

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-107

Judge:	No. 1099514934A
Complainant:	No. 1099514934B

ORDER

The complainant alleged that a superior court judge was biased, engaged in improper ex parte communications, and should have disqualified herself due to a conflict.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or 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 review, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of court rulings. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: May 21, 2014.

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed
to the complainant and the judge
on May 21, 2014.

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

2014-107

COMPLAINT AGAINST A JUDGE

Your name: _____ Judge's name: _____ Date: _____

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.

PLEASE SEE ATTACHED.

(Attach additional sheets as needed)

CONFIDENTIAL

FOR OFFICE USE ONLY

State of Arizona Commission on Judicial Conduct

1501 W. Washington Street, Suite 229

Phoenix, Arizona 85007

COMPLAINT AGAINST A JUDGE

Your name:

Judge's name:

Date:

The question is not whether the Honorable _____ is impartial in fact, but rather whether reasonable men might question her impartiality under all circumstances. *United States v. Gigax*, 605 F.2d 507 (10th Cir. 1979).

Prior to being appointed as a _____ Court Judge,
_____ now ex-husband, _____ and _____
all worked together at the Law firm of _____ and _____ During their
tenure together at _____ and _____
and _____ worked in tandem on various cases and were acquaintances both in
and outside of the office.

In addition, upon belief and information received,
_____ and _____ wife of _____
associated together in an affable manner on numerous occasions, thus creating a conflict
of interest by her presiding over this immediate action when she was fully aware of the
gregarious relationship between her, the _____ and _____

Furthermore, upon belief and information received, prior to becoming appointed as a Court Judge, worked as a Prosecuting Attorney for the City of Arizona at the same time worked as a Prosecuting Attorney for the County Attorney's Office. and worked on various cases in connection with one another and were in fact comrades, thus creating a conflict of interest by her presiding over this immediate action when she was fully aware of the cordial relationship between her and both in and out of the workplace.

Judge should have recused herself from these proceedings immediately upon knowing that and were Counsel of record for and as their camaraderie smacks of collusion.

Finally, has initiated an independent query into Judge record in matters involving pro per litigants and it is believed the results show an extreme prejudice against pro per litigants.

In addition, Judge *ex parte* communications between Judge and are not only unethical, but further proves extreme bias against

The *ex parte* communications between Judge and can be evidenced as far back as .

The *ex parte* communications between and Judge has even caused a to be issued for the arrest of . When was notified of this warrant, he promptly called the Court and spoke with Judge and informed Mr. that he was going to turn himself in to law enforcement. Mr. was adamant that that was not a good idea. informed

Mr. that the warrant was issued solely on ex parte communications and that the issue would be addressed by the Court and State of Arizona Commission on Judicial Conduct. Magically the warrant was quashed.

It cannot be disputed that all of the ex parte communications has caused an extreme bias against and in the favor of the Defendants/counterclaimants.

Judge has been unnecessarily harsh on in this matter and it has appeared to at least witnesses to her conduct that she has acted in a prejudicial fashion toward . Further, Judge has imposed impossible burdens on and severely lacked in imposing the same on other litigants represented by counsel in this immediate action. Accordingly, moves and prays that the Honorable be disqualified from further proceedings in this matter.

Courts have said a trial judge must always remain fair and impartial. *Kennedy v. Los Angeles Police Dep't*, 901 F.2d 702, 709 (9th Cir. 1989). "He must be ever mindful of the sensitive role [the court] plays in a jury trial and avoid even the appearance of advocacy or partiality." *Id.* quoting *United States v. Harris*, 501 F.2d 1, 10 (9th Cir. 1974).

In addition, the appearance of the impropriety has affected the integrity of the judicial process and Rule 59 of the Arizona Rules of Civil Procedure provides that a new trial may be granted for "[i]rregularity in the proceedings of the court . . . whereby the moving party was deprived of a fair trial." Ariz. R. Civ. P. 59(a)(1). Even where there is no actual bias, justice must appear fair. *State v. Romano*, 34 Wash.App. 567, 569, 662 P.2d 406, 407 (1983) (citing *In re Murchison*, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955)). By definition, ex parte contacts are rarely on the record and, therefore, are usually

unreviewable. Thus, such contacts cast doubt upon the adversary system and give the appearance of favoritism. See *In re Burrows*, 291 Or. 135, 145, 629 P.2d 820, 826 (1981).

