

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 17-066

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Judge: Wilbur N. Hudson, III

Complainant: Self-Report

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**AMENDED ORDER**

A municipal court judge self-reported that he failed to follow the law, engaged in improper ex parte communications, and failed to ensure all parties had the right to be heard. The conduct was also reported to the commission by the court's presiding judge.

Rule 1.1 of the Code of Judicial Conduct states "a judge shall comply with the law, including the Code of Judicial Conduct." Rule 1.2 states "a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Rule 2.2 states "a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Additionally, Rule 2.6(A) states "a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." Finally, Rule 2.9(A) states "a judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter . . . ."

Judge Hudson reported that he conducted a hearing in which the father of a criminal defendant argued for the release of his child to a behavioral health treatment provider, and Judge Hudson indicated that the defendant could be released to the treatment provider. Neither the state nor the defendant was present during this hearing, nor did the victims receive any notification of the change in release conditions. By permitting a non-lawyer to advocate in a case, Judge Hudson's conduct violated Rules 1.1, 1.2, and 2.2. Failing to afford the state, defendant, and the victims the right to be heard violates Rule 2.6(A), and conducting a hearing without both sides being present is an ex parte communication in violation of Rule 2.9(A).

Accordingly, Judge Wilbur N. Hudson is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The record in

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

this case, consisting of the complaint, the judge's response, and this order shall be made public as required by Rule 9(a).

Dated: August 22, 2017

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez  
Commission Chair

Copies of this order were distributed to all appropriate persons on August 22, 2017.

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

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 17-066

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Judge: Wilbur N. Hudson, III

Complainant: Self-Report

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**ORDER DENYING RESPONDENT JUDGE'S  
MOTION FOR RECONSIDERATION AS TO THE SANCTION, BUT  
GRANTING RESPONDENT JUDGE'S MOTION TO CORRECT FACTUAL  
ERROR IN THE REPRIMAND ORDER**

The respondent judge filed a motion for reconsideration of the commission's reprimand decision as set forth in its previous order. The motion sought reconsideration of the imposition of the reprimand, as well as requested the commission correct a factual error in the Reprimand Order issued May 11, 2017. Pursuant to Commission Policy 23, disciplinary counsel was requested to file a response to the motion, and did so.

On August 11, 2017, the commission denied the motion for reconsideration as to the sanction imposed. The reprimand shall stand. However, the commission did grant that portion of the respondent judge's motion to correct a factual error in the reprimand order dated May 11, 2017. Paragraph three of the Reprimand Order shall be revised to state:

Judge Hudson reported that he conducted a hearing in which the father of a criminal defendant argued for the release of his child to a behavioral health treatment provider, **and Judge Hudson indicated that the defendant could be released to the treatment provider.** Neither the state nor the defendant was present during this hearing, nor did the victims receive any notification of the change in release conditions. By permitting a non-lawyer to advocate in a case, Judge Hudson's conduct violated Rules 1.1, 1.2, and 2.2. Failing to afford the state, defendant, and the victims the right to be heard violates Rule 2.6(A), and conducting a hearing without both sides being present is an ex parte communication in violation of Rule 2.9(A). (amended language is shown in bold)

An amended reprimand order shall issue.

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As provided in Commission Policy 23, the respondent judge's motion for reconsideration, disciplinary counsel's response, this order denying the motion for reconsideration, and the amended reprimand order shall be made a part of the record that is posted to the commission's website with the other public documents (the self-report letter, the presiding judge's letter, and the reprimand order).

Commission member Art Hinshaw did not participate in the consideration of this matter.

Dated: August 22, 2017

FOR THE COMMISSION

/s/ Louis Frank Dominguez

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Hon. Louis Frank Dominguez  
Commission Chair

Copies of this order were distributed to all appropriate persons on August 22, 2017.

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**ORDER**

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Judge Hudson reported that he conducted a hearing in which the father of a criminal defendant argued for the release of his child to a behavioral health treatment provider, and Judge Hudson granted that request, signing a release order to be effective a few days later. Neither the state nor the defendant was present during this hearing, nor did the victims receive any notification of the change in release conditions. By permitting a non-lawyer to advocate in a case, Judge Hudson's conduct violated Rules 1.1, 1.2, and 2.2. Failing to afford the state, defendant, and the victims the right to be heard violates Rule 2.6(A), and conducting a hearing without both sides being present is an ex parte communication in violation of Rule 2.9(A).

Accordingly, Judge Wilbur N. Hudson is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The record in

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

this case, consisting of the complaint, the judge's response, and this order shall be made public as required by Rule 9(a).

Dated: May 17, 2017

FOR THE COMMISSION

/s/ Louis Frank Dominguez

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Hon. Louis Frank Dominguez  
Commission Chair

Copies of this order were distributed to all appropriate persons on May 17, 2017.

