

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 14-015

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Judge:	No. 1079114856A
Complainant:	No. 1079114856B

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**ORDER**

The complainant alleged a superior court judge is acting improperly and is biased against him by failing to address his motions notwithstanding the fact that he is represented by 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 26, 2014.

FOR THE COMMISSION

/s/ George Riemer

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George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on February 26, 2014.

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

Defention Center.

Judicial Misconduct Court  
for investigation.

Comes now the defendant

The defendant Cites A Case Law *Mesa Resti*  
v. U.S. 352 U.S. 112 2d 177 Sct. 1 (1956) Truthfulness  
of testimony -- the dignity of the United States  
Government will not permit the conviction on  
tainted testimony.

Defendants Original Charge: Sales of A  
Narcotic drug to wit: Colaine base. Class-  
time felony, In the grand Jury 242nd G.J.  
183. Filed June 6, 2013. was "dismissed."  
A direct demand, was filed to (A) New  
244th G-J 125

"Using fruit of the poisonous tree evidence  
to find Probable Cause," to indict the de-  
fendant, from the police incident's  
investigative report. <sup>22</sup>possessing narcotic drug for sale  
Defendant filed A Motion to Suppress  
the evidence, "Rule 16.2 on pretrial  
Motion to suppress the evidence." filed  
"On A timely Bases."  
which was not ruled on by the Honorable  
Judge "Due to ineffec-

1 - the Counsel, Public Defender [redacted]  
 2 [redacted] "The Charge of, Possessing &  
 3 Morletic drug for Sale to wit: Blaine  
 4 Base. A Class two felony.  
 5

6 A Detective [redacted], Badge  
 7 Number [redacted] "Misdirected the Grand  
 8 Jury in both, the 242nd G-T 183. And the  
 9 244th G-T 125."

10 "There was (a Person) in the 242nd G-T 183.  
 11 who was called forward to Question the  
 12 (Witnesses by the name of (Detective [redacted])  
 13 [redacted] "When Questioning, the Witt-  
 14 -ness [redacted] (Name) was not given"?

15 And then, the foreperson Mistakenly said,  
 16 OK, "I see Rouse Hands", when the foreperson  
 17 did ask, "was there any (Person) wanting to  
 18 Question the Witness"?

19 The defendant was told by all three,  
 20 attorneys, representing him, "to go over  
 21 the Probable Cause proceedings, and if  
 22 there was something not right, or needed  
 23 correcting, to inform the attorneys about  
 24 this"; The defendant informed the attorneys  
 25 "there was something wrong with the  
 26 Probable Cause facts; And evidence,  
 27 given by Detective [redacted]"

Nothing was done to correct the matter each time.  
1 While the defendant was waiting for a bus  
2 to take him home, "under cover Agent  
3 Badge Number, [redacted] "perused another individ-  
4 ual standing in the [redacted] parking lot,"  
5 "behind the bus stop, while striking up a  
6 mild conversation, with [redacted] who  
7 was waiting for the bus to return around [redacted].  
8 In the case of the United State v. Russell 411 U.S.  
9 423, 431. 93 S.Ct. 1637. 36 L.Ed.2d 366 (1973).  
10 Law enforcement may provide opportunity  
11 to facilitate the commission of a crime through  
12 the artifice and stratagems in order to arrest  
13 persons engaged in criminal enterprise. Soell  
14 287 U.S. at 441. 53 S.Ct. 210 Law enforcement  
15 officials may not entrap those persons,  
16 however, but this Court determines whether  
17 entrapment has occurred through looking to  
18 see whether a trap has been set for an un-  
19 der innocent or whether a trap was set  
20 for an ordinary criminal. S.Ct. 819, 2 L.Ed.2d  
21 848 (1958) Judicial Phase of Criminal Process  
22 are not entitled to absolute immunity. Brown  
23 500 U.S. at 493. 111 S.Ct. (1991) (quoting  
24 Ambler v. Pachtman 424 U.S. 409. 96 S.Ct.  
25 984. 47 L.Ed. 125 L.Ed.2d 209 (1993)  
26 finding that absolute immunity does not protect  
27 prosecutors for fabrication of evidence dur-

