

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

---

Disposition of Complaint 13-334

---

Judge:	No. 1030821400A
Complainant:	No. 1030821400B

---

**ORDER**

The complainant alleged a superior court judge improperly failed to act despite knowledge of both a conspiracy between the prosecutor and his defense counsel and a conflict of interest between the complainant and his defense counsel.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After review, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review legal issues. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: February 12, 2014.

FOR THE COMMISSION

/s/ George Riemer

---

George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on February 12, 2014.

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

## Arizona Commission on Judicial Conduct

IN RE:	)	RE:	
Petitioner,	)	RE:	
	)		County
-v-	)		
	)		
Judge	)	RE:	
The County of	)		
_____	)		

Petitioner requests an investigation where these ministerial officers of the Court's conduct violated the ethics rules. These officers of the Court engaged in misconduct and inappropriate behavior during his pre-trial and trial. In fact, throughout Petitioner's Court proceedings he experienced a series of corruption and misconduct where his attorney and the Prosecutor engaged in tactics that they knew would violate his Constitutional rights. The sentencing Judge knew of these and other violations and refused its duty and obligations under the Rules of Professional Conduct, and failed to protect Petitioner's rights or the integrity of the legal profession. The U.S Constitution requires a fair trial for all accused of a crime, and Petitioner submits that a conflict of interest denied him a fair and impartial trial, while the Prosecutor and sentencing Judge had knowledge that defense counsel violated these ethics rules. Defense counsel had a history of misconduct and disciplinary reports. Judge encouraged Prosecutorial Misconduct in Petitioner's case by his repeated failure to correct the Prosecutors actions, where he knew that they had engaged in misconduct or inappropriate behavior. The issue of the Unethical Conduct is clearly seen when Petitioner repeatedly requested disclosure and the Prosecutor sent him typing-paper and blacked out pictures, and Judge still failed to sanction this Prosecutor.

Petitioner seeks only his freedom from the prosecutorial misbehavior and outright misconduct from his two attorneys.

## Judicial Review

IN RE:            **Judicial Corruption and Misconduct**

Petitioner respectfully requests a Judicial Review be done on his cases because of the Judicial errors and corruption from the Maricopa County Superior Court system, its Prosecutors and Defense attorneys. Throughout Petitioners pre-trial and trial proceedings he experienced a series of corruption and misconduct by his attorneys, the prosecutor and his sentencing judge. On the Petitioner's attorney \_\_\_\_\_ conspired with Prosecutor \_\_\_\_\_ to deprive Petitioner of his rights to counsel, and to obtain incriminating statements from him. Attorney \_\_\_\_\_ admitted and acknowledged his part in this conspiracy, and Prosecutor \_\_\_\_\_ sought for qualified immunity in a Court action against her.

Attorney and Prosecutor actions created a conflict of interest. Petitioner established in Judge court that this conflict of interest engendered by trial counsel and this Prosecutor resulted in a violation of his Sixth and Fourteenth Amendment rights. These two attorneys engaged in extreme misconduct that they knew was grossly improper and highly prejudicial.

On or about \_\_\_\_\_ the \_\_\_\_\_ County Superior Court appointed attorney \_\_\_\_\_ to represent the Petitioner in this case. The Petitioner informed attorney \_\_\_\_\_ that he needed counsel to assist him in cooperating with the Government in a criminal case against \_\_\_\_\_ and a number of other individuals. Attorney \_\_\_\_\_ refused to assist Petitioner in anyway to his cooperating with the Government against \_\_\_\_\_ and this attorney failed to meet with Petitioner and Government agents a number of times. On \_\_\_\_\_ attorney \_\_\_\_\_ told Pettitioner not to make any deals with these agents against \_\_\_\_\_. In \_\_\_\_\_ Petitioners investigator \_\_\_\_\_ informed Petitioner that attorney \_\_\_\_\_ also had represented \_\_\_\_\_.

