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STATE OF ARIZONA
COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning)	
)	
Judge Patty Nolan)	Case Nos. 09-088 and 09-244
Justice of the Peace)	
Globe Regional Justice Court)	STATEMENT OF CHARGES
Gila County)	
State of Arizona)	
Respondent.)	

An investigative panel composed of members of the Commission on Judicial Conduct (Commission) has determined that there is reasonable cause to commence formal proceedings against Judge Patty Nolan (Respondent) for misconduct in office. This statement of charges sets forth the jurisdiction of the Commission and specifies the nature of the alleged misconduct.

JURISDICTION

1. The Commission has jurisdiction of this matter pursuant to Article 6.1, § 4 of the Arizona Constitution.
2. This Statement of Charges is filed pursuant to Rule 24(a) of the Rules of the Commission on Judicial Conduct (Commission Rules).

3. Respondent has served as a justice of the peace in Gila County since September 1998 and was serving in her capacity as a judge at all times relevant to the allegations contained herein.

4. As a judge, Respondent is and has been subject to all provisions of the Code of Judicial Conduct (Code) as set forth in Supreme Court Rule 81.

ALLEGATIONS COMMON TO ALL COUNTS

5. In July 2004, the Administrative Office of the Courts (AOC) issued a Court Operational Review Evaluation of the Globe Regional Justice Court (2004 Review). The 2004 Review identified, among other problems, significant case processing delays.

6. In the summer and fall of 2007, Gila County Attorney Daisy Flores twice spoke with Respondent, informally alerting her of significant case processing delays.

7. In January 2008, Flores, Respondent, and Presiding Superior Court Judge Peter Cahill met to discuss the continuing case processing delays in Respondent's court.

8. After the January 2008 meeting, Judge Cahill contacted the AOC to request assistance in developing and reviewing a management plan with Respondent to address the ongoing delay problems.

9. Significant delays continued into 2009 and between January and February 2009 the county attorney's office filed motions to dismiss in 178 cases for violations of the time limits set forth in Rule 8.2, Arizona Rules of Criminal Procedure.

10. As of the beginning of 2009, Judge Nolan had thus received notice on four separate occasions over the course of almost five years that significant case processing delays persisted in her court yet she failed to resolve these problems.

11. Judge Cahill again contacted the AOC in 2009, which then conducted a limited on-site assessment in March and April 2009. (2009 Assessment)

12. On April 1, 2009, the Arizona Supreme Court issued Administrative Order 2009-35 giving administrative control and oversight of the Globe Regional Justice Court to Judge Cahill and reassigning Respondent to only those duties authorized by Judge Cahill. After a de facto suspension of two months, Judge Cahill reinstated Respondent to her judicial duties on May 29, 2009.

13. As the justice of the peace presiding over the Globe Regional Justice Court, Judge Nolan is ultimately responsible for the administrative oversight of her court, including the maintenance of court records and supervision of court staff.

COUNT I

FAILURE TO ISSUE WARRANTS AND JUDGMENTS ON A TIMELY BASIS.

14. Respondent has repeatedly failed to issue warrants and default judgments in a timely manner, a pattern that began as early as September 20, 2000. The 2004 Review found delays in the issuance of warrants in 75 percent of the sample examined.

15. Despite the 2004, 2007, and 2008 notices of ongoing and significant delays, Respondent repeatedly failed to promptly issue warrants and default judgments.

16. Based on the 2009 Assessment, the Commission identified eleven specific cases in which Respondent failed to promptly issue warrants or default judgments. Respondent issued the warrants or default judgments in these eleven cases between 50 and 1,782 days after the defendant's failure to appear or failure to comply date. *See Exhibit A*

17. Respondent’s delay problem was not, however, limited to these eleven cases. As of March 12, 2009, the 2009 Assessment identified approximately 1,864 warrants and default judgments awaiting issuance, some dating back to 2003.