1 - ing investigation stages of Making statements to  
2 The Media, [redacted] "gave false testi-  
3 -mony before the grand jury Contradicting the  
4 exculpatory facts were contained in Police Report.  
5 "Which, without, lead, the grand jury to  
6 believe the defendant (was) going to tell  
7 [redacted] to the under cover office  
8 [redacted] "Which [redacted] (has Confessed.)  
9 Which would have likely exonerated the  
10 defendant, in the probable cause hearing, from  
11 a possession of a narcotic drug for sale,  
12 to simple possession for personal use. Charged.  
13 a false testimony by [redacted]  
14 "The defendant contends that giving Detective  
15 [redacted] absolute immu-  
16 -nity as a grand jury witness, any use of the  
17 testimony as evidence of immunised pre-  
18 -testimonial acts is forbidden. that it should  
19 not be so. Detective [redacted] should  
20 be charged with liability for his partici-  
21 -pation in the grand jury proceedings and  
22 pre-testimonial misconduct. The grand jury  
23 testimony simply provides evidence of  
24 inconsistencies in the detective's actions,  
25 which bolsters the conclusion that he was  
26 conspiring to get the grand jury to believe  
27 something that was not true "and they did."

1 A Recent Eleventh Circuit Case examined this very  
 2 issue, *Harris v. Roderick*, 126 F.3d 1189 (9th  
 3 Cir. 1997). Recognized official testimony  
 4 was immune, But that subsequent official  
 5's testimony was simply a part of the  
 6 implementation of Conspiracy, A Step  
 7 in the Over-all plan. More Over; A body  
 8 of law has been established that, in  
 9 Criminal Context, Creates an exception  
 10 to testimonial immunity where the immuni-  
 11 zed witness (Lies under oath). see *United*  
 12 *States v. Veal*, 153 F.3d 1233 (11th Cir. 1998)  
 13 (Cases Collected therein). However the Supr  
 14 the Court in *Briscoe v. Latta*, 460 U.S.  
 15 325, 339-41-103 S.Ct. 1108, 75 L.Ed.  
 16 2d 96 (1983) *Buckley v. Fissimons*, 509  
 17 U.S. 259, 113 S.Ct. at 2612 N. 5. The mis-  
 18 direction of the grand jury removes the pro-  
 19 tection that any pre-grand jury misconduct  
 20 would have enjoyed after an indictment  
 21 was issued absent any misdirection of the  
 22 grand jury. *Strength*, 854 F.2d at 425.  
 23 Therefore, we conclude that it was clearly  
 24 establish in the 11th Circuit that a conspir-  
 25 acy to violate the Constitutional rights of  
 26 another such as using false information to  
 27 cause a malicious prosecution is actionable  
 28 under Section 1983 *Strength v. Hebert*, 854

1 Fed 421 (11th Cir 1988). [23] In order for a  
2 Section 1983 Conspiracy claim to survive a  
3 summary Judgment Motion the Plaintiff must  
4 show specific facts indicating the existence  
5 or execution of alleged Conspiracy.  
6 ¶ 19 the Arizona rules of evidence define relevant  
7 evidence as evidence having any tendency to  
8 make the existence of any fact that is of consequence  
9 to the determination of the action more  
10 probable or less probable than it would be  
11 without the evidence." Ariz. Rule of evidence.  
12 401. Under Case law. (e) evidence is relevant if  
13 it has any basis in reason to prove a material  
14 fact in issue or if it tends to cast light on  
15 the Crime Charged." State v. Adanson, 136  
16 Ariz. 250. 210 P. 665 P.2d 972. 983 (1983)  
17 Arizona rule of evidence 402 dictates that  
18 relevant evidence is admissible unless as  
19 limited by rule 403 it is prejudicial, confusing  
20 or a waste of time.  
21 Defendant cites Case law U.S.V. Miles, 201  
22 F.3d 988 (7th Cir. 2001) Evidence is unfairly  
23 prejudicial if it will induce the Jury to  
24 decide the case on improper basis rather  
25 on the evidence presented.  
26 Detective [redacted] altered the Original  
27 and Confession of the defendant.  
28 The Under cover Agent. [redacted] offered Alco-

