State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-165

Judge: Jennifer Ryan-Touhill

Complainant: Elsie Howard

ORDER

A complainant alleged a superior court judge created an appearance of bias by stepping off the bench and embracing a witness after her testimony concluded.

Judge Jennifer Ryan-Touhill presided over a homicide trial in which Complainant's daughter was the defendant. After the conclusion of emotional testimony from the decedent's next-of-kin, the Complainant observed Judge Ryan-Touhill step down from the bench and offer condolences and an embrace to the next-of-kin who had just testified. Judge Ryan-Touhill's actions created an appearance of bias in violation Rule 1.2 and 2.3(B) of the Code. The Complainant could understandably believe that the defendant, her daughter, did not receive fair and impartial treatment over the course of the trial because of Judge Ryan-Touhill's actions.

Accordingly, Judge Jennifer Ryan-Touhill is hereby publicly reprimanded for the conduct described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judicial officer's response, and this order shall be made public as required by Commission Rule 9(a).

Commission members Denise K. Aguilar, Roger D. Barton, Colleen E. Concannon, and Joseph C. Kreamer did not participate in the consideration of this matter.

Dated: September 19, 2022

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were distributed to all appropriate persons on September 19, 2022.

State of Arizona

COMMISSION ON JUDICIAL CONDUCT

	Disposition of Complaint 22-165
Judge:	
Complainant:	

ORDER

September 19, 2022

The Complainant alleged improper courtroom management and delay in proceedings.

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 members Denise K. Aguilar, Roger D. Barton, Colleen E. Concannon, and Joseph C. Kreamer did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on September 19, 2022.

CONFIDENTIAL

Arizona Commission on Judicial Conduct 1501 W. Washington Street, Suite 229 Phoenix, Arizona 85007 FOR OFFICE USE ONLY

2022-165

COMPLAINT AGAINST A JUDGE		
Name: Elsie Howard and Drondog Judge's Name: Jeni Fer Rygin		
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		
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CONFIDENTIAL Arizona Commission on Judicial Conduct 1501 W. Washington Street, Suite 229 Phoenix, Arizona 85007	FOR OFFICE USE ONLY
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So be contacting Department of

Comments:

This judge is capable and her rulings are thorough but her temperament is poor. Her bad attitude sets the tone in the courtroom and paves the way for contentious litigation rather than settlement. She also has a tendency to ignore what either party might be arguing and focus in on an issue that is not pending before the court. I have also personally heard her threaten to send children to foster care if the parties didn't settle, which was highly inappropriate and also well outside her jurisdiction.

View Detail

Send e-mail to this poster 2/1/2017 12:57:06 PN

Other

Comment #: AZ1393

Comments:

Completely violates peoples rights with her own opinion without proof or merit she should never have the power over peoples life. I think she was to long a lousy attorney, able to lie and do what she wants

View Detail

Send e-mail to this poster 8/29/2016 10:19:52 AN

Other

Comment #: AZ1359

Comments:

What could have been a disastrous trial, the facts were read, the lies were read through and I was very happy with the results of my divorce trial.

View Detail

Send e-mail to this poster 6/23/2016 3:12:47 PN

Other

Comment #: AZ1326 Rating:Not Rated Comments:

Horrible judgement, poor attitude, and lacks all human emotion REQUIRED to be a judge.

Mian Datail

Sand a mail to this poster 1/7/2016 5:30:16 PA

can be afforded relief. This can include a conviction being overturned.

Prosecutorial misconduct is not limited to the context of a criminal trial. It can take place at any stage of the criminal court process. Some of these stages may include pretrial proceedings and sentencing hearings.

In general, there are **four main types** of prosecutorial misconduct in the criminal justice system. These are:

- 1. failing to disclose exculpatory evidence,
- 2. introducing false evidence,
- 3. using improper arguments, and
- 4. discriminating in jury selection.

A judge can do any of the following if he/she finds that misconduct **prejudiced** the accused:

- 1. dismiss the charge(s),
- 2. admonish the jury to disregard certain evidence or comments, or
- grant a motion for a new trial

Note that malicious prosecution refers to something different than prosecutorial misconduct. The phrase refers to a case that gets filed without any **legal** foundation or basis for it. The case can be either civil or criminal in nature.

