

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-265

Complainant: Robin Puchek

Judge: Rick Williams

ORDER

After reviewing the response filed by Judge Williams, the commission finds that the superior court judge in this case violated the Code of Judicial Conduct.

Rule 2.11(6)(a) of the Code requires a judge to disqualify himself if he previously served as a lawyer in the matter is in controversy before him. This rule is not subject to the judge's determination of whether he believes his impartiality might be reasonably be questioned under the circumstances, but rather requires a judge to automatically disqualify himself in all such cases. In this case, Judge Williams incorrectly interpreted the rule to allow him to serve as the judge in a matter in which he had previously served as counsel to the defendant because he believed his impartiality could not reasonably be questioned under the circumstances. The commission thus determined that Judge Williams engaged in ethical misconduct warranting an informal reprimand.

Accordingly, the judge is hereby reprimanded for his conduct pursuant to Rule 17(a), and the record in this case, consisting of the complaint, the judge's response, and this order, shall be made public as required by Rule 9(a).

Dated: March 15, 2012,

FOR THE COMMISSION

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on March 15, 2012.

This order may not be used as a basis for disqualification of a judge.

BY: _____

2011 OCT 19 AM 11:11

FALITH TUNNELL
SUPERIOR COURT CLERK

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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MOHAVE**

10 STATE OF ARIZONA,

No. CR 2008-0719

11 Plaintiff,

**MOTION TO DISMISS
PETITION TO REVOKE
PROBATION**

12 v.

13 JAMES A. DELAROSA,

14 Defendant.

15
16 COMES NOW, the defendant through his counsel, and moves this court for an
17 order dismissing the Petition to Revoke Probation dated August 3, 2011 and further an order of the
18 court vacating the contested probation violation hearing set for October 19, 2011. The legal basis
19 for this request is the fact that the order of the court requiring the defendant to self surrender at the
20 Mohave County jail by August 1, 2011 at 5:00 PM was an unenforceable order. (See exhibit 1).
21 Therefore, the defendant had no legal obligation to report and thus he cannot be found in violation
22 of the order. Without a valid or enforceable order of the court there is nothing for the defendant to
23 have violated. Similarly, the order of the court requiring the defendant to complete 15 days jail on
24 January 21, 2011 was also an unenforceable order of the court. (See exhibit 2).

25 The reason that both of these orders of the court are unenforceable is the fact the
26 judge imposing the orders was the former defense attorney for Mr. DeLaRosa in this exactly same
27 case number. Pursuant to the Code of Judicial Conduct, Canon 3 E (1) (b), Mandatory
28 Disqualification, Judge Williams could not impose the conditions of probation noted in exhibits 1

1 and 2 supra, as he was the former counsel in the exact same case in which the orders were being
2 entered.

3 The Canon provides in pertinent part: "A judge **shall** disqualify himself . . . in a
4 proceeding in which the judge's impartiality might reasonably be questioned, including but not
5 limited to instances where the judge served as a lawyer in the matter in controversy..." (See
6 Exhibit 3). It is apparent from the court file, of which the court can take judicial notice, or Mr.
7 DeLaRosa can testify to the fact he retained now Judge Williams to represent him in the "matter in
8 controversy." The Canon appears to be mandatory in nature and thus not waiveable by the Judge.
9 Therefore, it appears that Judge Williams disclaimer (See exhibit 4) in which he acknowledges the
10 conflict but applies a unilateral waiver should not trump the **mandatory** provision of the Canon of
11 Judicial Conduct. Similarly, there do not appear to be any circumstances under which the
12 defendant could ever give a knowing waiver of the conflict with the Code of Judicial Conduct as
13 he is effectively pro per at this stage of the proceedings. He does not have counsel to confer with,
14 he is not a lawyer, and he has no comprehension nor can he be charged with knowledge of the
15 Code. In fact, since the defendant is pro per while he is on probation, it would seem incumbent on
16 the court to give even greater deference to the mandatory provisions of the Code.