This was a case of blatant conflict on interest and attorney \_\_\_\_\_ knew that he had a duty to inform this Petitioner and the Court of these facts. It was misconduct and corruption to withhold

this information from the Petitioner, and a Sixth Amendment violation of Petitioners Constitutional rights. Attorney \_\_\_\_\_ knew Petitioner wanted a plea agreement, Petitioner stated this to the Court on \_\_\_\_\_, then attorney \_\_\_\_\_ accelerated a trial for the Petitioner when Petitioner was meeting F.B.I. agents on \_\_\_\_\_ to gain a deal with them for a lighter sentence.

\_\_\_\_\_ engaged in extreme misconduct that he knew was grossly improper and highly prejudicial, both as to the Petitioner and to the integrity of the Court system. Moreover, Judge \_\_\_\_\_ knew of both of the misconducts in this case, and not only did he know about them, he participated in Judicial Misconduct himself by failing to grant Petitioner an Evidentiary Hearing solely on the issue of ineffective assistance of counsel because of the conflict of interest. Judge \_\_\_\_\_ further participated in misconduct by intentionally failing to notify Petitioner that he had denied the Petitioners Post-Conviction Relief Petition when he knew Petitioner was pro-per and represented himself. This was intentional professional misconduct that further violated Petitioners U.S. Constitutional rights.

This misconduct from Judge \_\_\_\_\_ attorney \_\_\_\_\_ Prosecutor \_\_\_\_\_ and attorney \_\_\_\_\_ was a dishonest way to represent the State of Arizona, and it was especially dishonest where the evidence shows that Petitioners Government cooperation would have helped to jail individuals that the Government sought. The State of Arizona has allowed misconduct and corruption into its Court system statewide, and Petitioner has suffered a violation of his Constitutional rights and seeks only his freedom from this miscarriage.

This Petition is supported by the accompanying Memorandum of Points and Authorities.

Dated this \_\_\_\_\_ day of \_\_\_\_\_

By: \_\_\_\_\_

# MEMORANDUM OF POINTS AND AUTHORITIES

## Factual Background

On \_\_\_\_\_ the Petitioner was arrested in the above cause number. In \_\_\_\_\_ the Petitioner informed his attorney, \_\_\_\_\_ that he needed trial counsel to assist him in his efforts to cooperate with the Government in a case against \_\_\_\_\_ and a number of other individuals. At no time did trial counsel tell the Petitioner that he also represented \_\_\_\_\_. The Petitioner had plans to show that \_\_\_\_\_ had been involved in a murder relating to his illegal gun business in \_\_\_\_\_. The Petitioner had sought to get a lighter sentence in his own criminal case by providing information in this first murder case from \_\_\_\_\_. \_\_\_\_\_ was involved in a second murder case in \_\_\_\_\_.

The Petitioner repeatedly expressed to trial counsel that he did not want a trial; he wanted a plea agreement where he would cooperate with the State and Federal Governments against a number of individuals for a lighter sentence in his own criminal case before the Superior Court. From \_\_\_\_\_, trial counsel delayed meeting with the Petitioner to consult on his options as to what he would offer the Government in his cooperation efforts. On \_\_\_\_\_, before Judge \_\_\_\_\_, the Petitioner expressed his desire to cooperate with the Government against trial counsel's other client \_\_\_\_\_. Trial counsel's conflict of interest and divided loyalty motivated him to force the Petitioner into going to trial. On \_\_\_\_\_; \_\_\_\_\_, the Petitioner informed trial counsel that he would meet with F.B.I. Agents the week of \_\_\_\_\_, and would give them all his information on \_\_\_\_\_ and the others to start his cooperation with the Government.