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Judge Denieserran-Koughill
had may 17, 2022 step
down from her bench and embrace huggs to a complaintant which she show a bigs move in showing that she was going to rule in an racial monor which violetes chil rights and constitulal rights this motter needs to be looked into needs to be address I will also contact the investivisative news on this matter and Judge did not allow the the knife into the case in court even when she knew that The person was a drug addict and his own family was even asraid of hm this Judge be reporting to FBI. Ism Theur

CONFIDENTIAL

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

Name: _____ Judge's Name: _

FOR OFFICE USE ONLY

2022-165

COMPLAINT AGAINST A JUDGE

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.
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Resp (Ryan-Touhill) 22-165 7/25/22



Judge Jennifer Ryan-Touhill ● Superior Court of Arizona South Court Tower Courtroom 5C 175 West Madison Street Phoenix, Arizona 85003

July 25, 2022

Commission on Judicial Conduct c/o Ariel I. Worth 1501 West Washington Street, Suite 229 Phoenix, Arizona 85007

Re: No. 22-165

Dear Ms. Worth:

I write to you in response to the complaint filed against me by Elsie Howard regarding my conduct in CR2015-147837-001. You have asked me to address the allegation that I "stepped off the bench to embrace a victim or victim's family member during a court proceeding on May 17, 2022, and that this action created an appearance of bias." The complainant asserts that I have violated civil and constitutional rights; you have asked me to address Rules 2.2 and 2.3 of the Code.

Ms. Howard has misrepresented what transpired.

I conducted a jury trial; in the second-degree murder case, the jury found the defendant guilty of the lesser-included offense of manslaughter. The parties proceeded to an aggravation phase. During the aggravation phase, the State called the (deceased) victim's mother to the stand to testify as to the emotional harm to the victim. The victim's mother (witness) was understandably distraught, testifying as to her loss and emotional pain. The witness testified she had tried to kill herself more than once as a result of her son's death, the witness testified she had been hospitalized as a result of her mental distress over her son's death, and the witness testified that she currently suffers significant anguish due to her son's death. Not only did the witness cry but so did the jurors—it was impactful and emotional testimony.

At the conclusion of the aggravation phase evidence, the jury left the courtroom to begin their deliberations. The case was adjourned, recordings ceased (including FTR and livestream), and the parties remaining in the courtroom partook in miscellaneous activities while waiting for the excused jury. At this time I stepped down from the bench, undoubtedly performed some housekeeping duties, and approached the victim's mother in the gallery. I do not recall my exact words but they were along the lines of, "I am terribly sorry for your loss and the pain you have suffered." I am sure I discussed grief with her, as this is a theme in my courtroom and I seek to validate the positions of parties present (including defendants). I would not be surprised if I hugged the mother of the victim or if she hugged me and I responded. I have no independent recollection of this—what I do recall is my concern that she reported feeling suicidal and distressed. I recall I may have confirmed with the Victim Advocate present at the time that the mother of the deceased had access to services. My acknowledgment of her pain and suffering did not occur in front of the jury, was not on the record, and was not part of any court proceeding.

Rule 2.2, Impartiality and Fairness, states, "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." The majority of the comments listed are not applicable (e.g., error of law, providing references); it appears the most relevant comment is number 1, which requires impartiality and fairness to all parties. In my opinion, showing kindness and sympathy to a person who is struggling and greatly distressed is not indicative of any type of partiality or unfairness. Rather, it shows the court system is made up of people who care, who show compassion, and who recognize the human side of these extremely difficult legal proceedings. As a matter of fact, our Victim's Rights require us to tell victims they have the right to be treated with fairness, respect, and dignity. I embrace these rights.

I find it unfortunate that Ms. Howard, whom I also always treated with respect and dignity, would perceive my kindness towards the mother of the deceased as somehow manifesting bias, discrimination against the defendant, or evidence of a racist intent. Moreover, I strove (and do, on a daily basis) to treat the defendant with respect and fairness. Kindness and sympathy towards one person does not mean that a person is incapable of showing the same treatment towards others.

Regarding Rule 2.3, Bias, Prejudice, and Harassment, this rule is rather encompassing and I am unclear as to which part or parts Ms. Howard believes I violated. Of course, the judge shall perform their duties without bias or prejudice (A), not harass anyone for any reason and not allow staff to do so (B), and shall require the same behavior from counsel (C). The comments provide examples of bias or prejudice: epithets, slurs, demeaning names or nicknames, stereotyping, inappropriate humor or threats, racial comments, or comments on personal characteristics. Harassment is further defined as conduct that shows hostility or aversion toward another based upon sex, race, religion, etc.

