

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 20-081

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Judge:

Complainants:

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**ORDER**

September 15, 2020

The Complainants alleged a pro tem justice of the peace engaged in ex parte communication.

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 Commission Rules 16(a) and 23(a).

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

Copies of this order were distributed to all appropriate persons on September 15, 2020.

**2020-081**

**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.

Complainants represent \_\_\_\_\_ in the \_\_\_\_\_ Justice Court case  
Counsel was retained to file an appeal on \_\_\_\_\_ behalf following a conviction by jury trial in his  
matter. Upon review of the record, counsel discovered that Judge \_\_\_\_\_ held an ex parte hearing with  
attorney for the State, \_\_\_\_\_ regarding several substantive matters without \_\_\_\_\_ or his  
trial counsel, \_\_\_\_\_ present. Pursuant to our ethical obligation under In Re Himmel, this complaint  
follows.

Complainants prepared and filed an appellate brief in this matter, alleging a due process violation and  
ethical violations for the ex parte hearing. The following was asserted in the appellate brief and  
summarizes the conduct that occurred:

Prior to the start of trial on \_\_\_\_\_ counsel for the State discussed preliminary jury instructions  
without \_\_\_\_\_ or defense counsel present. At \_\_\_\_\_ Judge \_\_\_\_\_ called the case on the record  
and noted that defense counsel was running late. Two attorneys for the State, \_\_\_\_\_ and  
\_\_\_\_\_ announced their presence. Without any attempt to contact defense counsel or  
the State immediately requested to make argument about the following substantive matters: 1)  
admissibility of a 911 call; 2) defense's motion in limine regarding breath test results; 3) preclusion of  
medical records noticed by defense purported to support a defense; 4) preclusion and limitation of the  
testimony provided by defense witness, \_\_\_\_\_ wife; and 5) preliminary jury instructions. Judge  
issued a ruling on several of the matters without hearing any argument from defense counsel. When  
defense counsel arrived, he requested to address the issues. Judge \_\_\_\_\_ advised counsel that they had  
already been addressed. Defense counsel attempted to provide further argument and renew his  
objection for the record, but Judge \_\_\_\_\_ affirmed the ruling from the ex parte argument.

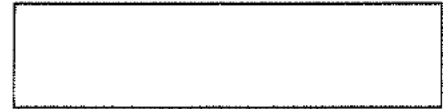
During testimony, defense counsel objected to admission of State's exhibits, as he originally moved to  
suppress. Judge \_\_\_\_\_ overruled the objection and admitted both exhibits, but allowed the State to clarify  
the testimony for the record. During direct examination of the defendant, \_\_\_\_\_ attempted to  
introduce a medical record from defendant's doctor in another country, but the State objected because  
Judge \_\_\_\_\_ had already ruled it inadmissible during the ex parte argument. Judge \_\_\_\_\_ repeated the ruling.

Judge \_\_\_\_\_ did not inform defense counsel that the State's motion had been argued and ruled on until  
defense counsel himself asked to address the outstanding issues. To this, Judge \_\_\_\_\_ advised counsel  
that the matters were already heard because he was late. Counsel explained that he was mistaken on the  
time, believing court would start at 8:30 a.m., rather than 8:00 a.m. The ex parte argument began at 8:20  
a.m., minutes before defense counsel arrived. After the argument – not before – Judge \_\_\_\_\_ asked a  
bailiff to contact counsel ' s office to determine his whereabouts. The bailiff stated that \_\_\_\_\_ was  
present in the court lobby, but Judge \_\_\_\_\_ directed them not to bring him into the courtroom. After  
counsel arrived and attempted to address his motion in limine, Judge \_\_\_\_\_ stated that his motion was  
denied but he could raise the objection later if he wanted to. Counsel attempted to add argument to  
preserve the record, but Judge \_\_\_\_\_ reiterated, " \_\_\_\_\_ "

**CONFIDENTIAL**

Arizona Commission on Judicial Conduct  
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Phoenix, Arizona 85007

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As detailed in our appellate memorandum, the following arguments and rulings were made during the ex parte proceeding:

First, the State addressed defense counsel's motion in limine requesting to suppress breath test results. The State provided a copy of a statute to the court and argued that the results should be admissible. Judge \_\_\_\_\_ ruled in favor of the State and denied defense's motion ex parte.

Next, the State requested to preclude an exhibit consisting of \_\_\_\_\_ medical records that defense counsel intended to introduce to attack the validity of the breath test. The State provided argument on grounds of relevance, hearsay, and self-authentication of the document, which came from a doctor in \_\_\_\_\_ The State also requested limited testimony from \_\_\_\_\_ wife regarding the medical records so that they would not be admissible in any way. The crux of the defense was based on \_\_\_\_\_ medical condition and how it may affect a breath test result, but defense was not permitted to present any argument in support of their purported exhibits and testimony. Again, Judge \_\_\_\_\_ ruled in favor of the State without response from defense.

Finally, the State argued to deny \_\_\_\_\_ wife spousal privilege if she chose to testify. Counsel for the State advised she was " \_\_\_\_\_ " but then proceeded to make argument. Judge \_\_\_\_\_ reserved ruling until the witness actually tried to assert spousal privilege, which did not occur during trial.

Complainant counsel is able to provide to the Commission a copy of the transcript of the proceedings, the For The Record audio from the proceedings, and a copy of our filed Appellate Memorandum.