

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 18-245

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge improperly dismissed his petition for special action.

The responsibility of the Commission on Judicial Conduct is to impartially determine if a judicial officer 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 a judicial officer's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judicial officer did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

Dated: November 21, 2018

Copies of this order were distributed to all appropriate persons on November 21, 2018.

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

COMPLAINT AGAINST A JUDGE

Complainant Judge

These pages contain the details of the complaint. It is printed in this format so that the words are larger and easier to read.

This Complaint is supported by attachment 1, submitted herewith.

Summary of Charges:

On the Hon. Judge denied a petition for special action from the Court. In the Minute Entry denying relief, Judge violated the following Canons and Rules of the Arizona Code of Judicial Conduct ("ACJC"):

Canon 1: Rules 1.1 Compliance with the Law; Rule 1.2 Promoting Confidence in the Judiciary; Rule 2.2 Impartiality and Fairness; Rule 2.3 Bias, Prejudice, and Harassment; Rule 2.4 External Influences on Judicial Conduct; Rule 2.5 Competence, Diligence and Cooperation; Rule 2.6 Ensuring the Right to Be Heard; **Rule 2.15 Responding to Judicial and Lawyer Misconduct.**

The violation of **Rule 2.15** is the most serious issue. Judge clearly intended to condone serious misconduct, including harassment of the defendant, by the lower court. Judge clearly intended to hide serious judicial misconduct with the Minute Entry. Detailed explanations of the judicial misconduct in the Court are set forth in the complaint below and in the accompanying supplements and evidentiary exhibits.

I. Factual Background

1. Complainant is a pro se defendant who was charged with trespassing at open public comment, while attempting to give a prepared presentation, in a meeting, on

2. On about the case , was transferred to the Court from the Court. (" ")

3. The case was transferred to because the Hon. the presiding judge in the Court , had disqualified himself from the case under ACJC Rule 2.11.

4. On _____ the Hon. _____, the presiding judge in _____ issued an order that scheduled a status conference for _____ ("_____"). The Order placed severe restrictions on defendant's liberty interests and associational interests, including precluding him from conducting discovery or having any contact with witnesses or the police officers that had arrested him for trespassing. The Order was exceptionally broad and could conceivably be violated for a wide range of normal business and leisure activities by the defendant. A copy of the Order is included as **Attachment 1**:

5. The Order did not contain any written findings or explanations of any type justifying the restrictions.

6. Defendant received notice of the Order _____ on _____

7. On _____ defendant filed an emergency motion in _____ asking the Court to immediately vacate the restrictions. ("_____"). (**Att. 1** : _____)

8. The E-Motion indicated that defendant would seek special action relief if the restrictive conditions were not vacated by _____. The E- Motion explained that the Order violated the _____ Court's holdings about restrictions on pre-trial activities in _____ Ariz. 204, ¶2 (_____)

9. For the _____ that this prosecution has been ongoing, to _____, no judge has placed any restrictions of any type on defendant's liberty interests or associational interests.

10. On _____ at about _____ defendant was informed via voice mail that a hearing about the restrictions was scheduled for _____. Court personnel indicated that the restrictions had not been removed.

11. On _____ defendant filed a petition for special action , _____ asking the _____ Court to stay the proceedings in _____ and to issue an order vacating the restrictions, because they contravened controlling legal authority as set forth in _____ Ariz. 204, _____ (**Att. 1**: _____)

12. On _____, defendant received a minute entry from Judge _____ via _____ dismissing the Special Action. ("_____") (See **Att.1**: _____)

13. The Minute Entry stated in part,

The Court notes that the Stay and Petition relate to a Release Order issued by the Court in an underlying matter. It appears that the Petitioner also has a separate but concurrent case proceeding as well. The Petitioner sought a review of his release conditions in the Court and that Court set a hearing on this request for Nonetheless, Petitioner a Request for a Stay and the Petition for Special Action. The Court does not find that these issues are ripe for consideration at this time.