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

Wilbur N. Hudson, III  
Judge Phoenix Municipal Court  
300 W. Washington St.  
Phoenix, Arizona 85003-2103

Self-Report Ltr

MAR 16 2017

2017-066

March 16, 2017

Hon. Louis Frank Dominguez, Surprise Municipal Court (Chair)  
Arizona Commission on Judicial Conduct  
1501 W. Washington Street, Suite 229  
Phoenix, Arizona 85007

**Re: Wilbur N. "Wil" Hudson – Self Reporting Judicial Complaint**

Dear Judge Dominguez and members of the Commission:

I am self-reporting a judicial complaint as I recently determined that I violated Canon 1 & Canon 2 of the Arizona Code of Judicial Conduct, Rule 81 of the Rules of the Supreme Court of Arizona.

For your review, I am including the following:

- a.) This memorandum;
- b.) The CD of the relevant hearing;
- c.) The relevant pages from the Judicial Notes in the court files in case of State vs. Erica Larissa Guerra, Case numbers 5114961 and 4615881;
- d.) The entire court files in case of State vs. Erica Larissa Guerra, Case numbers 5114961 and 4615881

**Background.**

Wilbur N. "Wil" Hudson, III, Judge of Phoenix Municipal Court.

I am 54 years old. I was admitted to be an attorney in Arizona on November 16, 1989 after graduating from Arizona State University law school earlier that year. I spent 20 years in private practice until being appointed to the bench of Phoenix Municipal Court in 2014. I have been a judge on the Phoenix Municipal Court bench full time since my appointment. Because of my junior status, I do not have a full-time courtroom, instead, I am a "floater" and fill in courtrooms when and where needed.

I hear misdemeanor cases, traffic cases, or civil restraining orders (orders of protection, injunctions against harassment, etc.). I also hear arraignments, walk-ins and occasionally trucking cases.

### **Background of Complaint**

On February 13, 2017, I was assigned to Courtroom 206 in the Phoenix Municipal Court. Courtroom 206 is, among other things, the “walk in” courtroom. If a person comes to the Court on a date that he or she is not scheduled a customer service person on the first floor sends the person to courtroom 206 to be heard. There is no prosecutor assigned to that courtroom, and rarely if ever does the State appear in Courtroom 206. Mainly what occurs in this courtroom are as follows: people come to quash bench warrants; to have confinement orders amended; and other miscellaneous relief. On this particular day, there were 54 matters that walked into or were scheduled in Courtroom 206,

The case involved in this complaint that were called before the court were State vs. Erica Larissa Guerra, Case numbers 5114961 and 4615881. It appears on the case jacket that the reckless driving case (4615881) was previously dismissed. Additionally, the case of leaving the scene of an accident with injury (case 5092064) was concluded on February 10, 2017 (however the case number is referenced on the prior release orders).

During the calendar, Defendant Erica Larissa Guerra’s father appeared asking for miscellaneous relief. Ms. Guerra was in custody and her father is not an attorney. Neither Erica Larissa Guerra nor the prosecutor were in attendance.

It should be noted, the relief requested, if granted, was not going to be effective for at least two days. I expedited the matter so that the Defendant could be considered for placement in treatment. No release order was signed. It appeared that there was no damage to any party or to the integrity of the system. I could have done things differently and should have. But my actions appear to have caused no harm to any party. I was simply trying to help a young woman get the treatment it appeared she needed.

I am submitting this complaint against myself, as I did violate the canons as outlined below.

### **Violations of Arizona Code of Judicial Conduct:**

#### **Violation A. Canon 1: Rule 1.1. Failed to follow law (permitting non-lawyer to advocate).**

On the date in question, I permitted the father of the Defendant to appear before me, without Defendant present, and make an argument, requesting affirmative relief. Defendant’s father is not an attorney. It is impermissible for non-lawyers to advocate in

Court for any party with the exception of a person being pro-per. See Supreme Court Rule 31.

Discussion:

I made a mistake. Courtroom 206 is the walk-in courtroom. It is not unusual for a family member to appear – for example a parent may come in to court to explain why a defendant could not appear, or a health care provider may write to let the court know of a defendant's incapacitation – if justified the court may reset the matter. In this case, the relief requested sounded reasonable on its face. However, the relief requested was not the type that is routinely given, and a non-lawyer should not have advocated for the relief. Defendant's father asked that the Defendant be released to a mental health inpatient treatment facility. Defendant's father did not have the authority to request that relief, nor did I have the authority to grant the relief requested.

**Violation B: Canon 1, Rule 1.1. Failure to follow law (failed to adhere to victim's rights).**

This violation concerns the same Defendant on the same date. There is a notation on one of the case jackets that the theft case was dismissed, it appears it was not (the leaving the scene case was also concluded prior to this date). Furthermore, the contributing to the delinquency of a minor remained an open case. Without consulting with the State to ensure victim's rights compliance, it appears I set this matter in Courtroom 501 so that our mental health court could determine whether or not the defendant should be released to a treatment facility. As a result, when I ordered that the Defendant's case be transferred to the mental health court and logged that she could be released to an inpatient treatment facility, I did not comply with victim's rights.

