

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-120

Judge:

Complainant:

ORDER

February 16, 2023

The Complainant alleged a superior court commissioner had improper ex parte communications with a juror during his criminal trial.

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.

The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Copies of this order were distributed to all appropriate persons on February 16, 2023.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2022-120

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.

ALLEGATION: Commissioner Has violated R. 2 OF
CANON 1, AND ALSO VIOLATED R 2.2, 2.3, 2.5, 2.6, AND 2.9 OF
CANON 2, AS WELL AS CANONS 1 & 2 THEMSELVES.

SITTING AS _____ AT _____ TRIAL IN _____
RECEIVED A SUBSTANTIVE AND MATERIAL NOTE FROM
THE _____ JURY. COMM. DID NOT NOTIFY THE
PARTIES THE JURY HAD SENT THIS NOTE. COMM. RESPONDED
EX PARTE TO THE JURY, WITHOUT PROVIDING THE DEFENSE THEIR
RIGHT TO BE HEARD. THIS COMMUNICATION WAS DISCOVERED
AFTER THE TRIAL WAS COMPLETED BY THE DUE DILIGENCE OF
ATTORNEY, WHILE SEARCHING THE TRIAL FILE FOR ISSUES
TO PRESENT TO THE COURT OF _____ ON DIRECT REVIEW. WHILE
DOES NOT REMEMBER HER NAME, SHE WAS/IS EMPLOYED BY
THE OFFICE OF THE _____ THE ARIZONA COURT OF
ORDERED A LIMITED REMAND TO DETERMINE IF
HAD NOTIFIED THE PARTIES: IN A TELEPHONIC CONFERENCE BETWEEN
COMM. _____
OPD HELD ON _____ IT
WAS AGREED TO BY ALL PARTIES, AFTER RESEARCHING THE APPROPRIATE
RECORDS, THAT HER HONOR DID NOT NOTIFY THE PARTIES THAT SHE
HAD RECEIVED A SUBSTANTIVE AND MATERIAL JURY NOTE TO WHICH
SHE HAD PROVIDED A PRIVATE EX PARTE RESPONSE.

(CONTINUED NEXT PAGE)

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THE GRAVITY OF THIS VIOLATION IS EXACERBATED BY THE SUBJECT
MATTER OF THE PRIVATE COMMUNICATION. THE MID-DELIBERATION
JURY REQUESTED THE PERMISSION TO BE ALLOWED
TO OVERCOME THEIR REASONABLE DOUBT OF GUILT TO
THE CHARGED OFFENSE BY THEIR DETERMINATION ON THE EVIDENCE
OF IDENTITY, EXCLUSIVELY. COMM. ACQUIESCED IN THE
JURY'S REQUEST BY CLAIMING THAT THAT WAS A MATTER
"UP TO THE JURY TO DECIDE." ACTUALLY, IT'S NOT. THE US
DETERMINED THE STANDARD OF PROOF OF GUILT IN
IS A DETERMINATION BEYOND REASONABLE DOUBT OF THE
EVIDENCE DEMONSTRATING EACH AND EVERY ELEMENT OF THE CHARGED
OFFENSE, IN ORDER TO CONVICT. SO, NOT ONLY DID HER HONOR
ERRONEOUSLY COMMUNICATE EX PARTE WITH THE MID-DELIBERATION
JURY, SHE FURTHER PERMITTED THE JURY THEIR REQUEST TO
CONVICT BY A STANDARD FAR INFERIOR TO THE
STANDARD OF PROOF OF GUILT. FURTHER, DEFENSE TO THE
CHARGE WAS MISIDENTIFICATION AND THIS EVIDENCE WAS CENTRAL TO THE CASE.
THESE ACTIONS BY COMMISSIONER RESULTED IN THE
WRONGFUL CONVICTION OF AN ABSOLUTELY INNOCENT DEFENDANT IN
THIS CASE, FOR WHICH HE RECEIVED 10 1/2 YEARS FLAT IN PRISON
FOR A CRIME HE DID NOT COMMIT. ON HABEAS REVIEW
AGREED WITH AZ COURT OF THAT COMM. HAD COMMITTED ERROR AND
THAT THIS ERROR WAS "INSTRUMENTAL" IN THE JURY'S DECISION TO CONVICT.

* * I WOULD APPRECIATE A COPY OF ³
THIS COMPLAINT, ANY RESPONSE THERETO,
ANY INVESTIGATIVE REPORTS/RECOMMENDATIONS,
AND THIS BODY'S FINDINGS — PLEASE AND THANK YOU.