18. Rule 3.1(a) of the Arizona Rules of Criminal Procedure requires courts to “promptly issue” warrants upon a finding of probable cause or presentment of a complaint.

19. Respondent’s actions in repeatedly failing to promptly issue warrants and default judgments violated the Arizona Constitution, which forbids “wilful misconduct in office, wilful and persistent failure to perform [judicial] duties, . . . or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” Article 6.1, § 4. Respondent's actions also violated the Code. *See* Rule 1.2¹, (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.”); Rule 2.2 (“A judge shall uphold and apply the law[.]”); Rule 2.5(A) (“A judge shall perform judicial and administrative duties competently, diligently, and promptly.”); and Rule 2.13(A) (“A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code.”). *See also* Code Rule 2.12(A), Comment 2 (“Public confidence in the judicial system depends on timely justice.”).

¹ Citations will be to the 2009 Code provisions, which do not differ in material aspects with regard to the particular rules at issue in these cases.

COUNT II

FAILURE TO TIMELY SET HEARINGS OR TRIALS

20. Respondent has repeatedly failed to calendar hearings and trials on a timely basis. The 2004 Review, as well as the meetings with the county attorney in 2007 and 2008, alerted Respondent that the significant case processing delays in her court included delays in calendaring hearings and trials.

21. Despite multiple notices of ongoing and significant problems with calendaring delays, Respondent continued to significantly delay calendaring hearings and trials.

22. Based on the 2009 Assessment, the Commission identified seven specific cases in which Respondent failed to calendar a hearing or trial within a reasonable time once a defendant pled not guilty or a party requested a continuance. The parties in these seven cases waited between 110 and 251 days for a trial or hearing setting. The court ultimately dismissed two of the cases because of the significant delay in calendaring. *See Exhibit A.*

23. Altogether, the 2009 Assessment identified 80 cases involving significant delays and awaiting a hearing or trial date as of March 25, 2009. Sixty percent of the cases pending a trial or hearing on March 25, 2009, had been awaiting calendaring for at least two years.

24. Respondent's actions in repeatedly failing to calendar trials and hearings in a timely manner violated the Arizona Constitution, which forbids "wilful misconduct in office, wilful and persistent failure to perform [judicial] duties, . . . or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Article 6.1, § 4. Respondent's actions also violated the Code. *See Rule 1.2,* ("A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the

judiciary and shall avoid impropriety and the appearance of impropriety.”); Rule 2.5(A) (“A judge shall perform judicial and administrative duties competently, diligently, and promptly.”); and Rule 2.13(A) (“A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code.”). *See also* Code Rule 2.12(A), Comment 2 (“Public confidence in the judicial system depends on timely justice.”)

COUNT III

FAILURE TO ISSUE RULINGS ON A TIMELY BASIS

25. Respondent has repeatedly failed to issue timely rulings on matters taken under advisement. Arizona law requires justices of the peace to issue rulings within 60 days of the date on which the matter was submitted to the court. *See* A.R.S. § 11-424.02(A).

26. In the 2004 Review, the AOC identified 86 cases awaiting a judicial decision since June 2001. Despite this notice of her failure to issue timely rulings, Respondent continued to delay ruling on matters taken under advisement.

27. The 2009 Assessment identified four specific cases in which Respondent failed to issue a ruling for more than 60 days. The parties in these four cases waited between 624 and 2,847 days for a ruling. *See* Exhibit A.

28. On June 16, 2009, shortly after returning to the bench from her two-month de facto suspension, Respondent held a bench trial and took the matter under advisement. Court staff warned Respondent of the approaching deadline twice, yet Respondent still failed to issue her ruling for 79 days, 19 days past the 60-day deadline.

