

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

---

Disposition of Complaint 07-082

---

Complainant: Thomas Jones

Judge: Clyde Andress

---

**ORDER**

After reviewing the complaint, the audio recording of the hearing, and the judge's response, the commission finds that the judge's conduct in this case violated the Code of Judicial Conduct.

Canon 3B(4) of the code requires that a judge be patient, dignified and courteous to litigants and attorneys. During the hearing described in the complaint, the judge became irritable and impatient with the complainant. Canon 3B(7) requires that a judge give an attorney the right to be heard. When the attorney tried to make a record, the judge said, "I don't care for the record, Mr. Jones. You say one more word and you're in contempt." This behavior violated the Code of Judicial Conduct.

Accordingly, the judge is hereby reprimanded for his conduct pursuant to Rule 17(a), and 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: July 11, 2007.

FOR THE COMMISSION

/s/ J. W. Brammer, Jr.  
Hon. J. William Brammer, Jr.  
Commission Chair

Copies of this order were mailed to the complainant and the judge on July 11, 2007.

THOMAS W. JONES

ATTORNEY AT LAW

1930 Mesquite Ave., Suite 6  
Lake Havasu City AZ, 86403  
(928) 855-7864  
FAX: (928) 855-7865

March 23, 2007

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

CJC-07-082

Re: Complaint Against Judge Clyde Andress, Lake Havasu City Municipal Court

Dear Sir or Madam:

For the following reasons, I believe that on March 16, 2007, Judge Andress violated the following Canons of Judicial Ethics:

- 1) Canon 3(B)(4) - "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers. . . ."
- 2) Canon 3(B)(7) - "A judge shall accord to every person who has a legal interest in a proceedings, or that person's lawyer, the right to be heard according to law . . . ."
- 3) Canon 3(B)(8) - "A judge shall dispose of all judicial matters . . . . fairly."

The reason for this is that Judge Andress threatened to hold me in contempt of court for attempting to make a record in a court proceeding. This was in the context of my objection to his decision to proceed with a hearing which he had previously agreed should be set at a later date. There are audio recordings of the relevant hearings from March 2, 2007 and March 16, 2007 which should confirm my allegations.

A bit of background is necessary. I was appointed to represent one George Shuck, an indigent in a misdemeanor criminal case. He was charged with two counts of DUI and one count of failure to appear. Judge Andress was presiding over this case in the Lake Havasu City Municipal Court. Mr. Shuck is out of custody.

I would note that the standard practice of that court is to set dates by simply issuing orders, rather than comparing the calendars of the court, the attorneys and other interested parties. Under this practice, the judge set a pre-trial conference for me to meet with Mr. Shuck on January 11, 2007 and a second date for February 1st.

I was unable to meet with Mr. Shuck on January 11th due to a required appearance in juvenile delinquency matter, Mohave Superior Court Case #JV-2006-7031. I did meet with him on February 1st.

During this meeting, I learned that Mr. Shuck had been taking prescription medication, and that this, rather than alcohol, may have caused the symptoms of the DUI with which he was charged. I instructed Mr. Shuck to follow up with his medical providers to produce relevant information.

I intended to notify the judge of these developments at a February 16th judgment and sentencing, which was the next scheduled court date. I also planned to notify the court that I would be seeking approval for funding for a medical expert. I have never dealt with this specific defense nor have I ever had Judge Andress approve such funds. Therefore I was uncertain about his preferred method for doing this.

I moved to continue this hearing because of a scheduling conflict with Parker Municipal Court #CR-2006-0072, in which the undersigned is acting as special prosecutor. Because of speedy trial considerations, I believed that I was under greater pressure to move forward with the Parker prosecution rather than an out-of-custody misdemeanor case in which I was defense counsel. In any event, the State did not object and Judge Andress continued the judgment and sentencing until March 2, 2007.

In the meantime, Mr. Shuck had provided me with medical records and we were both working on locating an expert. It was anticipated that a motion for expert funds would be filed in the second half of March, after specific information was obtained.

At the March 2, 2007 hearing, I requested a thirty day continuance of the judgment and sentencing to allow more time to follow up with an expert. The prosecutor objected to this. He suggested that Judge Andress proceed with setting an omnibus hearing. The reason for this was that due to congestion on the court's calender, such a hearing could not be set for over thirty days anyway. As such, the defense would have sufficient time to consult with an expert and the case would continue to proceed. With the caveat that it would be at least thirty days until an omnibus hearing was set, the defense agreed to this. Judge Andress then stated that the omnibus hearing would be set at least thirty days from that date.

One week later, on March 9th, my office received a call from the clerk of court asking why he was not at an omnibus hearing that had been set on that day. No notice of such a hearing had been sent and the court was informed of this. Notice was thereafter received that the omnibus hearing was set for March 16th, only two weeks after the previous hearing.

Due to the prior confusion by the clerk's office and the judge's statements that the hearing would be set no earlier than the first week of April, I was under the impression that this was an error. Because of this, I appeared at the March 16th hearing with the intention of asking for a continuance.

At the hearing, I pointed out the scheduling error. Instead of addressing the issue, Judge Andress jokingly responded that two weeks was approximately thirty days. I formally objected to proceeding with the omnibus hearing because of the scheduling error.

The judge nonetheless proceeded with the omnibus hearing. The prosecutor asked that the judge impose a deadline for defense disclosure of its expert witness. In response, Judge Andress imposed a deadline of March 30, 2007. Notably, this is sooner than the thirty day period that the defense was originally supposed to have to work its case.

