

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-106

Judge:

Complainant:

ORDER

September 23, 2024

The Complainant alleged a superior court judge pro tem had ex parte communication with the prosecutor and jail staff.

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).

Commission members Denise K. Aguilar and Barbara Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on September 23, 2024.

Comp

2024-106

Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, Arizona 86007

RE: Honorable Judge Pro Tempore for County Superior Court.

To whom it may concern,

This letter serves as a judicial complaint pursuant to the Rules of the Commission on Judicial Conduct and Article 6.1 of the Arizona Constitution.

I am a criminal defendant with charges currently pending against me in County Superior Court cause numbers

These matters are assigned to the Honorable
a Judge Pro Tempore who presides over of the County
Superior Court. I am submitting this complaint to bring what I believe are multiple egregious and blatant violations of the Arizona Code of Judicial Conduct by Judge to the attention of the Commission.

A) Promoting Confidence in the Judiciary (Rule 1.2), Impartiality and Fairness (Rule 2.2),

Ex-Parte Communications (Rule 2.9) and/or Bias, Prejudice, and Harassment (Rule 2.3)

On Judge granted my pro se Motion to Substitute Counsel in the pending matters referenced above, and appointed to represent me. A Status Conference was subsequently held to set a trial date in one of my pending matters. At that time, informed the court that he would be able to prepare my defense and try my case in but only if I remained in County instead of being transferred to the I am currently serving a sentence of imprisonment in another matter heard and tried in front of Judge) Judge agreed to order that I remain in County to assist with the preparation of my defense.

On Judge held a *sua sponte* Status Conference; the purpose of which neither myself, nor my counsel, was aware of until the hearing was conducted. Without stating any reason or justification, Judge ordered that I be transported to pending trial, over defense counsel's objection.

The week prior to this hearing, I was confronted by Corrections Lieutenant of the regarding a grievance I had filed. Lieutenant stated that, due to my sentence of imprisonment, I could be transferred to and if I wanted to stay in County, I should stop complaining. Without stating Judge name, I informed Lieutenant that my judge ordered that I remain in County; He responded stating that Lieutenant (a liaison between the County Superior Court and the County, had already

spoken to "Judge " (referencing him by name) and that Judge was already "on board" with transferring me to if I "continue to complain." The Status Conference in which Judge ordered my transfer to sua sponte occurred less than a week after Lt. statement.

Given the chain of events which led to my transfer, I believed that Judge had indeed spoken to Lt. As such, I submitted a public records request to the County Superior Court requesting phone records of any calls between Judge and assigned county telephone extension number. This request was denied, and the reason provided was that Judge had claimed the records were judicial work product and privileged. However, given my suspicions that Judge had engaged in ex parte communication, I also submitted a public records request to the requesting phone records of any calls between Judge and the deputy county attorney assigned to my case. The provided responsive records showing that, in Judge placed calls to, and received calls from, or different occasions. One call, initiated by Judge had a duration of 12 Minutes & 53 seconds. Another call, initiated by had a duration of 18 minutes and 38 seconds. These records only reflect calls between Judge county-assigned phone extension and county-assigned phone extension; the remainder of the call log is redacted, and any additional calls between Judge and that utilize another telephone (e.g. a cell phone) would not show. These records confirmed my long-standing suspicion that impropriety existed between Judge and Of course, I can only speculate as to the substance of these call's subject matter, but the fact that they occurred at all, and the length of the calls, presents an overwhelming

appearance of impropriety, and demonstrably evidences ex parte communications between a judge and a prosecutor.

B) Compliance with the Law (Rule 1.1), Impartiality and Fairness (Rule 2.2), Competence, Diligence, and Cooperation (Rule 2.5).

On _____ while I was incarcerated at the _____ I received a disciplinary infraction, which alleged that I tampered with a visitation computer intended for attorney/client video visits.

On _____ I was scheduled to begin trial in _____. However, at the time trial was scheduled to begin, deputy county attorney informed Judge _____ that I had received the disciplinary charge referenced above. She further stated that a criminal investigation was now underway, and my defense counsel would be called as a witness in any criminal proceedings. _____ did not inform Judge _____ that the disciplinary infraction was still under investigation by the _____ command staff and a finding of guilt had yet to be made. My defense counsel immediately moved to withdraw, citing the conflict of interest created by _____ comment, and Judge _____ granted the oral motion, leaving me unrepresented for the remainder of the hearing. After my defense counsel withdrew, _____ asked Judge _____ to enter an order prohibiting me from using any communication devices, including telephone, tablet and computers. Judge _____ stated, " _____ " and made such an order. Judge _____ did not allow me to be heard at any point during this hearing. Of course, given counsel's withdrawal, the scheduled trial was vacated pending appointment of new defense counsel.

On _____ the _____ conducted a disciplinary hearing regarding the alleged tampering. The hearing officer concluded that an officer had made an erroneous assumption about a function of the visitation computer, leading the officer to believe I had tampered with it. The disciplinary charges were found to be unsubstantiated in their entirety, and were dismissed with a "not guilty" finding.

Immediately after the hearing, I drafted a *pro se* Motion to Reconsider, requesting that Judge _____ vacate his orders allowing my defense counsel to withdraw and prohibiting me from using electronics. At the time I submitted the motion, I was not represented by counsel, as Judge _____ had yet to appoint successor counsel. Upon receipt of the motion, Judge _____ denied it without prejudice and forwarded them to newly-appointed defense counsel. At two subsequent status conferences, I requested that Judge _____ vacate his order prohibiting me from utilizing electronic devices, and both times Judge _____ refused to do so.

On _____ I submitted a Petition for Writ of Habeas Corpus in the _____ requesting that the Court intervene and vacate/void the order. On _____ the _____ submitted a non-party Motion for Clarification on behalf of the _____ requesting " _____ to " withdraw any permission for the Defendant to have access to any tablet, computer or telephone contact until further order of the Court." On _____ Judge _____ entered an In Chambers order vacating the _____ order prohibiting electronics usage. Judge _____ did not provide any rationale or clarification as to his jurisdictional authority to enter the original

**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.**