I adamantly deny any violation of subsections (B) and (C). The primary focus appears to be on whether I performed my duties without bias or prejudice (A): I adamantly deny I violated this subsection, also, and contend I have performed my duties without bias or

prejudice. I showed the same patience, respect, and courteousness to defendant and her family (including her mother, the complainant) that I showed to the victim's family. See, e.g., Rule 2.8 (B).

It appears that Ms. Howard has misunderstood my role in the jury trial—Ms. Howard believed my kindness towards the victim demonstrated I would "rule in a racial manor" [sic] when, in fact, the decisions were left to the jurors. Ms. Howard further assumes that my compassion towards another human being would somehow translate to a lack of kindness towards Ms. Howard's daughter—the defendant. This is untrue and unfortunate. To reiterate, I consistently treated the defendant with respect, impartiality, and kindness.

In my courtroom I often conduct hearings, trials, and settlement conferences. For example, during settlement conferences, I choose to sit immediately across from a defendant so that I can give them eye contact and discuss their case. It is important to establish rapport with them; I often ask them if they'd like a glass of water, if they are comfortable, and if they wish to express themselves (with counsel's permission). I frequently show sympathy to defendants (and victims), ensuring that all parties feel heard and have an opportunity to present their position. At times during these proceedings, I have spoken with a family member or close friend who attends on defendant's behalf, validating their concerns, also, and answering questions as appropriate and warranted.

I have yet to have anyone complain that my desire to see to a defendant's comfort, ensure victims have tissues, confirm I am willing to listen to the parties, etc., somehow demonstrates I am biased, prejudiced, or unfair to anyone in my courtroom. Rather, I believe it shows that I take my job extremely seriously, understand the impact these serious crimes have on many people in society, and follow the law while ensuring I treat others in a courteous and respectful fashion. If I am to change my method of how I conduct proceedings in my courtroom it would be out of a fear of potential criticism, which is expressly prohibited by Rule 2.4.

The commission's letter references many other accusations made against me by Ms. Howard, (i.e., "the complainant alleges, in part. . ."). I am unclear if the commission expects a response from me regarding the remaining spurious allegations made against me, including, but not limited to: racism, favoritism towards the "drug addict" victim, unethical practices, treating the case as a joke, fraud, a belief that black lives do not matter, I ruled on the case with no evidence, I did something (I cannot read the allegation) regarding a mental health witness, committing technical errors, and intimidation. Some of Ms. Howard's assertions are not relevant here (e.g., the commission does not review my legal rulings and decisions) and I will not address those.

I shall, briefly, address the allegation that I am racist and believe black lives do not matter. Beyond denying Ms. Howard's claims, the only response I will provide is that I live my life with strong character, dignity, and respect of others.

In light of Ms. Howard's belief that I will not impose a fair sentence for the crime of which a jury found the defendant guilty, I have chosen to recuse myself from this case. It will now proceed in front of another judicial officer who will sentence the defendant in accordance with Arizona law.

In my opinion, there is no violation of the code of Judicial Conduct. I trust you have all of the information required for your investigation. Do not hesitate to contact me if you need anything further.

Yours Truly,

/s/

Jennifer Ryan-Touhill



J. Scott Rhodes

Chair, Legal Ethics Group

P 602.262.5862 | **F** 602.495.2648 srhodes@jsslaw.com

Jennings, Strouss & Salmon, P.L.C. One East Washington Street, Suite 1900 Phoenix, Arizona 85004-2554 *jsslaw.com*

November 16, 2022

VIA E-MAIL aworth@courts.az.gov

Ariel I. Worth, Esq. Disciplinary Counsel Arizona Commission on Judicial Conduct 1501 W. Washington St., Ste. 229 Phoenix, AZ 85007

Re: Complainant: Elsie Howard

Respondent: Honorable Jennifer Ryan-Touhill

CJC Case No. 22-165

Motion for Reconsideration

Dear Ms. Worth:

This letter constitutes Judge Ryan-Touhill's Motion for Reconsideration ("Motion"), pursuant to Rule 23(b)(1) of the Commission's Rules, related to the Commission's Reprimand of September 19, 2022. Judge Ryan-Touhill presents this Motion after in-depth consideration and self-reflection, and with humility and remorse both for the feelings of the Complainant and for the Commission's conclusions about her conduct.

