

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 10-306

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Complainant: No. 0192210270A

Judge: No. 0192210270B

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**ORDER**

The commission learned that a superior court judge appeared to have provided legal advice to a county employee in a case that could come before the judge's court. After reviewing the judge's response, the commission found no violation of the Code of Judicial Conduct. Pursuant to Rules 16(b) and 23, the commission decided to dismiss the complaint with an advisory letter.

Dated: March 18, 2011

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez  
Commission Chair

Copies of this order were mailed  
to the complainant and the judge  
on March 18, 2011

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

Notes

Regarding Conversations  
and Others Regarding Ms.  
interactions with Judge

On \_\_\_\_\_ at approximately 1:00 p.m. I received a call from a \_\_\_\_\_ employee at extension \_\_\_\_\_. (Notes were written throughout the day shortly after each conversation.) I did not know who the person was when I spoke with her. She asked if I had a minute to visit with her but she did not identify the subject. I told her that I had court in about a half hour but I could spare a few minutes. She said that she would come right up. As she was on her way I looked up her extension and found that it was \_\_\_\_\_ from the \_\_\_\_\_

Ms. \_\_\_\_\_ came into my office and closed the door. I asked what I could help her with. She asked if a signed and notarized agreement is legally binding. I suspected that this was personal in nature but as she is an employee, I needed to make sure it was not having anything to do with \_\_\_\_\_ business as I have had employees come to me with what they believed were whistle blowing type concerns. I asked for more detail.

She said that she and her ex-boyfriend had written an agreement regarding child support as to how much he would pay per month and regarding other expenses he would pay. I asked "You mean like dental or medical expenses?" She just said other stuff he would pay for. I did not inquire any further. She went on to say that the boyfriend said that he would not go to court over the issue so they had signed this agreement that said "Legally Binding" on the top and was notarized. She did not say whose idea it was to write the contract or who drafted it.

She then volunteered that she had taken the contract to \_\_\_\_\_ to review and that \_\_\_\_\_ had told her the contract was binding and that it was good. She pointed up stairs when she said \_\_\_\_\_ is the only \_\_\_\_\_ Court Judge in \_\_\_\_\_ County and the only person I am aware of that works for \_\_\_\_\_ named \_\_\_\_\_. Her office is \_\_\_\_\_ my own and in the direction that Ms. \_\_\_\_\_ pointed. Before Ms. \_\_\_\_\_ mentioned \_\_\_\_\_ I did not have any reason to suspect that Judge \_\_\_\_\_ had anything to do with any of what Ms. \_\_\_\_\_ had just told me.

Ms. \_\_\_\_\_ then said that she is worried because the ex-boyfriend now has a new girlfriend and that the exboyfriend is now wanting to change the contract and she is worried. She said that she had tried to get a hold of \_\_\_\_\_, but that \_\_\_\_\_ was not available and since she was panicking, she decided to get a hold of me.

I asked her when \_\_\_\_\_ had reviewed the contract and she said that it was in May of this year.

I then told her that I could not give her legal advice and that by law I am only allowed to represent \_\_\_\_\_ County. She then asked if I could just give her my opinion. I explained that I could not because that would be the same as giving her legal advice. I also emphasized that I

have not practiced family law in many many years and wouldn't know what to tell her anyway. I told her that I could tell her the names of some attorneys in the area that I know who practice family law but that I could not recommend any of them nor do I have any idea what they charge or what arrangements could be made with any of them. She asked who they are and I gave her the names of 5 or 6 attorneys who I believe practice locally in that area of the law. I did not give her any contact information or recommendation and I did tell her that there may be others who practice family law as well. Ms. [redacted] then left my office.

About [redacted] later, I called Ms. [redacted] to ask if [redacted] had reviewed the contract before or after it had been signed. Ms. [redacted] did not answer her phone so I left her a message with that question. She called back a few minutes later when I was away from my desk and said "both." She said she thought [redacted] had reviewed it both before and after it had been signed. About [redacted] later, Ms. [redacted] called again and said that she thought that [redacted] had reviewed the contract before it was signed. I thanked her and we ended the conversation.

Ms. [redacted] currently lives in [redacted] just across the state line from [redacted] and I believe that she has lived in the [redacted] area for some time. The ex-boyfriend lives in neighboring [redacted] AZ and she said that paternity had been established in [redacted] AZ. There would be a possibility that a child support issue could be filed in [redacted] County or that in a conflict situation, Judge [redacted] may be assigned a case arising in [redacted] Co. I believe the likelihood of Judge [redacted] being asked to sit on the case is possible but somewhat remote at this time but I have no way of assessing that possibility in the future.

