge _____ as the initial Judge in _____ actually set up the orders that Petitioner feels that the current Judge is being bias and showing deep-seated favoritism. Judge _____ ruled twice on these filing which leaves serious concern for impartiality. The Judge that the complaint is about actually in the same area on the _____ in the

COURT OF ARIZONA

CLERK OF THE COURT

HONORABLE

IN RE THE MATTER OF

AND

JUDGE
JUDGE

MINUTE ENTRY

This Court is in receipt of Father/Petitioner's Motion entitled: Motion for Disqualification filed Because Father's pleading was deemed to be a notice of change of judge for cause, it was sent to this division for ruling.

Pursuant to Rule 6.1 ARFLP., if a party makes proper service of an affidavit that meets the requirements of A.R.S. § 12-409(A) seeking to change the assigned judge for cause, the matter must be heard by another judge and the issue decided by a preponderance of the evidence. However, before the court sets this matter for an evidentiary hearing to resolve disputed issues on the alleged bias, prejudice, or interest of the assigned judge, the court must first determine whether or not the affidavit as a matter of law states grounds that, if proven, would justify disqualification under A.R.S. § 12-409. *See, e.g., Mervyn's v. Superior Court*, 179 Ariz. 359, 361, 879 P.2d 367, 369 (App. 1994). In *Smith v. Smith*, 115 Ariz. 299, 564 P.2d 1266 (App. 1977), the Arizona Court of Appeals recognized that, "the bias and prejudice necessary to disqualify a judge must arise from an extra-judicial source and

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not from what the judge has done in his or her participation in the case.” *Id.* at 303, 564 P.2d at 1269. *See also United States v. Grinnel Corp.*, 384 U.S. 563, 86 S.Ct. 1698, 16 L.Ed 2d 778 (1966); and *State v. Ellison*, 213 Ariz. 116, 129, 140 P.3d 899, 912 (2006) (“Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion, without showing either an extrajudicial source of bias or any deep-seated favoritism.”) (citations omitted).

Father’s pleading does not comply with the requirements of A.R.S. §12-409 or Rule 6.1 ARFLP., as it does not constitute or include an affidavit. However, even if Father did file an affidavit setting forth the information included within his pleading, he still would not be entitled to a change of judge for cause. That is because Father’s pleading contains no substantiated allegations of bias, prejudice or interest of the assigned judicial officer arising from an extra-judicial source. Rather, everything alleged by Father pertains to what the judge has done in his participation in the case and supposition based on the trial judges’ religion.

The court notes that Father has made previous motions containing the same unsubstantiated and caustic allegations. They have also been denied.

For the reasons set forth above,

IT IS ORDERED denying Father’s Motion entitled: Motion for Disqualification filed

IT IS FURTHER ORDERED reassigning this case to Judge

/s/ Honorable Judge

Presiding Judge

All parties representing themselves must keep the Court updated with address changes.
A form may be downloaded at:

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