

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-047

Complainant: No. 1279110435A

Judge: No. 1279110435B

ORDER

The commission reviewed the complaint filed in this matter and found no misconduct on the part of the judge. Although the complainant's client was held without a hearing for a time, this is permissible in mental health cases to protect both the client and the public. The commission is not a court and cannot make any determination regarding whether or not the client was held longer than the law allows. Further, there was no evidence that the judge acted unethically in having the client evaluated on an emergency basis.

The complaint is dismissed pursuant to Rule 16(a).

Dated: June 27, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on June 27, 2006.

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

Complaint Against a Judge - Page 3

Your name: [] Judge's name: [] Date: 2/14/06

Summary: My complaint against Judge [] is that he entered an unwritten "off the record" order detaining [] without legal basis, without appointing counsel, or informing the Deputy Public Defender of the unwritten order upon direct inquiry to the court of the means/method used to detain [] Judge [] subsequently presided at [] hearing on Petition for Court-Ordered Treatment (COT) without disclosing any of the "off the record" events or detention order to defense counsel.

Narrative: On [] a Petition for Court Ordered Evaluation was filed in the matter of [] and assigned [] A subsequent Petition for Court Ordered Treatment was filed in the case. [] was scheduled for hearing on a pending petition for court-ordered treatment on [] before Judge [] Late on the day preceding the hearing, [] I realized that there were some procedural irregularities relating to [] detention and treatment. I was unable to confirm further information prior to the hearing on []

Prior to the hearing, I interviewed both "lay" witnesses presented by [] to testify at the COT hearing on [] Both lay witnesses are crisis workers employed by [] At an interview, both witnesses indicated that they did not believe [] was petitionable. They indicated that they both intended to testify that [] should not be placed under a Court Order for Mental Health Treatment. Based upon this information, I realized that the State could not meet its statutory burden to prove the necessity of involuntary treatment by clear and convincing evidence. As such, the petition would be dismissed at hearing and [] would be ordered released. While ultimately she would be released, it appeared to me from the irregularities at the outset that [] had likely been detained "illegally" throughout her hospitalization at [] I was greatly concerned by the apparent violation of my client's civil rights. I wanted to understand how this had ultimately occurred and insure that it would not be repeated.

On [] prior to the hearing, I requested and received a chambers conference with Judge [] I requested that a court reporter record the proceedings. [Transcript attached as "Exhibit A."] At the conference, I presented my concerns about [] detention to the court and specifically inquired whether or not [] had played a part in what appeared to be an improper extended pre-petition detention. Based upon my [] years of experience representing the vast majority of persons petitioned for involuntary mental health treatment in [] I had significant familiarity with the territorial separations and provision of services. Based upon my experience, I knew that the facts of [] case could not have occurred without some extraordinary causal event. At the time of the chambers conference, I was still utterly in the dark as to the nature of that event.

[] is not an Arizona resident. She was traveling by car from [] Due to a small accident or car difficulties, [] had contact with the [] Police Department. She was admitted to the [] Emergency Room and subsequently voluntarily admitted herself to the [] (commonly

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Your name: [REDACTED] Judge's name: [REDACTED] Date: 2/14/06

referred to as [REDACTED]). At a later time, [REDACTED] was informed (by [REDACTED]) that her insurance would not pay for her admission to [REDACTED]. Upon learning this information, [REDACTED] requested to leave [REDACTED]. Her treating psychiatrist, [REDACTED] believed that [REDACTED] was not stable enough to maintain herself safely without hospitalization. [REDACTED] signed the form to leave the hospital against medical advice (AMA).

Typically, if a hospital feels that a patient should not leave AMA, they have the option of contacting the mental health mobile crisis team to assess the patient for possible involuntary emergency evaluation/hospitalization. In the [REDACTED] area, this crisis service is provided by [REDACTED]. Yet somehow, the paperwork completed for [REDACTED] emergency detention was authored by the crisis team from [REDACTED] in [REDACTED]. Upon learning on [REDACTED] that [REDACTED] had not voluntarily transferred hospitals, the fact that [REDACTED] crisis had assessed [REDACTED] instead of [REDACTED] was a screaming red flag. There is no legal means known to me to physically transfer an involuntary patient from one crisis team territory to another.

In my experience with Mental Health cases, I was also aware that it is the common practice of the hospitals, and other mental health providers, to contact the County Attorney's Office - specifically [REDACTED] to seek legal advice in a variety of circumstances. With my awareness of the irregularities in [REDACTED] case and knowledge that [REDACTED] is typically consulted, I requested that Judge [REDACTED] ask [REDACTED] to state whether or not he had been involved in the transfer of [REDACTED] from [REDACTED] to [REDACTED]. I can only plainly state that I knew something irregular and possibly ethically improper had taken place in this case, I simply didn't know the exact facts, but I was confident that [REDACTED] was likely aware of the details and that he had not yet informed me of those facts prior to the scheduled COT hearing. At the time of the chambers conference, it had never even crossed my mind that Judge [REDACTED] was also involved. As the transcript shows, I was asking Judge [REDACTED] to ask [REDACTED] to state whether or not [REDACTED] was involved, in any manner, in the transfer of [REDACTED] from [REDACTED] to [REDACTED].