For the reasons stated herein, Judge Ryan-Touhill respectfully asks the Commission to conclude that the unusual circumstances underlying the complaint, and the lessons that Judge Ryan-Touhill has learned, demonstrate that there is no need for a public sanction.

ARGUMENT

Judge Ryan-Touhill might appear to some as a judge who is very confident and self-assured, a judge who is in total command, not only of her courtroom, but also of her personal emotions. These are, in many respects, attributes of a great judge. But they can also at times disguise human characteristics that are laudable but hard to reconcile with the role of a judicial officer, characteristics such as compassion for those in dire personal circumstances. Judge Ryan-Touhill strives at all times to be an outstanding jurist, and review of her JPR scores and comments indicate that she succeeds in her mission. Yet Judge Ryan-Touhill, like all of us, is also a human being. Her desire to achieve excellence as a judicial officer occasionally creates some anxiety. Her prior experience with the Commission causes her to be mindful of impressions that some have had of her in the past, impressions that she sometimes appeared harsh or judgmental. She has taken the Commission's past admonitions very much to heart, and consequently, she believes that she now effectively balances courtroom control and decisiveness with appropriate sympathy and understanding for all who appear before her, whether as parties, witnesses, victims, or lawyers.

The event that led to the Complainant's referral of Judge Ryan-Touhill to the Commission was highly unusual. During the aggravation phase of a manslaughter trial, the victim's mother testified. Her testimony included references to her suicide attempts, and indications that she did not know if she could continue with her life following her son's death. Some jurors audibly cried during the testimony. Judge Ryan-Touhill, however, showed no emotions during the testimony. At the close of evidence, she instructed the jury in a neutral tone, and the jury withdrew to start its deliberations.

This testimony occurred during the aggravation phase of the trial. The jury already had returned a verdict of guilty of manslaughter. Nothing had occurred during the guilt phase of the trial that called Judge Ryan-Touhill's neutrality into question. Nor did anything occur in the presence of the jury during the aggravation phase that called Judge Ryan-Touhill's neutrality into question. The allegations, and the Commission's findings, revolve around Judge Ryan-Touhill's actions outside the presence of the jury after the victim's mother had testified.

The purpose of this Motion is not to justify Judge Ryan-Touhill's conduct or minimize its importance. Judge Ryan-Touhill understands and appreciates that a public reprimand is an informal sanction for conduct "that is not so serious as to warrant formal proceedings or further discipline by the supreme court." Rule 17(a). Judge Ryan-Touhill also fully accepts that she should not have offered sympathy for or hugged the victim's mother after her testimony. She understands and respects the Complainant's consternation about her actions, and she knows she should have considered the appearance that her gesture of sympathy toward the victim's mother could create. She also knows and understands that, in responding to the victim's mother's comments about suicide, she did not adequately consider that the Defendant's mother was also in the throes of a moment of extreme emotional and personal distress, having seen the jury return a guilty verdict for her daughter.

Judge Ryan-Touhill understands and regrets that she lost perspective as to her role as the judge presiding over the case and that, for a short moment, she focused instead on her concern for a woman who, it appeared to her, might have been contemplating suicide. Without minimizing the seriousness of her lapse in judgment, she respectfully asks the Commission to consider her conduct for what it was – a lapse, not an indication of a widespread failure to comprehend and adhere to her duties and obligations as a judicial officer that requires a public reprimand.

Before becoming a judge, Judge Ryan-Touhill was involved as an attorney in cases involving families in crisis -- children being removed from their homes; parents who were going to lose their children. As counsel for state agencies, it was her place to at times provide insight for the families into the complex dynamics of our judicial system. She came to understand how frightening courts are for many people, especially those who have never entered a courtroom or faced the potential severe and life-changing consequences that can flow from a judge's rulings. Through communicating with and observing these families, Judge Ryan-Touhill came to understand that judges can be intimidating, even when they try not to be, and that the very nature of a judge's role can cause great stress to participants in a court proceeding.