After these interactions, I contacted three other attorneys, two of whom have had extensive interaction with the rules of ethics governing attorney conduct to seek their advice on whether I now had an obligation pursuant to ER 8.3(b) to file a report on the issue.

The attorney with no specific background in ethics rules application believed that I do have an obligation to report. This is an attorney who used to practice criminal law in the [redacted] area, but has since moved their practice to another area of the State.

One of the other two attorneys believed that there is a violation of the judicial code of conduct but questioned me about the credibility of Ms. [redacted] and recommended that I visit with Judge [redacted] about the situation to determine whether or not it really happened as Ms. [redacted] related the story to me. This attorney raised the issue of substantiality but also pointed out that one clearly would not want this happening again. I told the attorney that I had heard rumors of similar conduct by Judge [redacted] but that I had exerted no effort to track down any such rumors. This attorney said that if Judge [redacted] essentially confirmed the story that Ms. [redacted] had told me, that I would probably have an obligation to report.

The last attorney I consulted also felt that this was a violation of the judicial code of conduct but did not know whether it was "substantial." This attorney recommended that I have a more in depth discussion with Ms. [redacted] to try to better determine the nature of the conversation with Judge [redacted]

The attorney also recommended that I contact the executive director of the Judicial Conduct Commission and seek his/her guidance on whether or not I needed to report the occurrence.

It is now \_\_\_\_\_ and will attempt to contact the Judicial Conduct Commission tomorrow.

(Notes written at approximately 8:50 a.m.) - I contacted \_\_\_\_\_ again today and asked her to come visit with me about our conversations yesterday. She asked if she was in trouble and I explained that she was not but that I needed to clarify some things she had told me yesterday. I had my \_\_\_\_\_ sit in on today's discussion.

When Ms. \_\_\_\_\_ arrived I told her that one thing I needed to clarify was that although she intended to have the conversation be just between her and myself, that I was not her attorney and that I have obligations as an attorney that meant that conversation could not necessarily be just between the two of us. I emphasized several times that she was not in trouble and that she had not done anything wrong. Ms. \_\_\_\_\_ was reluctant to discuss the issue, and it appeared that not withstanding my assurances, she still worried that she had done something wrong.

Ms. \_\_\_\_\_ explained that her exboyfriend didn't want to go to court and that she felt like she needed to protect herself by having their agreement in writing. She intimated that she had drafted the contract which included an agreement for him to pay towards a credit card debt, which she said he has not been doing. She said that she had contacted her former attorney in \_\_\_\_\_ who, according to Ms. \_\_\_\_\_, told her that since they weren't married if she could get him to sign a contract, that would be a very good thing. She said that she wanted to make sure that the contract would be binding and had asked \_\_\_\_\_ about the contract. Once Ms. \_\_\_\_\_ understood that the focus of my questions regarded the interaction between herself and \_\_\_\_\_ she became very vague about what exactly she had spoken about with \_\_\_\_\_. She did say that \_\_\_\_\_ had seen the contract and that Ms. \_\_\_\_\_ had been concerned about the legal efficacy of a notarized contract and that she visited with \_\_\_\_\_ about that. I got the impression that the conversation had been more extensive but Ms. \_\_\_\_\_ did not give any details about the conversation. Ms. \_\_\_\_\_ did ask if she had gotten \_\_\_\_\_ in trouble and said that she could go talk to \_\_\_\_\_. This last statement seemed to suggest that she would attempt to make things right with \_\_\_\_\_.

At the end of the conversation, Ms. \_\_\_\_\_ seemed upset that I had asked her follow up questions. She said a couple of times that she just wanted some reassurance about the contract and that she came to me with a private question. I again explained that as a \_\_\_\_\_ I can't give her \_\_\_\_\_ and that I also have obligations when things are told to me. I did not explain what my obligations are, only that there are ethical rules that I must abide by. She said that she understood that I cannot give her advice and she left.

(Notes written at approximately 10:30 a.m.) - I called \_\_\_\_\_ to seek his advice regarding my reporting responsibility. He had just a few minutes and our conversation was short. I briefly outlined what

had happened and he also focused on the substantiality of the conduct. He suggested that I approach Judge directly and let her know what was related to me by Ms. He suggested that I let her know that I believe that I might have a reporting obligation and to invite her to self report. I assured him that I would do so on

(Notes written at approximately 10:20 a.m.) - I spoke with Judge today regarding the information I had received from Ms. had already come to see Judge and visited with her. I explained to Judge what I had learned from Ms. and that I had spoken with and that he had advised that I speak with her.

