

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-066

Judge:

Complainant:

ORDER

January 11, 2023

The Complainant alleged improper and erroneous rulings by a superior court judge hearing a criminal case.

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 members Michael J. Brown and Joseph C. Kreamer did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on January 11, 2023.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2022-066

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.

*see enclosed (13-page) COMPLAINT AGAINST A JUDGE

*see enclosed EXHIBITS INDEX (with Exhibits A to L)

SUBMISSION TO THE ARIZONA
COMMISSION ON JUDICIAL CONDUCT
COMPLAINT AGAINST A JUDGE

I, _____, file this Complaint Against a Judge to the Commission on Judicial
Conduct requesting you take appropriate actions against Judge _____ for the
following reasons:
Judge _____ participated in a conspiracy to illegally convict Defendant of _____
(Case No. _____) by illegally overturning a 404(b) Ruling (previously
in Defendant's favor) which allowed perjurious testimony in trial. Also, Judge _____ himself
committed perjury, at both Defendant's trial and sentencing, and illegally sentenced
Defendant to more time than the absolute maximum prescribed by Legislation for _____
showing multiple occurrences of judicial misconduct, bias and prejudice
which warrants review, as argued in the following memorandum of points and
authorities.

DATED this _____

MEMORANDUM OF POINTS AND AUTHORITIES

"A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice." see Rule 2.3(A) of the Arizona Code of Judicial Conduct. In addition "[a] judge shall require lawyers in proceedings before the Court refrain from manifesting bias or prejudice." (Id@ Rule 2.3 (C)). A judge must avoid conduct that may be reasonably perceived as prejudiced or bias. A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Moreover, "[a] Judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially" (Id@ Rule 2.2); see also Canon 2 of the Arizona Code of Judicial Conduct. A judge shall comply with the law, including the Code of Judicial Conduct." (Id@ Rule 1.1) Judicial misconduct occurs when a judge deliberately or knowingly and arbitrarily disregards the legal standards, causing delay and expense. See, <https://definitions.uslegal.com/j/judicial-misconduct/>.

An essential element of fairness is for a judge to be impartial and not to be bias or prejudice towards a defendant. Accordingly, due process requires that a judge possess neither actual nor apparent bias. Rippe v. Baker, 137 S.Ct. 905, 907 (2017). Even if a judges impartiality may be reasonably questioned, section 455 (a) requires recusal. See 28 USC 455(a); see also, Sae Paulo v. Am. Tobacco Co., 535 US 229, 233 (2002)

CLAIM i. Judge participated in a conspiracy to illegally overturn Defendant's favorable 404(b) Ruling, thus aiding co-conspirators to illegally and wrongfully convict Defendant of

Here, Judge participated in a conspiracy (with States Prosecutors and and Trial Defense Attorney, which directly allowed perjurous testimony of State (civilian) Witness at Defendant's trial (with others) by overturning favorable 404(b) Ruling, which allowed co-conspirators to illegally and wrongfully convict Defendant of. The following argument is the basis of this claim.

On, Prosecutor filed (sic) States Notice of Intent to Use Other Acts Evidence. Subsequently, the 404(b) Hearing was conducted on (DAY-1) and on (DAY-2), which concluded the 404(b) Hearing. The Court (Judge

took the case under advisement and on (nearly 4-months later) ruled in favor

of Defendant. Prosecutor attempts to seek "clarification" on different occasions, yet when

told to file a motion, he ignores Judge advisement. For example, on

during a status conference, asks the Court "if the court has maybe a half hour sometime in

the near future for me to brief one issue and clarify the Court's ruling. So we have a very clear

record for trial as to what and what is not admissible," see, Reporter's Transcript of Status

Conference, Dated , attached hereto as EXHIBIT A, at Pg 4, Ln 14-17. Judge states "I

don't know exactly what it is you are going to be asking me... certain specific events... for to

reconsider certain events, I want you to be very specific." (Id at Pg 4, Ln 18-24). responds