## ARGUMENTS

### A). Sixth Amendment Right to Conflict Free Representation

The Superior Court Rule-32 Court erred in failing to address the issue on conflict of interest. The Petitioner's Sixth Amendment Right to Counsel includes a right to conflict free representation. U.S. -v- Rogers, 209 F.3d 139, 143 (2<sup>nd</sup> Cir. 2000); see also Wood -v- Georgia, 450 U.S. 261, 271, 101 S.Ct. 1097, 67 L.Ed. 2d 220 (1981) that court stated: (where a constitutional right to counsel exists, our Sixth Amendment cases hold that there is a correlative right to representation that is free from conflict of interest); U.S. -v- Levy, 25 F.3d 146, 152 (2<sup>nd</sup> Cir. 1994). The Petitioner's assertion of his right to conflict free representation by counsel addresses four areas:

1. That the Court's knowledge of a possible conflict of interest imposed upon it a duty of inquiry. The Petitioner had written letters to the State and brought the issue of his cooperation with the Government before the Court,

2. trial counsel's actions and statements in and out of court demonstrate that there was an actual conflict of interest,
3. Petitioner's assertions do present a plausible theory of actual conflict of interest adversely affecting representation,
4. the right to effective assistance of counsel attaches to Petitioner's pretrial attempts to cooperate with the Government in order to obtain a plea agreement and lighter sentence,
5. The conflict of interest motivated trial counsel to sabotage the Petitioner's efforts to cooperate with the Government against , counsel's client and family member.
6. Failure to inform the Petitioner that counsel represented trial counsel had a duty to do this.

Trial counsel intentionally failed to negotiate a plea agreement or meet with the Petitioner and Government Agents to try to facilitate the process of the Petitioner's cooperation and ascertain what these agents wanted from the Petitioner. Trial counsel failed to communicate with the Petitioner or advise him of the appropriate course to maximize his chances for providing substantial assistance to the Government, hindering and placing delays in those efforts to cooperate. The Petitioner informed trial counsel that he knew members, black gang members, and , and that he would testify against them in court. The Petitioner expressed his frustration to trial counsel after six months had gone by, and trial counsel had failed to assist him in his efforts to cooperate. He informed trial counsel in that he would have all of the information he needed to bring against and other individuals within , and would get a meeting with F.B.I. Agents in

Trial counsel made no attempts to assist the Petitioner or try to obtain a plea agreement with the State using the information that this Petitioner had. On the Petitioner was taken into custody and began focusing his efforts on making bail. Trial counsel agreed to get a Bail Hearing for the Petitioner, and to postpone his trial to to give the Petitioner time to meet with Government agents, remain out on bail and so that he could be allowed to cooperate.

Unknown to the Petitioner, trial counsel had agreed with the State to accelerate the Petitioner's trial and not give him the time he needed to work out a deal to cooperate with the Government. Trial counsel had never consulted with the Petitioner regarding the issues of his criminal case, but sought to accelerate this trial to stop Petitioner from cooperating.

#### B). Actual Conflict of Interest

The Superior Court erred when it did not hold an Evidentiary Hearing to address the issue of conflict of interest regarding trial counsel's representation of and the Petitioner. Petitioner was entitled to an Evidentiary Hearing on his claims that his trial counsel failed to inform him that he represented he intentionally remained as counsel of record for

the Petitioner to protect interest. Trial counsel chose to advance interest to the detriment of the Petitioner's interest and failed to seek a plea negotiation with the Government wherein the Petitioner would cooperate against and other individuals. Counsel deliberately:

1. Attempted to steer the Petitioner away from any plea agreement that would involve cooperation with the Government against
2. Forced the Petitioner into a trial when he knew that the Petitioner wanted to get a plea agreement for his cooperation and giving of criminal information against other individuals. Trial counsel made no attempts to meet with the Petitioner and Government Agents. When the Petitioner requested trial counsel's help, counsel did nothing to try to facilitate the process of the Petitioner's meeting with agents and the State. Trial counsel failed to keep appointments with the Petitioner to consult him in regards to the appropriate course of action to maximize his chances for providing assistance to the agents he was meeting with.

