

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-040

Complainant: Glenn J. Gimbut

Judge: Rosendo Morales, Jr.

ORDER

After reviewing the complaint, the evidence gathered during preliminary investigation, and the judge's response, the commission finds that Judge Morales' conduct violated the Code of Judicial Conduct.

On November 21, 2006, attorney James Gregory entered a notice of appearance with the Commission on Judicial Conduct to represent Judge Morales in his formal case. On November 27, Mr. Gregory filed a motion in Judge Morales' court to quash an arrest warrant on behalf of a client. Without disqualifying himself and without notifying the state, Judge Morales quashed the warrant the same day.

Canon 1 mandates that a judge uphold the integrity and independence of the judiciary. Canon 2A requires that a judge avoid the appearance of impropriety. Canon 2B prohibits a judge from lending the prestige of judicial office to others. The judge's actions in quashing a warrant based solely on a motion filed by his own attorney presented the appearance that the judge was granting Mr. Gregory a special favor. Canon 3E(a) requires a judge to disqualify himself when he has a personal bias concerning a lawyer. In this case, the judge's own lawyer was appearing before the judge, by way of his motion, and seeking a favorable ruling which the judge granted without notice to the state.

The judge is hereby reprimanded for his conduct pursuant to Rule 17(a). 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: September 28, 2007

FOR THE COMMISSION

J. William Brammer, Jr.
Hon. J. William Brammer, Jr.
Commission Chair

Copies of this order were mailed to the complainant and the judge on September 28, 2007.



City of San Luis

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CJC-07-040

February 1, 2007

Mr. James Gregory, Esq.
217 S. Second Ave.
Yuma, AZ 85364

HAND DELIVERED

Re: Representation of Judge Rosendo Morales

Dear Mr. Gregory:

It has come to my attention that both you and your client, Judge Rosendo Morales of the San Luis Municipal Court, may have committed ethics violations during the course of your representation of the Judge before the Commission on Judicial Conduct and the Supreme Court of Arizona. The purpose of this letter is to outline the information that has been received by this office and to give you an opportunity to respond, in writing, before any formal complaint is made to proper authorities. As you are aware, ER 8.3 requires an attorney who knows of a violation of either the Rules of Professional Conduct or the Rules of Judicial Conduct to inform the appropriate authority. Before this office takes that step, I want to be certain of the facts and the law. There may very well be a perfectly reasonable explanation for the conduct. But I would like to hear it.

As you know, Judge Morales recently received an interim suspension from the bench for misconduct, pending final decision from the Supreme Court of Arizona. There is a recommendation for a sixty (60) day suspension from the Commission on Judicial Conduct. This pending discipline is the result of a complaint and investigation that may have begun as early as May of 2006. The record reflects that you have been the attorney representing Judge Morales for these proceedings.

It has come to my attention that while you were representing Judge Morales in a personal capacity, you had appeared of record as an attorney representing clients before Judge Morales. Not only did you not recuse yourself from pending cases, you actively took on new clients and continued to appear. I am informed that no notice of your representation of Judge Morales was given to the City Prosecutor, the Honorable Lawrence Kenworthy. I am further informed that Judge Morales did not inform him of this conflict either. It is my information that Judge Morales did not recuse himself from those matters. I do not have a listing of all cases in which you appeared since May 1, 2006, but I have asked, through Judge Figueroa, for court staff to research.

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Of grave concern is the following case, which may simply be the tip of the iceberg. State v. Carlos Manuel Munoz, CR200600600, San Luis Municipal Court, is matter involving a charge of criminal assault which occurred on November 5, 2006. According to the court file, Mr. Munoz was arrested and placed in custody. On release an order of protection was issued against with terms and conditions of release that required him to stay away from the victim. The pictures of the victim are not pretty, and the police reports indicate an admission of assault. On November 20, 2006 the prosecutor, now Judge of the Superior Court, Lawrence C. Kenworthy, filed a Petition to Revoke/Modify Conditions of Release pursuant to Rule 7.5 of the Rules of Criminal Procedure. Based upon that petition the Court issued a warrant for the arrest of Mr. Munoz. On November 27, 2006, at a time you were actively representing Judge Morales before the Commission on Judicial Conduct, you made an appearance in the case and made an ex parte appearance in front of Judge Morales asking that the warrant be quashed. No notice in writing or otherwise was given to the city prosecutor of your written motion. Judge Morales signed the form of order quashing the warrant that you presented him. Not only was the action done in an ex parte manner, no notice was given to the victim as required by law. The victim continues to remain fearful of Mr. Munoz. It would appear that a motion setting aside the quashing of the warrant is in order, and that you are no longer qualified to be the counsel for Mr. Munoz.

