

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 07-216

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Complainant: No. 1316510253A

Judge: No. 1316510253B

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**ORDER**

The commission reviewed the complaint filed in this matter and found no intentional misconduct on the part of the judge. In order to avoid even the appearance of misconduct, the judge was advised not to meet with victims prior to a hearing.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: December 4, 2007.

FOR THE COMMISSION

   \g\ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on December 4, 2007.

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

CJC-07-216

COMPLAINT AGAINST A JUDGE

Your name: [redacted] Judge's name: [redacted] Date: 8/9/07

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

On [redacted] I was arrested for a misdemeanor and my attorney, [redacted] and I, were informed that video court would take place at 9:00 PM. It turned out court actually started at 8:00 PM. I was the first defendant to be seen by the court and Judge [redacted] was presiding. I believe Judge [redacted] may have committed violations of Canon 3(B) as follows:

(B) Adjudicative Responsibilities

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding...

Judge [redacted] began conducting my initial appearance by stating, "[redacted] I have already spoken to two of the victims and [redacted] who are present..." Without giving me an opportunity to be heard, he set bond at [redacted] When I was given an opportunity to speak, I named my two attorneys and indicated they believed court was at 9:00 PM and therefore, could ~~they~~<sup>someone</sup> reach my attorneys and could my initial appearance be moved to the end of the docket? Judge [redacted] remarked, "For what purpose?" I indicated, "So they can be heard on conditions of release." The judge denied the request but then permitted attorney for the alleged victims, [redacted] to address the court. I indicated that I could not hear [redacted] or the "alleged victims" but could only hear the court. I was informed by the judge

(Attach additional sheets as needed)

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that [ ] was asking for a higher bond. I again told the judge I could only hear him and not the others. He informed me my bond would now be [ ] I could hear [ ] continue to speak and was informed by the court that he was objecting and asking for a still higher bond. I was never given an opportunity to address conditions of release. The victims were afforded this opportunity under ARS 13-4421 but I was not given an opportunity, nor were my attorneys. The victims, as indicated by the judge, had already made their views known, ex parte, but I was never informed of the content of their communications.

Conditions of release are substantive matters. I believe the judge did not "accord [me] the right to be heard" He did not "accord [my] lawyer, the right to be heard, according to law." The judge clearly "permitted" and "considered ex parte communications," because he had "already spoken to two of the alleged victims" before the proceedings began. In essence, he continued to receive ex parte communications when I informed him I couldn't hear what was being said. He denied my request to postpone the hearing until the arrival of my attorneys. He failed to "promptly notify... [me] of the ex parte communications" or "allow [me] an opportunity to respond"

The commentary to the canon indicates, "To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge," and, "In general... a judge must discourage ex parte communication and allow it only if all the criteria stated in 3B(7) are clearly met." "A judge must disclose to all parties all ex parte communications."

Here, the ex parte communication was substantive and not "for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues." The substance was not disclosed and no opportunity to respond was given. "A procedural or tactical (Attach addition [ ] ted) advantage" was gained by the "alleged victims" as a result of Judge [ ] misconduct.