

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-192

Judge: Julie P. Newell

Complainant: Commission on Judicial Conduct

ORDER

The commission received information that a superior court commissioner engaged in inappropriate courtroom demeanor during a criminal proceeding.

Rule 2.8(B) requires judges to “be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity”

Commissioner Newell was extremely rude to an attorney for the victim in a criminal case who was attempting to be heard at a hearing. When the attorney stood up and stated she wished to address the court, Commissioner Newell cut her off, and, in a very harsh tone, told her to sit down and to only address the court when she was told to do so. The attorney sat down, and the rest of the hearing proceeded. At the conclusion of the hearing, the attorney again stated she wished to address the court, and again, Commissioner Newell was rude, telling the attorney in a very loud and harsh tone to leave the courtroom or she would summon a deputy. The attorney once again asked to address the court, and Commissioner Newell had staff call for a deputy to respond to the courtroom. The defense attorney then advised the court that the woman was an attorney representing the victim who wished to be heard. Commissioner Newell, in a brusque tone, advised she was not hearing from the victim at that time and concluded the hearing.

Commissioner Newell was not patient, dignified, or courteous with the attorney or others involved in this proceeding. Rather, she was impatient, harsh, and intimidating. Whether Commissioner Newell knew the woman was an attorney or not, the commissioner violated Rule 2.8(B) in her interaction with her.

Commissioner Newell was previously reprimanded for violation of Rules 1.2 and 2.8 in Case No. 13-211. In light of Commissioner Newell’s resignation as a commissioner and pro tem judge, the commission concluded this matter should be resolved by the issuance of another public reprimand rather than the institution of formal disciplinary proceedings.

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

Accordingly, Julie P. Newell, Commissioner, is hereby publicly reprimanded for her conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the commissioner's response, and this order shall be made public as required by Rule 9(a).

Dated: November 13, 2015

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

A copy of this order was mailed to the commissioner's attorney on November 13, 2015.

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

From: Lori Ash
Sent: Thursday, July 16, 2015 2:06 PM
To: Riemer, George
Subject: Complaints about court proceeding

Good afternoon,

The court received some negative feedback about the treatment of an attorney in a court proceeding yesterday and the court wanted to forward it to the Commission for whatever consideration the Commission deems appropriate. The proceeding occurred yesterday at approximately 11:30 in a criminal case in the Superior Court in Maricopa County.

The Court Commissioner in the video has resigned, effective today. However, she remains a judge pro tempore. I will forward the video in four emails shortly. If you have any questions or need any additional information from the court, please let me know.

Thank you for your time.

Lori Ash
General Counsel
Superior Court in Maricopa County

Resp

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AUG 21 2015

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August 21, 2015

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Re: Julie Newell
Case no. 15-192

Dear Members of The Commission on Judicial Conduct:

This is former-Commissioner Julie Newell's response to the above-referenced complaint.

At the outset, let me formally notify the Commission that Ms. Newell resigned her position as a Commissioner shortly after the incident in question. Ms. Newell has also resigned as a pro-tem judge. She now no longer holds any judicial position. I acknowledge that her resignation does not preclude action by the Commission, *In re Fleischman*, 188 Ariz. 106, 113, 933 P.2d 563, 570 (1997); *In re Lehman*, 168 Ariz. 174, 176, 812 P.2d 992, 994 (1991), but a determination not to impose discipline in this case is not likely to negatively "impact . . . our system of justice [or] the perception of the integrity of the judicial process." *In re Goodfarb*, 179 Ariz. 400, 403, 880 P.2d 620, 623 (1994).

Although there is an FTR video of the episode, it does not tell the whole story. Some background is necessary. At the time of these events, Ms. Newell was assigned to the RCC (Regional Court Center). The RCC's main purpose is to determine if probable cause exists as to cases the State has charged by direct complaint. The RCC conducts preliminary hearings. Nevertheless, the RCC handles a number of other proceedings. A case can remain in RCC for up to thirty days, during which time the parties typically attempt to resolve the case. If a plea agreement is reached, the RCC handles the change of plea proceeding and sentencing.

The RCC also handles what are called "Straight Waivers." As noted, a case can remain in the RCC for up to thirty days. During the period, the accused is often incarcerated. Some defendants choose not to challenge the existence of probable cause. They want to speed the process up by skipping the preliminary hearing and go directly to Superior Court. This step is accomplished during a Straight Waiver hearing. It is a short hearing that usually lasts no more than a few minutes. The judicial officer asks the accused a number of questions to make a record that the waiver is knowing and voluntary. Importantly, because the accused is merely waiving the right to a probable cause hearing, this is not a step in which a victim has any say.

This is the type of hearing that Ms. Newell was conducting on the day in question. Because victims' advocates do not usually have any role whatever in this proceeding, Ms. Newell had no reason to think (and did not in fact appreciate) that Ms. Madden was in court as the victim's advocate. Ms. Newell did not recognize Ms. Madden.

When lawyers attend a proceeding, they typically check in with the clerk. Victims' advocates sometimes notify the prosecutor of their presence instead. Ms. Madden did neither. That is another reason Ms. Newell failed to appreciate that Ms. Madden was attempting to appear as a victim's advocate, as opposed to being an unruly layperson disrupting the proceeding.

Finally, as noted, Ms. Madden is a lawyer. Lawyers are taught in law school to follow a judge's instruction no matter how incorrect they think it is. Ms. Madden's defiant refusal to sit down as directed only reinforced Ms. Newell's belief she was dealing with a disruptive layperson. There were other avenues available to Ms. Madden to communicate whatever point she felt needed to be made. Leaning over the bench and asking the prosecutor to say something, for example, would have avoided this whole unfortunate situation.

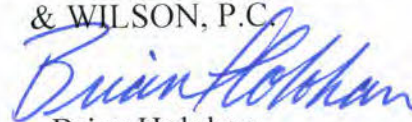
Ms. Newell mistakenly thought that she was dealing with an unruly layperson (an all too familiar circumstance in the criminal arena) rather than an attorney – who, as noted, added fuel to the fire by refusing to follow Ms. Newell’s instruction. That it reasonably appeared that Ms. Newell was having to contend with a disruptive layperson is reinforced by the fact that the M.C.S.O. Detention Officer in the courtroom had on his own called for a deputy before being directed to do so by Ms. Newell. Ms. Newell’s tone was stern, yes, but it is sometimes necessary for a judge to be forceful with uncooperative laypersons to maintain control of the courtroom, which is itself a judge’s ethical obligation under Rule 2.8(a) of the Arizona Code of Judicial Conduct. It is noteworthy that although Rule 2.8(b) imposes an obligation to treat litigants courteously, the Canon itself imposes the obligations of impartiality, competence and diligence. Ms. Newell’s efforts, under the circumstances, met those requirements.

Unlike former Judge Goodfarb, Ms. Newell was not profane. She did not use insensitive language or racial epithets. She is especially regretful of the episode as she had been actively taking steps to deal with the issue of her sometimes-intemperate demeanor. All of her hard work and progress was undone in the span of a few minutes. When she found out the person who was causing the disruption was Ms. Madden, Ms. Newell sought her out to apologize, but Ms. Madden had already left. Ms. Newell’s behavior was the kind the authors of the Scope Section of the Arizona Code of Judicial Conduct had in mind when they observed that not every transgression warrants discipline. There is no chance of a repeat episode.

The Commission should not impose discipline.

Very truly yours,

BROENING, OBERG, WOODS
& WILSON, P.C.



Brian Holohan
Of Counsel

BH/
cc client