

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-109

Judge:

Complainant:

ORDER

May 24, 2024

The Complainant alleged an appellate court judge covered up the trial judge's bias and committed judicial misconduct.

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 does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. 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, Michael J. 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.

RE: Judicial Complaint against Hon. ()
(No.)

The standard of Review for Attorney misconduct is clear and convincing evidence of ethical misconduct. (Emphasis added)

Hon. is for his action is in violation of Rule 2.15

RULE 2.15. Responding to Judicial and Lawyer Misconduct (A) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authorities.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this code shall take appropriate action. This Judge is aware that while addressing the above matter violated numerous cannons and this Judge has failed to report this infractions of Judicial Misconduct In fact in handling the appeal in this matter for were 6 area of law that wanted reviewed the three judge panel all signed there name to the review but non opted to follow the rule of law but yet decided to yield to the pressure of protecting one of their own. and his colleagues decided to forego the final two that directly focused on Judge fairness an potential bias. Petitioner used the case *In re Rosner*, No. S-1-SC-39193 (N.M. Jan. 30, 2023) this panel shirked at it responsibility and rather protect a child chose to do the cowardly act an not address both arguments 5 and 6 in the Appellants brief to protect their sister's reputation at the expense of a year old child forced to live with a register sex offender.

Hon. was acting as an Appellant Judge on this day in her acting capacity.

He was also aware that Petitioner cited in his brief that he filed two complaints on Judge with the judicial Commission he was also ware that she retaliated and dismissed my contempt of court motion in this matter due to retaliation.

Rule 14 - Prohibition Against Retaliation

A judge against whom a complaint is filed shall not directly or indirectly engage in any act of retaliation against any person who files a complaint, cooperates in the investigation of a complaint, or acts as a witness in any proceeding brought against the judge. "Retaliation" includes, but is not limited to, the act of dismissing or procuring the dismissal, without reasonable cause, of a member of the judge's staff or other person subject to the judge's direction and control, creating a hostile or offensive working environment for such person, or filing a frivolous bar complaint against an attorney who is a complainant or witness. The commission or disciplinary counsel may, at any time, file a petition with the supreme court for an order prohibiting, at the risk of sanctions for contempt, conduct of a judge that is or appears to be retaliatory in nature.

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(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

A judge must be impartial, and a Judge must be faithful to the law (Emphasis added). Father advised this Court of common law in his Pre-trial statement as it pertains to exhibits and evidence. This court went on to abandon common law and to go rogue and to "exclude" exhibits. *Kelly v. Kelly*, 503 P.3d 822, 252 Ariz. 371 (Ariz. Ct. App. 2021)

Please see footnote Page .5 FC2013-007736 Please see exhibit 7

The Court granted Father leave to submit a 2-page summary of caselaw or a closing following trial. In violation of the Court's order, Father submitted a voluminous pleading that attached many of his previously **excluded** exhibits. As indicated in its ME, the Court limited its review to the first two substantive pages of Father's submission, which largely mirrored his arguments at trial. (Emphasis Added) there are remedies such as contempt of court but not to deny important exhibits that impact an innocent third party- the child.

Hon. handles numerous appeals and is clearly aware that the best interest of the child is paramount and to exclude important information that impacts the best interest of the child is not idea behind the law *Hays v. Gama*, 205 Ariz. 99, 67 P.3d 695, 398 Ariz. Adv. Rep. 24 (Ariz. 2003) *Kelly v. Kelly*, 503 P.3d 822, 252 Ariz. 371 (Ariz. Ct. App. 2021).

1. Should Judge have recused herself under Rule 2.11?

RULE 1.1. Compliance with the Law A judge shall comply with the law, including the Code of Judicial Conduct. **Comment** For a discussion of the judge's obligation when applying and interpreting the law.

RULE 2.2. Impartiality and Fairness A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially.

Comment 1. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

RULE 1.2. Promoting Confidence in the Judiciary A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. **Comment 1.** Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge. **2.** A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the code. **3. Conduct that compromises or appears to compromise the independence, integrity**

RULE 2.11. Disqualification (A) A judge shall disqualify himself or

herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

1. Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply.

In re Rosner, No. S-1-SC-39193 (N.M. Jan. 30, This matter arose out of Judge Rosner's handling of Cause No. D-307-DM-2014-00786, a domestic matter involving the custody of a minor child (the Soto matter).

{¶14} We acknowledge that the precise time to recuse is not always clear and that a judge "must exercise [her] judicial function." *Gerety*, 1978-NMSC-097, ¶ 10. In performing her required duties, Judge Rosner determined at the time she considered Father's two motions that she could continue presiding over the Soto matter without violating the Code of Judicial Conduct. Nevertheless, the facts of this case support a conclusion that "an objective, disinterested observer . . . would . . . doubt that justice would be done" if Judge Rosner were allowed to continue on the case. *Riordan*, 2009-NMSC-022, ¶ 11 (brackets, internal quotation marks, and citation omitted). Here, Father's counsel's two motions contained allegations of ethical and legal misconduct by Judge Rosner. The *Las Cruces Sun-Times* article also alleged ethical and legal misconduct by Judge Rosner. Judge Rosner believed Father's counsel was the source of the article and admitted she felt personally attacked by the article. In response, Judge Rosner, rather than simply addressing the merits of

Father's motions, included the gratuitous accusations set out in paragraph 17 of the order denying Father's motions. **Once her impartiality might have reasonably been questioned**, Judge Rosner was **obligated to recuse**, and her failure to do so violated Rule 21-211(A). Notwithstanding this violation, we recognize that Judge Rosner ultimately remedied her error, reconsidering whether she could remain impartial and subsequently recusing from the Soto matter.

{¶15} Rule 21-204(A)-(B) requires that a "judge . . . not be swayed by public opinion or fear of criticism" and "shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment." Judge Rosner admits, and we agree, that her conduct violated Rule 21-204(A)-(B) when she reacted to the criticism in the *Las Cruces Sun-News* article and included the language in paragraph 17 of the order denying Father's motions.

{¶16} Judge Rosner's statements also violate Rule 21-210(A)'s proscription of statements that might affect the outcome of a pending or impending case. The statements suggest that there is at least an appearance that Judge Rosner may not be impartial to the parties, which certainly may impact the outcome of a proceeding. While Rule 21-210(A), (E) allows a judge to respond to criticism, it cannot be done in a manner that may appear to impact the outcome of a proceeding and cannot be done using court orders in active proceedings.

{¶17} While we commend Judge Rosner for recusing when she realized she could not be impartial, her use of the order denying Father's motions, a tool used to carry out her official judicial duties under Article VI, Section

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THE COMMISSION CASE
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