

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 20-350

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Judge:

Complainant:

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**ORDER**

March 24, 2021

The Complainant alleged a judge made a false finding against him.

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 Barbara Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on March 24, 2021.

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

20-350

**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.

Judges involved: \_\_\_\_\_ and \_\_\_\_\_

**TO: THE COMMISSION ON JUDICIAL CONDUCT**

**RE: COMPLAINT OF  
RESPONDENT, AGAINST JUDGE  
JUDGE , AND JUDGE**

Pursuant to Rule 7 of the Arizona Rules of the Commission on Judicial

Misconduct, I, , Respondent in the matter of

hereby makes a complaint against the aforementioned individuals for violation of the Arizona Rules of Judicial Conduct 2.2, 2.3 and 2.6. The following are facts which support that complaint.

A member consisting of  
Judge, and  
, in made findings that were not part of any

record, and that were later overturned, on appeal, by the Arizona

Respondent alleges that these actions constitute a violation of the Arizona Rules of Judicial Conduct, specifically Rules 2.2, 2.3 and 2.6. As a sanction for these violations,

Respondent requests that none of these individuals sit in judgment of the

Respondent in any other proceeding in the future. To be clear, the issue is not that the

Arizona Court overturned multiple findings of the , as that by itself

would not justify a judicial complaint. However, in this matter, the ignored the

clear meaning of the terms “ ” and “ ” to make a finding on

evidence that appeared nowhere in the record, and in fact does not exist. In

Respondent's opinion, this conduct violates the aforementioned rules governing the conduct of the [redacted] in this matter.

Furthermore, and perhaps even more concerning, the [redacted] made a finding against the Respondent on a claim that was never made in the Complaint, nor argued by the [redacted]. This is a material abuse of discretion and goes to the core of what is required by an unbiased judicial panel.

**1. Exhibit One – [redacted] Complaint**

The [redacted] filed a Complaint on [redacted]. (Copy attached as Exhibit [redacted]). In the Complaint the following accusation was set forth:

**Misconduct in pre-trial litigation in [redacted] case**

**Respondent's false statements pertaining to Motion to Reconsider Severance**

1. Respondent argued to sever [redacted] and [redacted] of the indictment. After the Court denied Counsel's request to sever the counts, Respondent filed a Motion to Reconsider Severance.

Complainant alleged that Respondent made [redacted] false statements in pleadings and oral argument with respect to the request for reconsideration. Below is the statement that implicates an ethical rule violation, the other [redacted] statements are included in the [redacted] " [redacted] " section in paragraph [redacted].

- a. Respondent said during oral argument on [redacted], that he did not mention [redacted] **in his original motion.** (Emphasis added).
- b. Respondent stated on page [redacted] of his motion for reconsideration re: severance that the medical examiner and [redacted] " [redacted] , [redacted] , [redacted] ..."
- c. Respondent told the [redacted] that Complainant did not include enough context for him to rebut this allegation.

d. reviewed the and agrees with Complainant that Respondent made false statements. Respondent stated that the prosecutors have not listed as a witness and therefore should not be referencing in support of their argument against severance. Respondent went on to say that "

\_\_\_\_\_," (Emphasis added). Moments later, Respondent again states that he did not believe that the Court should consider the interview of \_\_\_\_\_, explaining "

**" While Respondent's main argument was that the Motion to Sever testimony and evidence came from \_\_\_\_\_, not \_\_\_\_\_, Respondent repeatedly states that he was not the first to refer to \_\_\_\_\_. However, a review of his motion reveals this to be inaccurate, which is a violation of ER 1.3, 3.1, and 8.4(c). (Emphasis added).**

Clearly the allegation refers to motion practice and which side, the prosecution or the defense, first mentioned \_\_\_\_\_ in a motion. The other alleged false statements, which even the \_\_\_\_\_ rejected as non-credible allegations, are listed in paragraph \_\_\_\_\_ of Exhibit \_\_\_\_\_. The argument being made in Court by the Respondent on \_\_\_\_\_ involved the motion for reconsideration. However, the \_\_\_\_\_ not only made a finding based on a clearly erroneous claim about what constitutes an original/initial motion, but furthermore, made a finding based on a nonexistent allegation in the \_\_\_\_\_ Complaint.

- 2. Exhibit – Respondent’s Motion to Sever filed on
- 3. Exhibit – State’s Response to Motion to Dismiss filed on
- 4. Exhibit – State’s Response to Motion to Sever filed on
- 5. Exhibit – Respondent’s Motion to Reconsider filed on
- 6. Exhibit – Transcript of hearing.

On , Respondent filed a Motion to Sever Counts , and  
 (Exhibit ) The motion made no reference to . The State responded on  
 , with a Response to a Motion to Dismiss (Exhibit ) which discussed  
 (Pg. , “ , ‘ ,  
 ( )

.” (Emphasis added) and a Response to the Motion to Sever  
 (Exhibit ) which expressly incorporated the Response to Motion to Dismiss by  
 reference. (Exhibit - Pg. )“( )”

(Emphasis in Original) and again on pg. (See Response to Motion to Dismiss).  
 (Emphasis in Original). **The mention of occurred in the State’s**

**responses.** Respondent filed a motion to reconsider the denial of his motion to sever  
 on . (Exhibit ) A hearing was held on . During the  
 hearing, Respondent correctly stated that his original motion, filed on , did

**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.**