

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-002

Judge:

Complainant:

ORDER

May 24, 2024

The Complainant alleged a superior court judge had a conflict of interest in hearing his cases in 2011.

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 Barbara Brown and Delia R. Neal did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on May 24, 2024.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2024 - 002

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.

Good Cause - Jurisdiction: On _____ Non _____ presided over the dependency proceeding concerning the custody and control of the Petitioner's minor children. This dependency hearing gave Judge _____ personal knowledge of the defendant's criminal case which was also pending at that time. The dependency hearing involved the same child who was the main witness and accuser in the criminal case. Before Judge _____ could make any finding or a determination on custody and control of the petitioner's children he would be required to personally examine the evidence from the defendant's criminal case. Rule 2.11 (A)(6)(d) states: "A judge shall disqualify himself... in any proceeding in which the judge's impartiality might reasonably be questioned, including... when the judge previously presided as a judge over the matter in another court." There is an impermissible risk of actual bias when a judge has a significant, personal involvement as a prosecutor in a critical decision regarding a defendant's case... Here, not only did Judge _____ preside as the judge over the matter in the dependency hearing, he had had to find the defendant guilty of the charges in order to authorize the removal of the Petitioner's minor children from the Petitioner's home. Exhibit "A" Pursuant to Rule 2.11 Judge _____ did not have jurisdiction to preside over the defendant's case/trial, sentencing or his Rule 32 proceeding. A commentary to rule 2.11 states that: (2.) A judge's obligation not to hear or decide matters in which disqualification is **REQUIRED** applies regardless of whether a motion to disqualify is filed. Here, Judge _____ was notified by counsel that he had previously been assigned as the judicial officer presiding over the juvenile dependency case involved the same allegations as those endemic to the indictment. Exhibit "B" Judge _____ was therefore required by Rule upon this notice to disqualify himself from the defendant's criminal proceeding due to his involvement in the dependency case. Petitioner hereby challenges his trial proceedings, conviction, sentencing, appeal, and PEB proceedings as invalid due to the appearance of impropriety and bias from Judge _____ where he clearly violated Rule 2.11 (A)(6)(d). Good Cause - Appearance of impropriety and bias resulting in a Structural Error which requires Reversal. Defendant submitted a motion through counsel for him to withdraw because the defendant had proof that _____ was not prepared for trial. The defendant decided to execute his right to waive counsel and proceed pro-se. The main reason for the motion was that _____ was appointed as trial attorney "less than a month before trial, Exhibit "C" he was not doing his job, and he was not communicating or cooperating with the defendant. And the allow no continuance.

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During the defendant's pro-se colloquy he requested a continuance due to the case being complex and having less than days to prepare for trial. Even though a complex case cannot be prepared in less than days, which provides the court with an appropriate reason to grant a continuance (the Attorney needed to review records, consult with the defendant, conduct the proper investigation, interview all witnesses, hire an expert witness, etc). the judge denied the continuance stating there was no basis for the continuance. This ruling shows bias and was an abuse of discretion because Judge denied the defendant of his 6th Amendment right to represent himself it created a structural error, a defect that fundamentally undermined the reliability and fairness of the trial, which ~~is~~ is not subject to harmless error review and requires an automatic reversal (structural errors, as opposed to trial errors, involve defects in fundamental framework by which criminal trials assess guilt. Denial of right to self representation not subject to harmless error analysis). There seems to be a systemic defect in county in the way defendants are appointed counsel. During PIR proceedings the "Chief Prosecutor" in County left to become a public defender. A few weeks later the defendant received a letter from this chief prosecutor stating she has been appointed to take over the defendant's Rule 32 proceeding "Major Conflict." During trial the defendant was denied his 6th Amendment right to self representation. However, during PIR proceedings the defendant was forced to proceed pro-se because the chief prosecutor, now public defender filed an Anders Brief forcing the defendant to fend for him self during the PIR proceedings. She was prosecuting me then defended me and quickly said no credible claims. Hired by Judge _____

For these reasons I have filed this complaint I am now asking for any public reports involving the honorable _____ who presided over my case noted above. Please provide me with the requested information, and mail via legal mail to: _____

Telephone:
Facsimile:
E-Mail:

Attorney for Defendant

IN THE COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF

STATE OF ARIZONA,
Plaintiff,

vs.

Defendant.

) Case No.

)
) **MOTION TO WITHDRAW AS**
) **COUNSEL**
) (Expedited Ruling Requested)

) Hon.

Defendant, _____, has directed undersigned counsel to withdraw his representation for the following reasons, which reasons were conveyed by Defendant to undersigned counsel on the evening of _____ :

1. Defendant alleges conflict of interest; Defendant has filed a previous bar complaint against the office of undersigned counsel and threatens continued additional complaint;
2. Defendant alleges lack of due diligence on the part of undersigned counsel in his representation;
3. Defendant refuses to communicate or cooperate with undersigned counsel toward effective assistance of counsel;
4. Defendant demands that this Court allow him to represent himself;
5. Defendant is fully aware that Trial is proceeding on _____ as scheduled.

RESPECTFULLY SUBMITTED this day of

By: _____

Attorney for Defendant

1 **Original/Copies of the foregoing delivered**
2 **this day of , to:**

3 Clerk of County Court

4 Hon.

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EXHIBIT "E"

**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.**