In re Guardianship of Styer, 24 Ariz. App. 148, 151, 536 P.2d 717, 720 (1975), the Court of Appeals defined judicial bias as "a hostile feeling or spirit of ill-will," or "undue friendship or favoritism towards one of the litigants." Judge [redacted] actions has given rise to just such an appearance of "a hostile feeling or spirit of ill-will" towards [redacted] due to all of the ex parte communications. A judge should avoid even the appearance of partiality. *Taylor v. Hayes*, 418 U.S. 488, 94 S.Ct. 2697, 41 L.Ed.2d 897 (1974); ABA Standards, supra, § 1.7. A judge must be careful never to act in the dual capacity of judge and advocate. *Evans v. Humphrey*, 281 Ky. 254, 135 S.W.2d 915 (1940).

On [redacted], Plaintiff/counterdefendant [redacted] contacted this Court's Judicial Assistant, [redacted] regarding all ex parte communications between this Court, non-parties, parties and/or opposing counsel, including but not limited to emails, faxes and telephonic conversations since the inception of this immediate action.

[redacted] was informed by Mr. [redacted] that in order for all of the ex parte communications to be disclosed, [redacted] needed to submit a Motion to the Court. Mr. [redacted] further stated that in a previous email [redacted] only asked for the ex parte communications between this Court and Attorney [redacted] and alluded to the fact that further ex parte communications exist.

[redacted] complied and submitted his Motion for the Disclosure of ALL ex parte communications. The Court replied with a list that only included the ex parte communication from [redacted]. [redacted] has been trying unsuccessfully to gain all of the ex parte communications for over [redacted] days and has requested it from all litigants

and this Court, all to no avail. It can be documented as far back as _____, that Mr.

_____ and Judge _____ have engaged in ex parte communications involving, at a minimum phone conversations and emails. [Exhibit A].

Every lawyer knows nonconsensual ex parte contacts with a judge or judicial officer, including court personnel who participate in the decision making process, on the merits of a contested matter are prohibited by the Rules of Professional Conduct. Attorney _____ and _____ have violated this Rule by repeatedly using ex parte communications with this Court as a means of gaining an edge in their favor.

It is a known bias or prejudice on the part of the trial judge, and an abuse of discretion for her to not withdraw from the case, or not even accept the case when she knew that a prior relationship existed between her, _____ and _____.

Model Code of Judicial Conduct: Canon 1 holds: “A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.”

Having secret meetings with opposing counsel and acting favorably to opposing counsel for the same instances where the Court was unfavorable to _____ is more than an inference of impropriety. The speech in the transcripts and the actions to ignore evidence and retaliation claims are more than just an inference of impropriety.

CANON 1 RULE 1.2. Promoting Confidence in the Judiciary

“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. “

“Comment

1. Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

2. A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the code.

3. Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the rule is necessarily cast in general terms.

4. Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

5. Actual improprieties include violations of law, court rules, or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. An appearance of impropriety does not exist merely because a judge has previously rendered a decision on a similar issue, has a general opinion about a legal matter that relates to the case before him or her, or may have personal views that are not in harmony with the views or objectives of either party. A judge's personal and family

circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.”

6. The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party’s right to be heard according to law. The judge should keep in mind the effect that the judge’s participation in settlement discussions may have, not only on the judge’s own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, or is on appellate review, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, (6) whether the matter is civil or criminal, and (7) whether the judge involved in the settlement discussions will also be involved in the decision on the merits.

3. Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge’s best efforts, there may be instances when information obtained during settlement discussions could influence a judge’s decision-making during trial or on appeal and, in such instances, the judge should consider whether disqualification

may be appropriate. See Rule 2.11(A)(1).

CANON 2 RULE 2.6. Ensuring the Right to Be Heard

“(A) 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.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute, but shall not coerce any party into settlement.

Comment

1. The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.
2. The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party’s right to be heard according to law. The judge should keep in mind the effect that the judge’s participation in settlement discussions may have, not only on the judge’s own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, or is on appellate review, (4) whether the parties participate with

their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, (6) whether the matter is civil or criminal, and (7) whether the judge involved in the settlement discussions will also be involved in the decision on the merits.

3. Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision-making during trial or on appeal and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1)."

For all the reasons stated above, has cause to believe and does believe that on account of the bias, prejudice, or interest of the judge he cannot obtain a fair and impartial trial and therefore requests that either Judge voluntarily removes herself from this immediate action or the Court Order her removal. A Motion for Change of Judge has been filed with the Arizona Court. [Exhibit 2]. A Supplemental Complaint will be filed documenting the bias and prejudicial ruling since inception of this immediate action.

Dated: