

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-299

Judge:

Complainant:

ORDER

The complainant alleged a municipal court judge engaged in improper ex parte communications in a criminal matter.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge 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 review, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission approved sending the judge an advisory letter to ensure all parties in her courtroom are clear on her policies for bench conferences so as not to give the appearance that ex parte communication has occurred in violation of Rule 2.9(A). The complaint is dismissed pursuant to Rules 16(b) and 23(a).

The complainant's request for a copy of the judge's response was also denied.

Commission members Chris Ames, Louis Frank Dominguez and Art Hinshaw did not participate in the consideration of this matter.

Dated: May 10, 2018

FOR THE COMMISSION

/s/ Peter J. Eckerstrom

Hon. Peter J. Eckerstrom
Commission Vice-chair

Copies of this order were distributed to all appropriate persons on May 10, 2018.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2017-299

COMPLAINT AGAINST A JUDGE

Name: _____ Judge's Name: _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

Please see attached.

Narrative (2 pages)

Exhibit 1 -

Exhibit 2 - Record of Proceedings and

Exhibit 3 - Docket Report

Exhibit 4 - Audio/Video

Exhibit 5 - Events Query

BACKGROUND

On [redacted] was charged with committing theft and criminal damage against [redacted]. See Exhibit 1 - [redacted]. On [redacted] [redacted] entered into a plea of guilty before the Honorable [redacted] of the [redacted] Court. Judge [redacted] ordered [redacted] to serve [redacted] probation, and ordered him not to return to [redacted], to pay \$ [redacted] restitution, and to report on [redacted] to make payment arrangements. Defendant failed to appear on [redacted] and a Petition to Revoke Probation was filed. Additionally, Defendant failed to appear on [redacted] and [redacted]. See Exhibit 2 - Court Record of Proceedings and [redacted].

Almost [redacted] later, on [redacted] [redacted] was scheduled for Probation Revocation Arraignment (PRA) before the Honorable [redacted]. I was the [redacted] assigned to that division. Around [redacted] Judge [redacted] took the bench and did a roll call of the defendants.

[redacted] (substitute Court Appointed Attorney) provided me with a motion to continue the PRA and release OR for [redacted] to get him on a payment plan for the restitution that he owed. [redacted] did not oppose the Defense motion to continue or OR release. Around [redacted], Judge [redacted] stated, "[redacted]" [redacted] only had [redacted] matter on the docket. See Exhibits 3 & 4 - Docket Report and Audio/Video.

EX PARTE COMMUNICATION

Several minutes later, around [redacted], Judge [redacted] stated, "[redacted]" [redacted] was seated at the Defense table and approached the bench where Judge [redacted] spoke with [redacted] for about [redacted]. They were whispering. [redacted] was not asked by either Judge [redacted] or [redacted] to approach the bench. While Judge [redacted] spoke to [redacted], she provided the written motion that she had just granted at [redacted] to [redacted] and placed it on the top of the bench. [redacted] picked up the motion, concealed it, and took it with him. I was seated at the [redacted] table and unable to hear what was discussed, when this happened. See Exhibit 4 - Audio/Video.

I approached the area in front of the Bailiff to pick up [redacted] copies of motions. [redacted] was also in that area, near the Judge's bench, [redacted] had not left the bench and turned to me and stated that [redacted] was no longer continuing this matter and said that he would have to pay the restitution no matter what happened. However, at no point had [redacted] left the bench to consult with [redacted] about making an admission instead of continuing the matter. It was only after [redacted] informed me that he was not continuing the matter that he went directly to [redacted] and spoke with him. [redacted] was seated in the [redacted] of the jury box in [redacted].

I asked [redacted] what he had discussed with the Judge? He did not reply and only stared at me. Immediately, Judge [redacted] stated, "[redacted]" [redacted] I made it clear that I was not called to the bench. Judge [redacted] replied, "[redacted]" [redacted] Judge [redacted] did not explain why she was asking [redacted] about the case, and doing so without the Prosecutor present, when she had already granted [redacted] motion to continue and motion to release OR approximately [redacted] prior.

Although Judge [redacted] granted the motion to continue on the record, the Court's Record of Proceedings does not contain any reference to the motion to continue and release OR. The Court's file also does not contain any copy of the written motion that Judge [redacted] granted at [redacted]. It appears that Judge [redacted] discussed the matter with [redacted] they decided to proceed in a different manner, and Judge [redacted] gave the written motion back to defense counsel, all without the Prosecutor being present. See Exhibit 4 Audio/Video listed above.

DEFENDANT'S ADMISSION

Around [redacted] case was called again and Judge asked, "[redacted]?" [redacted] responded, "[redacted]" Judge [redacted] then stated, "[redacted]" Judge [redacted] proceeded by reminding the Defendant that the case was from [redacted] and told him the terms of probation. [redacted] admitted to violating probation, and the Court accepted the admission. Judge revoked Defendant's probation, executed the jail of [redacted] time-served, waived jail costs and the CAA fee. Judge informed the Defendant that restitution does not go away and it is in the amount of \$ [redacted] A review date of [redacted] was set for [redacted] to set-up payments. No fees would be accrued during this time. [redacted] failed to appear on [redacted] different occasions, including the [redacted] date as well, and has not paid restitution. See Exhibit 5 - Events Query.