1 - That, "When it was alleged, in the Confession,  
2 The defendant Confessed to Obtaining Crack  
3 Cocaine and Selling to the Under Cover Officer,  
4 When detective testified  
5 to the Grand Jury in the 242nd G.J. 183  
6 (That Charge was Dismissed). "Prima facie"  
7 (Charged) The defen-  
8 dant's Confession, "from the 242nd G.J. 183,  
9 "and Alleged Confession."  
10 (Stated Under oath), "That the defendant  
11 Confessed during Questioning, "that the  
12 Defendant (was going to Sell Crack Co-  
13 -caine to the Under Cover agent." (Misdirections)  
14 The defendant has done everything he  
15 can to present the facts, and evidence,  
16 to show innocence. "to his legal defense,  
17 who has done  
18 Nothing regarding the evidence, or facts,  
19 of the case. defendant requested a surre-  
20 -nder of the evidence, Rule 16.2 and a  
21 Rule 12.9 demand to the Grand Jury, for  
22 Corrections. "Unintentional."  
23 (Motion) the 12.9 Motion, and among other Motion  
24 (s) filed in Court by the Clerk  
25 "has prejudice the defendant" and  
26 Violated the defendants due process, as well as, his  
27 Constitutional Rights. Should be  
28 Under investigation and Deputy

Honorable Judge

Superior Court Div.

Shirra. is Making a prejudice case  
Toward the defendant, because she has not allow  
any motions filed in her court, so ruled on,  
"Except motions requesting attorneys to With-  
drawal as Counsel."<sup>99</sup>

The motions the defendant has moved and  
filed in court through the Clerk <sup>99</sup> 81 as  
follows: Motion for 6.3 for attorney  
to withdrawal. <sup>99</sup> filed <sup>99</sup> failure to file  
motion on a timely basis. Motion Rule 15.6 Continuing  
Duties to Disclose of the prosecution. <sup>99</sup> Motion Rule  
6.3 for to withdrawal, due to  
conflicting issues and disagreements. <sup>99</sup> filed.

Motion Rule 11.6 Dismissal of the  
prosecution on defendant's motion, the indictment  
is insufficient. <sup>99</sup> § 1.8 Remedy: the principal  
remedy for unconstitutional police actions is  
to exclude the illegally obtained evidence from  
admission in a criminal prosecution. <sup>99</sup> Motion for  
Rule 12.9 Remand the grand jury for corrections.  
Statute 13-2701 Definition: (3) Sworn Statement  
means any statement knowingly given under oath  
before the grand jury of <sup>99</sup> County Arizona.  
Page vii page 101. Cite Book 24th Edition 3rd update  
Mestricanni v. Borcos, 160 F.3d 671 (11th Cir.  
1998) Arrest pursuant to grand jury indictment  
may violate the fourth Amendment if the grand

my was misled or experience under pressure.<sup>93</sup>  
 filed U.S. v. Davis 184 F3d 643

(7th Cir. 1999) Intoxication (Can Negate) Causal Wit-  
 ness to committing "Specific Intent" filed.

Motion Rule 16.2 procedure on pretrial  
 motion to suppress the evidence.

"Motion: Rule to Cross examine the witnesses for  
 the State." Motion Rule 16.3 evidentiary hearing.<sup>95</sup>

Another motion for Rule 16.6(B) dismissal of the  
 prosecution, evidence lacking "in New probable  
 Cause hearing." filed.<sup>99</sup>

Motion Rule 12.6 Independent Grand Jury Bill  
 of particulars. "Rule 16.2 Pretrial Motion Omnibus

Prosecution

and defendant's legal

Defense.

"Talk about giving

the defendant: "A Class four felony, legal defense

"Come out to the jail, and

set the defendant up "unprofessionally," when

she gave the defendant false hope that the next

following day, "the defendant

would be (starring) the plea deal for the Class-

four." When

broke "the news."