17
18 Therefore, the defendant submits the order of the court dated July 18, 2011 was an
19 unenforceable order. Since the order had no legal weight the defendant had no legal obligation to
20 report to jail on August 1, 2011. Since he had no legal obligation, he cannot be held in violation of
21 probation for failing to complete a task which has no legal basis due to the fact it violated a Canon
22 of the Code of Judicial Conduct. Therefore, the Petition to Revoke Probation must be dismissed
23 and the defendant should be reinstated on probation.

24 Respectfully submitted this 19th day of October, 2011.

25
26 John Pecchia, Attorney
Mohave County Public Defender

27
28 By: _____
Robin I. Puchek
Deputy Public Defender



DEC 12 2011

RICK A. WILLIAMS
JUDGE - DIVISION V

SUPERIOR COURT OF ARIZONA
COUNTY OF MOHAVE

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December 6, 2011

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

Re: Case No. 11-265

Dear Ladies and Gentlemen,

Thank you for allowing me the opportunity to respond to the above referenced complaint. Mr. Puchek alleges that I violated Judicial Canon 2.11 (he cites the former Canon 3E(b)(1)). Canon 2.11 provides, in pertinent part, "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: ... The judge served as a lawyer in the matter in controversy" (emphasis added). I respectfully submit that the orders I signed which are complained of by Mr. Puchek were pursuant to stipulation and therefore my impartiality could not reasonably be questioned.

James Delarosa was placed on probation by Judge Robert R. Moon on October 27, 2008 (Exhibit "A"). I represented Mr. Delarosa at the time, and continued to do so until Judge Moon authorized my firm's withdrawal as counsel of record on November 24, 2008 (Exhibit "B"). I was elected as Judge Moon's successor and took over duties for Division V on January 5, 2009.

The probation department filed a petition for an intermediate sanction on January 4, 2011 (Exhibit "C"). The petition was accompanied by a letter signed by Mr. Delarosa, wherein he agreed to serve a 15 day jail sentence in lieu of facing a petition to revoke probation. I signed the stipulated order on January 7, 2011 (Exhibit "D").

Mr. Delarosa sent the court correspondence from jail, which I addressed in a minute order dated February 14, 2011 (Exhibit "E"). In that order, I clarify that I previously represented the defendant, signed the intermediate sanction order because it was uncontested, and would recuse myself "if any contested issues arise or if requested to do so by either the defendant or the state."

On July 12, 2011, the probation department filed another petition for an intermediate sanction (Exhibit "F"). The petition was accompanied by a letter signed by Mr. Delarosa, wherein he agreed to serve a 60 day jail sentence in lieu of facing a petition to revoke probation. I signed the stipulated order on July 18, 2011 (Exhibit "G"). Shortly thereafter the probation department filed a petition to revoke Mr. Delarosa's probation and requested the issuance of a bench warrant (Exhibit "H"). I signed an order directing the issuance of a bench warrant on August 10, 2011 (Exhibit "I"). Mr. Delarosa was arrested, appeared for an Initial Appearance before Judge Conn on August 18, 2011, and the case remained assigned to Judge Conn from that point forward (Exhibit "J").

I do not interpret Canon 2.11 to require an automatic, mandatory recusal on every case in which I participated as an attorney. Rather, disqualification is mandatory only when a judge's impartiality "might reasonably be questioned." On two occasions Mr. Delarosa reached a stipulation for intermediate sanction with the probation department. The stipulation was commemorated in writing which advised Mr. Delarosa that he only had to sign the stipulation if he thought it was in his best interest.

There was no controversy or contested matter. The only exercise of discretion on my part was deciding whether or not to sign the orders. Neither party actually gained -- or had the appearance of gaining -- a tactical advantage by having me sign the orders as opposed to another division of this court. Had there been any indication of a disagreement or misunderstanding between Mr. Delarosa and the probation department, or had I been requested to perform any action which might reasonably appear to favor one party over the other, I would have recused myself immediately.

Thank you again for allowing me the opportunity to respond. Should you have any questions or require any additional information, please do not hesitate to contact me.

Very truly yours,

Rick A. Williams
Judge of Superior Court

RAW/wap