Ultimately Judge [REDACTED] refused to require [REDACTED] to respond to my inquiries. I was threatened with contempt of court by both [REDACTED] and Judge [REDACTED]. I was directed by Judge [REDACTED] to find out the missing information on my own and to not make accusations. Judge [REDACTED] first directed me to request a continuance of the COT hearing and to make further inquiry. I fully believe that it would have been ethically improper for me to continue the hearing. On [REDACTED] I originally planned to request a continuance for additional time to contact and interview any persons involved with [REDACTED] treatment and transfer, however upon learning from the lay witnesses that they intended to testify that [REDACTED] should not be subject to a Court Order for Treatment, I could not ethically delay the dismissal of the case. Had I requested a continuance, [REDACTED] would have remained inpatient at the hospital. I explained this to Judge [REDACTED] but also expressed my concern that, upon dismissal, the irregularities in the matter would not be dealt with and would end up swept under the rug.

During the chambers conference, [REDACTED] indicated that he had prior discussions with the judge regarding [REDACTED] (Transcript p.12, l.15-19). I inquired whether [REDACTED] and the Judge had spoken regarding the facts of the case without the presence of defense counsel. Judge

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Your name: [redacted] Judge's name: [redacted] Date: 2/14/06

[redacted] responded that he had been the one to review the petition the previous Wednesday or Thursday. [redacted] confirmed their discussion was on Wednesday. The previous Wednesday was [redacted]. The Petition for Court Ordered Treatment had been filed on [redacted] [redacted] (resulting in the hearing set [redacted]. Judge [redacted] and [redacted] therefore led me to believe that they had a conversation regarding the review of the Petition for Court Ordered Treatment on [redacted]. At no time did they inform me of what I was only to later discover, that on [redacted] (a week earlier than they mentioned) Judge [redacted] and [redacted] had an "off the record" meeting with the [redacted] resulting in [redacted] unrepresented detention.

In response to my expressed concerns, Judge [redacted] threatened contempt proceedings. The result of the chambers conference was that the hearing proceeded with Judge [redacted] presiding and the petition was dismissed. However, during the chambers conference I was directed by Judge [redacted] to investigate on my own and to advise my client of her civil remedies.

Investigation:

[redacted]

- [redacted] crisis was called approximately four times to assess [redacted] at [redacted]
- First assessment could not be completed because [redacted] was too drugged with medication to adequately respond.
- Subsequent assessments revealed that [redacted] had a long history of a bipolar diagnosis, had been off her prescribed medication and was in a manic phase. [redacted] was willing to accept voluntary treatment at [redacted]. She was not petitioned for involuntary treatment, because she consistently expressed her willingness to be treated at [redacted].
- [redacted] was contacted by [redacted] [redacted] upset that [redacted] would not petition [redacted] was informed that a hearing was scheduled the following day [redacted] before Judge [redacted] regarding [redacted].
- [redacted] spoke with [redacted] and was informed that [redacted] was "out of" the case and that a hearing was set on the following day [redacted] in front of Judge [redacted] regarding [redacted].
- [redacted] stated that [redacted] would not violate Title 36 by petitioning a voluntary patient. They did not "decline" to assess her, rather when assessed she presented as voluntary.
- [redacted] indicated that [redacted] was not contacted to assess [redacted] subsequent to her request to leave the hospital AMA.
- [redacted] indicated that she was now aware [redacted] requested to leave AMA from [redacted] on the morning of [redacted]. The hospital kept her for an additional 24-hour "cooling off" period before the hospital would release her, however, she was not released the morning of [redacted]. Rather, an emergency hearing took place before Judge [redacted] and [redacted] was ordered detained and transferred to [redacted]. She was admitted [redacted].

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Your name: [redacted] Judge's name: [redacted] Date: 2/14/06

- [redacted] stated that [redacted] informed her that on [redacted] the hospital's attorney, [redacted] attained a court order from Judge [redacted] for [redacted] 24-hour detention.

[redacted] Attempted to reach [redacted] She was on vacation until [redacted] Upon returning from vacation [redacted] did not return my call.