When she became a judge, Judge Ryan-Touhill determined that she was going to try to find a balance between having command over her courtroom and providing comfort wherever possible to all who appear before her. When she started her judicial career in Family Court, she was comfortable with the law and procedures, having practiced in that area as a practitioner, but she worried about learning how to manage her calendar, issue clear orders,

make decisions without undue delay, and navigate the heightened emotions that often are part of a Family Court judicial assignment. She now believes, upon self-reflection, that she may have over-compensated on the side of being decisive during that early phase of her judicial career, and thus she may have given less than optimal attention to her empathy, even though empathy was a defining part of her personality.

When she was transferred to the criminal bench, Judge Ryan-Touhill had a steep learning curve in regard to the law and procedure, and she also encountered the disharmony that at times can exist between defense counsel and the prosecution. During this new assignment, she over-reacted to a lawyer, which led to a warning by the Commission – a warning that she immediately took to heart, and in fact, that helped her gain a better perspective about how to handle difficult situations with attorneys. She also came to better understand and recognize when her emotions might make recusal wise or even necessary. Indeed, Judge Ryan-Touhill recused herself from the underlying case after the Complainant filed her complaint. She would have done so earlier if she had been aware of the Complainant's concerns.

During her years on a criminal calendar, Judge Ryan-Touhill has presided over many complex trials for serious crimes, including multi-defendant trials. During the COVID pandemic, due to the size of her courtroom, she was able to conduct in-person trials for a period of time. Thereafter, when all court proceedings occurred by video link, Judge Ryan-Touhill worked on committees to establish processes to handle criminal cases, and she participated in committees that developed new technologies. For her in-person trials, she oversaw and worried about assuring that the defendants' due process rights were protected, while at the same time respecting the health and safety of jurors, witnesses, court personnel, lawyers and jail staff responsible for transporting defendants to and from jail. She found herself worrying a lot about the well-being of all involved and the fairness of the proceedings during an unprecedented event in history.

After court personnel started to return to the court facilities and court proceedings recommenced in person, Judge Ryan-Touhill became concerned about the transition, which although not difficult for her, she knew was difficult for some personnel, including newly-appointed judges who had started their judicial careers in a remote environment. She was concerned that, because being a judge can be an isolating experience in the best of circumstances, some new judges may have felt even more isolated. She therefore reached out to new judges, offering to mentor them or simply to be a sounding board.

From her seat on the bench, Judge Ryan-Touhill sees human beings across from her desk, some who have had difficult and neglectful childhoods, some who have felt the pains of discrimination or micro-aggression, some who are fearful for their future. Behind each defendant, she sees a human being. She also sees their supportive family members, who are afraid and in pain. She also sees the victims, who might feel they cannot adequately express the effect on them of the crime at issue and, who, like the defendant, might feel alone.

Judge Ryan-Touhill recalls a sentencing hearing for a case involving shots fired at DPS officers. One of the officers testified as a victim and was obviously upset with the plea agreement, thinking it insufficiently harsh. Judge Ryan-Touhill listened to the officer attentively, then told him that she understood the burden of living up to a higher standard, but that our system is stronger for people who understand and carry that burden without allowing their emotions to overcome their judgment.

She knows she should have listened to her own advice to that officer. She let her emotional response to the victim's mother, and her concern that the mother might be suicidal, overcome her sense of a judge's role. It was a serious lapse, but it was a lapse, not a pattern. She has learned so much from it. The lessons have not all been tied to the Commission's investigation. They have come through self-reflection. They have involved remorse for the defendant's mother and the pain she inadvertently caused at a difficult time for her. She regrets that, when she responded to the Commission, rather than sharing her human reaction to her actions and her very sincere remorse, she instead became overly analytical. She truthfully said that her memories of the events are vague. In concentrating on those points, however, her response seemed evasive, and it failed to share adequately with the Commission her regret and the lessons she has learned about herself. The irony is that she may have seemed evasive when, in the privacy of her own thoughts, she was dissecting her entire judicial career, and her personal past, to determine how to convert this moment of failure as a judicial officer into a foundation for improvement and a renewed dedication to the integrity of our judicial system.

CONCLUSION

Judge Ryan-Touhill is humbled by her conduct, yet fervent in her belief that her error already has become a strength. For the reasons stated above, we respectfully request reconsideration, and issuance of a warning letter pursuant to Rule 16(b), or an informal sanction in the form of extra judicial education or counseling pursuant to Rule 17(b). We further propose that, in the Commission's deliberations, the Commission conclude that the following mitigating circumstances apply under Rule 19:

- (a) the infrequency (unique nature) of the misconduct;
- (f) acknowledgement of the wrongful nature of the conduct and a manifested effort to change the same;
 - (h) compliance with prior Commission warnings; and
 - (i) cooperation with the Commission and proceedings.