Judge said that she doesn't really know Ms. very well but that she spoke to her as a friend. Judge explained that she had been approached by Ms., she thought out by the counter or in hall or outside her office, it was not real clear where she alluded to, and asked the Judge some questions about her ex-boyfriend and their break up. Judge said that she told her that if she needed to get an order of protection, then she should get an order of protection and other such information, although what other information was unclear. Judge said that she never read the document but that Ms. had a document with her and that Ms. asked her some questions about the document. Specifically, Ms. stated her belief to Judge that if the document was notarized that meant it was true. Judge explained that all a notarization does is verify who signed the document. She also asked the Judge whether she should have the document recorded and according to Judge she told Ms. that recording the document would make no difference.

Judge said she thought that Ms. had said something about having spoken to an attorney at some point about the document. This was described as an impression rather than a fact.

Judge went on to explain that she felt sorry for the woman and that most of her advice was to toughen up and not worry about "what ifs." She said at one point, she wanted to give her a hug and say stop worrying so much. Judge said that Ms. had tried to come see her last Tuesday (two days before she had come to see me) and that she had called several times in an attempt to see Judge. Judge calendar was very full and she eventually told Ms. that if she wanted, she could come up and wait for an opportunity to visit with the Judge. Apparently, she did so and the Judge did see her last Ms. was concerned that the ex-boyfriend would stop paying whatever financial obligations he had agree to pursuant to the document that had been drafted, signed, notarized and recorded. Judge described the conversation as a lecture to stop worrying about what might happen and to toughen up. She said that she didn't think that Ms. had come to get a lecture, but that is what she got. The Judge and I both surmised that when she didn't get any specific information from Judge on Tuesday, she decided to come see me.

According to Judge Ms. again went to see Judge this morning prior to my visit with the Judge, to express her apologies for having "gotten Judge into trouble."

Judge stated that she did not believe that she had given any legal advice except perhaps regarding the legal effect of notarization and recording of a document. Her characterization of the exchange was that she had given friendly advice to a person who needed to toughen up and take more control of her own life and not live in fear of the "what ifs". At the end of my conversation with Judge I related to her what had suggested: 1) That I believed I may have a reporting obligation and; 2) That perhaps she may wish to self-report the incident.

Neither Ms nor Judge account of their interaction suggested that Judge ever told Ms. that the Judge could not discuss the matter with her; that Ms. should consult an attorney competent in family law; that it was improper for the Judge to give legal advice or express opinions with respect to Ms. concerns; or that the Judge expressed any concern that the matter may potentially come before her Court. Notwithstanding Judge perception of the conversations that had taken place, at the time Ms. approached me, she clearly believed that she had received legal advice from Judge at the time she discussed the "contract" document with Judge. Furthermore, she was seeking additional legal advice, first from Judge and then from me, as to the efficacy of the document if the arrangement she had with her ex-boyfriend didn't work out.

It is perhaps unclear whether Judge practiced law in the sense contemplated by Rule 3.10 of the Code of Judicial Conduct. Nevertheless, I am concerned that the friendly and loose manner of the interactions with Ms. without making clear the boundaries of Judicial behavior, leaves both Ms. and others with whom the Judge may have similar interactions, as well as anyone who may learn of such interactions, with the impression that the Judge is accessible for consultation on legal matters. The apparent diminished appreciation of the difficulties such encounters create is also a concern. I believe that sort of encounters that have occurred with Ms. undermines the public's confidence in the independence, integrity, and impartiality of the judiciary, and do not serve to avoid the appearance of impropriety as required by Rule 1.2 of the Code of Judicial Conduct. I have therefore determined that I have a duty pursuant to E.R. 8.3(b) to inform the appropriate authority.

I appreciate your taking a few moments to visit with me last regarding the situation that confronted me regarding a Ms. and Judge the  
I took your advice and visited with Judge

Rule 8.3(b) states "A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority." Comment three to this rule states in part ". . . This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term 'substantial' refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. . . ."

While the standards of this rule may be somewhat vague, the duty is not. I have therefore decided that I must fulfill my obligations pursuant to Rule 8.3(b) by informing the Judicial Conduct Commission of this event by emailing a copy of my notes

I want to make it clear, this email and my notes are not intended to be construed as a complaint, formal or otherwise. Rather, this is my effort to meet my obligation to inform the appropriate authority. Furthermore, I have provided a copy of this email and my notes to Judge I trust that you and the commission will do whatever you determine is best to be done.

Thank you again for your time and direction. If you have any questions, please feel free to contact me.

Sincerely,