Discussion:

It was a mistake on my part not to inquire as to victim's rights. I saw the notation that the theft case was dismissed on the file jacket (the file jacket is wrong), but I should have recognized that the victim in a contributing to the delinquency of a minor case, has the right to be heard. The mistake was not willful. The release of the Defendant never occurred. I ordered the Defendant to be brought to mental health court two days later so that the court could determine whether or not to release her to a mental health facility.

**Violation C: Canon 2, Rule 2.9. Ex-parte hearing without State present.**

Regarding the above referenced matters, without giving the State the opportunity to respond, I granted affirmative relief to the Defendant.

Discussion:

If a member of the public appears on a day they are scheduled and they want or need to see a judge, the Clerk's office routes their file to Courtroom 206 and the member of the public will be directed to Courtroom 206 so that they can address the Court. A prosecutor rarely appears. However, a vast majority of matters heard are usually administrative: change surrender date for jail, quash warrant for FTA, receive a new counseling order, pick a self-surrender date, etc. In this case, the face of the request seemed reasonable. I transferred the case to our mental health court for determination on whether or not the Defendant could be released to a mental health facility. The case was set for hearing in two days. However there were bi-monthly hearing scheduled for this case, and the State always appeared. I should not have granted the relief without giving notice. This will not happen again.

**Violation D. Canon 2, Rule 2.6 - Ensuring Rights to Be Heard**

On the same date for the same Defendant regarding the same cause numbers, I failed to ensure all parties had the right to be heard.

Discussion:

As stated, for the walk-in calendar I issued orders that affected the Defendant and the State. I should have had a hearing on this matter prior to issuing any orders. I will not make that mistake again.

**Conclusion:**

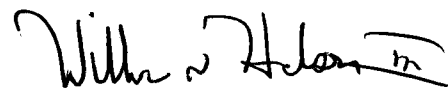
I did violate the canons as detailed above, however, there appears to be no harm caused to any party. The Defendant was never released. Since these issues, I have taken a more pro-active approach to my assignments when assigned to Courtroom 206. I now look more closely as to whether or not there are victims and if victim's rights are implicated in those hearings. Furthermore, in the future, I will ensure that the State is given notice if notice is required by the victim's bill of rights. In addition, it is my understanding that the court is making some procedural changes that will help ensure that these errors do not happen again.

What I should have done in these matters were to tell the Defendant's father that he lacked standing to appear and ask for relief and concluded the matter.

I am self-reporting and I acknowledge the errors that I have made. The mistakes I have made are not willful and the Defendant was never released. There appears to be no harm to any party. I will do everything in my power to make sure these errors never occur again.

If I have any questions, or need any further information, please do not hesitate to contact me.

Very Respectfully,

A handwritten signature in black ink, appearing to read "Wilbur N. Hudson, III". The signature is written in a cursive style with a horizontal line at the end.

Wilbur N. Hudson, III

Enclosures as indicated



**City of Phoenix**  
MUNICIPAL COURT  
OFFICE OF THE CHIEF PRESIDING JUDGE

MAR 30 2017

2017-066

PHONE: 602-262-1899  
FAX: 602-534-6291

**B. DON TAYLOR III**  
Chief Presiding Judge

March 24, 2017

Mr. George A. Riemer, Director  
Arizona Commission on Judicial Conduct  
1501 West Washington Street, Ste. 229  
Phoenix, AZ 85007

Re: Phoenix Municipal Court Judge, The Hon. Wilbur N. Hudson

Dear Mr. Riemer:

I write pursuant to my duty under Rule 2.15 of the Arizona Code of Judicial Conduct ("the Code") to report what I believe to be violations of that Code committed by Phoenix Municipal Court Judge Wilbur N. Hudson. Judge Hudson was first appointed to the Phoenix Municipal Court bench on April 30, 2014.

Our investigation of this matter, based on the Court's record, combined with information provided by members of our judiciary, court staff, and Judge Hudson himself, indicate there is a "substantial likelihood" Judge Hudson, violated the Code, Canons 1 and 2, Rules 1.2, 2.2, 2.6, and 2.9. It should be noted that we received Judge Hudson's full and attentive cooperation during our investigation.

**Judicial Conduct:**

1. Rule 2.9 [Ex Parte Communication] provides:
  - "A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter. . . ."

On or about February 13, 2017, the Honorable Wilbur Hudson allowed a non-lawyer, non-party, Mr. Ronald Guerra, who is the father of the defendant in two criminal cases, to address the court, provide evidence, and argue in support of a motion Mr. Guerra filed, seeking the rescheduling of a trial. Judge Hudson also allowed Mr. Guerra to testify to the court by arguing that the defendant should be released from custody, asserting that the defendant needed to go back to a mental health facility.

There is no indication in the record that the State, the defendant herself, the defendant's court-appointed lawyer, or the victims in the two cases were notified of Mr. Guerra's motion, or given an opportunity to be heard.

