

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-040

Judge:

Complainant:

ORDER

May 21, 2020

The Complainant alleged a superior court judge pro tem improperly closed a hearing to the public without explaining the reasons for the closure.

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 does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. 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 Commission Rules 16(a) and 23(a).

Commission member Colleen E. Concannon did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on May 21, 2020.

20-040

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.

BACKGROUND

I ask the Commission on Judicial Conduct to review the circumstances in which Pro Tempore Judge _____ of the _____ County Court closed the courtroom in a high-profile Order of Protecting hearing she conducted on behalf of _____ County r Court on _____

As a journalist, my issue is not whether Judge _____ has authority to close the courtroom. However, the judiciary's past practice -particularly here in _____ County- of invoking such authority without regard to transparency is why it's imperative for judges to explain to the public why a proceeding will be conducted outside public view, even if state law or court rules mandate such closure.

CONCERN

The _____ OOP hearing was prompted by a petition filed by a candidate for _____ Court judge against his ex-wife, who is also an attorney. It involves a decade-long, never-ending family court dispute (mostly related to custody of a son) that has been packed with allegations by both parties of personal and professional misconduct by the other.

Notwithstanding concerns for the child's best interest, the parties' actions are particularly relevant at this time because of the father's candidacy and the fact that the trial judge in the underlying case recently filed a State Bar ethics complaint against the mother.

Judge _____ knew the hearing was of public interest because she conducted a "media" hearing the day before (Exhibit A) about whether photography and audio/video recording would be allowed in the courtroom on _____. Although she denied that request, her order did not reference any intention nor decision to close the proceeding.

On _____ I entered the court just as _____ members of the public were exiting. They told me a court security officer ordered them out of the courtroom "at the judge's order" but all claimed Judge herself never said why they had to leave. Another court security officer advised that I was not allowed into the courtroom, which was now locked.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

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 have no personal knowledge of what was said (or by whom) inside the courtroom before my arrival. However, upon belief, Judge _____ engaged in a phone conversation with Court Security Officer _____ via the officer's cell phone, while members of the public were inside the courtroom. Immediately after the call, Officer _____ cleared the courtroom.

No one knows what the Judge _____ said to the security officer, nor whether the officer properly acted on the judge's directive.

After reviewing the Minute Entry of the OOP hearing (Exhibit B), as well as speaking with court personnel and those who attempted to observe the hearing, it appears Judge _____ did not issue an on-the-record order closing the courtroom until after the public was forced out.

Further, the public was not told at the time why Judge _____ closed the courtroom – was it in accordance to a specific court rule under which she had no discretion? Or did she believe a “best interest” condition applied to justify the closure? Nor does the Minute Entry address the reason for the closure.

CLOSING

Again, I do not challenge Judge _____ authority to order the courtroom closed. However, the judge knew the matter was high-profile, had garnered media attention, and that members of the public were present. She should have issued her order on the record while the public was present. She also should have ensured the Minute Entry reflected why the public was forced to leave.

Respectfully,

IN THE COURT OF THE STATE OF ARIZONA, In and for the County of

JUDGE: HONORABLE , Clerk of the Court
DIVISION: by:
COURT REPORTER:
RECORDING TYPE: Digital Recording
INTERPRETER: ----- HEARING DATE:

Table with 2 columns: Case details (Plaintiff, Defendant) and Case information (CASE NO, MINUTE ENTRY, HEARING START/END TIME)

Plaintiff: , appearing telephonically and by . who is appearing telephonically
Defendant: present in Pro Per
. GAL for the minor child who is appearing telephonically
who is appearing telephonically

This matter came before the Court this date for a Hearing: Motion for Media Coverage/Video Request.
presented his position in support of his motion for media coverage/video request for tomorrow's hearing.
The Court inquired of
presented the position of on behalf of the Plaintiff opposing the motion for media coverage/video request.
presented her position on the motion for media coverage/video request.
presented her position on the motion.

Discussion was held between the parties regarding Rule 7 and Rule 122 of the Arizona Rules of Procedure on Protective Orders.

IT IS ORDERED DENYING the Motion for Media Coverage/Video Request.

and orally motioned for a stay for tomorrow's proceeding so that a special action could be filed.
presented her position in support for the motion for stay.

Date: **Case No.:**
Minute Entry – Hearing: Motion for Media Coverage/Video Request

presented his position in support of the motion for stay.

presented the position on behalf of the Plaintiff opposing the motion for stay.

presented her position.

IT IS ORDERED DENYING the Motion for Stay for tomorrow’s proceedings.

IT IS FURTHER ORDERED that tomorrow’s proceeding shall limit the events that happened on _____ ,

Upon inquiry of _____ , **IT IS ORDERED** that _____ shall provide any disclosure regarding tomorrow’s proceeding to _____ no later than _____ . this date.

Proceedings concluded.

xc: emailed (√)/ Distributed(x)/mailed(x)/ by: _____ bg _____ date: _____

-
-
-
-
-
-

(e)

IN THE COURT OF THE STATE OF ARIZONA, In and for the County of

JUDGE: HONORABLE , Clerk of the Court
DIVISION: by:
COURT REPORTER
RECORDING TYPE:
INTERPRETER: ----- HEARING DATE:

Table with 2 columns: Case details (Plaintiff, Defendant) and Case information (CASE NO, MINUTE ENTRY, HEARING ON A PETITION FOR ORDER OF PROTECTION, HEARING START TIME, HEARING END TIME)

Plaintiff: present in person and by
Defendant: present in Pro Per

Prior to commencement of proceedings, Plaintiff's exhibits 1-20 excluding exhibit 15 and Defendant's exhibits A-F were marked for identification purposes.

This matter came before the Court for a hearing on a Petition for an Order of Protection.

The Court noted that before the proceeding began, the bailiff spoke to the Court regarding individuals that were present in the courtroom. They are not a party to this matter.

Discussion was held between the parties regarding this issue.

The individuals that were in the courtroom were excused but could remain in the lobby if they wished to do so.

called as a witness, who, being previously sworn, was direct examined. During this testimony, Plaintiff's exhibits 16, 17, 18, 19, and 20 were admitted into evidence.

At the Court called a brief recess to allow the Court to view the videos regarding Plaintiff's exhibits 18 and 19.

At ., the Court went back on the record with all the previous parties present.

**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.**