

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaints 18-389, 18-398 & 18-406

Judge: Lee F. Jantzen

Complainants: James M. Schoppmann
Christopher Stavris
LeRoy Montoya

ORDER

All three complainants allege that a superior court judge engaged in improper ex parte communications and handled matters on which he had previously recused. Additionally, one complainant also alleged the judge was biased against him.

Judge Jantzen previously recused himself from handling Mr. Montoya's post-conviction matters following the initiation of the Commission's investigation into Judge Jantzen's delayed rulings on those post-conviction matters. (CJC Case No. 17-232). Judge Jantzen was censured for his conduct in that case.

Before recusing, Judge Jantzen had imposed certain sentences on Mr. Montoya. On or about September 18, 2018, Judge Sipe, who is now handling Mr. Montoya's post-conviction matters, asked Judge Jantzen to respond to an inquiry from the Arizona Department of Corrections (ADOC) about application of pre-sentence incarceration credit to Mr. Montoya's sentences. Judge Jantzen, through his judicial assistant, responded to those inquiries via email. The Commission did not find any improper conduct by Judge Jantzen in responding to this clarification request from the ADOC.

However, on or about October 16, 2018, Judge Jantzen received a hand-written proposed order in the mail from Mr. Montoya related to the same issue. The order stated, "Upon Motion for the Defendant . . . ," but no motion was submitted with the order. The motion was not filed with the Clerk of the Court until approximately one week later and was entitled "Ex Parte Motion." Judge Jantzen signed the order without attempting to locate the accompanying motion or attempting to ascertain if the prosecutor and Mr. Montoya's court-appointed attorney agreed with the order (or had even seen the order). When asked by the Commission about the matter, Judge Jantzen's explanation was that he believed the order simply confirmed the prior information he had communicated to the ADOC via email. The signed hand-written

order, however, had the unintended consequence of accelerating Mr. Montoya's release date because it recited certain ADOC commitment codes corresponding to his sentences. Upon receiving the signed order, Mr. Montoya's defense attorney notified the prosecutor, who then took steps to prevent Mr. Montoya's premature release from ADOC. Judge Jantzen issued a minute entry on October 19, 2018, which clarified Mr. Montoya's sentences. The minute entry stated, "The Court has no idea what the codes that the Defendant had written in parentheses after the order mean and probably should have removed those codes from the order."

The Commission found that Judge Jantzen's conduct in signing an ex parte order on matters in which he previously recused as described above violated the following Code provisions:

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."

Rule 2.6(A) (Ensuring the Right to be Heard): "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."

Rule 2.9 (Ex Parte Communication):

"(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending matter . . ."

The Commission found no clear and convincing evidence of a Code violation as to the remaining allegations of the complaints.

Accordingly, Judge Lee F. Jantzen is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The Commission further directs that Judge Jantzen complete the web-based course, "Ethics and Judging: Reaching Higher Ground," offered through the National Judicial College, beginning June 10, 2019, or an alternative course approved by the Commission Chair, at his own expense.

...

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: May 13, 2019

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were distributed to all appropriate persons on May 13, 2019.

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

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2018-398

COMPLAINT AGAINST A JUDGE

Name: Christopher Stavris Judge's Name: Hon. Lee Jantzen

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.

The majority of the information contained therein is copied from undersigned counsel's recently filed motion for change of venue. Undersigned counsel, after reviewing Rules of Professional Conduct that govern attorney conduct, The Arizona Code of Judicial Conduct, which governs judicial conduct and after conferring with ethics counsel for The State Bar of Arizona, has decided to file this complaint, as undersigned counsel feels that he has an ethical obligation to do so. The filing of this complaint is something that undersigned counsel takes extremely serious, as undersigned counsel has the utmost of respect for the position of judicial officer as well as for all members of the judiciary that undersigned counsel has appeared before throughout the State of Arizona. Undersigned counsel is not presenting any argument along with this complaint nor is he providing any position as to any desired outcome; undersigned counsel is only attempting to relay the facts, as best known to undersigned counsel, at the time of this filing.

Undersigned counsel has been court appointed (through Mohave County Office of Indigent Defense Services) to represent the Defendant, Leroy Montoya, in CR2007-0058 and CR2007-0095. Undersigned counsel has been assigned to Mr. Montoya's cases, as post-condition counsel, since October of 2016. Since April of 2015, well before undersigned counsel was ever assigned on Defendant's cases, Defendant's matters were significantly and unnecessarily delayed. As reported, much of this delay was attributed to the judicial officer formerly presiding over these proceedings, The Honorable Lee F. Jantzen, failing to rule on previously submitted pleadings, particularly in reference to a case in which Defendant was proceeding in propria persona as to a successive petition for post-conviction relief: CR2007-00363. After numerous pleadings were filed without action being taken by the court for a lengthy period of time, Defendant filed a complaint with The Commission on Judicial Performance (The Commission) on August 22, 2017. As a result of Defendant's complaint, Judge Jantzen indicated that he would recuse himself from Defendant's cases (stated in initial response to The Commission dated 11/24/17; see Case no. 17-232). Thereafter, Mr. Montoy's cases were reassigned to the Hon. Billy Sipe Jr. Subsequently, Judge Jantzen stipulated to public censure for his conduct in Case No. 17-232, on May 15, 2018, acknowledging, too, that he had previously received a warning from The Commission for similar misconduct involving a delayed ruling. As to CR2007-00363, the pleadings in that case were finally ruled upon by Judge pro-ten Billy Sipe Jr. on February 26, 2018.

Then, on October 16, 2018, in response to what appears to be a handwritten, in pencil motion (EXH. #1) that was filed by Defendant on October 1, 2018, pro per and without the assistance of counsel as to CR2007-0058 and CR2007-0095, Judge Jantzen signed the handwritten, in pencil, corresponding order (EXH #2) whereby Judge Jantzen, essentially, clarified and reiterated time computation issues for Arizona Department of Corrections. By signing this order, Judge Jantzen seemingly affirmed two prior court orders, as to presentence incarceration credit. (See court order of 07/12/13, filed 07/13/13, stating that Defendant, as of the date of the evidentiary hearing (04/12/13) "is to be given a total of 2,409 days credit as of today's date", as to CR2007-0058; See court order dated 11/10/14, filed 11/13/14, stating that Defendant, " [is to] receive 148 days of additional credit for time served on this case (CR2007-0095), or a total credit for time served of 2,409 days from July 12, 2013." [Attached collectively as EXH #3]

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

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COMPLAINT AGAINST A JUDGE

Name: Christopher Stavris Judge's Name: Hon. Lee Jantzen

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.

The October 16, 2018, handwritten, in pencil order signed by Judge Jantzen, as to both CR2007-0058 and CR2007-0095, stated that "[Defendant] is to receive 148 days additional credit for time served on these cases or a total credit of time served of 2,409 days to July 12, 2013 (i.e. D-02, D-04, D-05, F-02)." (see order signed 10/16/18 by Judge Janzen and filed 10/18/18).

Contained within the corresponding October 1, 2018 motion (EXH #1) to this order was "Appendix 1", (in part) an AZDOC time computation printout dated December 23, 2010. This printout listed the sentences, previously imposed by Judge Jantzen, along with each of the sentences corresponding code/count number, AZDOC's method of categorizing inmate sentences. In viewing the time computation printout, the following can be easily observed:

As to CR 2007-0058:

- Defendant's 6 year sentence is categorized as "D-04", credited with 1,334 days, sentence begin date of 03/19/07
- Defendant's 13 year sentence is categorized as "D-05", credited with 1,334 days, sentence begin date of 06/19/12

As to CR2007-0095:

- Defendant's 10.5 years sentence is categorized as "E-02", credited with 0 days, sentence begin date of 12/06/19

☐

As to all sentences, Defendant's earned release credit date (ERCD) is 12/19/2028.

