

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-347

Judge:

Complainant:

ORDER

May 11, 2021

The Complainant alleged a superior court judge was biased against her, had improperly threatened to remove her as court-appointed counsel, and had failed to appropriately supervise her staff.

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 Joseph C. Kreamer did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on May 11, 2021.

Phone: _____

Email: _____

CONFIDENTIAL

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

To Whom it May Concern,

My complaints and concerns with Judge _____ are numerous and cumulative. The crux of my complaint is that she has used her position as a Judge to retaliate and engage in a very passive aggressive and not so thinly veiled pattern of harassment. The proper thing to do, under the rules cited below, would have been to recuse herself from my cases based on her own personal biases towards me. Those biases are in, part, based on a previous heated and ugly exchange wherein she referred to me as a "_____ " and made other disparaging accusations about what kind of lawyer I am. While that was in _____ of _____, I still would have filed a 10.2 Notice of Change of Judge if that was an available option, but it is not. Given a Judge is presumed to be fair and impartial and she never recused herself, I could only hope the events of _____ were behind us with no ill will, but clearly I was wrong.

In _____ on _____ I filed a request asking for certain trial practices to be put in place to ensure a safe trial during this on going pandemic, That request is attached. The request was sent to the Presiding Judge as well as Counsel for the _____ and _____ Court. If they said no or denied the request, so be it, but I wanted a record of the request. Judge _____ responded with a minute entry that really served to launch a very personal attack and took the opportunity to comment on and berate me for a previously requested (and granted) continuance. Given the

_____ the spike in Covid numbers, as reported by the Arizona Department of Health Services, and an _____ publication from the Center for Disease Control, all presented to the Court and filed with my request, I believed the request was reasonable. Many of my colleagues shared in the sentiment and actually expressed appreciation that someone was talking about these issues, as they relate to the Defense Bar. While we have heard of numerous meetings with 'stakeholders,' none of us who are in the trenches everyday have been asked to

participate in these " " meetings. Instead of simply addressing and/or denying my requests, Judge issued a minute entry that was, in many respects, misleading or inaccurate. Ultimately, she created a false record and it wasn't the first or only time.

Judge attempted to claim that she offered me the opportunity to withdraw. That is not accurate. Judge actually threatened she would replace me as counsel, thereby interfering with my livelihood, the Defendant's sixth amendment right to counsel, including my relationship with him, and engage in what amounts to tortuous interference with contract. She further threatened to call the
the

The request for safe practices was not a request for a continuance. In fact, the request advised that the parties anticipated being ready to start trial on our scheduled trial date of Judge in launching her attack, made no mention of the five other continuances in NOT sought by the Defense nor was there ever the suggestion that the State's lawyer would be replaced with another one from its office when the State had trial conflicts. Judge threat was levied only against me. My request in when we were getting moving again with trial prep also included a caveat that the 60 days being requested may not be enough, depending on all the moving parts having to do with availability, witnesses, Covid numbers, trial conflicts and anything associated with getting cases moving again that had been stalled in the pipeline. Moreover, what Judge didn't know (because I didn't think it was appropriate to share my confidential work product with her) is that under the right circumstances and at the right time, a resolution short of trial could possibly be reached with the client who had trust issues based on other experiences with other lawyers and was digging his heels in for trial because of it. In the event the case didn't resolve, I was preparing for trial and most of the preparation was done prior to the Covid shutdown.

On I first received yet another plea that I was told was coming but didn't actually have yet. Judge with only the Defendant and I in the courtroom basically barked out a " " in an attempt to advise the Defendant because she thought I wasn't communicating with him. The " " was regarding a plea that I JUST received, and took place over a speaker in the courtroom with only the Defendant and I standing there, reminiscent of the " " scene from the Wizard of Oz. This setting was supposed to be an in person conference, but in person only means in person for the Defense. The State was allowed to appear remotely and Judge appeared by audio that day as well. She did have staff present. All that served was to further erode this client's trust in the system and put this event in the category of things that do not promote confidence in the judiciary. Judge position was

to admonish me claiming I needed to communicate with my client more when the reality was I had nothing new to communicate to him until that day. At no point during her threats to replace me did the Defendant ever ask for a new lawyer, ask to have me removed nor was he asked to waive time indefinitely, as her minute entry suggests. I requested only 30-45 days because of the risk, but also with the hope that I could mitigate my personal and specific risk that I had only recently learned of and which could be ascertained and evaluated, with additional blood work, in another 30-45 days. The [redacted] contains no requirement that, before liberally granting the ordered continuances, the person seeking one is required to disclose specific and private health issues.

I filed a reply to Judge [redacted] minute entry that was intended to correct or complete the record she laid out in that minute entry. On [redacted] Judge [redacted] issued an Order striking the pleading and removing it from the record. My truth to her power was not well received. With no legal authority, she sought to strike a filing, that she labeled a " [redacted] " and silence Defense Counsel. I refiled it the document as a " [redacted] " noting however that Arizona case law has made it clear, the caption or title is not controlling. See Eggerth v. Forselius, 846 Ariz 2 Ariz 256 (1957) and White V. Davidson 46 Ariz 1 (1935). Moreover, Rule 16 of the Rules of Criminal Procedure DOES permit responsive pleadings. I filed a request of [redacted] and with the Court, Judge [redacted] answered, with a false record, and I replied attempting to correct the record. These documents are attached.

At an earlier proceeding in [redacted] case, she turned the narrative, with NO suggestion from the Defendant that there was insufficient communication, into whether I was communicating enough with him. I ultimately filed a memo re: settlement negotiations as it was clear to she was attempting to shift the narrative. Her attempts to micromanage and insert herself into what I was doing or what she thought I wasn't doing almost derailed any hopes that the case might actually resolve short of trial. The case did resolve, on the eve of trial, with the very same plea that was the subject of her [redacted] " in [redacted] and is now concluded.