IT IS ORDERED denying the Emergency Request for Stay and Petition for Special Action. The Petitioner should bring his issues regarding contact with those involved in the case to the Court's attention and allow the Court to decide if a modification of his release conditions is appropriate. If Petitioner disagrees with the Court after the Court has had the opportunity to hear the Petitioner and State's arguments, Petitioner is then free to file an appeal or special action if it is grounded in the law and facts. (**Att. 1:**

14. Under Arizona law, a defendant charged with a crime does not have a burden or obligation to prove that his life should not be restricted. Rather, the burden to justify all restrictions lies solely and completely with the judge that seeks to impose those restrictions. Ariz. 204, ¶2

15. In our explained that,

The trial court, however, must make an individualized determination supported by findings sufficient for appellate review concerning whether the pretrial release conditions are the least onerous measures reasonable and necessary..

16. In Ariz. 204, 211, ¶24 our tate again very clearly,

Discerning the “ ” release condition “ ” to protect the public necessarily requires the judge to make an individualized determination. 241 Ariz. at 349 ¶ The “ ” is a “ ” into the future dangerousness of the accused, which ensures the release condition comports with due process. *See id.*; F.3d at

(stating that, pursuant to 18 U.S.C. § 3583(d), to satisfy an “
” when placing a “
” a court “
”). (emphasis
added)

¶25 We hold that due process and, by implication, Rules 7.2(a) and 7.3(b), require the trial court to make an individualized determination in setting discretionary pretrial release conditions..... he trial court must, however, make findings and articulate its reasoning for determining that the condition is the least onerous measure reasonable and necessary to mitigate an identifiable risk of harm.

17. Judge Minute Entry intentionally ignored the mandate of our court in

18. Judge Minute Entry condoned obvious judicial misconduct by a lower court and thereby encouraged future misconduct by Judge

II. Legal Argument

Judge isolated his obligations under the ACJC by intentionally disregarding controlling legal authority. Judge Minute Entry demonstrates that his goal was to condone and cover-up judicial misconduct in a lower Court, and to encourage the ongoing violations of defendant’s civil rights. Judge Minute Entry manifests bias and prejudice against defendant, and most likely prejudice against pro se litigants in general.

A. Judge Violated Rule 1.1 Compliance with the Law.

Rule 1.2 states, A **judge shall comply with the law, including the Code of Judicial Conduct.** (emphasis added)

Judge has an obligation to know the law and to honestly apply the law. The petition for special action, **Attachment 1**, pp. , clearly set forth the controlling legal authority. Judge deliberately choose to ignore the legal authority set forth in Ariz. 204 (). No honest and reasonable reading of this decision would have led Judge to believe that setting restrictions on a defendant sua sponte and dramatically changing the status quo, without making particularized findings in writing in advance, was allowed by law. No honest reading of would have led Judge to believe

that a defendant had a burden to prove that he should not be restricted. Judge [redacted] legal interpretation makes a mockery of our constitution rights and openly defies the [redacted] Court.

Defendant's petition was ripe for decision and relief. The ripeness doctrine prevents a court from rendering a premature judgment or opinion on a situation that may never occur. [redacted] 190 Ariz. [redacted]) “

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Ariz. 95, 120 ¶ 94 (App.

The harm to defendant's civil rights had already occurred and was ongoing. (Att. 1: [redacted] Section [redacted] Judge [redacted] deliberately misstated the ripeness doctrine to avoid granting defendant relief. Judge [redacted] could have declined to accept jurisdiction without comment. Instead, Judge [redacted] choose to deliberately misstate the law to create the impression that defendant did not have valid grounds to seek relief.

Judge [redacted] wrote,

If Petitioner disagrees with the [redacted] Court after the [redacted] Court has had the opportunity to hear the Petitioner and State's arguments, Petitioner is then free to file an appeal or special action if it is grounded in the law and facts.

The State had not requested any release conditions. In fact, no release conditions of any type had been in place for the prior [redacted] (Att. 1: [redacted]) Defendant's petition was grounded in law and facts. Judge [redacted] simply choose to ignore the law, and to create a new burden on defendant, i.e., defendant must prove that he should not be restricted.

B. Judge [redacted] Actions Undermine Confidence in the Judiciary **—Rule 1.2**

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.

Judge [redacted] Minute Entry indicates that he had not read defendant's petition for special action. Judge [redacted] Minute Entry indicates that he does not believe that he must follow the mandates of the [redacted] Court. Judge [redacted]

Minute Entry indicates that he believes that defendant is not entitled to the protections of the Arizona constitution and [redacted] Court rulings.

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COMPLAINT ON ITS WEBSITE.**

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