

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-035

Judge:

Complainant:

ORDER

June 10, 2019

The Complainant alleged a municipal court judge improperly used attorney-client privileged information against a defendant.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Rules 16(a) and 23(a).

Copies of this order were distributed to all appropriate persons on June 10, 2019.

19-035

COMPLAINT AGAINST A JUDGE

Name: _____ Judge's Name: _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

I was in _____ on the morning of _____ covering an _____ for _____ . The _____ was supposed to be handled by Judge _____ , but Judge _____ appeared instead. Some context regarding _____ , they handle their _____ with the _____ are asked to confer _____ in the _____ in the presence of the prosecutor, judge, and anyone else in the court room at the time. There is no meaningful way to have a truly confidential conversation since it is clear that everyone in the courtroom can hear what the attorneys and the defendants are saying. I attempt to mitigate this by the defendants, speaking quietly,

On the day of this event, I was assigned to represent _____ , Case No. _____ I was told he was having some issues, crying hysterically, unable to communicate, etc., and instructed to determine whether he needed to be evaluated under Rule 11. I spoke with _____ , was able to get him to calm down so we could talk, and discovered that he has been suffering from _____ was in court facing charges of _____ arising out of a _____ and there was alcohol involved. He had no recollection of the event and was very upset about what he had been told happened. I asked for a Rule 11 pre-screen evaluation and was heard on release conditions. Based on the underlying _____ , the defendant's _____ , and the fact that the _____ , I asked Judge _____ to release _____ on his own recognizance and allow him to return home to his _____ , the attorney _____ asked for a \$ _____ bond. Judge _____ put a _____ in place and gave _____ a \$ _____ bond.

After, I went back to the _____ the ruling to _____ because he _____ . I spoke with him about whether he had any family who could post his bond and explained that he could not _____ Judge _____ order was in place. As I was attempting to explain the seriousness of the _____ order, _____ repeatedly told me that he needed to reach out to _____ apologize and make it right. It was clear to me that he was upset about what he had been told happened and that he wanted to make sure _____ okay and apologize for his behavior. I continued to explain that he could not _____ and urged him to listen to me. When we were finished I asked if there was anything else he needed and _____ responded that he needed a gun (throughout the proceedings he had talked about how he _____). Given the state he was in and the fact that he was _____ I believed his statements were hyperbole and a result of his confusion and guilt. As I was walking away from _____ , Judge _____ , on his own motion, raised release condition again asking if we needed to raise the bond amount. I assumed this was in response to statement about needing a gun and explained the context. Judge _____ responded by saying something along the lines of, " _____ " and ordered a \$ _____ bond. During this time _____ stood up and told the court that he had to contact _____ apologize. I urged Judge _____ to reconsider, pointing out that _____ was only asking for a _____ bond, the _____ issues, defendant's lack of _____ , and the inappropriateness of him using an overheard attorney-client privileged conversation to modify his original release order. Judge _____ reconsidered and set a \$ _____ bond. This whole interaction was recorded on the record.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

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Judge _____ decision to raise release condition from \$ _____ to \$ _____ and then to \$ _____ on his own motion based on a privileged conversation that should not have been overheard, much less used as the basis of his motion, is deeply concerning. The in-custody set up in _____ raises attorney-client confidentiality issues under the best of circumstances, but on this day seriously affected my ability to adequately represent my client. This breach of attorney-client privilege resulted in a direct and substantial negative impact on my client. Not only did Judge _____ ruling violate attorney-client privilege, but also punished my client for something had yet to do, and utilized bond as a punitive measure vastly out of proportion with the underlying offenses.

I do not take this complaint lightly and have spent a lot of time considering whether this is the appropriate avenue for raising this issue. I ultimately decided to file this complaint due to the above detailed concerns and the lack of alternative options. My concerns arise from Judge _____ demeanor and failure to recognize the impropriety of using an overheard privileged conversation, even after that error was pointed out by counsel.