Within this same pro-per pleading, Defendant also provided an additional AZDOC time computation printout, dated August 27, 2018, which listed the following:

As to CR 2007-0058:

- Defendant's 13 year sentence is categorized as "D-05", credited with 0 days, sentence begin date of 02/10/12

As to CR2007-0095:

- Defendant's 10.5 years sentence is now categorized as "F-02", credited with 2,409 days, sentence begin date of 04/10/23

☐

As to all sentences, Defendant's earned release credit date (ERCD) is 09/03/2025

As to this pro-per motion, undersigned counsel, upon requesting a copy of such from the clerk's office, was provided with a copy of the motion; the motion was date stamped 10/23/18 and post-dated the order, that Judge Jantzen signed, by 5 days; undersigned counsel has no explanation for why this is and, as reported by Mr. Montoya, the motion was mailed along with and at the same time as the order that Judge Jantzen signed on 10/16/18.

Undersigned counsel first learned that Judge Jantzen signed the handwritten, in pencil order on October 18, 2018, when he was emailed a copy of Judge Jantzen's signed order from the clerk of the court. Upon reading the order and reviewing various memo's undersigned counsel had previously prepared as to the issue of time computation, it became apparent that based on Judge Jantzen's orders, Defendant was, seemingly, eligible for immediate release from AZDOC. As such, undersigned counsel immediately communicated with both the office of Indigent Defense Services (IDS) and counsel for The State in reference to this issue. These communications centered around Judge Jantzen signing an order on a case in which he had previously recused himself on and, too, of undersigned counsel's intention to file a petition for post-conviction relief, as to both cases, whereby he would be asking for Defendant's release from custody. Counsel for The State, in part, disagreed with undersigned counsel's assessment of things and informed undersigned counsel that this issue would be followed-up on. On October 19, 2018, just three days after signing the aforementioned order, Judge Jantzen then issued an additional order, although there was no motion pending before Judge Jantzen (EXH #4): "This Court had signed an Order on October 16, 2018 confirming what Court staff had told the Arizona Department of Corrections on September 18, 2018 regarding the credit for time served. To clarify, The Defendant is to receive 2,409 days credit in CR-2007-0058 for Counts 2 and 4, which run concurrent to each other, and 0 days credit for Count 5. The Court has no idea what the codes that the Defendant had written in parentheses after the order mean and probably should have removed those codes from the order."

Also on October 19, 2018, counsel for The State communicated to undersigned counsel, via email, that "Jantzen JA told us that yes Jantzen did sign the order and was just clarifying and he also verbally clarified for AZDOC."

Additionally, in a display of complete transparency, counsel for The State also provided undersigned counsel with a string of email exchanges between himself and AZDOC. In those emails, the following is conveyed:

From: James Schoppmann
Sent: Friday, October 19, 2018 10:01 AM
To: 'hhaley'
Subject: Inmate Montoya - AZDOC # 238802
Mr. Haley:

I just learned that a Judge signed a handwritten order proposed by Montoya regarding credit and the Judge supposedly confirmed over the phone. However, the case had been reassigned

to another judge and there may be an error. Can you let me know who I can talk to about this case asap? Additionally, can you let me know what your new computation is, if any?
I will be filing a motion to stay the order and motion to reconsider asap.

Thanks,

James M. Schoppmann
Chief Deputy County Attorney

From: Cody Hutchinson
Sent: Friday, October 19, 2018 4:11 PM
To: James Schoppmann
Subject: Fwd: FW: Inmate Montoya - AZDOC # 238802

The staff had completed the recalculation of the above named inmate.
The tentative dates are as follows:

CR20070058 (Commit D: Count 4 & 5)

D04:

He was sentenced to 6 years with 2409 jail credited days, with a date of sentence of 07/12/2013. He will reach his Earned Release Credit Date 02/10/2012.

D05:

He was sentenced to 13 years with 0 jail credited days, with 02/10/2012 starting this sentence. He will reach his Earned Release Credit Date 08/23/2023.

CR20070095 (Commit F: Count 2)

He was sentenced to 10 years and 6 months with 2409 jail credited days, with his start date of 08/23/2023. He will reach his Community Supervision Begin Date on 10/28/2025 and complete his sentence when he reaches his Community Supervision End Date on 03/28/2030. Should he be denied be denied for his Community Supervision Begin Date then he will be reverted to his Earned Release Credit Date of 01/15/2026 and recalculate his Community Supervision End Date.

As is apparent, Judge Jantzen, no longer the assigned judge on these post-conviction proceedings, signed Defendant's handwritten, in pencil court order, on October 16, 2018, after reviewing Defendant's handwritten, in pencil motion. In doing so, Judge Jantzen was, basically, clarifying time computation issues for AZDOC and, seemingly, affirming prior court orders, as to presentence credit, in both CR2007-0058 and CR2007-0095. Then, without formally being prompted to do so by either undersigned counsel, Defendant, nor counsel for

the State, Judge Jantzen, just three days later, issued an order, in part, contradicting what he had previously ordered on October 16, 2018. The court order of October 16, 2018, states that: "This Court had signed an Order on October 16, 2018 confirming what Court staff had told the Arizona Department of Corrections on September 18, 2018 regarding the credit for time served." However, the email communications received by undersigned counsel from counsel for the State indicates "Jantzen JA told us that yes Jantzen did sign the order and was just clarifying and he also verbally clarified for AZDOC" and , too, "I just learned that a Judge signed a handwritten order proposed by Montoya regarding credit and the Judge supposedly confirmed over the phone .

At this time, it is unclear what Judge Jantzen's orders, as to presentence credit, are. It is also unclear if Judge Jantzen or someone from Judge Jantzen's staff, even prior to Defendant providing Judge Jantzen with a pro-per, handwritten, in pencil order, communicated with AZDOC personnel. From counsel for the State's perspective, in him speaking with a member(s) of Judge Jantzen's staff, it appears that counsel for The State is under the impression that it was Judge Jantzen personally, who communicated with AZDOC personnel in reference to presentence credit/time computation issues. This is concerning because if this is the case, it appears that whomever Judge Jantzen spoke to (or members of his staff spoke to), at the very least, may have influenced the decision of Judge Jantzen to issue an additional, unprompted order on October 19, 2018 (i.e. there was no motion, at that time, pending before Judge Jantzen) that adversely affected the Defendant. Furthermore, depending on if and whom Judge Jantzen spoke to at AZDOC, there may be an additional concern that arises in the event that either Judge Jantzen or a member of his staff, at his direction, communicated with a person whom Defendant, anticipating an (eventual) evidentiary hearing in these post-conviction proceedings, may be calling as a witness during an evidentiary hearing. At this time, as there is a motion to change venue outstanding, undersigned counsel has yet to file a petition for post conviction relief and , as such, there has been no ruling on substantive pleadings and no order setting the matter for an evidentiary hearing.

Please contact undersigned counsel with any questions, concerns, or follow-up; undersigned counsel shall fully and honestly comply with all requests for information.



Resp
18-398
3/29/19

HONORABLE LEE F. JANTZEN
JUDGE - DIVISION IV

**SUPERIOR COURT OF ARIZONA
COUNTY OF MOHAVE**

401 EAST SPRING STREET
POST OFFICE BOX 7000
KINGMAN, ARIZONA 86402

(928) 753-0785
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March 25, 2017

Re: Judicial Conduct Commission

Response to Complaints – Case No. 18-389, 18-398 and 18-406

Ms. Elliott:

Thank you for the opportunity to respond to the Judicial Complaints filed by James Schoppmann, Christopher Stavris and Leroy Montoya concerning my conduct in two pending post-conviction relief cases (CR20070058, CR20070095). These complaints are made by the State, defense counsel and the Defendant, all alleging that I acted improperly in attempting to clarify an order in cases involving Leroy Montoya in which I am recused.

