

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-017

Judge:

Complainant:

ORDER

February 12, 2024

The Complainant alleged bias and poor demeanor by a superior court judge hearing criminal cases.

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 Regina L. Nassen did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on February 12, 2024.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2022 - 017

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.

Please see the attached complaint, transcripts, and email chain.

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This complaint is in response to the on-bench behavior of Judge County Court. The issues raised call into question his fitness as a judicial official. There are three major aspects of his behavior I wish to raise. First, his bias against me as an individual. Second, his courtroom decorum and demeanor. Third, he ignores the law in ruling against the State in cases I prosecute.

Set-Aside Hearing

The first hearing involved the set-aside of a Defendant's prior convictions. Judge took issue with my cross-examination of the witness and criticized my cross examination on the record. To paraphrase the hearing:

I was cross examining a witness who refused to answer my leading questions, so I said to her " " She responded " I then asked " " She responding affirmatively. I then asked if she could respond to me only with 'yes' or 'no' answers. To which the Judge asked the witness to only answer the questions asked. The Judge then stated that my cross examination was something he had only seen in the movies and he would not permit that kind of cross examination in his courtroom. I do not think my questioning was disrespectful at all, and I did not intend to be disrespectful to the witness or the court. I have seen Judge allow what I would consider much more disrespectful cross-examination in his courtroom.

, State v.

This hearing was a "Status Conference Regarding Settlement Conference" and involved one probation violation case (aggravated assault) and two drug cases (both committed while on probation, and one committed while on pretrial release).¹ Judge was informed that the Drug Court team would not accept the Defendant, as well as some of the facts and procedural history of the cases. Judge was aware that it was my case and stated:

"

"

"

¹ The Defendant had previously violated his probation and been reinstated (including Intensive Probation) numerous times, and violated intensive probation at least three times.

Eventually Judge _____ continued to set the next hearing for a Trial Setting / Change of Plea Hearing, and said “ _____ ”

Judge _____ statements violate Judicial Rule 2.10, making public statements to affect the outcome of a matter pending before the court, by intending that the prosecutor offer a better plea. Here his statements clearly show that he was expecting the state to offer a new plea agreement when he set the case for a new Trial Setting / Change of Plea Hearing and saying “ _____ ” Comment 1 under Rule 2.10 indicates the importance of the independence, integrity, and impartiality of the judiciary. Yet his commentary regarding the State’s plea was made on the record and in front of the defendant. At a minimum, the defendant was told by the judge that the plea was not a good plea.

Judicial Rule 2.8 requires a judge to be dignified and courteous to lawyers and require that other lawyers act in the same way. Here, Judge _____ allowed the defense counsel to claim that the Prosecutor was being unjust and that the Defendant was wrongfully prosecuted on his first case, even though the Defendant pled guilty in that first case. Moreover, Judge _____ joined the defense counsel in attempting to coerce the prosecutor into offering a better plea agreement by stating that the court believed the plea to be excessive and saying that the prosecutor should rethink the plea agreement.

Judicial Rule 2.6 prohibits a judge from coercing any party into the settlement of any case. Once again, Judge _____ told the defendant that the Prosecutor was being unjust, and by saying the plea agreement was “ _____ ” Moreover, Judge _____ teamed up with the defense counsel by attempting to convince the prosecutor to offer a more lenient plea agreement. The judge clearly hoped that his statements would affect the plea offer when he continued the case and said “ _____ ”

_____, State v. _____

This hearing involved the same cases listed above. In this hearing, the Defendant entered the plea agreements and was automatically violated on his Violation of Probation case. I was at this hearing. In the hearing, Judge _____ allowed Defense Counsel to make sarcastic and unnecessary statements about the fairness of the pleas the Defendant entered. Page 9.

At the end of the hearing, while still on the Record, Judge _____ berated me about how I was not doing justice and insinuated that I was doing something unethical. He also brought up comments and the discussions that went on in a settlement conference before another judge. Moreover, these comments served no other purpose than to attempt to demean and humiliate me in front of court staff, other attorneys, and the public. The written record does not capture Judge _____ condescending and angry tone towards me. The court does make _____ recordings, but the court will not make the _____ recordings available to us. I requested a copy

of the recording, but my request was denied. The judges' comments are cited as follows (Page 15):

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Under Rule 2.8, Judge should ensure the proceedings are dignified and courteous, and these proceedings were nothing of the sort. Judge did not reign in the defense counsel, and Judge did not control his own behavior/statements. Judge words and tone were unprofessional and undignified.

Judge personal feelings about me and the job I am doing should not be on the public record. If he has an issue with the job I am doing, he should address it at a side-bar or in-chambers meeting. Not on the record in open court. The legal field is one where reputation matters. Here, Judge made reckless comments that harm my reputation as an attorney and a prosecutor.

 , State v.

This hearing was an aggravation/mitigation hearing that I was not party to. For this hearing, I was sitting next to the prosecutor conducting the hearing while waiting for my case to be called. The prosecutor recommended probation for two Possession of Drugs for Sale cases, where the Defendant had committed the crimes two years prior and he had completely changed his life around while on pretrial release (he had not committed any new crimes, had learned a new trade, and had one or two jobs).

At the end of the hearing, Judge was looking at me when he said, "

**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.**