

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-308

Complainant: Ivo Ortiz

Judge: Anne Fisher Segal

ORDER

The complainant alleged a justice of the peace prejudged his case, was biased, and improperly refused plea bargains offered by the state.

After reviewing the allegations, the recordings of four proceedings, and the judge's response, the commission finds that the justice of the peace in this case violated the following provisions of the Code of Judicial Conduct:

- Rule 1.1 (requiring that a judge comply with the law and the Code);
- Rule 1.2 (requiring that a judge “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 (requiring that a judge “uphold and apply the law, and shall perform all duties of judicial office fairly and impartially”);
- Rule 2.6(A) (requiring that a judge ensure parties to a proceeding have a right to be heard according to law);
- Rule 2.9(A)(3) (requiring that a judge who receives ex parte factual information related to a case must provide the parties notice of that information and an opportunity to respond); and,
- Rule 2.11 (requiring a judge to disqualify herself in any proceeding in which her impartiality might reasonably be questioned).

In the underlying case, Judge Segal received an ex parte communication from court security regarding an incident involving a criminal defendant. The judge's conduct in the case resulting from that communication was improper.

1. Judge Segal did not disclose the actual contents of that communication on the record and never provided the defendant an opportunity to respond.

Nonetheless, the recordings reveal that the communication caused Judge Segal to alter how she would normally have dealt with a similar case.

2. The judge repeatedly indicated that she considered the conduct she believed the defendant to have engaged in toward court security as conduct directed at her specifically, and yet she failed to then disqualify herself as is required under Rule 2.11 of the Code.
3. Judge Segal gave the appearance of prejudging the matter by disregarding the prosecutor's recommended sanction of a minimal fine, and instead appointed counsel, indicating her likely intent to impose an incarceration sentence even before she heard evidence related to the underlying charge.
4. Although the multiple hearing recordings provide no evidence that the defendant was difficult, unruly, disrespectful, or argumentative, the judge repeatedly declared him to be difficult and tailored his ultimate sentence to address these issues based solely on the undisclosed communication from court security. The ultimate sentence appeared to be related solely to the alleged conduct that occurred with court security, and not related to the underlying charge. Judge Segal's sentence was in essence one for contempt without having followed the proper procedures for exercising the contempt power.

The commission was particularly concerned that Judge Segal's response, which indicates that she also reviewed the recordings of the hearings, failed to recognize or acknowledge any of the above noted issues.

Accordingly, Judge Anne Fisher Segal is hereby reprimanded for her conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judge's response, and this order shall be made public as required by Rule 9(a).

Dated: February 27, 2013.

FOR THE COMMISSION

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judges on February 27, 2013.

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

2012-308

COMPLAINT AGAINST A JUDGE

Your name: Ivo Ortiz Judge's name: Anne Segal Date: 11/14/12

Instructions: Use this form or plain paper of the same size to file a complaint. Attach additional pages, as needed. Please describe in your own words what the judge said or did that you believe constitutes judicial misconduct. To help us understand your concern, be specific and list all of the names, dates, times and places where the conduct occurred. Include only copies of original documents or court recordings that are relevant to your allegations. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

On 07/02/2012 Defendant, Ivo Ortiz, had a case management hearing on a misdemeanor citation.

Upon entrance to the courthouse Defendant had a minor misunderstanding with security in that he had walked through the metal detector with his wallet.

When the guard stated that he had his wallet in his back pocket Mr. Ortiz responded that he had forgotten it, but that the detector did not buzz.

The deputy relayed this to Judge Segal's bailiff who passed it on to the Judge.

When Defendant's case was called Judge Segal proceeded to admonish the Defendant and stated that the Defendant needed to learn civic responsibilities, and berated him that he was disrespecting her and her courthouse. All this without hearing the Defendant's explanation.

Prosecutor B. Brown offered a plea bargain, of a fine, on the state's behalf.

Judge Segal refused a plea bargain exclaiming that this needed to go to trial.

At trial on 08/20/2012 Defendant was found guilty.

At sentencing Judge Anne Segal denied the state's recommendation of a fine.

She then proceeded to sentence the Defendant

(Attach additional sheets as needed)

word-for-word what she had expressed at the Defendant's case management on 07/02/2012. Any reasonable person can reach the conclusion that this was a self-fulfilling prophecy.

The Defendant believes that Judge Segal's impartiality was compromised and she just went through the motions of a trial.