Her handling of [redacted] case, threats to remove me, and creating a false record, I believe, all violated the following rules contained within the Judicial Canons:

Rule 1.2 Promoting confidence in the judiciary. Her insistence on trying to take the role of advising the defendant of a plea offer that I had only just received, while appearing by an audio speaker box only, did nothing to promote confidence in the judiciary. In fact, it had the opposite effect. This is evidenced by the fact that he took the very same plea once we left her courtroom.

Rule 2.2 Impartiality and Fairness. In impartial judge wouldn't issue the

minute entry suggesting and creating the false record that she did. An impartial judge, in deciding to outline the chronology of the delay would have included the five other continuances sought by the state or on the court's own motion. An impartial judge wouldn't threaten to *ME*, simply because she thought she had the power. A fair judge wouldn't seek to remove *ME*, citing delay when appointing a new lawyer would take even longer to get the case to trial or resolution, than I was asking for. A fair judge wouldn't admonish *ME* for asking for nothing that the [redacted] hadn't already specifically authorized. Judge [redacted] actions are clearly personal to me and this is about her bias and inability to be impartial towards me.

Rule 2.3 Bias and Prejudice. Again, Judge [redacted] actions in launching a personal attack on me in her [redacted] show her bias and prejudice or more realistically, her disdain, for me. Only a biased or prejudiced judge would seek to remove *ME* for asking for a 30-45 continuance that has already been ordered by the [redacted]

Rule 2.6 Ensuring the Right to Be Heard. Please reference the minute entry striking my reply. Judge [redacted] claimed there was no procedural mechanism to file this " [redacted] " As I stated above, Rule 16 of the Arizona Rules of Criminal Procedure allow for responsive pleadings, which I believe to be controlling, given the false record created by Judge [redacted] To the extent there is any argument that that is not what the rules contemplate, the case law cited above addresses this.

Judge [redacted] made the same threat to remove me as Counsel in [redacted] on [redacted] with an uncontested motion to continue for a Defendant who is out of custody and in need of translation services. My request was pursuant to the [redacted] Administrative Order issued on [redacted] In attempting to turn the narrative into one of whether I was " [redacted] " Judge [redacted] again threatened that she would have me removed from the case. The Defendant was not even there, as her presence was waived. I replied, *at great length*, that the issue is not preparedness but one of safety for Defense Counsel, to include myself, and the courtroom logistics that do not allow for the same safety measures provided to or for Court personnel or the jury. Nonetheless her minute entry indicated that the continuance was for trial preparation. This was another attempt on her part to shift the focus as to whether I was prepared or could prepare and, again, created another false record. I let that one go at that time, in an attempt to " [redacted] " And there can be no doubt that the minute entry was issued as intended, it was not simply a boilerplate minute entry or something she wouldn't have realized was incorrect. We know this because immediately after that hearing, I received an email from a lawyer at the [redacted] who was on the line and heard the entire exchange. It did not go unnoticed, at all, by this lawyer, who commented on what was said during the virtual hearing. The motion, the minute entry and email are also all [redacted]

attached. The identifying portion of that email is redacted so as not to create problems for or retaliation against that lawyer. However, note the date and time.

The same Judicial Canons and Rules cited above have been violated in these Ramyar proceedings as well.

Frankly, I believe there's a pattern of retaliation from Judge [redacted] for two separate reasons. The first is more recent. Earlier this summer, Judge [redacted] directed her staff send emails to the lawyers appearing before her, requiring those lawyers to file motions to continue, with a waiver of time. None of the lawyers were actually moving to continue their cases. There was no reason to because this was during the time the [redacted] had suspended jury trials. Other divisions and judges were continuing their cases on their own motion, citing the order or directive from the [redacted] or Judge [redacted]. Judge [redacted] division sent emails *telling* the lawyers to file motions to continue and *telling* them waive time. Those emails are also attached. At first I just tried to ignore it or suggest that since other divisions were doing this sua sponte, wouldn't that be the preferred practice? I REALLY didn't want to get into an argument over it. I was very uncomfortable as I thought her request was wrong on every level and inappropriate, but I feared that if I brought it up, it would be " " with her. Eventually, I sent back a very deferential email with my very real fear that if I disagreed with Judge [redacted] practice, she with would be take this as a challenge to her authority and she would take every chance she had to take a stab at me. I was not wrong. Counsel further inquired of [redacted] as to their position on this given the contract for indigent services specifically excludes motions to continue as compensable time. I was lead to believe, shortly thereafter, that she had been spoken to about it and the practice was discontinued. Those emails are attached.

In another, earlier, instance the request to file these motions to continue was completely disingenuous. When I responded that we just keep the dates in place and address scheduling on the record, only then did Judge [redacted] staff advise that she wasn't available for the current setting and that she only worked or was available certain days that week. I was told that if I wanted to remain in control of my case, I needed to file the motion. I felt that this was Judge [redacted] using her leverage or power to get me to do her work and if I didn't, there would be consequences.

I believe that this issue of " " whether it was appropriate for Judge [redacted] to tell us to file motions waiving time was the most recent of her issues, with me, causing her to retaliate.

The other issue and instance is admittedly [redacted] ago, but it is still discussed by people who were present and still remains one of my concerns with this Judge. Ultimately, and even what is troubling is that she hasn't saw fit to recuse herself from my cases. I can't file a 10.2 right now, because, obviously the rule is suspended.

**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.**