Very truly yours,

JENNINGS, STROUSS & SALMON, P.L.C.

By

J. Scott Rhodes

SR1/mtan

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

Telephone: (602) 452-3200

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning) Case No.: 22-165	
Judge Jennifer Ryan-Touhill)	
Maricopa County Superior Court State of Arizona,	ORDER DIRECTING THE FILING OF A RESPONSE	
Respondent.)))	

Respondent Judge Jennifer Ryan-Touhill filed a Motion for Reconsideration of the public reprimand issued on September 19, 2022.

IT IS ORDERED that Disciplinary Counsel for the Commission shall prepare and file a response to Respondent's motion by December 1, 2022. Disciplinary Counsel shall provide a copy of her response to Respondent on or before December 1, 2022. Absent a request from the Commission, Respondent may not submit a written reply brief or any additional materials.

Dated this 16th day of November, 2022.

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this pleading were delivered on November 16, 2022, via electronic mail, to:

J. Scott Rhodes, Esq. Jennings Strouss & Salmon, PLC srhodes@jsslaw.com Attorney for Respondent

Ariel I. Worth, Esq. Arizona Commission on Judicial Conduct aworth@courts.az.gov Disciplinary Counsel

By: <u>/s/ Kim Welch</u> Kim Welch, Commission Clerk Ariel I. Worth (Bar # 018702)
Disciplinary Counsel
Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, AZ 85007

Telephone: (602) 452-3200 Email: aworth@courts.az.gov

STATE OF ARIZONA COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning)) Case No. 22-165
Judge Jennifer Ryan-Touhill)
Maricopa County Superior Court State of Arizona) RESPONSE TO JUDGE'S) MOTION FOR) RECONSIDERATION
Respondent)

On September 19, 2022, the Commission on Judicial Conduct (Commission) publicly reprimanded Judge Jennifer Ryan-Touhill (Respondent) for violations of the Arizona Code of Judicial Conduct (Code). Respondent timely requested reconsideration of this order on October 5, 2022, and supplemented her request on November 16, 2022. Undersigned submits this response pursuant to Commission Rule 23(b), respectfully requesting that the Commission deny the motion.

Factors Supporting a Sanction

The Scope section of the Code sets forth several factors for the Commission to consider in determining whether a sanction is appropriate in a particular case. These factors are the seriousness of the transgression, the facts and circumstances existing at the time of the transgression, the extent of any pattern of improper activity or

previous violations, and the effect of the improper activity upon the judicial system or others. On balance, these factors support the issuance of the reprimand. The reprimand addresses Respondent's public conduct in embracing a victim's next of kin following that individual's testimony during the sentencing phase of a homicide trial. The public must have confidence in the independence, integrity, and impartiality of the judiciary, and the interaction gave the appearance that Respondent was biased in favor of this witness or biased against the defendant in the case. Thus, the transgression is serious.

The imposition of the public reprimand comports with the principles of Commission Rule 5 (Purpose of Judicial Discipline). That rule states:

The purpose of the judicial discipline and incapacity system is to protect the public and to maintain high standards for the judiciary and the administration of justice. Any disciplinary remedy or sanction imposed shall be sufficient to restore and maintain the dignity and honor of the position and to protect the public by assuring that the judge will refrain from similar acts of misconduct in the future.

Here, the nature of the misconduct was public, in the courtroom. The harm caused, in part, was to the public's perception of the judiciary and trust in the institution. Issuing public discipline in response to underlying public misconduct helps restore dignity and honor to the judiciary. Further, the public nature of the reprimand allows other members of the judiciary to learn from the misconduct that warranted the reprimand. This opportunity, which helps protect the public generally, is lost if the Commission's resolution, such as judicial education or counseling as proposed by Respondent, is confidential. The purpose is to restore and maintain the

dignity and honor of the position and to protect the public. The reprimand is the best way to achieve those ends.

Aggravating and Mitigating Factors

Rule 19 of the Commission Rules sets forth ten aggravating and mitigating factors for the Commission to also consider.

