

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-370

Judge:

Complainant:

ORDER

The Complainant alleged a superior court judge issued an improper *ex parte* minute entry which contradicted a prior order.

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.

After review, the Commission found no evidence of any *ex parte* communication, but rather, that the judge failed to diligently review the minute entry prior to signing it. While this was improper under Rules 1.2 and 2.5(A) of the Code of Judicial Conduct, the Scope Section of the Code provides that not every transgression will result in the imposition of discipline. The Commission decided, after considering all the facts and circumstances, to dismiss the Complaint pursuant to Commission Rules 16(b) and 23(a), but to issue a warning letter to the judicial officer reminding her to diligently review all minute entries and orders prior to signing them to ensure accuracy.

Commission member Michael J. Brown did not participate in the consideration of this matter.

Dated: May 19, 2020

FOR THE COMMISSION

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

Copies of this order were distributed to all appropriate persons on May 19, 2020.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2019-370

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.

On _____ the parties to the case of _____ Coconino
Superior Court. met and stipulated to the entry of an Order committing the accused to the _____ County
program. A transcript of said hearing is filed herewith. Said Order was signed
by the Court and filed with the Clerk of the Court on _____ Said Order, a copy of which is filed
herewith, does not authorize the forcible administration of psychoactive medications. Neither party sought
such an Order, nor was evidence presented on said issue, nor did the Court make the required findings
pursuant to Sell v. US, 539 U.S. 166 (2003). On _____ the Court issued a minute entry,
which was received by the _____ authorizing involuntary
treatment. A copy of said minute entry is also filed herewith. _____ was transported to the program
on _____ and was subjected to involuntary treatment which was terminated after she was
admitted to the _____ Emergency room _____ times in _____ due to serious complications from
her treatment. We did not review that minute entry, as we assumed it was simply a record of what
occurred in court on the _____. The court at no time indicated that it was going to issue such an Order, and
of course, the issuance of such an Order without having a hearing and making the requisite findings is
prohibited by the United States constitution as the Sell case holds. We did not realize that
had been subject to involuntary treatment until we received a copy of the report from the _____ County
Program on _____

The court's actions in issuing a sua sponte ex parte order in violation of applicable law, and in violation of a constitutional right of the accused, violate several canons of judicial ethics, and we believe that Rule 8.3 of the Arizona Rules of Professional Responsibility mandate this report.

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF

3)
4)
5)
6)
7)
8)
9)
Plaintiff,)
vs.)
Defendant.)
_____)

10 Arizona

11
12 BEFORE THE HONORABLE
13 SUPERIOR COURT JUDGE

14
15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 COMPETENCY HEARING

17
18 **ORIGINAL**

19
20
21 **REPORTED BY:**

22 Certified Court Reporter
23
24
25

A P P E A R A N C E S

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FOR THE STATE:

BY:

FOR THE DEFENDANT:

BY:

Attorneys for the Defendant

P R O C E E D I N G S

(Whereupon, the following proceedings commenced in open court:)

THE COURT: This is the time set for a competency hearing in _____ versus _____

Counsel, would you like to make your appearances?

: Good afternoon, Your Honor.

for the State.

: Good afternoon, Judge.

_____ on behalf of _____ who is in custody and present. And to my left is _____

THE COURT: Good afternoon, everyone.

So the Court has for the record, read and considered the evaluation prepared by _____

And that Rule 11 Competency Evaluation was prepared on _____ of this year. And in her evaluation, she does state that the defendant is not competent but restorable within the statutory timeline.

And then I did go back earlier, a little while ago, earlier today, and I went back and read the evaluation prepared by _____

_____ prepared a Rule 11 Competency Evaluation of the defendant on -- date of evaluation was _____ of this year. And he also opined _____

1 in his evaluation that he believed that the defendant was
2 incompetent to stand trial on the date he examined her,
3 but he did believe she was restorable. And I have also
4 received a Notice of Lodging with a proposed order for
5 the commitment of the defendant for competency
6 restoration to the

7
8 Well, first of all, what's counsel's position on
9 the Court basing its decision on their evaluations I just
10 referred to? And anything else you want to put on the
11 record.

12 : Judge, the State would
13 stipulate to the findings in those reports, and we
14 would ask the Court to follow those suggestions and
15 recommendations. And the State and, I believe, the
16 Defense are asking the same thing today, which is to just
17 have the defendant sent to the

18 Thank you.

19 THE COURT:

20 : We agree, Judge. We would like
21 to stipulate to the findings of of those reports.
22 We're of the position that of those doctors share
23 the position that our client is incompetent but
24 restorable.

25 So we did draft the order that was provided to

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**