

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-226

Judge:

Complainant:

ORDER

September 15, 2020

A pro tem superior court judge self-reported a violation of Rule 2.9 of the Code.

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.

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

Sent via email

Re: Self-Report of Violation of Rule 2.9, Arizona Code of Judicial Conduct

To the Arizona Commission on Judicial Conduct:

I am self-reporting a violation of 2.9 of the Arizona Code of Judicial Conduct. I unintentionally had *ex parte* communication in a _____ County Superior Court Case

On _____, I conducted a detained advisory hearing in the case. Attorney _____ appeared on behalf of the _____ later, on _____ I received an email from the _____ assigned on the case questioning the status of _____ as the _____ attorney. I did see that the email was also sent to _____ people, _____ was the county attorney assigned to the case. On _____ I responded to the email by hitting "reply all," wanting to include all recipients on the email. I advised that the question should be directed to _____ at the _____ County Public Defender's Office as she is the public defender who oversees _____ matters and is responsible for _____ representation. I also stated in my response that the issue would need to be raised by _____ or _____ the public defender appearing in most _____ matters in my court and referenced in the email, so that I could address it in open court.

I did not realize the email string did not include the attorney who had appeared representing the _____ at the hearing on _____. The omission of _____ from the email string made it *ex parte* communication.

I did not recognize this error until the issue was brought to my attention yesterday, Upon review of the email, I noticed the _____ person copied on the email was a second county attorney and not the _____ attorney. In short, the probation officer sent the email to myself and _____ county attorneys and not to the assigned county attorney and the _____ attorney.

After being alerted to the issue, I spoke with the presiding _____ judge about my error. This morning I had the email attached to a Notice and made part of the case, disclosing it to all parties. I am making this self-report to the Judicial Commission to fulfill my obligation to be open and transparent with the Commission on any violations committed by me to the Arizona Code of Judicial Conduct.

I assure the commission this communication on my part was inadvertent. I have attached the minute entry from the hearing on _____ a Corrected Minute Entry dated _____ (unrelated to this issue), and the email containing the *ex parte* communication to this letter for your review. It is clear from my communication that I directed the question posed by the _____ probation officer to the public defender's office and stated the issue needed to be brought before the court, in open court, through legal counsel. In no way did I intend to have one sided, *ex parte*, communication to exclude the _____ attorney.

I take full responsibility for this oversight and will ensure such communication does not occur again.

Sincerely

The Honorable

Attachments:

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF

In the Matter of

)
)
)
) Div.
) Hon.
) Date

HEARING [Minute Entry: JV General Hearing]

REVIEW HRG [Minute Entry: Review Hearing] RE: _____

Petition filed _____

Victim case Yes No

APPEARANCES:

START TIME: _____

END TIME: _____

[] is not present [] in detention * telephonic

[] The offense(s) is/are designated a misdemeanor. []

[] On motion of IT IS ORDERED dismissing the Petition filed

[] with [] without prejudice []

IT IS ORDERED:

NOTE: Proceedings are audio recorded via For the Record ("F.T.R.") on compact disc and are not recorded by a court reporter. Any party may request the presence of a court reporter by contacting the Court at _____ not less than forty-eight (48) hours prior to the scheduled proceeding.

[X]	Address _____	Interpreter _____
[X]	Other _____	
[X]	[] Warrants (e) + OnBase	
[]	[] e) []	[] w/file TOTAL _____
[]	Dispo Screen Complete []	Hearing Review

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF

DIVISION

HON.

By:

CASE NO.

Date:

TITLE:

In the Matter of:

Corrected Minute Entry

The Minute Entry dated _____ is amended to reflect the following:

IT IS ORDERED: A Psychosexual Evaluation shall be completed and provided to _____ and to distribute to the appropriate parties.

for redaction

The balance of Minute Entry remains unchanged.

cc: Division

Atty:

Amendment

From:
Sent:
To:
Cc:
Subject:

I do not believe [redacted] can retain an attorney for [redacted] could do that. I would not distribute the evaluation to [redacted] until this issue is resolved. I would encourage the [redacted] to contact [redacted] at the [redacted] office and speak with her about [redacted] assignment as the [redacted] office is responsible for representation and [redacted] would be the best person to handle the issue. This issue will need to be raised by legal counsel, either by [redacted] or I [redacted] so I can address it in open court.

From:
Sent:
To:
Cc:
Subject:
Importance:

After [redacted] hearing yesterday, [redacted] asked me why [redacted] wasn't attorney. I let them know that [redacted] acted as his attorney and appeared telephonically. [redacted] were adamant that they didn't hire an attorney. His counselor, [redacted] with [redacted] reported that [redacted] told her that his [redacted] hired him an attorney. [redacted] are not happy and wanted to make it clear that [redacted] do not have any [redacted] rights and they questioned how they were able to make this decision

I spoke with the [redacted] this morning and [redacted] let me know that he called [redacted] (his [redacted]) and asked them about the attorney. The [redacted] would not discuss it with him. [redacted] called and spoke with [redacted] who told him that they do not have a say in him representing [redacted]. He added that they are not paying for it so what are concerned about it. He also told [redacted] that they have a conflict of interest and cannot represent [redacted] as well as the victim in this case, which is [redacted] said he would not withdraw from the case and that this could be addressed at the case management on [redacted]

I have never had this happen before and wanted to make you both aware of the situation. I received the psychological evaluation from [redacted] and am concerned about releasing it to an attorney that [redacted] didn't hire. Do you have any recommendations on how to handle this situation and can an attorney be hired without the [redacted]

**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.**