

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-197

Complainant: No. 1424110651A

Judge: No. 1424110651B

ORDER

The complainant alleged that a justice of the peace was rude and exhibited an improper demeanor.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the all of the information provided by the complainant, the judge's response, and listening to the recording of the hearing, the commission decided to dismiss this matter with a private advisory letter to the judge. The complaint is dismissed pursuant to Rules 16(b) and 23(a).

Dated: October 21, 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 October 21, 2011.

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

CONFIDENTIAL

State of Arizona
Commission on Judicial conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

8011-197

COMPLAINT AGAINST A JUDGE

Your name: _____ Judge's name: _____ Date: 08/04/2011

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

I have been practicing law for 38 years, 35 of them in Pima County, Arizona. I have been a member, and for one year the President of, The Inn of Court. I have been asked to speak at State Bar seminars on professionalism. I have probably participated in literally thousands of hearings, evidentiary hearings, and motion practice hearings during my years in practice. I have never even thought about filing a complaint against a judge, until my experience with Judge _____ Wednesday morning, August 3, 2011.

This was a simple assault case that I was handling *pro bono* on behalf of the defendant, Acacia Lynn Martinez. The State agreed to enter into a plea agreement consisting of diversion. The Order approving the diversion is attached as Ex. 1.

On July 15, 2011, this matter was set for either a status conference or change of plea. I spoke with the prosecutor the day before that scheduled hearing, and he told me the file was going to be transferred to Sterling Struckmeyer of the Pima County Attorney's Office. I asked the prosecutor whether we could continue the case for 30 days because I intended to ask Sterling to dismiss the charges. The prosecutor indicated that would be no problem, and that he would request the continuance and inform the Court we had spoken.

The next thing that occurred is that I received the attached Minute Entry Order (Ex. 2) stating that "Defense counsel failed to appear for his Show Cause and sanctions shall be imposed. A second failure to appear may result in reporting counsel to the State Bar."

In the first instance, there was no Show Cause hearing scheduled for July 15, 2011. Secondly, I have, on dozens of occasions, entered into a postponement of the type the prosecutor and I agreed to here, in both Justice Court and Pima County Superior Court, where one or the other counsel advised the Court of the agreement to continue. No judge has ever questioned the propriety of this arrangement, but apparently Judge _____ took offense that I did not physically appear, and so I sent the enclosed letter (Ex. 3) of apology to Judge _____

What occurred Wednesday morning was embarrassing not only for me professionally, but for my client, her mother Diana Martinez, and her mother's employer, Dr. Julie Bradshaw, all of whom appeared in court. If you speak with Diana Martinez or Julie Bradshaw, they will confirm what I am about to describe.

Judge [redacted] literally "ripped" into me about my non-appearance on July 15th, even though we were in court for the change of plea and even though I had written a letter of apology. Her demeanor, tone of voice and language used were, in my judgment, entirely injudicious, unprofessional and inappropriate. She was condescending and insulting. There was simply no need for her to spend five minutes berating me for not having appeared on the earlier date. She could, and should, have issued an order to show cause if she had such a problem with my non-appearance, instead of berating me at the change of plea hearing.

Judge [redacted] demeanor was so inappropriate that it reduced my client to tears, and both her mother and Dr. Bradshaw were visibly upset. Dr. Bradshaw commented on how inappropriately she thought Judge [redacted] had conducted herself, and I assured her this was highly unusual and atypical behavior for a Pima County judge.

I have never, in my 38 years of practice in law, encountered anything remotely resembling what occurred Wednesday morning, and I therefore feel compelled to report this incident to the Commission for its review and, hopefully, investigation. I feel strongly that Judge [redacted] has violated Rule 2.8(B) of the Code of Judicial Conduct, which requires her to "be patient, dignified, and courteous to...lawyers..."

Two final points. First, I want to say that when addressing my client and processing the change of plea, Judge [redacted] comported herself in a most judicious way. Second, I believe the proceeding may have been recorded, and encourage you to listen to what transpired.