Synopsis of what I did

In September 2018, I received word from my Judicial Assistant that the Judge handling the case wanted me to clarify an issue with the Department of Corrections (hereinafter "DOC") relating back to the last time I had sentenced the Defendant in November 2014. The DOC had sent an email to Judge Sipe's Judicial Assistant, Wendy Perkins, asking for clarification. The Defendant had been sentenced three different times in this case and I had been the sentencing judge each time. I didn't really want to do it or to do anything ever again with this case, because this is the same case I received public censure for my dilatory behavior, but I did not see clarification of the sentence as entering back into the case or to create new rulings. It is routine for us to receive requests from the local jail and the DOC to clarify sentencing orders and so I did so by reviewing the file, specifically looking back at the sentencing in November 2014.

A few weeks later, on October 16, 2018, my Judicial Assistant said she had receive a hand-written order with my name and a signature line on it from the Defendant. I walked over to her desk looked at the order and it listed the exact same credit for time served I had told her to send to DOC a few weeks earlier. I said to her something like "he must need this for whatever argument he is making". The order had the same specific numbers regarding credit for time served that were in the November 2014 ruling and I so signed it. I did not have it in my possession for more than thirty seconds. I did not think it was connected to any motion. I did not believe it to be anything more than clarifying the sentence that I had issued previously. Due to the history of my involvement in this case, I wanted to react quickly and not let something sit.

A few days later, on October 19, 2018, we received a call from the County Attorney's Office saying that the Defendant was going to be released because the hand-written order I had quickly signed contained code numbers the Defendant had entered and that I had ignored that meant something to the prison different from my intent. I quickly had my Judicial Assistant prepare the October 19, 2018 minute entry vacating the order I signed on October 16, 2018 and clarifying the only thing I was attempting to accomplish in this case was trying to clarify the November 2014 sentencing order.

Answering the Committee's specific questions

Q1. - You issued orders in this matter after previously recusing yourself from Mr. Montoya's cases.

I did recuse myself from Mr. Montoya's cases in November 2017, during the Judicial Commission complaint process where I eventually received a public censure for my dilatory handling of the cases. I was first assigned these cases back in late 2007 or early 2008 when Judge Chavez recused himself.

In September 2018, I was asked by the Honorable Billy K. Sipe, Jr. to "clarify" a sentencing order I had issued in November 2014 for the Department of Corrections. This, in my opinion, was a routine request from the Department of Corrections and I was asked to clarify because I had a long history with these cases and I was the sentencing judge in these cases. I did not read any pleadings. I simply looked at the file and told my Judicial Assistant what I had ordered in November 2014, and she sent the DOC an email. **Those e-mails are attached.**

I did later sign the hand-written order sent by the Defendant, but only in an attempt to clarify the sentence issued in November 2014. This is addressed in detail below.

I did issue a minute entry immediately after I found out from the County Attorney's Office about the effect of the order I had signed.

My involvement in September and October 2018, including the order and the minute entry were done for the sole purpose of clarifying a sentencing order I issued in these cases in November 2014.

Q.2 - You issued an order on an *ex parte* basis dated October 16, 2018 and the accompanying *ex parte* motion for that order was not filed with the Court until October 23, 2018.

The order I signed on October 16, 2018 was only intended to clarify the sentence from November 2014. My Judicial Assistant said she had something the Defendant wanted me to sign. I did not read or see any accompanying motions. As it turned out, a motion was filed one week later on October 23, 2018 – I have never reviewed that motion. I did not communicate with anyone, I just looked at the order, which was hand printed by the Defendant in pencil and had a signature place for my name. In looking over the order, I saw it had the exact amount of days credit that I had issued in November 2014 and that had been in the email sent by my Judicial Assistant the month before to DOC. I thought in my head this clarified my previous

November 2014 order, that the Defendant must need this with my signature for some argument he is making, and so I quickly signed the order without walking back to my desk, keeping in my mind, that I had recused on this case because I received a public censure on these same cases because I did not timely respond to Defendant's pleadings in the past, and so I wanted to react quickly. Most importantly, however, it was not intended to be a new order in the case creating anything different. It was intended by me to be an order affirming and clarifying the November 2014 sentencing order. Nothing more.