[redacted] Telephone Interview of [redacted]

- [redacted] confirmed that [redacted] was admitted to [redacted] on a 24-hour "observation" on [redacted]
- [redacted] authorized her admission.
- *Observation admission was so that a Petition for Court Ordered for Evaluation could be prepared.*

[redacted] Telephone Interview of [redacted]

- She was not on duty and only has second-hand knowledge of the matter of [redacted]

[redacted] Telephone Interview of [redacted]

- [redacted] was admitted on a voluntary basis to [redacted]
- [redacted] did not petition [redacted] because she was voluntary
- [redacted] was extremely manic
- On [redacted] informed [redacted] that her insurance would not cover her stay at [redacted]
- [redacted] immediately requested to leave on the morning of [redacted]
- [redacted] presented [redacted] with a form to sign indicating that she was acknowledging she wanted to leave [redacted] AMA (Against Medical Advice). [redacted] signed the form on the morning of [redacted]
- [redacted] indicates that [redacted] was detained for a 24-hour cooling off period expiring the morning of [redacted]
- [redacted] feared that [redacted] would not be safe if released and met with [redacted] regarding the fact that [redacted] had previously not petitioned [redacted]
- [redacted] was present as [redacted] called [redacted] and essentially inquired what could be done if a crisis team did not believe a patient was petitionable, but the treating physician believed she was a danger to herself.
- [redacted] indicated that [redacted] stated that he believed this was a "gap in the statutes" and suggested that they all meet with Judge [redacted] to discuss it.
- On [redacted] attended a hearing before Judge [redacted] with [redacted] and [redacted]
- Judge [redacted] denied [redacted] petition for Court Ordered Evaluation, but directed that it was ok for [redacted] to hold [redacted] for 24-hours.
- Judge [redacted] told [redacted] to use the extra time to see if [redacted] would agree to transfer [redacted] to [redacted] for evaluation at [redacted]

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Your name: [] Judge's name: [] Date: 2/14/06

- [] indicated that the courthouse was closed by the time they finished and estimated it was around 5:30 p.m.
- [] stated that they left the hearing with no "piece of paper" confirming the Judge's order because the court was already closed.
- [] says she was told that it was a "precedent."
- I requested an affidavit from [] and was informed by [] that [] administration requires a court order before their employees will complete an affidavit.
- I filed a motion requesting a deposition. It remains pending.

[] Telephone Interview of []

- [] first heard about [] once [] was already admitted to []
- [] was aware that the transfer was arranged through []
- When the original request to transfer [] came in to [] from [] [] was not comfortable proceeding without a written court order of detention. [] was informed that [] had obtained the court order.
- According to [] [] stated that he would accept [] avowal that a court order existed. [] spoke with [] and "vouched" that it was all taken care of and that they had a 24-hour hold even without any paperwork.
- [] approved the transfer of [] to []

[] I've repeatedly left messages for [] (approximately five over three weeks) [] He has not returned my calls.

[] Telephone Interview of []

- [] informed me that she kept extensive notes of all actions and conversations taken in the case of [] and that she would fax me a copy of her notes (I never received the promised fax).
- On [] came into the Emergency Room at [] and was admitted to the medical unit. She was subsequently admitted to the [] unit - []
- [] presented as manic and had an insurance policy out of []
- The insurer was contacted and refused to cover the admission to []
- [] was concerned about liability if they admitted [] voluntarily, but then she decided she wanted to leave. [] had assessed [] and determined that she was voluntary and willing to be treated.
- Once informed of lack of insurance coverage, [] immediately wanted to leave.
- [] was already concerned because [] had no local residence. [] [] felt she was a danger to herself or others and was not competent to make a decision in her best interest.

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Your name: [redacted] Judge's name: [redacted] Date: 2/14/06

- [redacted] was in an awkward position because their doctor felt that she was a danger to herself or others, but each time she was evaluated by [redacted] she was voluntary.
- On the morning of [redacted] signed the AMA form.
- Out of concern for the patient and for reasons of liability, the hospital took further action. They contacted the family, but the family wouldn't assist (Mom, Brother, Husband).
- [redacted] contacted [redacted] and, upon reviewing the statute, he pointed out that it said "the agency to present to the County Attorney's Office" and since [redacted] is "the agency" and they previously determined she was voluntary, [redacted] suggested that they try to get a court order.
- On Thursday [redacted] all met with Judge [redacted]
- [redacted] characterized the meeting as a "strange procedure."
- When [redacted] arrived at the [redacted] Courthouse, Judge [redacted] was on the bench in another hearing. The clerk or bailiff assisted [redacted] to communicate with Judge [redacted] in writing/papers during breaks. [redacted] and [redacted] were at the courthouse for several hours.
- While waiting, [redacted] was informed that [redacted] was meeting with Judge [redacted] to see if they could petition [redacted]
- After 5:00 p.m. [redacted] was called in to meet with Judge [redacted] and [redacted] [redacted] was present. [redacted] reported that two different court reporters were also present. The first reporter had to leave to catch her carpool and another came in to replace her.
- Judge [redacted] issued an order detaining [redacted] for 24-hours and directed [redacted] to have [redacted] talk to see if they would agree to transfer [redacted] to [redacted] and do the evaluation there.
- Judge [redacted] told [redacted] that no written order could be issued because it was after hours and he was unsure how to do an order because the computers were turned off.
- Judge [redacted] denied [redacted] petition for evaluation, but granted a 24-hour hold so that they could "keep" [redacted] at [redacted] long enough to work out with [redacted] to transfer and evaluate her.
- Later in the evening on [redacted] [redacted] contacted [redacted] because [redacted] would not accept the transfer from [redacted] without a detention order. [redacted] [redacted] said that [redacted] contacted [redacted] and "vouched" that an order of detention was in place.
- The [redacted] Police Department refused to transport [redacted] from [redacted] to [redacted] an ambulance was used.
- [redacted] indicated that she felt bad about the entire process, but that the week before, the hospital had been served a lawsuit. She informed me that a patient on methamphetamine left the Emergency Room "AMA" and subsequently [redacted] [redacted] The hospital was being sued for allowing the patient to leave.