"There was some mistake to the plea, and the

plea on the table is now, "A Class three attempt

to sell a narcotic drug" from a Class four, of

possessing a narcotic for personal use.<sup>95</sup>

Then her excuse was,

is (Blind)

"that sounded like coming from a person

Who has studied law, is a professional,  
for twenty five years. Who conspired against  
the defendant since she was appointed by  
the Court to represent the defendant,  
Because Judge \_\_\_\_\_ was out sick,  
the defendant appeared for the hearing of the  
plea deal, of which the defendant stated on  
record before Judge \_\_\_\_\_ Division  
\_\_\_\_\_ with legal defense  
present "was shocked and surprised," the de-  
fendant was, "when he found out that that was not  
the plea deal." Semish prosecution, "Class Court"  
said, it was a mistake,  
because the Deputy prosecutor was blind,  
"which does not make good sense. Having  
other stuff working under his!"  
Defendants Mail Gate, was moved from  
Fil - May 13th, 2014. And the plea  
of attempting to sell a narcotic drug to  
Juitt: "Green" Base "was selected." and time  
was waived, \_\_\_\_\_ has lied  
and covered up for the State, and has not once,  
represented the defendant properly. And (ed),  
"Do Not Trust \_\_\_\_\_ with  
his case" because he is siding with the  
prosecution, and the Judge  
mentions to the defendant, \_\_\_\_\_ has  
"the de-  
fendant legal defense," does not have to

file defendant Motion, or anything, the defendant ask of his legal defence. The Judge has (stated this on record) in her Court room. On two occasions, to the defendant. "Here goes the due process right out the window. That too prejudices the defendant's due process, right under Constitution."

*Elsholtz v. U.S.* 347 U.S. 62, 64-65, 74 S.Ct. 354, 98 L.ed 503 (1954) The Government cannot violate the Fourth Amendment in the only way in which the government can do anything, namely through its agents - and use the fruits of such unlawful conduct to secure a conviction. Nor can the government make indirect use of such evidence for its case, or support a conviction on evidence obtained through leads from the unlawfully obtained evidence. All these methods are outlawed, and convictions obtained by means of them are invalidated, because they encourage the kind of society that is obnoxious to free men.

another case cited: *Michigan v. Tucker*, 417 U.S. 433, 447, 94 S.Ct. 2357, L.Ed 2d 182 (1974) Basic Definitions: "The deterrent purpose of the exclusion - any rule necessarily assumes that the police has engaged

in willful, or at the very least negligent conduct which has deprived the defendant of some rights. By refusing to admit evidence gained as a result of such conduct, the Courts hope to instill in these particular investigating officers, or in their future counterparts, a greater degree of care towards the right of an accused.

The Defendant has been in Detention, for eight months, and had to ask, three legal Defense Attorneys, to Withdraw, due to the Unwillingness, at every possible pursuit of the defendant, to prove his case through the facts, of the evidence, and the lack thereof).<sup>55</sup> The violations of the due process, the Unwillingness of the Attorneys to present defendant's Motion, to the Court, which is relevant to the defendant's arguments.

The defendant does not wish to go pro-se, "He needs someone to help him prove his case", which seems to be out of the question, there is know lessor included Charge (listed) in the defendant's indictment: Detective testified, He (defendant (Refused to Sell) the Norcaine drug). 244TH G.T 125. But in other statements (mislead the Respectfully yours Jay in false testimony).

## Special Action

To

Administration Assistant.

Defendant legal defense  
Cause another pro  
- lesson for the defendant when she visited him  
at County Jail Detention Center.

stated to defendant he  
be signing a plea deal for a Class four-  
"possessing a narcotic drug for personal  
use" which she (stated) was a plea offered  
from the prosecution's office, of Deputy

who agreed to grant the plea,  
to the defendant, and if the defendant would  
sign it in the Honorable  
Judge Court room.

But upon arrival

Mr

has a change of plans,  
and tells the defendant that the Deputy,

is (Blind), and has made a  
mistake, with giving the defendant the wrong  
plea deal, "the same plea I rejected  
some time back. was a Class three, we did  
not talk about that

I, the defendant, believe she did this to me deliberately. Just to see my reactions.

spent thirty minutes going over the plea with the defendant at the detention center, just to let me down again. She has not offered professional assistance, "Not once," the defendant ask for her withdrawal a month ago, "But the Judge who is Bias, towards the defendant, Denied the defendant's Motion," however, Judge did request for

"to (review) the defendant's Motion: Rule 12.9" to send back to the grand jury for correction, which refuse to do.

Behind the back of Judge D.P.