At the conclusion of the ex parte proceeding, Judge Hudson ordered that the defendant be released to an entity referred to as Innovative Solutions and that a status conference be scheduled for February 15, 2017.

2. RULE 2.6. [Ensuring the Right to Be Heard] provides:

- “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law.”

We believe that on February 13, 2017, Judge Hudson violated Rule 2.6 by failing to provide the State, the defendant, and victims in the two cases with an opportunity to be heard and respond to the information and arguments Judge Hudson received from Mr. Guerra in the course of the ex parte proceeding described above. The Arizona Victims’ Bill Of Rights, Const. Art. II, § 2.1(A) provides that victims have the right to be informed, upon request, when an accused or convicted person is released from custody, to be present at and, upon request, to be informed of all criminal proceedings where the defendant has the right to be present, and to be heard at any proceeding involving a post-arrest release decision. Further, as the parties in fact to the two cases, the State represented by the City Prosecutor, and the defendant, in person and through her court appointed attorney, had the right to be present and to be heard in a substantive matter related to trial scheduling and conditions of defendant’s release.

3. RULE 2.2. [Impartiality and Fairness] provides:

- “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”

We believe that on February 13, 2017, Judge Hudson violated Rule 2.2 by engaging in ex parte communications, denying persons with the legal interest in a matter the opportunity to be heard, and by failing to uphold and apply the law when he permitted defendant’s father, a nonlawyer, nonparty, to engage in the unauthorized practice of law as defined and prohibited by Arizona Supreme Court Rule 31 (Regulation of the Practice of Law).

4. RULE 1.2 [Promoting Confidence in the Judiciary] provides:

- “A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.”

We believe Judge Hudson’s conduct in violating Rules 2.9, Rule 2.6, and Rule 2.2 also violated Rule 1.2.

**Factual Basis:**

Judge Hudson’s conduct occurred in connection with two cases in which one Erica Larissa Guerra was the named defendant.

- Case 5114961 is a post-adjudicated case in which an Order to Show Cause (OSC) was issued regarding defendant’s non-payment of \$9508.59 in restitution. The original restitution order was issued on September 4, 2014, in the amount of \$9808.59 and at the time Judge Hudson handled the case the defendant had only paid \$300 of the restitution.
- Case 4615881 was, at the time Judge Hudson handled the matter, a pre-adjudicated case in which the state alleged two counts of contributing to the dependency or delinquency of a minor child. There were two listed victims in this case and the State alleged that the defendant's conduct resulted in the death of one of the listed victims.
- Warrants were issued in both cases, resulting in the defendant being arrested on December 23, 2016. Subsequently, bail was set but defendant failed to post bail and was held in custody.

- On December 30, 2016, the judge assigned to preside over the case set a cash only bail of \$8000 in total for both cases. The assigned judge also scheduled a pretrial disposition conference in case 5092064 and an order to show cause hearing in case 4615881 for February 10, 2017.
- On February 10, 2017, the assigned judge heard argument and overruled defendant's motion to dismiss filed by counsel, re-scheduled the order to show cause hearing and pretrial disposition conference for February 24, 2017, and set a nonjury trial in case 4615881 for May 9, 2017. The defendant again failed to pay the \$8000 cash bail and remained in custody.
- On February 13, 2017, the defendant's father, Ronald Guerra, a non-party and non-lawyer, filed a written motion with the court citing both case numbers. (see attached Exhibit A)
- Mr. Guerra's motion clearly states that he is the defendant's father, and that by way of the motion he is requesting on behalf of his daughter, the defendant, that the trial be moved up to early March from May 9, 2017. The motion asserts as grounds that the family could not obtain the \$8000 cash required for the defendant's bail and that the defendant has 5 children.
- Mr. Guerra and his motion were sent to a courtroom processing appearances on orders to show cause and warrants, where Judge Hudson was presiding at the time.
- Judge Hudson allowed Mr. Guerra to address the court on the motion and Mr. Guerra argued for his motion, asserting that the defendant needed to go back to a mental health facility.
- There is no indication in the record or otherwise, that the State, the defendant herself, the defendant's court-appointed lawyer, or the victims in the two cases were notified of Mr. Guerra's motion, or given an opportunity to be heard.
- Judge Hudson ordered that the defendant be released to an entity referred to as Innovative Solutions and that a status conference be scheduled for February 15, 2017. (See Exhibit B) However, no release order was ever transmitted to the Maricopa County Jail and the defendant remained in custody.
- On February 15, 2017, the State filed a motion to strike the motion filed by defendant's father, Mr. Guerra, and to quash any orders entered by Judge Hudson. Such motion was granted by the judge assigned to the case. (See Exhibit C)
- Thereafter the judge assigned to the cases reported Judge Hudson's conduct to Court Administration.

**Conclusion:**

The principles that judges will act impartially and in accordance with the law, considering only evidence received in accordance with the rules, while respecting the rights of persons to be heard, are at the foundation of the justice system in the United States. As such, a judicial officer who fails to recognize and respect these fundamentals calls his or her judgement into question, risks serious damage to public confidence in the impartiality and fairness of the judiciary, and ultimately harms the public.

