

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-235

Judge:

Complainant:

ORDER

The Complainant alleged a pro tem superior court judge engaged in improper ex parte communications and failed to avoid the appearance of impropriety.

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 engaged in improper ex parte communication when he had email correspondence with one attorney in the litigation without ensuring the other attorney was copied on the communications. While this was improper under Rules 1.2 and 2.9(A) 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 of his obligation to ensure all parties are copied on any email correspondence or other communication about a pending matter.

Commission members Roger D. Barton and Christopher P. Staring did not participate in the consideration of this matter.

Dated: January 29, 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 January 29, 2020.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2019-235

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.

On _____ Judge _____ held a telephonic scheduling conference. On his own motion, Judge _____ expanded the scope of the scheduling conference to address substantive discovery issues and to issue rulings related thereto. One pending issue concerned the scope of a deposition. As his method of resolving the issue, Judge _____ directed adverse counsel, _____ Esq., to submit to him a list of proposed deposition topics and specifically directed _____ to submit the list to his personal email address, _____ rather than his court-issued email address.

Thereafter, on _____ Judge _____ used his personal email to correspond with _____ This occurred on two occasions on this date. On neither occasion did Judge _____ provide me a copy of his communications to _____

In his first email to _____ Judge _____ included what appeared to be his home address and cell phone number. This was likely inadvertent and was probably his standard email signature form.

In his second email to _____ Judge _____ advised _____ that he had in fact received the list of deposition topics and, moreover, that he had prepared a ruling thereon. _____ therefore had advance knowledge prior to me that Judge _____ had issued a ruling in the case.

On neither occasion did Judge _____ include me in his correspondence with _____ Therefore, I had no knowledge of the ex parte communications he had with _____ let alone an opportunity to respond thereto if I felt a response was warranted.

First, I believe Judge _____ conduct constitutes ex parte communication in violation of Rule 2.9(a), Code of Judicial Conduct, and that none of the exceptions including, subsection (1), apply. Even though the communications could be considered innocuous, they still implicate and jeopardize Canons 1 and 2 of the Code of Judicial Conduct.

Second, I believe Judge _____ conduct undermined confidence in the integrity and impartiality of the judiciary and failed to avoid impropriety or the appearance thereof, which is a violation of Rule 1.2, Code of Judicial Conduct. As a _____ who lives and practices in a county where no other judges or lawyers look like me, confidence in the integrity and impartiality of the judiciary and having judges who avoid the appearance of impropriety is important to me and others of diverse backgrounds. Other than relying on adverse counsel, I now have no way of being confident that Judge _____ and _____ are not engaging in ex parte communications regarding this case. I submit that this is compounded by the fact that Judge _____ and _____ are contemporaries: They are both _____ in their _____ who have practiced _____ and _____ in the _____ area for _____

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Candidly, I have no way of ascertaining the scope of their previous relationship or interactions, but I also cannot be confident that Judge _____ provision of his personal email address, home address, and cell phone number to adverse counsel has not or will not be used to my disadvantage or in a way that might make Judge _____ anything less than impartial.

The delay in submitting this complaint is that I have been waiting for a copy of the recording from the _____ hearing so I can submit with this complaint, however, the Clerk's office staff has advised that it is not available to date. The reason given to my office is that they are waiting for Judge _____ to issue a minute entry before they can release the audio recording of the hearing.

From:

Sent:

To:

Cc:

Subject:

Attachments:

N of Filing Deposition Topic List.pdf

Thank you, your honor, for this morning's hearing in the _____ case. Per the court's request, attached here is the Notice of Filing List of Deposition Topics as previously filed with the court. The last pages of that document are the list itself.

Since this is the first time I have used this email address, I would appreciate a confirmation that this message was received.

Thanks and regards,

From:
Sent:
To:
Subject: FW: Document not received (Deposition topics list -)

FYI.

From:
Sent:
To:
Subject: RE: Document not received (Deposition topics list -)

I apologize. I did get that. I have done a ruling (in process with the staff) on each category or topic.

From:
Sent: 7
To:
Cc:
Subject: RE: Document not received (Deposition topics list -)

Alright, your honor, my apologies, here is a re-send. The last pages of the attached pleading is the deposition topics list itself in the case.

Regards,

From:
Sent:
To:
Cc:
Subject: Document not received

I have checked all of my folders and did not find what you sent.