

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-110

Judge:

Complainant:

ORDER

The Complainant alleges a pro tem superior court judge engaged in sexual and other harassment, engaged in disparate treatment based on gender, and retaliated against an individual for making a complaint.

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 made an inappropriate comment in an off-the-record setting and failed to appropriately supervise his staff. While this was improper under Rules 1.2, 2.8(B), and 2.12 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 him to refrain from making comments that may be perceived as embarrassing or mocking and to ensure his staff complies with the Code.

Commission member Gus Aragón did not participate in the consideration of this matter.

Dated: September 15, 2020

FOR THE COMMISSION

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

Copies of this order were distributed to all appropriate persons on September 15, 2020.

Comp

2020-110

Executive Director
Staff Attorney
Commission On Judicial Conduct
1501 W. Washington St.
Phoenix, AZ 85007

RE: Honorable

Dear Executive Director and Staff Attorney

Pursuant to our phone conversations, please accept this as my formal request for the Commission's assistance in investigating allegations of harassment against our Judge Pro Tem

This request is based upon which Policy. The policy provides 'Alleged misconduct of a judge will be referred for investigation to the Commission on Judicial Conduct.'

As we have discussed, these allegations came to my attention after a meeting with County Public Defender Deputy Public Defender and Judge on Although I had planned to have this information to you much sooner, the past few weeks have been challenging as I am sure they have been for you. I also understand that under the current health crisis, your ability to investigate may be impacted.

Pursuant to your authorization, I also have spoken with Judge on along with our Deputy Court Administrator Based upon my conversation with Judge I am forwarding to you an email from him with a list of potential character witnesses. I am also including contact information for those witnesses and the witnesses brought to my attention by

Based upon the information that has come to my attention, my meetings with Judge and Judge Judge . Judge and Judge I have issued a new Administrative Order Effective immediately, Judge will be reassigned from

and removed from responsibility for Rule 11 cases assigned to other judges. We will begin transitioning him from his assignment to an assignment consisting of and courts. This reassignment was not done for disciplinary purposes but rather to protect those alleging inappropriate treatment by Judge as well as to protect Judge and his Judicial Assistant

Additionally, we have worked with County Human Resources to address the issues raised about Judge Judicial Assistant Court Administration has concluded that investigation and has taken appropriate action. Since that is a confidential human resources matter covered by Rule 123, *Arizona Rules of the Supreme Court*, I have not included detailed information or any documentation regarding that Human Resource matter. That decision was based upon the advice of our Assistant Attorney General as well as If that information becomes relevant to your investigation of Judge please request that I provide you with further information and a copy of any documentation. I will then revisit that issue with our legal counsel and attempt to make that information available to the Commission only.

The allegations regarding Judge can be broken down into four general categories. First, there is the statement Judge made to Deputy Public Defender during Court staffing to the effect that Judge was not asking The second category is other alleged inappropriate statements Judge has made to attorneys during Court staffing. The third category of allegations is best summarized as claims that Judge treats female attorneys differently than male attorneys. The fourth category is an alleged retaliation against Deputy Public Defender when an unredacted Rule 11 Report was provided to State's Counsel after had provided the Court's Judicial Assistant with a redacted copy of the Rule 11 Report. I will summarize the information I have received from all sources to date and am attaching emails as well as other documentation. I will forward to you the relevant FTR recordings we have been able to preserve to date. I am happy to assist with any additional information you may request.

On Judge was presiding over Court. One of the participants was who was in-custody on that date. The jail contacted Judge office on the morning of the hearing and advised that they would not be when they During the Court proceedings Judge Judicial Assistant entered the Courtroom and according to the assigned Defense Counsel Deputy Public Defender advised her that because he was " " and refused . When Judge called case advised that was not present and she was requesting a Rule 11 evaluation on her client. Judge asked her a few questions on the record but took no further action at that time. As is the normal practice for the attorneys and Judge adjourned in court and went into a conference room to discuss the cases and possible dispositions. These sessions are never recorded.

It was during that time that Judge had a discussion with regarding was discussing the need for a Rule 11 evaluation and Judge was

asking questions regarding whether [redacted] had met with her client. According to [redacted] she admitted that she had not met her client but was trying to provide support for her request for an evaluation when Judge [redacted] stated, “

” According to Judge [redacted] he was trying to obtain information from [redacted] about the basis for her Rule 11 request and suggested that [redacted] should meet with her client before she makes such a request. Judge [redacted] has stated that [redacted] non-verbal response to his suggestion to meet with her client resulted in him making what he recognizes now was an inappropriate statement which he asserts was as follows: “ [redacted] ” [redacted] was offended by the inappropriate comment and believes it set the tone for everyone involved in staffing that it was ok to laugh and joke about the situation.

Once the attorneys were back in the courtroom and Judge [redacted] called case, [redacted] requested a Rule 11 evaluation and supported her request with information about [redacted] prior mental health treatment. Judge [redacted] granted the request for a Preliminary Rule 11 Evaluation without further discussion. The FTR for the entire in court proceeding on [redacted] have been preserved. I will forward to you portions of the FTR recordings showing [redacted] speaking with [redacted] at the beginning of [redacted] the first time case is called by Judge [redacted] and the second time his case is called by Judge [redacted] after the staffing. Please let me know if you would like more of the FTR recordings; however, as mentioned above, the staffing in the conference room between the first and second time the case was called was not recorded.