Her intent was to find the Defendant guilty regardless of the evidence and sentence the Defendant to what she believed he needed; lessons on civic responsibility and anger management. Defendant has appealed this verdict and is praying for a new trial with a new judge who administers his/her judicial duties with integrity and character.

Respectfully Submitted

Ivo Ortiz.

Judge Anne Segal, J.D., PhD

Pima County Justice Court • Tucson Consolidated Courts
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December 17, 2012

DEC 19 2012

State of Arizona
Commission of Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

In Re: Ivo Ortiz 2012-303

Honorable Judicial Commission Members:

This letter is in response to the letter written by Ivo Ortiz, 12-CR-206535. I have reviewed the tapes, files and complaint in this matter. I understand that the Defendant has alleged he filed an appeal following the trial.

In this instance, Mr. Ortiz was convicted of consuming spirituous liquor in a public place, thoroughfare or gathering, a violation of Arizona Revised Statutes 4-244.20. This is a class two misdemeanor. The maximum penalty for this offense is two years of probation, four months in jail and/or a \$750.00 fine. Additional terms and conditions of probation are in the discretion of the judge.

Although counsel is not typically appointed to represent a defendant, the Pima County Justice Court judges has a contract with the Office of Court Appointed Counsel (OCAC) to appoint defense counsel in the event the offense triggers a mandatory jail sentence, such as an allegation of driving while impaired by alcohol or drugs. Counsel is appointed if the defendant is referred to the domestic violence specialty court, to the mental health court, to the Vet Court and to the Pet Court. Counsel is appointed if the State recommends supervised probation or jail. Also, if the judge determines that it is in the interest of justice, counsel is appointed on the court's motion. Contract attorneys are frequently appointed to represent people accused of misdemeanors if there is an indication the defendant is not able to appropriately represent him or herself in a legal proceedings. In this instance, counsel was appointed on my motion.

According to my recollections, on two occasions, Mr. Ortiz had confrontational difficulties after going through the court security system or while waiting for his

hearing. Security guards advised me that they felt it was necessary to remain in the courtroom during his courtroom proceedings.

In the case management conference, his attorney, Mr. Vincent Sottosanti, indicated the defendant would not accept a non-trial disposition and the matter was set for trial. At the trial, the officer testified that he observed the defendant drinking alcohol at a bus stop on the University of Arizona campus. The defendant denied under oath that he drank alcohol at the bus stop and denied throwing anything when the officer approached him. I found the officer's testimony to be credible and that the evidence was convincing beyond a reasonable doubt that the defendant consumed alcohol while at the student-based bus stop. The testimony indicated that Mr. Ortiz threw the beer can away with some anger as the officer approached. I also recall Mr. Ortiz became agitated during his testimony.

The finding of guilt was based on the evidence and testimony presented to the court. The terms of the sentence were based on the recommendations of the state as well as the recommendations of defense counsel. The State recommended a suspended fine and that the defendant complete a class in civic responsibility stating "the defendant needed some education about the norms of society." Defense counsel stated, "Defendant could use some anger management classes."

If a person who is convicted of an offense is eligible for probation, the court may suspend the imposition or execution of the sentence and, if so, shall without delay place the person on...unsupervised probation on such terms and conditions as the law requires and the court deems appropriate ... ARS 13-901. Insofar as the Defendant alleged he was indigent, the imposition of a fine did not seem appropriate. I felt that counseling was not going to be beneficial unless the Defendant was motivated and interested in going to counseling. The parameters of the sentence authorized the imposition of jail. The Defendant was given the choice of spending one day in jail or attending the counseling classes. The jail sentence was suspended. It should be noted that the short-term sentences, such as this one, are completed at The Mission, which is operated by the Pima County Sheriff's office. The Mission is a minimum-security facility that provides an equitable and familiar shelter-like care for the defendants.

I do, however, appreciate the opportunity to listen to myself on the record. I agree that I am verbose and unnecessarily detailed in my orders. Since listening to this proceeding and others, I have minimized my statements and have eliminated the lecturing as well as the personal and observational remarks. I recently attended an excellent course at the National Judicial College and feel that my skills as a jurist have markedly improved.

Please consider this as my response and steadfast denial of the allegations that I acted in an unethical or unprofessional manner. I trust nothing in this response is demeaning, condescending or disrespectful of the court proceedings. I believe that the issues raised by the defendant are ones that will also be reviewed by the appellate court

Respectfully submitted.

Anne Ségal
Pima County Justice Of The Peace
Tucson Consolidated Courts, Prescient One
115 N. Church, 3rd Floor
Tucson, AZ 85718