

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-042

Complainant: No. 1435710673A

Judge: No. 1435710673B

ORDER

The complainant alleged that a superior court commissioner pressured him to plead guilty during a settlement conference. He further alleged the commissioner ended up being his trial judge without his consent and imposed a harsh sentence because of bias based on her misconduct during the settlement conference.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the commissioner engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainant and various electronic court records, the commission found no evidence of ethical misconduct and concluded that the commissioner did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: March 21, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on March 21, 2012.

This order may not be used as a basis for disqualification of a judge.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

8012-042

COMPLAINT AGAINST A JUDGE

Your name: _____

Judge's name: _____

Date: 2-8-12

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

Judge violated the Arizona Code of Judicial Conduct Rule 2.6 (b),
Rule 2.11 (A), Rule 2.11 (A-b-d), Rule 2.11 (c), and due to presiding over
the settlement conference should have disqualified (recused) herself as
her impartiality would come into question. (See attachment enclosed
for the completion of complaint Pages 2 thru 4)

(Attach additional sheets as needed)

Judge held a settlement conference in this case on 6-3-2009 (R0A# 36) for 34 minutes avidly and aggressively trying to secure defendant's signing of a plea agreement by her actions and statements. Judge's action was come down to talk to defendant "I'm going to come down to defense table and join you so we can talk about your case," "to do that I have to leave my courtroom" (Exhibit 16) giving the perception of a casual atmosphere as she sat across from defendant in regular clothes (no robe) and stated "I meet with the attorneys beforehand which I've done, I'm familiar with what you've been charged with and I'm familiar with your criminal history" (Exhibit 17) "You're not new to the criminal justice system, you have about allegedly ten prior felony convictions" "They made you... their best rock bottom offer.. unfortunate that wasn't explained well to you" (Exhibit 18) and making it clear her position "Don't make any admission to me. What you say can't be used against you and I'm not the trial judge." (Exhibit 19). Then making very clear her feelings on what defendant presumably would receive if it were her doing the sentencing by stating 3 times "I don't sugar coat things... I don't think you'll get anything less than 10" (Exhibit 20), "don't expect less than 10 that's kind of what we start with," (Exhibit 21), "I just don't think you're going to get less than ten, it's technically possible... I just don't think you would" (Exhibit 22). She speaks of jury opinion, presumably it's hers "The jury... virtually everyone is going to be riled up about.. meth because they don't run in the circles... you may.. run in... I'm just a straight shooter... They don't know people who do meth or if they do they're so horrified.. because meth is a... insidious drug and people are freaked out about it" (Exhibit 23), then uses ^{subtle} ~~subtle~~ gut wrenching comments to provoke defendant to an emotional decision to sign plea "how are you going to feel in about five years from now when you think, today I could have been walking out the prison gate back to my girlfriend, back to my life, back to whatever matters to you" (Exhibit 24) "I think you'd be kicking yourself sitting there for extra years after extra years that you didn't have to serve", "the question is do you want to lose your freedom for six years or more than ten"

(Exhibit #25). More than ten years she knew was a threat (as pursuant to ~~Section 2000~~ v. Washington sentences can only be enhanced by submission to the jury) yet continued to pressure defendant sign plea "If I were you, you need to look at what's your likelihood of success," "then you look at, well is this offer better than trial? Yes" (Exhibit 26) "you have absolute right to go to trial but is it worth four plus years of your freedom to do that?" (Exhibit 27) and in the end giving her opinion on sentencing "My point is...if you won't stop committing felonies we have to take you out of commission for awhile" "the point is stop committing felonies. If you won't stop then we have to take you out of commission for a longer period of time. That's the philosophy. Got it." (Exhibit 28).

The personal aggression and threatening manner of the judge is construed as coercion as is her prejudicial opinion and misrepresentation of not being the trial judge, which she was, allowing her to sentence defendant when the jury returned a guilty verdict. Her actions and statements at the settlement conference brings into question her impartiality at sentencing and the fact that she didn't recuse herself or address disqualification on the record, violated the Arizona Code of Judicial Conduct, Canon 2, Rule 2.6(B)¹, Rule 2.6 comment 2 and Comment 3 ~~and see~~ Rule 2.11(A) "A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned", Rule 2.11A6(D) ~~or~~ "The judge previously presided as a judge over the matter in another court" Rule 2.11(C) "A judge subject to disqualification under this rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure,

1 - A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute, but shall not coerce any party into settlement. AZ. Code of Judicial Conduct Rule 2.6 (B)

the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding." Comment (1)
"Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply." Comment (5) "A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification."

Due to judge's failure to recuse herself or follow the Arizona Code of Judicial Conduct the defendant had no opportunity at a fair sentencing or any possible mitigation as proven by her statements and conduct depriving defendant of his constitutional right to "Due Process" and judicial impartiality and should not be tolerated.

Judge also failed to clarify the Code of Judicial conduct by not stating her possible impartiality coming into question when the trial judge (original) on 10-27-09 directed the case to Judge on 10-28-09 for reassignment, who assigned Judge who the minute entry states was present, though her Judicial Assistant (the only person to speak per minute entry (it shows attorneys and Horn were present, but could not have been as no statements on the entry by them) stated "the parties have stipulated to Comm. trying this case". Judge had her Assistant speak on behalf of the prosecution and defense counsel. That is deplorable. At no time should a person let alone a Judicial Assistant be allowed to testify, nor be told to by a judge on behalf of counsel when they have no interest in the case at bar. which begs the question of Judge Conduct allowing it and No mention of Judge questionable impartiality at possible Sentencing (see Exhibit 29) 4