

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 16-112

Judge:

Complainant:

ORDER

A superior court judge self-reported an improper ex-parte communication.

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 the judge did engage in improper ex parte communication by speaking to the prosecutor about his trial performance while the jury was still deliberating. While this was improper under Rule 2.9, the Scope Section of the Code of Judicial Conduct provides that it is not intended that every transgression will result in the imposition of discipline. The commission decided, after considering all the facts and circumstances, to dismiss this matter pursuant to Rules 16(b) and 23(a), but to issue a warning letter to the judge to refrain from engaging in such communication and of the far-reaching consequences of discussing trial performance with lawyers depending on the status of the case.

Commission member Anna Mary Glaab did not participate in the consideration of this matter.

Dated: June 14, 2016

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

A copy of this order was mailed to the judge on June 14, 2016.

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

Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

Dear Commission:

Recently, I was asked to recuse myself after a criminal jury trial in . Following my recusal, the defense filed a Motion to disqualify the county attorney's office and I was asked to testify. It was during the testimony that I realized that I should disclose an ex-parte communication to the Commission. I have attached a copy of the transcript of my testimony, which includes some detail as to the content of the conversation as well as another transcript of the hearing in which I placed my discussion with the prosecutor on the record.

In , the defendant was charged with the crimes of . The trial started on and on the jury was discharged to begin their deliberations. While the jury was deliberating on , I had the opportunity to speak with the prosecutor, who is also . During the conversation, I discussed with the prosecutor . I also discussed . I planned to offer the same opportunity to the defense attorney to discuss but believed I would have more opportunity since he was an attorney who . In this case, as with others, my only goal was to provide appear before me in order to in our courts.

It was only after the conversation that I realized my discussions with the prosecutor could create an issue should the jury be unable to reach a verdict. Immediately, I reported the incident to my presiding judge and requested his input. Based upon his input, I called both attorneys to my courtroom that very [redacted] and reported the incident to the defense attorney off the record. I advised him of the conversation and told him that I would recuse myself should the jury be unable to reach a verdict and a new trial become necessary. However, I also told him that I would recuse sooner should the defendant request it.

On [redacted], as the jury was deliberating, defense counsel asked that we address the issue of my discussions with the prosecutor on the record. At that time, the defense attorney and I briefly discussed what occurred and I then took a recess to allow the defendant time to consider his options. This discussion was on the record and a copy of the transcript is provided. [redacted] the defense attorney advised on the record that the defendant had considered his options and was requesting that I recuse myself. Based on the defendant's request, I recused myself from the case and advised both parties that another judge would be found to continue with the case on [redacted].

On [redacted], my [redacted] took control of the jury and proceeded with the case. A verdict was reached but by then, defense counsel had filed his Motion to disqualify the prosecutor. Before the [redacted], a hearing was held on the Motion and I testified in open court about [redacted].

As I previously stated, I had never really considered the nature of the conversation as an ex parte communication because I considered the trial concluded. However, I have always waited until after sentencing before having conversations with other attorneys about [redacted].

I also have generally had those types of conversations with both attorneys present. In this circumstance, I have no excuse as to why I did not wait other than the prosecutor was not someone I often see in my courtroom and I knew he was going to be dealing with some [redacted] after the trial was over.

It was never my intent to create an issue. I accept responsibility for my conduct and ask that, should a complaint be filed, the Commission consider this letter and the attached transcripts. I have never had a party complaint filed against me in my [redacted] years on the bench and I can assure the Commission that this will never happen again.

I appreciate your consideration.

Truly yours,

enclosures