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Your name: [] Judge's name: [] Date: 2/14/06

[] Telephone Interview of [] one of the two Court Reporters, []

- She recalled the parties talking "off the record."
- She has no record of the hearing.
- [] believed that [] had been transcribing the hearing when she entered the room to relieve her, however [] took nothing down.

[] I filed a motion requesting that the court supplement the record of hearing on the petition for court ordered treatment with [] clinical record from [] Judge [] denied the request on []

[] Telephone Interview of [] one of the Court Reporters, []

- She has no record of the hearing.
- [] denies that she was transcribing as [] entered the room to relieve her.

[] Spoke with [] by telephone.

- I informed [] that [] through [] had indicated that they were not requested to assess [] after she signed out AMA. [] indicated that had [] been informed [] was requesting to leave AMA, they could have initiated a petition at that time, as she was no longer "voluntary."
- [] could not confirm that [] was notified and requested to assess [] after she signed AMA. However, [] felt that there were enough discussions between the hospital and [] that [] had "adequate knowledge" to act.

[] requested that I put my request for records and an affidavit in writing. I forwarded a letter to her by fax. [] informed me that she would provide an affidavit upon approval of the hospital administration. She later informed me that [] requires a court order before she can complete an affidavit or forward any records.

Pending: During the chambers conference, Judge [] repeatedly directed me to investigate the matter on my own. Upon reaching the point that I could no longer continue to investigate the issue without a court order, I filed a request for depositions of or compelled affidavits from [] [Copy attached as "Exhibit B."] The State filed an opposition to deposition on [] [Copy attached as "Exhibit C"] No ruling has yet been made.

Judge [] issued a Notice minute entry on [] "closing" the [] for the reason that no other pleadings were filed. [Copy attached as "Exhibit D."]

On [] I filed a Notice to Correct the Court's Minute Entry, "Notice," Dated [] [Copy attached as "Exhibit E" (the second exhibit to this Notice is deleted as it was the chambers conference transcript herein provided as Exhibit A).]

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Your name: [] Judge's name: [] Date: 2/14/06

On [] Judge [] rescinded the [] Minute Entry. [Copy attached as "Exhibit F."]

Commentary: I find it deeply disturbing that a [] Judge did not disclose to me that he had participated in an "off the record" proceeding detaining my client. It is clear from the transcript of the chambers conference that I realized "something" was done without my knowledge to detain/transfer [] and that I did not believe there was any known legal basis for having done so. Meanwhile, Judge [] and [] knew exactly what was done to detain [] knew that they were the ones who were involved and ordered her detention, yet neither one of them revealed their actions to me. Instead, I was threatened with contempt and believe that both Judge [] and [] attempted to intimidate me into dropping the matter. Judge [] then proceeded to preside over the matter at hearing, knowing that he was withholding the requested information.

I'm further disturbed by the fact that I was repeatedly told that if I thought there was a problem, I should advise my client of her civil remedies. I feel that both Judge [] and [] were playing the odds that [] lack of Arizona residence and mental disorder would prevent her from adequately exercising her civil remedies in this matter.

I have no avenue of relief other than the filing of this complaint. I was reluctant to do so in concern for how it may impact my own career in [] Yet, I simply cannot continue to practice before Judge [] as if this never happened. I stood before a Judge of the [] and virtually begged to be told information that had negatively impacted my client, that Judge knew precisely what information I was seeking, had that information, was bound by all judicial propriety to reveal it to me, and instead responded with threats and intimidation and then remained on the case.

As a result of Judge [] actions, my client was improperly detained for approximately fourteen days.

