

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-145

Judge:

Complainant:

ORDER

September 23, 2024

The Complainant alleged a superior court judge had improper ex parte communication with former jurors on evidence not admitted at trial after a hung jury.

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, Barbara Brown, and Christopher P. Staring did not participate in the consideration of this matter.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2024-145

①

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 _____ jurors in the trial for case # _____
counts 1-3 deadlocked. Judge _____
declared a mistrial and the jurors were excused from their
service. After setting a status conference, _____ informed
the defense and state that he was going to the jury
room to thank the jurors for their service. Judge _____
did not invite either party to join him in this endeavor,
nor did he bring a court reporter with him to keep
a record of this ex-parte juror contact.

On _____, the _____ published
an article (Enclosed as Exhibit), and reported by
_____ stating that 4 of the jurors had gone to the
newspaper bemoaning the fact that a guilty verdict
could not be reached.

These 4 jurors revealed that _____ had informed
the jury, following their excusal, that I had been

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convicted of another murder involving another young girl —
The extent of how much detail Judge gave is still unclear, though he should have said nothing to these jurors at all unless it was to thank them for their service - under the circumstances.
extrajudicial comments reflected his bias, and this bias was broadcasted to the entire community. At the very least, it gave the appearance of impropriety.
"Canon 3B (7) says a judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending matter..."
Canon 3B (9) prescribes a judge from making any public comment that would reasonably be expected to affect the outcome of a proceeding or impair its fairness. It says also in 3B (10) that a judge may not commend or criticize jurors for their verdict.

(3)

Name:

Judge:

Canon 2A states judges are to act in a manner "that promotes public confidence in the integrity and impartiality of the judiciary."

Like any reasonable person, knew or should have known that a re-trial in such a high profile murder case would inevitably be re-tried. I also knew that any comments made to a jury that had such strong sentiments of guilt towards me would almost certainly be repeated to the media. By informing these deadlocked jurors of my previous conviction for a similar crime, Judge further tainted the jury pool for the next trial — he juxtaposed the two victims to the city of making my chances of receiving a fair trial that much harder.

It should be noted that the previous judge in this very case () was found to be in violation of many judicial canons, including but not limited to bias and the appearance of impropriety. In that case, this commission stressed to Judge that the commission's motive was not to punish her, but instead to "... restore and maintain the dignity and honor of the position and to protect the public."

This commission cited Commission Rule 5 to that her reprimand was to maintain high standards for the judiciary. a very member of that same judiciary, did not heed the consequences begotten by his predecessor. He commiserated with jurors who felt I was guilty.

Enclosed is the Motion for Change of Judge dated as well as the aforementioned article penned by the

I have also enclosed the Arizona Supreme Court's Advisory Opinion 01-01 (Re-issued 1/22/2003) that was all part of the record in the change of judge motion.

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Attorneys for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF

) Case No.
)
Plaintiff,)
vs.) DEFENDANT'S MOTION TO
) REMOVE JUDGE FOR CAUSE
) PURSUANT TO RULE 10.1
)
)
Defendant.) (Hon. Judge
) (Presiding Judge

Defendant through counsel, moves this Court, pursuant to Article II §4 of the Arizona Constitution, the 14th Amendment to the U.S. Constitution, *In Re Murchison*, 349 U.S. 133, 75 S.Ct. 623 (1955), *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252 (2009), *Williams v. Pennsylvania*, 136 S.Ct. 1899, 195 L.Ed. 2d 132 (2016), *State v. Meyers*, 117 Ariz. 79, 570 P.2d 1252 (1977), *State v. Valencia*, 124 Ariz.

1 139, 602 P.2d 807 (1979), Rule 10.1(a) of the Arizona Rules of Criminal Procedure, and
2 Rule 81 of the Rules of the Supreme Court, for a change of judge because the assigned
3 judge's interest or prejudice would prevent a fair and impartial hearing or trial. The judge
4 to be changed is the Honorable

5
6 This Motion is timely, as the basis for this Motion could not have been known to the
7 defense until the reported certain matters concerning Judge discussions
8 with the jury until The day following was

9
10 Per Rule 1.3 of the A.R.Cr.P., the day is computed by extending the
11 time limit to the next day that is not a Saturday, Sunday or legal holiday. Further, the
12 defense did not file this Motion sooner because it was important to confirm the accuracy
13 of the information reported in the subject news article.

14
15 Specifically, it was reported in an article starting on the front page of the
16 newspaper on hat Judge met some of the jurors
17 following the mistrial in first-degree murder trial
18 counts 1-3) who were unable to reach a verdict. According to the article:

19 “

20
21 ”

22
23 See, Article, “

24 ” Exhibit 1.

25 This Motion is supported by undersigned counsel's affidavit (Exhibit 2) and the
26

**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.**