This situation would appear to involve multiple levels of violations of ER 1.7. A lawyer may not represent a client if there is a significant risk that the representation will be materially limited by the lawyer's responsibilities to another client. The conflicts would not appear to be waiveable. ER 1.7 provides waiver is not possible where prohibited by law. This conduct would appear to be violative of Canons 1, 2, 3, as well as 4 of the Code of Judicial Conduct. Not only does this create problems for you and Judge Morales, but problems for every one of your other clients since any decision made by the court under those circumstances is now subject to be overturned. You would appear to be no longer qualified to represent these people, forcing them to find new lawyers and incur new expense. If these cases involve court appointed counsel, be advised that this office will be exploring making claim against you to recover the monies the city must spend cleaning up this mess.

What is most disconcerting is the terrible position that you have placed Judge Morales. He is not an attorney. You are. ER 1.1 and ER 2.1 require competency and sound advice. Did you advise Judge Morales of the Canons and the obvious conflicts? Did you advise him he was risking his career and livelihood? Did you advise your clients who were appearing before him of the conflicts and the legal risks that were being taken? Judge Morales appeared on the bench the morning after his suspension, apparently not knowing of the order of suspension. Did you not tell him about the order and the possible consequences for violation?

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Also you have applied to become my assistant as the city prosecutor, and failed to disclose that you were the Judge's personal attorney, and would have a conflict being prosecutor on any case in which you appeared before him. Did you expect the City to get a new judge? Or did you feel it was perfectly fine to be the personal attorney for the Judge and the prosecutor at the same time?

I would like an answer as to why the above are not violations of the Rules of Professional Conduct and the Canons of Judicial Ethics. Further I would like the following information:

- 1) The date you first came in contact with Judge Morales regarding the matter currently pending before the Supreme Court.
- 2) A list of all cases in which you were attorney of record in the Municipal Court of the City of San Luis on that date.
- 3) A list of all cases in which you entered an appearance between that date and today.

If I do not have a written response by noon of February 7, 2007, this matter will be forwarded to the State Bar of Arizona and the Commission on Judicial Conduct.

Glenn Gimblif ✓
City Attorney

cc: Honorable Andrew Gould, Presiding Judge
Honorable Mayor and Members of City Council
Gregory Torok, Esq.



San Luis Municipal Court

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JUN 11 2007

HON. ROSENDO MORALES JR.
MAGISTRATE

June 8, 2007

Commission on Judicial Conduct
Arizona State Courts Building
1501 West Washington Street, Room 229
Phoenix, Arizona 85007

Re: Response to complaint, case no. 07-040

Dear Commission Members:

On December 1, 2006, I retained an attorney to represent me in a complaint before the Commission. At the time of the hiring, there was not a contract tendered to me nor any other documents tendered to me by the attorney as part of representation nor did I sign any documents. I have a duplicate copy of the check which proves that I paid that attorney on that date of December 1, 2006.

Complainant states that I have allowed the attorney who represented me in the prior case before the Commission to practice in court and lists several cases as possible conflict. Complainant is not aware of the hiring of the attorney to represent me (December 1, 2006), and automatically assumes that I retained the attorney when the complaint was filed against me, some 6 months earlier. Upon reviewing the cases and the relevant date which I retained the attorney, December 1, 2006, I have not found any cases which presented a conflict as stated in the complaint. All cases are dated before the December 1, 2006 date and one case filed after December 1, 2006 resulted in a substitution of counsel from the attorney whom I contracted to represent me.

Being that there were no cases which resulted in representation before me, I hereby request that the complaint be dismissed.

Respectfully,

Rosendo Morales, Jr.
Judge
San Luis Municipal Court