Nature, Extent and Frequency of the Misconduct: Respondent's conduct in this case was a one-time occurrence. However, her actions did precipitate this judicial complaint and the subsequent recusal of Respondent from the criminal case. Assigning a new judge for sentencing after the case has been tried to a jury is a substantial detriment to the orderly disposition of the case. The newly assigned judge will be required to familiarize himself with the details of the case and will not have the benefit of first-hand observation of the witness and parties when determining a sentence. This gives slightly more weight to this being an aggravating factor.

Judge's Experience and Length of Service on the Bench: Respondent has served as a judicial officer for approximately seven years and should be reasonably well-versed on the Code. Undersigned deems this a slightly aggravating factor.

Whether the Conduct Occurred in the Judge's Official Capacity or Private Life:

The conduct occurred in Respondent's official capacity while in the courtroom and carrying the full authority of her office. Undersigned deems this an aggravating factor.

Nature and Extent to Which the Acts of Misconduct Injured Other Persons or Respect for the Judiciary: The conduct affected the criminal defendant's right to due

process as it caused delay and a reassignment of judge in the sentencing phase of her case. The public nature of the conduct negatively impacted the public perception and respect for the judiciary. This is an aggravating factor.

Whether and to What Extent the Judge Exploited his or her Position for Improper Purposes: Undersigned finds this factor inapplicable.

Whether the Judge has Recognized and Acknowledged the Wrongful Nature of the Conduct and Manifested an Effort to Change or Reform the Conduct: Respondent initially did not appear to appreciate the wrongful nature of her conduct when responding to the Commission. In her request for reconsideration, Respondent, by contrast, has expressed appropriate acknowledgement, understanding, and contrition for the underlying circumstances. On the balance, undersigned finds this to be a neutral factor.

Whether There Has Been Prior Disciplinary Action Concerning the Judge, and if so, its Remoteness and Relevance to the Present Proceeding: Respondent has not previously received disciplinary action. Undersigned finds this to be a mitigating factor.

Whether the Judge Complied with Prior Discipline or Requested and Complied with a Formal Ethics Advisory Opinion: Undersigned does not deem this factor as applicable as Respondent does not have prior discipline and has not acted in reliance upon a formal ethics advisory opinion.

Whether the Judge Cooperated Fully and Honestly with the Commission in the Proceeding: Undersigned believes Respondent has cooperated fully and honestly. This is a mitigating factor.

Whether the Judge was Suffering from Personal or Emotional Problems, or from Physical or Mental Disability or Impairment at the Time of the Misconduct: This was not raised as a defense by Respondent, and undersigned does not deem this factor applicable to this case.

While the aggravating factors outweigh the mitigating factors numerically, the Commission is free to assign whatever weight it chooses to the factors. Given the nature of the conduct, Respondent's experience, and the injury to the public perception of the judiciary, undersigned argues that the overall balance is in favor of upholding the sanction.

CONCLUSION

Based on the foregoing, undersigned recommends that the Commission deny Respondent's Motion for Reconsideration and affirm the imposition of the public reprimand issued on September 19, 2022.

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COMMISSION ON JUDICIAL CONDUCT

Ariel I. Worth
Disciplinary Counsel

Copies of this document were electronically served this 1st day of December, 2022 to:

J. Scott Rhodes, Attorney for Respondent Jennings Strouss & Salmon, PLC srhodes@jsslaw.com

Ariel I. Worth, Disciplinary Counsel Commission on Judicial Conduct aworth@courts.az.gov

By: <u>/s/ Kim Welch</u>
Kim Welch, Commission Clerk

State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-165

Judge: Jennifer Ryan-Touhill

Complainant: Elsie Howard

ORDER DENYING RESPONDENT JUDGE'S MOTION FOR RECONSIDERATION

The respondent judicial officer filed a Motion for Reconsideration of the Commission's reprimand decision as set forth in its previous order. Pursuant to Commission Policy 23, disciplinary counsel was requested to file a response to the motion, and did so.

On January 27, 2023, the Commission denied the Motion for Reconsideration. As provided in Commission Policy 23, the respondent judicial officer's Motion for Reconsideration, disciplinary counsel's response, and this Order denying the Motion for Reconsideration shall be made a part of the record that is posted to the Commission's website with the other public documents (the Complaint, the judicial officer's response and the Reprimand Order).

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

Dated: February 8, 2023

FOR THE COMMISSION

/s/ Christopher P. Staring
Hon. Christopher P. Staring
Commission Chair

Copies of this order were distributed to all appropriate persons on February 8, 2023.