If you need further information, please let me know.

Sincerely,



B. Don Taylor III  
Chief Presiding Judge

BDT/dgy

Judge MR  
JUN 01 2017  
2017-066

Lonnie J. Williams, Jr.  
602.212.8505 DIRECT  
602.586.5272 DIRECT FAX  
lonnie.williams@stinson.com

June 1, 2017

VIA HAND DELIVERY:

Hon. Louis Frank Dominguez  
Commission on Judicial Conduct  
1501 W. Washington Street, Suite 229  
Phoenix, AZ 85007

Re: Case No. 17-066 – Motion for Reconsideration

Dear Judge Dominguez & Members of the Commission:

I have been retained to represent Judge Wilbur N. Hudson, III in connection with this matter.

Pursuant to the Commission's Order dated May 17, 2017 (the "Order") and Rule 23(b)(1), Rules of the Commission on Judicial Conduct, we respectfully request the Commission to reconsider its Order. Specifically, there is a portion of the Order that is factually inaccurate. We also believe the inaccuracy is relevant to the Commission's ultimate decision to issue a public reprimand as opposed to a disposition under Rule 16, Rules of the Commission on Judicial Conduct.

In the third paragraph of the Order, the Commission states:

Judge Hudson reported that he conducted a hearing in which the father of a criminal defendant argued for the release of his child to a behavioral health treatment provider, and **Judge Hudson granted that request, signing a release order to be effective a few days later.**

The first portion of the quoted language is accurate, the portion in bold is not.

No release order was ever drafted or signed by Judge Hudson in connection with the hearing at issue. There was no release order in the documents attached to Judge Hudson's report to this Commission dated March 16, 2017. Attached to the report was an audio recording of the 7.47 minute hearing, Judge Hudson's judicial notes, and the entire court file related to Ms. Guerra. The aforementioned items do not support the existence of a signed release order.

Likewise, nothing that Judge Hudson did during this brief 7.47 minute hearing was "effective a few days later." The only thing Judge Hudson did regarding the future handling of this case was to schedule a status conference.

The letter from the Honorable B. Don Taylor III, Chief Presiding Judge of the City of Phoenix Municipal Court, also does not support the existence of a release order. On page 3 of Judge Taylor's letter, dated March 24, 2017, (the eleventh bullet point under the section entitled "Factual Basis"), he states:

Judge Hudson ordered that the defendant be released to an entity referred to as Innovative Solutions and that a status conference be scheduled for February 15, 2017 (see Exhibit B), however, no release order was ever transmitted to the Maricopa County Jail and the defendant remained in custody.

Exhibit B to Judge Taylor's letter is a copy of the judicial notes previously supplied to the Commission by Judge Hudson. No documents are attached to Judge Taylor's letter that suggests the existence of a release order.

It is not clear why the Honorable Presiding Judge concluded that Judge Hudson "ordered that the defendant be released." Likewise, it is not clear why Judge Taylor reached the conclusion that the defendant was not transferred, because no release order was transmitted to the Maricopa County Jail. However, it is axiomatic that a Court Order is more than a comment or statement from a judge. Many judges think aloud while on the bench. Comments such as "what I will say" or "defendant can," without more do not result in a "Court Order."

There are a number of objective reasons supporting the conclusion that Judge Hudson did not order the defendant's release, and did not rule on the Motion submitted by defendant's father. First, there is no release order. Any order releasing a defendant from the Maricopa County Jail must be in writing. Second, a review of the 7.47 minute hearing establishes that Judge Hudson simply indicates that the defendant "can" be released to a mental health facility. However, at the end of the hearing, Judge Hudson states that he is going to talk to the Court's mental health judge "to see what we can do." His very words indicate that this was something that could happen. His judicial notes indicate, that it is possible for the defendant to be transferred, but this matter was set for a Status Conference in front of the Mental Health Court. At the subsequent Status Conference before the Mental Health Court all parties would be present and have an opportunity to be heard on the defendant's possible release to a mental health facility. It is respectfully submitted that there is no other rational explanation for the lack of any release order and the scheduling of a subsequent hearing other than Judge Hudson did nothing but indicate that it was possible for the defendant to be released to a mental health facility.

Finally, there is no indication in the judicial notes, the defendant's father's written motion, or the 7.47 minute audio recording suggesting that Judge Hudson granted the

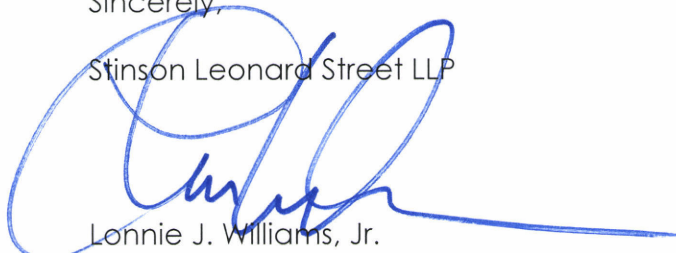
father's motion. This is evident from the actual motion where, under "FINDINGS & ORDER," no indication of action is shown and no signature is found. Contrast that with the documentation relating to the City of Phoenix Motion filed on February 15 to Strike the Motion filed by defendant's father. There, the Court indicates it is granting the Motion and a signature accompanies that action.