This incident prompted Public Defender [redacted] to question her staff and has learned about other incidents regarding Judge [redacted] and statements he has made during [redacted] staffings. Two specific incidents have been described by [redacted] in emails to me. The first incident occurred during an [redacted] staffing some time ago. The case was [redacted] which involved a husband who was charged with sexual assault of his spouse. Public Defender [redacted] asserts that Judge [redacted] stated something to the effect that, “ [redacted] ?” [redacted] advises that the statement upset her staff that was present as well as Deputy County Attorney [redacted] who was prosecuting the case. Judge [redacted] denies making such a statement but does recall that a defense attorney named [redacted] did make such a statement. Judge [redacted] admits that he should have responded to [redacted] statement by stopping the conversation and admits he was wrong in not taking such corrective action. The file reflects that [redacted] entered into a plea agreement at [redacted] on [redacted] and was subsequently sentenced on [redacted]. The attorneys involved in the case were Deputy County Attorney [redacted] and Deputy Public Defender [redacted].

Another specific statement that [redacted] attributes to Judge [redacted] during an staffing involved a young female client charged with drug offenses. [redacted] describes the Defendant as a young well-dressed good-looking lady. Judge [redacted] is alleged to have used air quotes with his hands in stating that the Public Defender’s client is a “ [redacted] ” suggesting that she was a sex worker. Judge [redacted] denies making such a statement but does recall an attorney during the staffing making such a suggestion and recognizes that he should have stopped the discussion immediately. I have provided more details as described by the defense attorney who witnessed the conduct below.

also reports that Deputy Public Defenders [redacted] and [redacted] allege that at an Initial Appearance hearing on [redacted] Judge [redacted] was reviewing a booking photo in the cases of [redacted] and made the statement that she would be a good-looking woman if she would clean herself up. Since this information came in later in the process and since my duties as [redacted] Judge have been overwhelmed by the current public health emergency, I have not taken the opportunity to discuss this allegation with Judge [redacted] and do not have his position to share. However, the FTR recording has been preserved and will be forwarded to you.

The next general category of concern from [redacted] is the allegation that Judge [redacted] treats female attorneys differently than male attorneys. She alleges that Judge [redacted] is dismissive and cuts off female attorneys in ways that he does not do to male attorneys. There are a few incidents that have recently been described in writing to me. One was during a hearing on [redacted] in the case of [redacted]

[redacted] Deputy Public Defender [redacted] alleges that Judge [redacted] would not allow her to make a record of her objections during the hearing. Like other later disclosed allegation, I have not taken the opportunity to discuss this allegation with Judge [redacted] and do not have his position to share. However, Judge [redacted] categorically denies treating attorneys differently and has provided a number of individuals as character witnesses regarding his judicial conduct. The FTR recording has been preserved for your consideration; however, given technical issues, I have not been able to review the recording personally. It will be sent to you separately.

Another incident is alleged to have occurred on [redacted] in [redacted] Judge [redacted] is alleged by Deputy Public Defender [redacted] to have admonished her for requesting release of her client after he was found not competent and not restorable. [redacted] reported this incident to her supervisor; however, that person's name was not provided to me. [redacted] who is a private defense attorney with a contract was present and has advised [redacted] that he was surprised at Judge [redacted] treatment of [redacted] and his ruling since he had a similar case and fact pattern which was handled differently by Judge [redacted] case was [redacted] and the Initial Appearance hearing was conducted before Judge [redacted] on [redacted] sent [redacted] an email which is attached to document number 11; however, that email primarily concerns [redacted] I have not spoken with Judge [redacted] about this allegation.

[redacted] Deputy Public Defender [redacted] has alleged that that atmosphere Judge [redacted] creates in [redacted] staffings is concerning. He has pointed to the case of [redacted] as an example. That case is generally described above, but here is a more complete summary. [redacted] describes [redacted] as “ [redacted] ” When [redacted] described [redacted] as a [redacted] during [redacted] staffing, he alleges that Judge [redacted] responded by repeating “ [redacted] ” while making an air quotes gesture. He alleges that Judge [redacted] continued to joke about [redacted] and implied she was a prostitute. When that continued, [redacted] excused himself from the discussion saying, “ [redacted] ”. When [redacted] came back into the room, he alleges Judge [redacted] started to make another comment about [redacted] then cut himself off and said something to the effect of [redacted]

“ Court records reflect that case was heard by Judge in on and that with the defense attorney and was the Deputy County Attorney. was sentenced by Judge on with the same two attorneys present. As I stated above, Judge denies making such a statement but does recall an attorney during the staffing making such a suggestion and recognizes that he should have stopped the discussion immediately.

The fourth allegation is of a more recent incident involving the case of that occurred after the incident was brought to everyone’s attention. believes this was retaliation by and Judge for report of the incident. As part of the Rule 11 proceedings, was provided a report from to redact before it would be sent to the State’s attorney. provided Judge Judicial Assistant with a copy of the report which she had redacted on On sent an email to the State’s attorney which was copied to The unredacted Rule 11 Report was included rather than the redacted one which had previously provided. We have attempted to determine how this happened by speaking to and Judge Judge asserts that he had no knowledge of the circumstances surrounding the distribution of the unredacted report. was surprised when confronted about this event and after reviewing her records believes this was an honest mistake. Deputy Court Administrator interviewed about this incident and found reaction and response to be credible. However, as mentioned above, the action that has been taken regarding is a confidential human resources matter pursuant to Rule 123, *Arizona Rules of the Supreme Court*. I am attaching the emails that were provided to me by regarding this allegation which include email with the redacted report as well as email distributing the unredacted report to the Deputy County Attorney.

I am including contact information regarding the individuals mentioned in this letter so you can reach out to any and all of them for further information.

I am including as attachments all information mentioned in this letter as well as all emails that have been exchanged regarding this matter.

Finally, I am providing a copy of this letter to and Judge as well as our supervising judges who have been involved in my discussions regarding these accusations including Judge Judge and Judge I am also providing a copy of this letter to our Court Administrator and Deputy Court Administrator.

I look forward to providing any further assistance that might be requested.

Sincerely,

Hon.

**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.**