

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-231

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge was biased against the prosecution.

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's collective comments gave an appearance of bias, although the Commission did not find clear and convincing evidence of actual bias. The Commission also found that the judge improperly took on the role of an advocate in one particular matter, and that some of his comments were not dignified. While this conduct was improper under Rules 1.2, 2.2, 2.3(A), and 2.8(B) 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 that his collective comments can give an appearance of bias, that his flippant comments were not dignified, and that he cannot take on the role of an advocate for a party.

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Commission members Denise K. Aguilar, Christopher W. Ames, Barbara Brown, Joseph C. Kreamer and J. Tyrrell Taber did not participate in the consideration of this matter.

Dated: March 17, 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 March 17, 2020.

Comp

PH.
FAX

2019-231

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

Re: Judge _____ County Superior Court

Dear Commission Members:

The _____ of the _____
has been made aware of numerous matters that question the impartiality of
_____ County Superior Court Judge _____. Each of these matters is
discussed below.

On _____ Judge _____ was sentencing a defendant in an identity
theft case, _____. The underlying facts of the case are contained
in the pre-sentence report.¹ See Attachment 1. Before imposing the sentence,
Judge _____ made the following statements on the record:

¹ All pre-sentence reports included in the attachments were obtained from the public view in _____ the court's information system.

² The court transcript of this exchange indicates the court said " _____ " However, this listener and others, in reviewing the video recording of this exchange, clearly heard " _____ ." The latter phrase also makes sense in the context of the court's comments. The recording is included as Attachment 3 and can be reviewed for clarification, specifically at _____

See Attachment 2 at pages _____ ; and Attachment 3 starting at _____

Although the court coverage attorney for the State pointed out some of the inaccurate assumptions of the court, Judge _____ did not retract any of his statements. He ultimately sentenced the defendant to _____ of supervised probation.

A few days later, on _____ Judge _____ was addressing the issue of plea deadlines in _____. On the record at the pretrial conference, Judge _____ made the following remarks to the defendant:

See Attachment 4 at pages _____ and Attachment 5 at _____³

In other instances, Judge _____ has overtly ridiculed _____ and expressed his intent to control how _____ prosecutes its cases. For example, in _____ and _____ where the State moved to continue the defendant's comprehensive pretrial conferences so that it could charge and simultaneously resolve a third (new) case against the defendant, Judge _____ made the following statements on the record:

See Attachment 6 at pages _____ and Attachment 7 at _____

Judge _____ voiced the same sentiments in _____ (see pre-sentence report in Attachment 8):

³ This matter is still pending. The parties in the case are unaware of this letter. Because Judge _____ comments are global comments directed at _____ and are not unique to any particular case, this incident is being included as an example.

See Attachment 9 at pages [redacted] and Attachment 10 at [redacted]

In yet another case, [redacted] and [redacted] (see pre-sentence report in Attachment 11), Judge [redacted] made similar comments where the *defendant* moved to continue the comprehensive pretrial conference so that she could obtain a global plea offer that would encompass recently forecasted new charges. When the prosecutor told Judge [redacted] that the State would extend a global plea offer to resolve the forthcoming charges within 30 days, Judge [redacted] responded on the record: “

.” See Attachment 12 at [redacted] and Attachment 13 at [redacted]

Judge [redacted] comments in these cases indicate a wholesale disdain for the State when motions to continue are made in cases due to newly submitted charges. His comments disregard the fact that new charges are dictated solely by the conduct of the accused and that the harm to victims would be discounted

by not giving those charges independent attention.

In other instances, Judge [redacted] has made it clear that he not only disapproves of Arizona's sentencing scheme for drug offenses,⁴ but that he is unhappy about how [redacted] plea policies operate within those legislatively enacted statutes. For example, in [redacted] (see pre-sentence report in Attachment 17), Judge [redacted] called an impromptu settlement conference at the bench in a promoting prison contraband case (that neither party requested or consented to)⁵ and stated "

[redacted] See Attachment 18 at page [redacted]

After intimating that the sentencing laws for promoting prison contraband are unconstitutional, Judge [redacted] continued to berate [redacted] policies: "

[redacted] " *Id.* at page [redacted] See also Attachment 19 at [redacted]

Similarly, in [redacted] and [redacted] (see pre-sentence report in Attachment 20)—cases involving drug possession and theft of means of transportation, committed by a defendant with three prior felony

⁴ [redacted] and related cases. " [redacted] See Attachment 14, at page [redacted] "...

[redacted] " *Id.* at [redacted] pages [redacted] See also *id.* at page [redacted] where Judge [redacted] places the defendant on 15 days of probation, stating "

[redacted] ". See also FTR in Attachment 15 (FTR at [redacted]) and the pre-sentence report in Attachment 16. While this comment is not directed at [redacted] it is directed at the very system Judge [redacted] is a leader in. To state in a public forum that he has no confidence in the system that HE oversees is guaranteed to undermine public confidence.

⁵ Rule 17.4(a)(2) only permits the assigned trial judge to participate in the discussion of plea negotiations if both parties consent. Ariz. R. Crim. P. 17.4(a)(2).

**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.**