

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 18-118

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Judge:

Complainant:

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**ORDER**

The complainant alleged a superior court judge issued an improper ruling and denied him due process.

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.

The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a). The complainant's request for a protective order is also denied.

Dated: June 20, 2018

Copies of this order were distributed to all appropriate persons on June 20, 2018.

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

Arizona Commission on Judicial Conduct:

I am making a formal complaint against [REDACTED] a [REDACTED] judge in

The subject matter of this complaint is Judge [REDACTED] procedurally improper reversal, and later unexplained denial, of a [REDACTED] order in a case where Plaintiff has needlessly dropped hints in her pleadings about Defendants' involvement with a [REDACTED]

[REDACTED] operating in association with [REDACTED]

For convenient reference, and to emphasize the comparable level of risk to life, I will refer simply to the [REDACTED]

Precisely because of the risk to life, this [REDACTED] [REDACTED] it should not be difficult, though, for the Commission to find out [REDACTED] is concerned here, so as to be able to investigate the alleged misconduct. However, in letting me share highly sensitive information, Defendants are hoping that they can trust the Commission not to produce any public record which **would allow** [REDACTED] **complaint to the** [REDACTED]

To clarify about this risk, Defendants made an error in judgment when [REDACTED] [REDACTED] they renewed contact with Plaintiff, a person from their former lives. Plaintiff is known by the abuser and his associates as having been a close friend of Defendants. So, even mere awareness of an [REDACTED] by Plaintiff, now cited online, would provide a clue to the abuser that Defendants might be his missing family. **He would only have to** [REDACTED] **see pleadings about Plaintiff having helped Defendants to** [REDACTED] and then he could feel certain he had learned where he could track down his former victims.

For this reason, at an *ex parte* hearing, Defendants disclosed their involvement with the [REDACTED] and obtained a [REDACTED] with leave to file material "

" - indicating that the judge saw a valid concern. Defendants subsequently were given notice that Plaintiff would be [REDACTED] but did not receive notice of the related hearing, which thus took place *ex parte* as well, and resulted in the [REDACTED] attempts by Defendants to correct this lack of due process, and to get a [REDACTED] were rebuffed by Judge [REDACTED] the [REDACTED] on the basis that Defendants had missed their chance, without any reasons. On [REDACTED] did the judge address the denial of a hearing notice or the merits of a [REDACTED] Consequently, while Plaintiff had been allowed to contest an *ex parte* order made **validly**, Defendants were not allowed to contest one made **invalidly**, despite the serious risk alleged.

Judge [REDACTED] conduct, in my respectful opinion, thus violated Canons 1-2 of the *Arizona Code of Judicial Conduct*, both as to general principles – integrity, independence, impartiality, (appearance of) propriety, competence, diligence – and as to Rule 2.9(A) in particular (bold added):

**A judge shall not initiate, permit, or consider ex parte communications, ... concerning a pending or impending matter, except as follows:**

(1) When circumstances require it, *ex parte* communication for [certain purposes] is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the *ex parte* communication; and

(b) the judge makes provision to promptly notify all other parties of the substance of the *ex parte* communication, and **gives the parties an opportunity to respond.**



Rather than being allowed an opportunity to respond to the improper *ex parte* order, Defendants were not taken seriously when they complained about having been denied notice of the hearing. Court staff did not bother to dispute the lack of notice, but instead brushed it off **with ridiculing excuses such as**

see Rules 2.8(B), 2.9 (Comment 2), 2.12.

While it might be argued that Defendants did have an opportunity to respond, when they brought [REDACTED] is no indication that Judge [REDACTED] seriously considered their arguments. She had angrily refused even to hear any such arguments at an oral hearing, **treating her improper *ex parte* order as determinative**. Then, when she was presented with a [REDACTED] which clearly satisfied the ARCP Rule 5.4(c)(2) criteria, she simply dismissed it as " [REDACTED] " and deserving of sanctions, without giving reasons – despite the fact that she had seen merit in Defendants' request earlier.

Such a strange complete reversal called for an explanation. Former Canon 3B(2) stated that "A judge shall be faithful to the law and maintain professional competence in it" - a requirement which has been judicially interpreted to include giving reasons for court decisions: *Cannon v. Miller*, 412 A.2d 946 (Del. 1980). It is respectfully urged that Judge [REDACTED] rendering of this critical decision, without giving or having reasons to support it, is an instance where "an intentional disregard of the law may constitute misconduct," per Rule 2.2, Comment 3.

Now, unfortunately, a judge of the [REDACTED] has deferred to Judge [REDACTED] decision without any explanation of his own. At this point, it would be a very risky gamble for Defendants to respond to any speculated reasons with even more sensitive information in public court proceedings.

The wrongfulness of this unexplained decision to deny protection to Defendants cannot be dispelled by any of the reasons suggested by Plaintiff's attorney, such as the unfair double-bind argument that people in a

[REDACTED] even if avoiding [REDACTED]

[REDACTED] Other arguments suggested by Plaintiff's counsel are: (1) that no [REDACTED] exists for domestic violence survivors; (2) that its clients are not at serious risk if exposed; (3) that Defendants were never clients; and (4) that they waited too long to [REDACTED] Corresponding to these numbered arguments, I am attaching **highly sensitive** exhibits in rebuttal:

**Exhibit 1:**

"

" and its connection to the

[REDACTED] for victims fleeing violent abusers is a logical extension of the [REDACTED] and so there need be no controversy about whether this type of service exists for [REDACTED]

**Exhibit 2:**

Reference is made to

assisting '

" (bold added). See also Exhibit 1, and the third paragraph above.

**Exhibit 3:**

**Exhibit 4:** minutes indicating what happened on the day Defendants first requested a [REDACTED] - Until that day, Defendants were in a Catch-22 situation, where they could not file a written [REDACTED] information which they needed [REDACTED]. On that day, however, a hearing was held ahead of schedule, and Plaintiff's counsel became Defendants, who then had a fortuitous opportunity to bring an oral motion in camera. The fact that Defendants were prepared to do so, at the first safe opportunity, is an indication that they had already been trying to figure out how to [REDACTED] and that they were not just inventing a stalling tactic midway through the proceedings.

Besides what I know from [REDACTED] I can add what I know otherwise about the [REDACTED] and **the associated risk of violence.** Defendants me because they had learned of

[REDACTED] fleeing a man suspected of [REDACTED] I am acquainted with the [REDACTED] who had helped

and I am aware that she had taken extreme safety precautions

When she heard that some [REDACTED] and [REDACTED] leading to [REDACTED] she phoned me out of concern that I might have been targeted by

[REDACTED] apparently is no longer in touch with their confidential supporters, and it is now feared that they may

**Under penalty of perjury,** I declare my sincere belief that everything stated in my complaint is true. Please hold Judge [REDACTED] accountable for:

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PAGES OF ANY DISMISSED  
COMPLAINT ON ITS WEBSITE.**

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COMPLAINT IN THIS MATTER,  
PLEASE MAKE YOUR REQUEST  
IN WRITING TO THE  
COMMISSION ON JUDICIAL  
CONDUCT AND REFERENCE  
THE COMMISSION CASE  
NUMBER IN YOUR REQUEST.**