Judge Hudson acknowledged in his self-report that he made a mistake. That mistake appears to be listening to the defendant's father, orally indicating that a transfer was possible and scheduling a subsequent hearing to allow the final decision to be made. Although such actions were a mistake, the question for this Commission is whether such action arises to the level of a violation of the code as set forth in Rule 6, Rules of the Commission on Judicial Conduct. It is respectfully submitted that such action is quite different than entering a ruling and signing an order releasing a defendant from custody without allowing the prosecution, the defense or the victim to be heard. Based on the objective fact that no action on the Motion was taken by Judge Hudson and no release ordered was issued, it is respectfully suggested that action under Rule 16 is a more appropriate result than a public reprimand. This is especially true given the factors set forth in Rule 19, including the lack of any prior complaints.

Judge Hudson stands ready, willing and able to respond to any inquiries from the Commission regarding this matter. Thank you for your time, service and consideration of this matter.

Sincerely,

Stinson Leonard Street LLP



Lonnie J. Williams, Jr.  
Bar No. 005966

LJW:cel

April P. Elliott (Bar #016701)  
Disciplinary Counsel  
Arizona Commission on Judicial Conduct  
1501 West Washington Street, Suite 229  
Phoenix, Arizona 85007  
Telephone: (602) 452-3200  
Email: *aelliott@courts.az.gov*

**STATE OF ARIZONA**

**COMMISSION ON JUDICIAL CONDUCT**

Inquiry concerning	)	
	)	Case No.: 17-066
<b>Judge Wilbur N. Hudson, III</b>	)	
Phoenix Municipal Court	)	<b>Response to Motion for</b>
Maricopa County	)	<b>Reconsideration</b>
State of Arizona,	)	
	)	
<u>Respondent.</u>	)	

On May 17, 2017, the Commission on Judicial Conduct (Commission) publicly reprimanded Judge Wilbur N. Hudson, III (Respondent), for violations of the Arizona Code of Judicial Conduct (Code). Respondent filed a Motion for Reconsideration on June 1, 2017. Undersigned Disciplinary Counsel submits this response pursuant to Commission Rule 23(b), respectfully requesting that the commission grant the motion in part to correct an error in the Reprimand Order, but deny the portion of the motion seeking a dismissal.

**I. The Reprimand Order Contains a Factual Error**

As noted in Respondent's Motion for Reconsideration, the third paragraph of the Reprimand Order states:

Judge Hudson reported that he conducted a hearing in which the father of a criminal defendant argued for the release of his child to a behavioral

health treatment provider, and **Judge Hudson granted that request, signing a release order to be effective a few days later.** Neither the state nor the defendant was present during this hearing, nor did the victims receive any notification of the change in release conditions. By permitting a non-lawyer to advocate in a case, Judge Hudson's conduct violated Rules 1.1, 1.2, and 2.2. Failing to afford the state, defendant, and the victims the right to be heard violates Rule 2.6(A), and conducting a hearing without both sides being present is an ex parte communication in violation of Rule 2.9(A). (emphasis added)

Respondent alleges the bolded language is inaccurate, in that no release order was ever actually signed.

Disciplinary Counsel has re-reviewed Respondent's self-report letter, the court file, Presiding Judge Don Taylor's letter, and the audio recording of the proceeding. Respondent does not ever state that a release order was actually signed, and an order was not signed on February 13, 2017. However, there is confusing information which led to the reasonable assumption.

Respondent's self-report letter states that he ". . . issued orders that affected the Defendant and the State. I should have had a hearing on this matter prior to issuing any orders. I will not make that mistake again."<sup>1</sup> Additionally, Presiding Judge Taylor's letter to the Commission also noted, "At the conclusion of the ex parte proceeding, Judge Hudson ordered that the defendant be released to an entity referred to as Innovative Solutions and that a status conference be scheduled for February 15, 2017."<sup>2</sup> The notes for the court proceedings state:

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<sup>1</sup> Respondent's self-report letter to the Commission dated March 16, 2017, page 4.

<sup>2</sup> Presiding Judge Don Taylor's letter to the Commission dated March 24, 2017, page 1.

Complaint No. 20129017477

2/13/17 D can be released to a mental health facility set for status conference 501 [illegible] D can be released to Innovative Solutions stat 2/15/17 501 9:30 am (per Judge Hudson)

Complaint No. 20169028620

2/13/17 D was in Innovative Solution is being held in [illegible] needs to go back to mental health facility. D can be released to Innovative Solutions set status conference in 501 [illegible] stat 2/15/17 501 9:30 am (per Judge Hudson)

Finally, the audio recording<sup>3</sup> shows that Judge Hudson stated, "I'll say Defendant can be released to a mental health facility."