Unfortunately, it turned out the Defendant had added codes to the order that had some significance at the prison. That led to, a few days later, my Judicial Assistant receiving a call from the County Attorney's office saying Mr. Montoya was going to be mistakenly released early because of the October 16, 2018 order I signed.

I quickly issued the October 19, 2018 minute entry clarifying my intent to only clarify the 2014 sentencing order.

I did not consider the October 16, 2018 order to be a pending or impending issue in this case. I considered it only as a clarification and therefore, I did not consider this to be an *ex parte* order. It wasn't, in my mind, related to anything pending, nor was it, in my mind, changing anything in the case. If I thought it was a contested issue, I would have not signed. It was only to clarify the November 2014 sentencing order. When I realized the mistake I quickly corrected the mistake.

You possibly had *ex parte* communication with the Arizona Department of Corrections regarding time credit and/or release dates.

I did not have any communication with the Arizona Department of Corrections, but my Judicial Assistant and Judge Sipe's Judicial Assistant did receive emails from them asking for clarification of my November 2014 sentencing order. (Copies of those are included with this letter). This is not uncommon. Court sentencing orders are often confusing. This case was especially confusing because Mr. Montoya had been sentenced three separate times. I did not consider this *ex parte* communication. The Department of Corrections isn't a "side" or a party in this case, and this was an administrative issue that wasn't being contested, just clarified. They have a job to do and they have to be able to understand the Court's orders to carry out the intent of the orders. We did send them information that was already in the court file with regard to the credit for time served the Defendant received in November 2014 and what counts that credit should be applied to. I have never personally talked to the Department of Corrections or anyone from the jail about clarifying a sentence, my Judicial Assistant has, but I believe the DOC and the jail routinely communicate with the Clerk's office of this court and every other court in the state to make sure the sentencings are correct.

Judicial Canon Rule 2.9 **Ex parte Communication** states in Section (A) "a judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows (1)..... administrative...purposes."

In this case there was nothing pending or impending. The communication between the Department of Corrections and my Judicial Assistant was routine communication involving the administrative purpose of clarifying an already existing sentencing order.

Everything I did in this case was with the sole intent of clarifying an existing order. I did not take the case back and attempt to make new orders. I quickly corrected the mistake I made in signing the Defendant's hand-written order. My only role was to clarify.

Conclusion

In an attempt to clarify a three-year old sentencing at the request of another Judge, I made a mistake in signing an order without properly thinking it through in a case in which I am recused. I am aware of and I understand it is the Court's job to consider all sides prior to ruling on and signing an order, but because I thought this was just a clarification, I did not go through that normal process.

I understand that this is possibly violation of judicial code. However, if this is a violation, the error was quickly fixed, and the order was quickly vacated. The mistake was rectified immediately. Defendant was not released prematurely.

This possible violation is also not similar to the previous violation for which I have been censured, other than it is involving the same Defendant.

I also don't believe my actions reflect any bias for or against the Defendant or the State. I thought the "order" was something the Defendant must need to clarify his sentence, so I signed it. When I found out about the unintended consequences, I immediately vacated the order. I wanted to clarify the sentence that was issued in these cases and nothing more.

Thank you for your consideration in this matter. I have included e-mails and a synopsis from my Judicial Assistant, Danielle Lecher, about what occurred.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lee F. Jantzen". The signature is fluid and cursive, with the first name "Lee" being prominent.

Hon. Lee F. Jantzen
Mohave County Superior Court – Division IV