The actual conflict of interest between trial counsel, and the Petitioner is clearly shown during the course of the representation, where trial counsel refused to aid the Petitioner in his criminal case and counsel's and the Petitioner's interest diverge with respect to Petitioner's cooperation with the Government against See, Winkler -v- Keane, 7 F.3d 304, 307 (2<sup>nd</sup> Cir. 1993). (quoting Cuyler, 445 U.S. at 356 N. 3, 100 S.Ct. 1708). Trial counsel was burdened by an actual conflict that adversely affected his performance and sabotaged the Petitioner's criminal case, and Petitioner is not required to demonstrate prejudice; prejudice is presumed. See, United States -v- Levy, 25 F. 3d at 155 (citing Winkler, 7 F. 3d at 307). In when trial counsel was informed of the Petitioner's plans of cooperating against counsel should have, at once, withdrawn as counsel of record for the Petitioner. Trial counsels actions demonstrate that he wanted the Petitioner to be convicted of the crimes that he was charged with. Trial counsel's failures were deliberate and intentional to sabotage the Petitioner's criminal case at both the pretrial and trial stages, and establish a Sixth Amendment violation based on this actual conflict of interest which adversely affected counsel's performance. See, Cuyler -v- Sullivan, 446 U.S. 335, 348, 100 S.Ct. 1708, (1980); Mannhalt -v- Reed, 847 F.2d 576, 579 (9<sup>th</sup> Cir. 1988).

It was a violation of the Petitioner's right to the assistance of counsel at a critical stage of the pretrial proceedings when trial counsel intentionally sabotaged the Petitioner's efforts to cooperate with the Government against and other individuals.

Trial counsel further failed to:

1. Consult with the Petitioner regarding the critical issues of his case, or to keep appointments to interview the Petitioner's witnesses, or to be reasonably diligent. Petitioner made two appointments for counsel to do the interviews, and counsel failed to be at his office. Counsel failed to act with commitment and dedication to the interests of the Petitioner.

2. Failed to call critical witnesses that would give testimony that the narcotic drugs had been planted on the Petitioner.
3. Failed to inquire how the drugs were found on the Petitioner or file a Motion to Suppress the drug evidence.
4. Failed to contact the Petitioner's treatment psychiatrist or consult the Petitioner's other doctors at \_\_\_\_\_ or view his records from the \_\_\_\_\_
5. Lied to the Petitioner when he stated he would get witnesses subpoenaed for trial.
6. Trial counsel failed to inform the Petitioner that he was a relative of \_\_\_\_\_
7. Trial counsel had a conflict of interest because he simultaneously defended Petitioner and \_\_\_\_\_ in unrelated prosecutions, after knowing that the Petitioner had planned to cooperate with the Government against \_\_\_\_\_
8. Failing to communicate Petitioner's offer to the State regarding \_\_\_\_\_ counsel protected \_\_\_\_\_ interests.
9. Failing to inform the Petitioner that he also represented \_\_\_\_\_
10. Intentionally failed to inform the Petitioner of the maximum punishment he could face after trial and conviction. Trial counsel provided ineffective assistance solely by virtue of forcing the Defendant to go to trial and risk life in prison, no parole for 25 years. Trial counsel compelled the Petitioner to go to trial when he knew that the Petitioner was seeking a deal with the Government to obtain a plea agreement and a lighter sentence. Counsel wanted the Petitioner to be convicted so he could not cooperate with the Government against \_\_\_\_\_

Trial counsel knew that his representation of \_\_\_\_\_ would go directly adverse to that of the Petitioner and should have withdrawn as counsel of record, as stated in:

Rules of the Supreme Court – Rule 42, ER 1.7. Conflict of Interest.

In \_\_\_\_\_ when the Petitioner informed counsel of his intent to work with the Government to bring criminal charges on \_\_\_\_\_ it set in motion that loyalty to current client which prohibits undertaking representation directly adverse to that client without that client's informed consent. Trial counsel violated the Petitioner's rights to conflict free representation, then violated the Rules of Professional Conduct – Rule 42 and betrayed, through sabotage, the Petitioner's criminal case and sought to aid the prosecution in its efforts to convict the Petitioner. Trial counsel forced the Petitioner into a trial he did not want. Days before the trial, the Petitioner requested trial counsel help him get a Bail Hearing, trial counsel stated he would get that Bail Hearing and postpone the trial to get the Petitioner time to meet with Government agents, but unknown to the Petitioner, counsel accelerated the trial. The Petitioner

