

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-049

Judge:

Complainants:

ORDER

The complainants alleged a superior court judge improperly referred them for prosecution and professional discipline and acted out of vindictiveness.

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 that the judge should have disqualified himself after referring the complainants for criminal prosecution, as his impartiality could then be reasonably questioned and that the judge failed to allow a discussion outside the presence of the court when disclosing a potential basis for disqualification. While this was improper under Rules 1.2 and 2.11, the Scope Section of the Code of Judicial Conduct provides that it is not intended that 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 Rules 16(b) and 23(a), but to issue a warning letter to the judge to be mindful of his obligations under Rule 1.2 and 2.11.

Commission member Diane M. Johnsen did not participate in the consideration of this matter.

Dated: June 10, 2019

FOR THE COMMISSION

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

Copies of this order were distributed to all appropriate persons on June 10, 2019.

Arizona Commission on Judicial Conduct

1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

Re: Hon.

Dear

We, and , are submitting this complaint against Judge on behalf of our client, and ourselves. Among other things, Judge referred the us for criminal prosecution, and the for Bar discipline on an *ex parte* communication, by the opposing attorney about us, without a copy to us, with not one word under oath to support this action and no rational basis for it. There is evidence Judge action was out of vindictiveness, a pre-existing grudge, and irrational.

Our client was the involved in a before Judge

Based on an *ex parte* communication from an opposing lawyer in this case, Judge ordered the following (his Order is vacated by the Court of Appeals,

1. That be referred for criminal prosecution for allegedly violating (), even though there was no evidentiary hearing, or even one word under oath to indicate that she had violated the statute. Subsequent uncontroverted declarations under oath demonstrated that she had not done so, but Judge would not withdraw the Order.

2. and to the

for criminal prosecution even though there was not one scintilla of evidence anywhere that either one had done anything wrong.

3. Excluding from all further proceedings in that case. “

although any member of the public has a right to attend hearings in Court.”

At the time that he issued the order, Judge did not know that the motion on which he was acting on was *ex parte* (no copy had been sent to us), but he quickly found out, and did nothing to correct the situation between and when the reversed the *ex parte* order. The Court of Appeals decision), states: “

.” (Emphasis added.)

Instead Judge let the Order stand, and the had to vacate the *ex parte* order. As a result of the reversal, there was no criminal or Bar action.

The original was filed because Judge refused to grant a motion for to intervene in the case. That criticized Judge for (See comments of I) to an

The is Details of the are given at pages . For example,

The [redacted] was based on illegal assumptions on the part of [redacted] and Judge [redacted]. The [redacted] was that [redacted] has preference over a [redacted] which is contrary to [redacted]. Only [redacted] have preference over [redacted] Other [redacted] in this case, are on an equal [redacted]. The [redacted] was that "[redacted]" as the [redacted] expressed to [redacted] and then put it in somewhat more diplomatic, but still racist, terms in the [redacted] change [redacted]. A copy of [redacted] memorandum [redacted] is attached as Exhibit D. Those were the only [redacted] reasons given. The racist justification is directly contrary to [redacted] but Judge [redacted] changed [redacted] with the only justification being that illegal and racist justification.

After being served with our [redacted], including these matters, Judge [redacted] became vindictive. The next day, [redacted] not only referred [redacted] and [redacted] attorneys to the [redacted] for criminal prosecution, as [redacted] had stated in [redacted] order, but [redacted] referred [redacted] and [redacted] to the [redacted] which [redacted] previous order had not mentioned. A copy of Judge [redacted] complaint to the [redacted] is Exhibit E.¹ [redacted] was served with the [redacted] on [redacted] sent the letter to the [redacted] (something he had not previously mentioned) [redacted] later, on [redacted] (Exhibit E.)

On [redacted] we emailed judge [redacted] a letter requesting that [redacted] voluntarily recuse [redacted] Exhibit F. In that letter, we pointed out the following facts to Judge [redacted], which we ask this Commission to consider seriously:

¹ Undersigned [redacted] is aware of other cases where a [redacted] judge, upon referring a [redacted] would immediately recuse [redacted] from further [redacted] proceedings.

As _____ knows, referring anyone for criminal prosecution, and referring _____ are serious acts, involving the possibility of ruining lives and careers. We have not even been able to contact the _____ to whom complaint was sent to give our side, because our letter to _____ asking to whom we should send information has been unanswered.

In _____ case, you have a declaration under oath from _____ that _____ was not involved either in the _____ or in the request of the _____. Although the declaration was filed after _____ decision (because we did not know that a motion had been filed) the burden should have been on the other side, and they submitted no evidence, under oath or otherwise, that _____ had done anything wrong.

I was involved only in the very beginning of the case, and then asked a _____ before the hearing to become involved again because of the threatening _____ received from the _____. I became aware that an _____ had been involved only a _____ before the hearing before this Court. Then I turned around and found out that _____ and _____

This court _____ and us for _____ action even though, not only was there no evidence to support it, but no party had asked for it. The following quote is from page _____: “

”

The fact that what was done in this case was done so arbitrarily is disturbing, as is the failure to vacate the Order when it came to light that the Order resulted from an *ex parte* communication between _____

The complaint against _____ was that _____ the outside of the _____ house, where he reported that she left the house _____ in the car, and _____ Instead of welcoming this information as bearing on the _____, which should be the point of the legal proceedings, _____ and Judge _____ sought to punish _____ in being responsible to investigate what is in _____

The allegation was that _____ law by giving the _____ address _____ But there was no evidentiary hearing, or even anything under oath, to support the allegation. The allegation was false. The _____ had the _____

That was not confidential information obtained _____ under the definition of _____ Judge _____ unjustifiably broad interpretation of the _____ (discussed further below) could have the effect of shielding his wrongdoing (not just in this case) from public scrutiny.

The declarations of _____ presented to both the _____ and the trial court, are attached as Exhibits F and G, and state in pertinent part:

Amended

2.

3.

² This was suggested as the appropriate response by one of the _____ judges at _____

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**