Judge Hudson's statements to Ms. Guerra's father during the hearing clearly gave the impression he was actually ordering her to be released. He does not make it clear that it will be up to the judge presiding over mental health court to make the release determination. Judge Hudson tells Ms. Guerra's father that he needs to return with information at the status conference on Innovative Solutions, however, Judge Hudson gives the impression that if Mr. Guerra provides that information to the court, his daughter will be released.

As a release order was not actually signed, Disciplinary Counsel requests that the Commission grant Respondent's motion, in part, to correct that error. Disciplinary Counsel suggests paragraph three of the Reprimand Order be revised to state:

Judge Hudson reported that he conducted a hearing in which the father of a criminal defendant argued for the release of his child to a behavioral

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<sup>3</sup> Disciplinary Counsel urges the Commission to re-review the audio recording of this proceeding during their deliberations on Respondent's Motion for Reconsideration.

health treatment provider, and **Judge Hudson indicated that the defendant could be released to the treatment provider.** Neither the state nor the defendant was present during this hearing, nor did the victims receive any notification of the change in release conditions. By permitting a non-lawyer to advocate in a case, Judge Hudson's conduct violated Rules 1.1, 1.2, and 2.2. Failing to afford the state, defendant, and the victims the right to be heard violates Rule 2.6(A), and conducting a hearing without both sides being present is an ex parte communication in violation of Rule 2.9(A). (emphasis added)

## **II. Good Cause Exists for the Imposition of the Reprimand**

Disciplinary Counsel requests that the Commission deny Respondent's request to vacate the reprimand, and impose a dismissal pursuant to Rule 16. Disciplinary Counsel argues that the existence of an actual signed release order was not a dispositive factor in the Commission's analysis of an appropriate sanction. The Commission's reprimand was based on a finding that Respondent violated Rules 1.1, 1.2, 2.2, 2.6(A), and 2.9(A) of the Code, as Respondent permitted a non-lawyer to advocate in a case, failed to afford all interested parties the right to be heard, and conducted a hearing without both sides being present.

Rule 1.1 of the Code of Judicial Conduct states that "a judge shall comply with the law, including the Code of Judicial Conduct." Rule 1.2 of the Code requires that a judge "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." Rule 2.2 states that "a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Additionally, Rule 2.6(A) of the Code states, "a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard

according to law.” Finally, Rule 2.9(A) states “a judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter . . . .”

Elizabeth Guerra was a criminal defendant in Phoenix Municipal Court, being held on bond for various cases. Her father, Ronald Guerra, filed a motion and appeared in the walk-in courtroom before Judge Hudson on February 13, 2017. In this motion, Mr. Guerra stated his daughter suffered from mental health issues, and he requested that she be released from jail and placed in a mental health facility, Innovative Solutions. As noted above, Judge Hudson advised Mr. Guerra that his daughter could be released to Innovative Solutions.

Judge Hudson self-reported his conduct, in which he admitted to violating Rules 1.1, 2.6 and 2.9 of the Code. Phoenix Municipal Court Presiding Judge Don Taylor also reported this conduct to the Commission, alleging Judge Hudson’s conduct violated Rules 1.2, 2.2, 2.6 and 2.9 of the Code.

### **III. 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. On balance, those factors support the issuance of the reprimand in this case.

#### **A. Seriousness of the Transgressions**

While a physical release order may not have been signed, and Ms. Guerra was not in fact released, Respondent’s conduct could have had significant consequences.

Neither the State nor victim was notified of Respondent's actions to allow Ms. Guerra to be released to a mental health facility. Ms. Guerra herself was not notified, and Respondent had no way of knowing whether or not she even wanted to be (or needed to be) released to a mental health facility. Respondent's actions undermine public confidence in the judiciary.

This factor weighs in favor of a sanction.

**B. Facts and Circumstances Existing at the Time of the Transgression**

In his self-report, Respondent stated his violations were not "willful," and that he was ". . . simply trying to help a young woman get the treatment it appeared she needed."<sup>4</sup> The Commission was aware of Respondent's motivations at the time the reprimand was issued. However, Respondent's conduct violated a number of rules of the Code, and ran afoul of very basic legal premises.

This factor weighs in favor of a sanction.

**C. Extent of Any Pattern of Improper Activity or Previous Violations**

Respondent has never previously been publicly disciplined by the Commission.

This factor weighs against a sanction.

**D. The Effect of the Improper Activity Upon the Judicial System or Others**

The success of our judicial system requires that the public have trust in the independence, integrity, and impartiality of the judges who serve on the bench. When a judge fails to follow the law, fails to afford all interested parties the right to be

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<sup>4</sup> Respondent's self-report letter to the Commission dated March 16, 2017, pages 2 and 4.

heard, and engages in ex parte communications, such behavior undermines that trust.

This factor weighs in favor of a sanction.

Three of the four factors that the commission must consider weigh in favor of issuing a sanction (a dismissal with an advisory comment or warning is not a sanction).