did not knowingly and intelligently waive his right to conflict free counsel that right was denied him by counsel of record. Petitioner's right to counsel attached at the pretrial attempts to cooperate with the Government against [redacted] and other individuals and trial counsel's actions constituted ineffective assistance of counsel. See, U.S. -v- Cronic, 466 U.S. 648, 659, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984). Trial counsel betrayed and sabotaged the Petitioner's case and caused a breakdown in the adversarial system of justice in this case that compels an application of the Cronic exception to the Strickland requirement of showing that the outcome of the trial would have been different without counsel's conflict of interest. See, Cronic, 466 U.S. at 659-60, 104 S.Ct. 2047.

A. Ministerial Officer of the Court

Within its authority the Arizona Supreme Court along with the American Bar Association have set standards for all Arizona Attorneys in, 17A A.R.S. Sup. Ct. Rules of Professional Conduct, Rule 42, sets forth the duties of attorneys, including the duty to defend any indigent defendant upon order of the court, at all stages of the proceedings. The word "defense" is clearly to be interpreted as embracing the assistance of counsel for a defendant's defense as specified in the U.S. Const., Sixth Amendment.

Attorney [redacted] is a ministerial officer of the court, whose conduct is subject to the control of the court in furtherance of justice in connection with pending judicial proceedings.

B) Misconduct

Petitioner first argues that attorney [redacted] misconduct during his representation violated Petitioner's right to due process, and this was a fundamental error. See: State -v- Bocharski, 218 Ariz. 476, 189 P.3d 403, 418 (2008).

This fundamental error, is "error" going to the foundation of this case, error that took from the Petitioner, a right essential to his defense, and error of such magnitude that Petitioner could not possibly have received a fair trial. See: State -v- Henderson, 210 Ariz. 561, 115 P.3d 601, 607 (2005). [redacted] conduct amounts to misconduct, and intentional conduct which he knew to be improper and prejudicial, and which he pursued for an improper purpose, to destroy Petitioner's attempts to cooperate with the Government against [redacted]. After a careful examination of the facts, one would find the hard evidence, that the simultaneous representation by attorney [redacted] divided his loyalties between [redacted] and Petitioner. Indeed, Petitioner's entire argument is that [redacted] sabotaged his case, and the only possible explanation for [redacted] not aiding his efforts to cooperate with the Government against [redacted] on [redacted] part, is that he felt bound by a continuing duty of loyalty to [redacted] and that this duty required him to sabotage Petitioner's case. One key fact stands out in this case, which demonstrates [redacted] conflict of interest caused [redacted] to attempt to steer Petitioner away from any plea agreement that would involve cooperation with the Government against [redacted] to which [redacted] owed first primary loyalty. Specifically, attorney [redacted] refused to meet with Law Enforcement Officers and Petitioner to workout an agreement to give information against [redacted]

Judge                      knew that this was an actual conflict of interest and that the Petitioner could prove this. Judge                      further knew that the Arizona Supreme Court directs all Attorneys and Judges to report all conflict of interest violations. Judge                      further failed to hold an Evidentiary Hearing on the issue of the conflict of interest, which was abuse of discretion, and a blatant cover up.

This miscarriage of justice deprived Petitioner of his Sixth Amendment right to counsel and his Fourteenth Amendment right to due process. The Petitioner is being held in custody in violation of the United States Constitution and State Laws.

This case lies, as is obvious, at the core of the Sixth and Fourteenth Amendment concern, namely, denial of the right to effective assistance of counsel, denial of due process of Law and meaningful access to the Court and a fair trial. Petitioners evidence clearly showed sufficient factual basis establishing Judicial Corruption and Misconduct from attorney                      Judge                      Attorney                      and Prosecutor                      The Arizona Courts have sidestepped this Constitutional violation of Petitioners rights. He seeks justice and his freedom from this miscarriage of justice.

### **Conclusion**

Petitioner seeks an Evidentiary Hearing and his freedom in this case, for the above Constitutional violations.

Dated this                      day of \_