

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 19-098

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Judge:           Howard J. Fell

Complainant: Self-Report

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**ORDER**

A pro tem superior court judge self-reported an inappropriate comment made to a litigant.

During a drug court hearing, a female participant seemed confused about where to sit or stand when her case was called. Judge Fell told her, “sit on my lap if you want . . . no, no I take that back.” Immediately after the drug court proceedings concluded, Judge Fell reported his conduct to his presiding judge and inquired as to the appropriate procedure to self-report his conduct to the Commission. Judge Fell was disciplined by his appointing authority, including a three-week suspension without pay, a requirement to complete sensitivity training, and removal from presiding over the drug court. In his communications with the Commission, Judge Fell expressed extreme remorse for his conduct.

The Commission found that Judge Fell’s conduct as described above violated the following Code provisions:

Rule 1.2 (Promoting Confidence in the Judiciary): “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.”

Rule 2.3(B) (Bias, Prejudice, and Harassment): “A judge shall not, in the performance of judicial duties, by words or conduct . . . engage in harassment, including but not limited . . . harassment based upon . . . sex, gender . . . .”

Rule 2.8(B) (Decorum, Demeanor, and Communication with Jurors): “A judge shall be patient, dignified, and courteous to litigants . . . .”

The Commission is cognizant of the gravity of the comment and recognizes that comments of this nature could warrant formal charges. The Commission also considered, however, that Judge Fell has served on the bench for more than twenty years without any disciplinary sanction, immediately self-reported his conduct,

expressed significant remorse for his comment, and was disciplined by his appointing authority. After considering these circumstances, the Commission concluded a public reprimand was the appropriate sanction for what appears to be an isolated incident.

Accordingly, Judge Howard J. Fell is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the self-report letter, the judge's response, and this order shall be made public as required by Rule 9(a).

Commission member Gus Aragón did not participate in the consideration of this matter.

Dated: June 10, 2019

FOR THE COMMISSION

/s/ Louis Frank Dominguez  
Hon. Louis Frank Dominguez  
Commission Chair

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

*Arizona Superior Court*  
*Pima County*  
*110 West Congress*  
*Tucson, Arizona 85701*

*Self Report Ltr*

**2019-098**

Howard Fell, Judge Pro Tem

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

Dear Commission Members,

I am a Judge Pro Tem in Pima County and among other duties, I preside over the DTAP (Drug Treatment Alternative to Prison) program.

On Monday, March 11, 2019, while presiding over a review hearing at which time participants in the program appear to discuss their progress, I made a regrettable, very inappropriate comment to one of the female participants. When she approached the podium, she was confused about whether to stand or sit and where. I commented, "sit on my lap if you want...no, no, I take that back" (a transcript of the comment is available). I no sooner made the comment that I realized how inappropriate and insulting it was. Though our review hearings are rather informal, there is no place in a courtroom for such a careless and unprofessional comment to be made.

On Tuesday, I immediately notified our Presiding Judge, Judge Bryson, our Presiding Criminal Judge, Judge Liwski and additionally consulted with Judge Margaret Downie. I have since contemplated how I could have said such a thing. It was insensitive and offensive to all who were present, particularly the woman to whom I addressed the comment. I recognize and acknowledge that my comment diminished the dignity of the Court and negatively affected the public perception of the Court. I intend to apologize to the woman at her next review hearing in open court and admit my inappropriate mistake in judgment to both her and the entire group of DTAP participants. I have been on the bench for over twenty-one years and have never had such a complaint brought to my attention.

I assure the Commission that I have taken this matter very seriously and that such behavior will never be repeated.

If you have any questions or comments, please contact me. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Howard Fell".

Howard Fell, Judge Pro Tem

*Arizona Superior Court*  
*Pima County*  
110 West Congress  
Tucson, Arizona 85701

RESP  
2019-098

Howard Fell, Judge Pro Tem

April P. Elliot  
Disciplinary Counsel  
Arizona Commission on Judicial Conduct  
1501 W. Washington St., Suite #229  
Phoenix, AZ 85007

Dear Ms. Elliott,

In response to your email request and our conversation, enclosed is a copy of the transcript of the relevant portion of the DTAP review hearing conducted on March 11, 2019, at which time I made the inappropriate comment with which you are familiar.

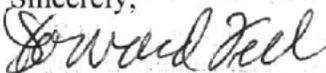
In my self-report letter to the Commission regarding the incident, I indicated that it was my intention to apologize to the participant at the next review hearing. Because of disciplinary action taken by Judge Bryson, Presiding Judge, I did not have the opportunity to do so. I was immediately removed from presiding over the DTAP Program and I had no further contact with the DTAP participant(s). Additionally, I was suspended from employment for three weeks without pay and required to complete a four-hour sensitivity training course, both of which have since been completed.

All that has transpired, the realization of the impropriety of my comment to the participant, the disciplinary action, the completed training, the humiliation and embarrassment experienced when facing my colleagues on the bench and within the legal community, has made a lasting impression on me.

Needless to say, I appreciate the wrongfulness of my behavior and assure the Commission that such an incident will never occur in the future.

If you or the Commission members need any further information, please let me know.

Sincerely,



Howard Fell