

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-021

Complainant:	No. 1384200349A
Judge:	No. 1384200349B

ORDER

An attorney alleged the judge made an inappropriate comment to an assistant public defender during an initial appearance session accommodated via a remote audiovisual system by suggesting to the attorney that she “snuggle up next to the defendant.” The commission reviewed the complaint, the recording of the hearing, and the judge’s response and issued private warning to the judge. The complaint is dismissed pursuant to Rules 16(b) and 23.

Dated: June 16, 2010.

FOR THE COMMISSION

\s\ William Brammer

J. William Brammer, Jr.
Commission Chair

Copies of this order were mailed to the complainant and the judge on June 16, 2010.

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

COMPLAINT

Assistant Public Defender _____ appeared as defense counsel on January 5, 2010, at the evening Initial Appearance session before Tucson City Magistrate Ms. _____ responsibilities at initial appearance were to represent all defendants charged with felonies who did not have retained counsel. At the beginning of the Initial Appearance session, Ms. _____ objected to the proceeding taking place in an audiovisual format, advising Judge _____ that audiovisual appearances were not permissible at that time due to Pima's non-compliance of the audiovisual system with ARCP 1.6 and the Operational Standards. Ms. _____ objections were well founded. ACJA 5-208 Operational Standards for Audiovisual Proceedings contained a variety of provisions not yet complied with in the Pima Superior Court system. Those Operating Standards required a local court certification showing that the audiovisual system was in compliance with the Operational Standards. That certificate had not yet been signed or filed. Ms. _____ told Judge _____ that because of defects in the existing system that only the defendant would be visible through the audiovisual system in the main courtroom, and that she would not be seen by anyone there. Judge _____ then stated in a somewhat mocking tone:

“you are welcome to snuggle up next to the defendant, counsel” (in order for you to appear on the courtroom videoscreen).

The defendant was a male and believed to be from a foreign country.

This comment was made on the record in open court, heard by the prosecuting attorney and by members of the public present in the courtroom. It was also heard at the remote location by six of the remaining defendants who were awaiting their hearings, as well as court staff and corrections officers.

The court's comment was disrespectful to Ms. _____. It was unwelcome, clearly sexist, and not humorous. The idea of a female lawyer “snuggling up” to a male defendant was demeaning, and served to undermine her in the performance of her professional responsibilities. This gratuitous remark was all the more egregious because Ms. _____ was alone with her client in a remote location separated from the judge. This is not the kind of remark any judge would make in open court. Ms. _____ was unaware of the impression left by the comment on the defendant, who she believed is a married man from a foreign culture.

Ms. _____ advised Judge _____ that she did not appreciate the suggestion that she snuggle up next to the defendant so she could be in the video, and that she found his comments inappropriate. Judge _____ did not respond with an apology or explanation. Subsequent to this event on 1/10/2010 the Pima Public Defender sent a letter of complaint about Judge _____ conduct to the presiding Magistrate of the City of Tucson Court, Judge _____. No response was ever made to that letter.

The preamble to Arizona's code of Judicial Conduct provides that judges should aspire to conduct themselves in a manner that promotes impartiality and integrity. Arizona Supreme Court Administrative Order 92-33 unequivocally states that sexual harassment in any form will not be tolerated in the courts, and all employees must be permitted to work in an environment free from unwelcome sexual overtones. Rule 2.3 (B) of the Arizona Code of Judicial Conduct prohibits a judge from engaging in harassment based on gender. Lastly, Rule 2.8(B) of the Arizona Code of Judicial Conduct provides: "A judge shall be patient, dignified, and courteous tolawyers. . . .and others with whom the judge deals in an official capacity. . . ."

This is not the first time Judge [redacted] has made sexually harassing comments to a female attorney. The Commission reprimanded Judge [redacted] in December 1993 for inappropriate remarks that he made to a female prosecutor about red shoes that she was wearing. After the reprimand, Judge [redacted] was quoted by the Arizona Daily Star as saying: "I will try to learn from these events to be a better person and judge, and to be more aware of the feelings and perceptions of others". Az Star 12/22/93. In this instance Judge [redacted] has either failed or refused to apologize.

Ms. [redacted] should not, and cannot be subjected to this kind of judicial behavior in the performance of her professional responsibilities. It's particularly distressing in this case because of Ms. [redacted] consummate professionalism and lifetime dedication to the law.