29. By repeatedly failing to issue timely rulings, Respondent violated the Arizona Constitution, which forbids “wilful misconduct in office, wilful and persistent failure to perform [judicial] duties, . . . or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” Article 6.1, § 4. Respondent's actions also violated the Code. *See* Rule 1.2, (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.”); Rule 2.2 (“A judge shall uphold and apply the law[.]”); Rule 2.5(A) (“A judge shall perform judicial and administrative duties competently, diligently, and promptly.”); and Rule 2.13(A) (“A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code.”). *See also* Code Rule 2.12(A), Comment 2 (“Public confidence in the judicial system depends on timely justice.”); *In re Braun*, 180 Ariz. 240, 241, 883 P.2d 996, 997 (1994).

COUNT IV

REPEATEDLY FILING FALSE AFFIDAVITS

30. A.R.S. Sec. 11-424.02(A) provides that a justice of the peace shall not receive her salary unless she certifies that no cause remains pending and undetermined for sixty days after it has been submitted.

31. At all times between April 15, 2001, and January 12, 2010, Respondent had at least one matter awaiting a ruling beyond 60 days. In *State v. Weatherman*, CR-2000-000809, trial concluded on April 25, 2001, and Respondent took the case under advisement. Almost eight years later, on February 9, 2009, the State filed a motion to dismiss, which was granted

on March 31, 2009. In *State v. Domina*, CR-2006-000762, the pretrial conference was reset three times in the fall of 2006, but never held. On April 25, 2007, the Defendant filed a motion to dismiss based on excessive delay to which the State filed a response on June 12, 2007, stating it did not object to dismissal. Respondent then failed to issue the dismissal order until January 12, 2010.

32. Between 2001 and 2010, Respondent filed more than 100 inaccurate monthly salary affidavits and collected her paychecks for those months. Respondent did not ever certify that her delayed rulings were excused by the Chief Justice of the Arizona Supreme Court, as required by law. Every affidavit Respondent signed contained the explicit requirement that she obtain an excuse from the Chief Justice regarding any pending matters.

33. By signing a series of affidavits that inaccurately reflected no matters were pending and undetermined for 60 days, Respondent violated the Arizona Constitution, which forbids “wilful misconduct in office, wilful and persistent failure to perform [judicial] duties, . . . or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” Article 6.1, § 4. Respondent's actions also violated the Code. *See* Rule 1.2, (“A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.”); and Rule 2.2 (“A judge shall uphold and apply the law[.]”). *See also In re Weeks*, 134 Ariz. 521, 525, 658 P.2d 174, 178 (1983) (“The signing of a series of false affidavits by a judge brings the integrity of the entire judicial system into question and is prejudicial to the administration of justice.”).

COUNT V

FAILURE TO DILIGENTLY ADMINISTER THE COURT

34. Respondent failed to institute proper administrative controls to ensure significant case processing delays did not occur in her court.

35. Respondent received notice on multiple occasions and was given ample opportunities to alter her administrative oversight and procedures and remedy the problems with delay in her court. Despite these repeated notices and opportunities over a period of five years, Respondent failed to resolve the delay problems or to seek assistance in doing so.

36. Respondent's inaction violated the Arizona Constitution, which forbids "wilful misconduct in office, wilful and persistent failure to perform [judicial] duties, . . . or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." Article 6.1, § 4. Respondent's actions also violated the Code. *See* Rule 1.2, ("A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety."); Canon 2, Rule 2.2 ("A judge shall uphold and apply the law[.]"); Rule 2.5(A) ("A judge shall perform judicial and administrative duties competently, diligently, and promptly."); and Rule 2.12(A) ("A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this code."); *see also* Rule 2.12(A), Comment 2 ("Public confidence in the judicial system depends on timely justice.").

REQUESTED RELIEF

WHEREFORE, the Commission, upon conclusion of a hearing and a finding of good cause, may recommend to the Supreme Court that Respondent be publicly censured, suspended or removed from judicial office; that costs be assessed against Respondent pursuant to Commission Rule 18(e), and that the court grant such other relief as may be deemed appropriate.

Dated this 18th day of March 2010.

COMMISSION ON JUDICIAL CONDUCT

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Copies of this pleading mailed by certified mail on March 18, 2010, to:

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