Superior Court. The way it works with "Is she works for the prosecution," that the defendant,

has come out to jail and refuses to raise arguments concerning newly discovered evidence, to exonerate the defendant, though she has lied to me; Badgered me; and spoken negative thoughts toward defendant's defense, "stating to the defendant, you're going down for a long time without viewing the facts and evidence to support the case."

Sincerely yours

## Administrative Assistance

Comes now the defendant  
concerning the Honorable

during Court  
appearance. The defendant learned  
that on the Honorable  
Judge stated to the defendant,  
on the record, that the Honorable  
had denied Defendant's Motion  
for Change of Cause.

Judge Having ruled on that Motion  
- on.

Defendant has argued before, that the  
Judge has violated defend-  
-ant's due process, and Constitutional  
rights, to remedy the matter, by the  
filing of Motions, which Judge

has never granted or denied and  
stated on record, that the legal defense,  
'does not have to present Defendant's Motion  
'if she does not want to.' Judge

'has also stated, the Motions could be raised  
during trial, which will be to late to  
raise Motions, which are raised during  
pre-trial proceedings, and for the due process,

For the purpose, "proceeding before trial." The motions the defendant was referring to, are the motions for Rule 15.6 Continuing duties to disclose. Rule 16.6 Dismissal of the prosecution on defendant's behalf. Rule 16.2 Pretrial motion for omnibus hearing. Rule 16.2 procedure on pre-trial motion to suppress the evidence.

Rule 16.6(B) Dismissal of prosecution, based on the evidence is lacking in this case.

Rule 12.6 Independent Grand Jury, "Bill of the particulars". Rule 10.1 Change of Judge for Cause. Rule 16.3 Evidentiary Hearing.

At any event, Judge [redacted] has betrayed Bias, prejudice towards the defendant, for almost the last nine months of incarceration. Defendant has done everything possible, to "demerol" his situation. Which seems to have worsened. Deputy [redacted] stated

on the record, the defendant seems to think there's a conspiracy going on in our office, "which the defendant does think." First off, they "change the Sale's Case, in the 242nd B-J 183. to "Possession of a narcotic drug," (without defendant consent), and did not put the defendant (on notice) "ahead of this change", which came three months later, they changed the (substance) of the charge. The defendant's attorney

3. Never gave (Notice) to the defendant, that  
he would have to request that, "Double  
Jeopardy (Bar) be put in place of  
the (instructions, for trial), Block States Attempt,  
"Original Charge" against the defendant.  
The defendant had also raised these matters  
on a Motion Rule 13.5 for defendant to give Consent.  
1. In the 244th G.T. 125, to Amendment.

The prosecution had a detective  
to Mislead, the grand Jury, in the  
New Grand Jury testimony, when he stated,  
for the record, "that Defendant was given  
"Mark Bray money", which upon a Motion  
for discovery, to receive this evidence,  
the defendant has not received nor  
disclose evidence, my Social Numbers,  
no Photo pictures, of said, money.

This also has been brought to Judge  
attention, "Months ago".  
and recent, It shows some kind of  
Bias, towards the defendant, regard-  
less of the defendant's attempt to get  
evidence, that is inculpatory, of defen-  
-dant, or shows exculpatory of defendant.  
Bray money, the state claims as their  
evidence. (Prosecution) was ask to be  
sanction, for not complying in a timely  
manner, the evidence request for proof.

## 4. Rule 15.7 Sanctions

1. Ordering Disclosure of the information not previously disclosed.
2. Granting a Continuance.
3. Holding a witness, party or Counsel in Contempt.
4. Precluding a party from calling a witness, offering evidence, or raising a defense not disclosed.
5. Declaring a mistrial when necessary to prevent a miscarriage of justice.

It runs it up to Judge's discretion, but in light of the evidence, the way the case is being handled by the Judge, her actions favor the prosecution, and not the facts that the evidence is needed for fair trial of the defendant, which means Bias on Judge's

part. Not allowing the defendant, this evidence for nine months. Something is amiss. Counsel also show Bad faith because she has fail to reveal existence documentary evidence, which constituted willful misconduct failure to follow requirement of rules of discovery with respect to such evidence.

Respectfully,  
D. J. [unclear]