"I am concerned about the things that were mainly heard the NIGHT of this alleged

[incident]..." (Id at Pg 5, Ln 8-9) (emphasis added). Judge interjects "what I would ask is that

you WRITE UP what you are seeking from the Court... [exactly] what you want clarified and/or

reconsidered... MAK(ING) IT VERY CLEAR so I know and I can correct it or I can simply try to issue a

ruling." (Id at Pg 5, Ln 14-19) (emphasis added). Judge further states "Of course, I want Ms.

also know what you are asking, so that she can also respond very specifically to that issue and focus on

it." (Id at Pg 5, Ln 22-24). The Court rules to give until to file this "Motion

never files it. About months later, during a

Status Conference (6 weeks prior to trial), states on court record that "I had intended to

ask the Court for a clarification with regards to a 404 ruling. I NEVER FILED THAT... so I'll get

that filed," see Reporter's Transcript of Status Conference, Dated , and attached hereto

as EXHIBIT B, at Pg 4, Ln 22-24, (emphasis added). Judge responds "...we gave you a specific

deadline... It was on and I said: Counsel shall file any motions regarding 404(b)

issues no later than ...if you do file something you should probably address why

it wasn't filed by that date." (Id at Pg 5, Ln 13-17). Again, does not file a "Motion

The day before trial, during the Final Trial Management Conference, Judge

Prosecutors and and Defense Attorney were present, however Defendant was

not there, as Ms. told him this was just for jury questionnaire refinement and he

should prepare for trial tomorrow. The Judge, Prosecutors and Defense Attorney then met

in chambers", see Final Trial Management Conference Minute Entry, Dated _____ and attached _____

hereto as EXHIBIT C, at Pg 1. During this "chamber discussion" an agreement was reached which

effectively overturned the 404(b) Ruling, previously in Defendants favor. This allowed States

Witness _____ to testify in trial. It's noteworthy, this "Ruling" overturning the 404(b)

is not noted *as it should be* on the Minute Entry, but only evidenced by the transcripts of the

ETMC, where the following discussion occurs on court record: Judge _____ initiates this topic

by stating, "There was an issue you asked about possibly getting clarification on one of my rulings,

and then we kind of passed the deadline," which _____ responds "Right". Judge _____ then

states "I think it may have had to do with could observations from the day of the death come

forward," _____ responds "Right". _____ then states "... And I would tell you that my initial

thinking is things that people OBSERVED ON THAT DAY may be relevant to what ultimately

happened, not as a bad act but as what happened that day. So initially I would tell you that

probably could come in, if it's an observation there". Fink further states "I think THE RULING

was hopefully explanatory," see Reporters Transcript of _____, Dated _____ and _____

attached hereto as EXHIBIT D, Pg 19, Ln 20 - Pg 20, Ln 17, (*emphasis added*). It's interesting to note

that "THE RULING" is omitted from the Minute Entry, see EX. C, Pg 1-2. Also note that Defense

Attorney _____ did not argue or object to this "Ruling", which is a clear violation of Ariz.R.

Crim.P., Rule 16.1 (b) which states in relevant part that "Parties must make ALL MOTIONS no later than _____ days

before trial", and Rule 16.1 (d) which states in relevant part that "A court MAY NOT consider an issue

previously decided in the case...". This "ruling" was made against the rules provided. The

"Motion" was a covert, off-the-record, orally presented; again against the rules, and was not

a benign issue, as it allowed perjured, witness-tampered testimony to be given at trial

by State's (civilian) witness _____ and others.

Defense Attorney was not a willing participant of this conspiracy to illegally overturn

this 404(b) Ruling, but (*weeks later*) coerced into allowing the perjured testimony (*now*

followed by this SUBSEQUENT RULING) which is a violation of the Rules of Professional Conduct,

ER 8.4 (a) and (e), by Prosecutor _____ and/or the Code of Judicial Conduct, Rule 1.1 and 2.3 by _____

of which one, or both, coerced Ms. _____ to allow perjured testimony, as evidenced

**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.**