Respondent asserts that his actions were a “mistake,” and that “. . . such action is clearly different than entering a ruling and signing an order releasing a defendant from custody without allowing the prosecution, the defense or the victim to be heard.”<sup>5</sup> Disciplinary Counsel argues the lack of a signed release order is not relevant to the analysis. Respondent entertained a motion from a non-lawyer, conducted a hearing without prior notification to the state, the defendant, or the victim, and made statements that gave the impression he granted the relief requested by the non-lawyer to release the defendant to a mental health facility. That is the conduct for which Respondent was sanctioned, not the signing of an order. The imposition of a public reprimand protects the public “by assuring that the judge will refrain from similar acts of misconduct in the future.” Commission Rule 5 (Purpose of Judicial Discipline).

#### **IV. Aggravating and Mitigating Factors**

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

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<sup>5</sup> Respondent’s Motion for Reconsideration dated June 1, 2017, page 3.

**A. Nature, Extent and Frequency of the Misconduct**

This is the only instance that the Commission is aware of in which Respondent permitted a non-lawyer to advocate on behalf of a party, failed to afford all interested parties the right to be heard, and conducted a hearing without both sides present. Although this may be a mitigating factor, the above violations are fundamental violations of due process rights that a judge should be expected to know.

**B. Judge's Experience and Length of Service on the Bench**

Respondent has been on the bench for approximately three years, and has been a practicing attorney for over twenty years. He should be well-versed in legal premises, as well as his ethical obligations under the Code. Therefore, this is an aggravating factor.

**C. Whether the Conduct Occurred in the Judge's Official Capacity or Private Life**

The conduct occurred in Respondent's official capacity, and thus, this is an aggravating factor as well.

**D. Nature and Extent to Which the Acts of Misconduct Injured Other Persons or Respect for the Judiciary**

Ms. Guerra was not released from custody, and all interested parties were later given their opportunity to be heard at the status conference in mental health court. However, the state was forced to move to set aside Mr. Guerra's motion. In his report to the Commission, Presiding Judge Taylor stated:

The principles that judges will act impartially and in accordance with the law, considering only evidence received in accordance with the rules, while respecting the rights of person to be heard, are at the foundation of the justice system in the United States. As such, a judicial officer who

fails to recognize and respect these fundamentals calls his or her judgement into question, risks serious damage to public confidence in the impartiality and fairness of the judiciary, and ultimately harms the public.<sup>6</sup>

This is an aggravating factor.

**E. Whether and to What Extent the Judge Exploited His or Her Position for Improper Purposes**

Disciplinary Counsel does not deem this factor as applicable.

**F. Whether the Judge has Recognized and Acknowledged the Wrongful Nature of the Conduct and Manifested an Effort to Change or Reform the Conduct**

Respondent self-reported and acknowledged his errors.<sup>7</sup> This is a mitigating factor.

**G. Whether There Has Been Prior Disciplinary Action Concerning the Judge, and if so, its Remoteness and Relevance to the Present Proceeding**

Respondent has no prior disciplinary history. While this may be a mitigating factor, the violations at issue are breaches of basic legal and fairness concepts that a judge should reasonably be expected to know.

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<sup>6</sup> Presiding Judge Don Taylor's letter to the Commission dated March 24, 2017, page 3.

<sup>7</sup> Although, one of the errors Respondent acknowledged in his initial response to this commission was improperly issuing an order, something he now distances himself from. Respondent's self-report letter states that he ". . . issued orders that affected the Defendant and the State. I should have had a hearing on this matter prior to issuing any orders. I will not make that mistake again." Respondent's self-report letter to the Commission dated March 16, 2017, page 4. As stated above, while it is technically correct that Respondent did not sign an order, he created the impression he had and at one point, even believed this himself.

**H. Whether the Judge Complied with Prior Discipline or Requested and Complied with a Formal Ethics Advisory Opinion**

Disciplinary Counsel does not deem this factor as applicable.

**I. Whether the Judge Cooperated Fully and Honestly with the Commission in the Proceeding**

Respondent has fully cooperated and has been honest. This is a mitigating factor.

**J. 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 Disciplinary Counsel does not deem this factor applicable to this case.

While the mitigating factors outweigh the aggravating factors numerically, the Commission is free to assign whatever weight they deem appropriate to the factors. Given the number of Code violations, the basic nature of the legal premises violated, and the injury to the public perception of the judiciary, Disciplinary Counsel argues that the overall balance is in favor of upholding the prior sanction.

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**V. Conclusion**

Disciplinary Counsel respectfully requests that the commission deny Respondent's motion and leave in place the public reprimand order issued May 17, 2017, in this case.

Dated this 9th day of June, 2017.

**COMMISSION ON JUDICIAL CONDUCT**

*April P. Elliott*

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Disciplinary Counsel

A copy of this document was delivered via email on June 9, 2017, to:

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Attorney for Respondent

By: /s/ Kim Welch  
Kim Welch, Commission Clerk