

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-259

Judge:

Complainant:

ORDER

The Complainant alleged a city court judge pro tem berated an attorney when he requested the continuance of a criminal misdemeanor trial.

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.

After review, the Commission found improper statements were made. While these statements violated Rules 1.2, 2.2 and 2.10 of the Code of Judicial Conduct, the Scope Section of the Code provides that not every transgression will result in the imposition of discipline. The Commission decided, after considering all the facts and circumstances, to dismiss the Complaint pursuant to Commission Rules 16(b) and 23(a), but to issue a warning letter to the judicial officer reminding of the duty to avoid comments that could give the appearance of partiality.

Dated: February 20, 2024

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 20, 2024.

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

Re: Complainant,
Judge Pro Tem,

Judge Pro Tem:
Municipal Court

Case

Attorneys: defense counsel
City Prosecutor
Asst. City Prosecutor

Witness: Defendant,

Facts:

On [redacted] was cited by [redacted] police for a violation of
A.R.S. §13-2810 (A)(2).

On [redacted] the matter was scheduled for trial on [redacted] This was
the first trial date scheduled. In the interim, defense counsel was ordered to conduct a
manslaughter jury trial in the [redacted] County Superior Court in

[redacted] from [redacted] through [redacted] On [redacted]
defense counsel filed a motion to continue the [redacted] Municipal/ [redacted] matter and
emailed the same to the prosecutor's office. On [redacted] counsel for defendant
became ill and was unable to attend neither the jury trial nor the motion to continue hearing
on [redacted] If counsel had not been ill, he would have attended the jury
trial and expected the motion to continue in the [redacted] trial, filed a week earlier, to have
sufficed in giving sufficient notice to the [redacted] court and prosecutor's office.

On [redacted] frantically telephoned counsel's office to disclose
that the motion to continue had been denied by pro tem Judge, [redacted] and that the

court would proceed with trial without counsel for [redacted] had apparently objected to defense counsel's motion to continue, without good cause in counsel's opinion. First, there is no good cause for an objection to a motion to continue if the defense attorney is in another jury trial. Any excuse for this carries no weight. There were no witnesses from another State, nor expert witnesses who could not be rescheduled. If [redacted] had opened the email with the motion to continue, they could have informed the victim and the police officer, witnesses who office next door to the court. Second, even if [redacted] nominally objects, "[redacted]" so to speak, any judge would tell the prosecutor and all of the parties involved that the defense lawyer is unavailable, because he's in another trial, a jury trial, no less, and in a court which takes precedent under the rules over a municipal court, the Superior court. Counsel is quite certain that this has happened before. In fact, lawyers experience these circumstances, often, when opposing counsel is in another trial. Judge [redacted] implied that somehow, defense counsel was responsible for this circumstance. In reality, defense counsel has little control over the [redacted] County court calendar. [redacted] County Judges, [redacted] and [redacted] have recently asserted control of defense counsel's trial calendar. Additionally, counsel is of the belief that neither [redacted] nor the Court had either opened or read defense counsel's email containing the motion to continue until the morning of the hearing. Counsel implored [redacted] to take his phone back into the courtroom so that counsel could address the court. Judge [redacted] then proceeded to accuse counsel of misconduct and threatened to report him to the State Bar, in the presence of the attorney's client. She stated that the motion to continue was denied and the trial would proceed until counsel reminded the judge that the Sixth Amendment to the United States, prevented her from proceeding without counsel. The Judge then berated counsel for not appearing in court, without regard to the fact that counsel was sick and unable to attend. Counsel informed the court that if he had been well enough to proceed, he would be in the jury trial. Judge [redacted] repeatedly asked counsel if he had actually begun his jury trial and would not accept counsel's response. The court then, apparently discovered that counsel was actually in the jury trial and stated, "[redacted]" She went on to state directly that counsel's "[redacted]" should be the subject of a State Bar complaint. The Judge next stated that counsel was from a "[redacted]" and that counsel should have had another lawyer appear for him. Counsel informed the court that he was a sole practitioner. Finally, the Judge suggested that [redacted] obtain a new lawyer to represent him. All of the conduct occurred in the presence of [redacted] and has damaged the attorney-client relationship.

The Honorable [redacted] should have known that counsel doesn't control the County Superior Court calendar because she served on its bench.

Quite frankly, her conduct in denying the motion, berating counsel in front of his client and the public, for no good reason, implying that defense counsel would lie about

being in trial and threatening a Bar complaint was reprehensible. Counsel has earned a great deal more respect than the manner in which he was treated.

I affirm, under penalty of perjury, that the foregoing information and the allegations contained therein, are true to the best of my knowledge, information, and belief.

Very truly yours,