I informed Judge Andress that I had located an expert, one Doctor King, and would soon be filing a motion asking for indigent funding. The judge hinted that he would be more comfortable with a Doctor Lumpkin. I also stated that he would filing a motion to sever counts and for indigent funding for an expert.

While I was able to discuss these matters, I felt it necessary to re-urge my motion to continue. In addition to the procedural objection, there were also substantive reasons:

- 1) a concern about being required to disclose privileged medical records prior to receiving a preliminary expert opinion;
- 2) a concern about being ordered to disclose an expert witness, even though the court had not yet approved funding;
- 3) a concern that I might need to consult another expert, as the judge seemed to indicate that he might not approve funds for Dr. King. Alternatively, if no funds were approved, I might have wanted time to re-consider the state's plea offer;
- 4) a belief that the case would actually proceed more quickly if the issues surrounding the expert were finalized before holding an omnibus hearing, rather than needing to file additional motions and set additional hearings if the judge did not grant my first motion for expert funds.

When I attempted to address these concerns, Judge Andress got angry and interrupted me. I was unable to speak about any of these issues. He then proceeded to recite his preferred method of scheduling court dates to force quick resolution of cases. He stated words to the effect that the court sticks to its own schedule.

I attempted to state that this was the entire point. That in this case, the Court had previously stated that the omnibus hearing would be set at least thirty days after March 2, 2007. As such, sticking to its own schedule would mean following this previous ruling.

In addition, I wanted to clarify that the pre-trial conference had conflicted with my calendar, and so this should not be taken into account for purposes of this case. I also wanted the record to reflect my thoughts about the medical records, obtaining an expert witness, and quick resolution of the case.

I attempted to place these concerns on the record. My voice was not raised. I did not use profanity, nor did I do anything that was improper. Judge Andress, quite upset, said that he did not care about the record. He also stated that if I said another word that he would hold me in contempt. I then ceased commenting about the omnibus hearing.

I believe that Judge Andress's conduct violated the following ethical rules:

Canon 3(B)(8)

The initial problem was that Judge Andress was not following his own ruling. At a minimum, one would think that due process and fundamental fairness mean that a court should follow its own orders. It does not seem possible to have a fair justice system if a judge can arbitrarily and capriciously act in violation of his own orders. At the very least, a court should have to provide an explanation for this rather than joking about it when this occurs.

Canon 3(B)(7)

As defense counsel, I had an ethical duty to preserve the issues that I had for the record. State v. Rivera, 168 Ariz. 102, 103, 811 P.2d 354, 355 (App. 1990). At the very least, a judge proceeding with a hearing that was prematurely scheduled should hardly be surprised that an attorney wants to memorialize his concerns over any prejudice that this may cause his client.

Under the circumstances there was no reason to prevent me from making a record. For a judge to state in open court that he does not care about the record is highly unprofessional and possibly reveals a fundamental misunderstanding about the role of a trial judge.

Canon 3(B)(4)

There was also no reason for Judge Andress to begin yelling at me. Whatever disagreements he may have had with my position should have been handled in a more civilized manner. This was a routine hearing in a misdemeanor case. I simply do not understand why he became so agitated.

To be honest, I would not be filing this complaint if he had not threatened me with contempt of court. In ten years of practicing law, I have never had a judge threaten me with contempt until practicing before Judge Andress.

I do not see how I was out of line for simply trying to address my concerns to the court, or lieu of that, at least being allowed to make a record. This does not constitute an "act which is calculated to hinder, obstruct or embarrass a court in the administration of justice, or which lessens the dignity or authority of a court[.]" Ong Hing v. Thurston, 101 Ariz. 92, 98, 416 P.2d 416, 422 (1966).

As previously stated, it would have been malpractice and an ethical violation on my part if I did not attempt to make a record. I do not believe that any attorney should be placed in a position where he or she is forced to choose between ineffective representation and being held in contempt. Yet this is precisely what happened to me.

I would like to thank the Commission for its time. Please contact me if you need follow-up information or otherwise have any concerns.

Sincerely,

[Redacted Signature]

Thomas W. Jones

Commission of Judicial Conduct  
Linda Haynes, Staff Attorney  
1501 W. Washington, Suite 229  
Phoenix, Arizona 85007

MAY 01 2007

07-082

Dear Linda Haynes:

I have enclosed the recordings for the MTR 2005 05135, hearing of March 2, 2007 & March 16, 2007. I have also enclosed a copy of the case file.

This case started with an arrest in Lake Havasu City, November 18, 2005, charging Mr Shuck one count of DUI A1, and A2. At the I/A held on November 19, 2005, the defendant pled not guilty and was released O.R. A pre-trial date for the defendant to meet with Prosecutor was set. Also a trial and sentence date were set. Defendant signed all paperwork and was given a copy. The defendant came to court on December 16, 2005, and requested a continuance because he was going to hire his own attorney. A new judgment and sentence or determination of trial date was set. Mr Shuck returned to court on February 7, 2006 and requested a Public Defender. Mr Jones was appointed and new pre-trial and judgment and sentence dates were set. The Public Defender (Mr Jones) requested and continuance till March 24, 2006. Mr Shuck did not appear and after numerous attempts by Mr Jones to contact his appointed client a warrant for failure to appear was issued November 8, 2006. Mr Shuck was arrested for failure to appear on December 8, 2006. He pled not guilty and posted a bond. Mr Jones was appointed and new dates set. Pre-trial on January 11, 2007, case management on February 1, 2007, and judgment and sentence or determination of trial date/omnibus hearing February 16, 2007. Because of calendar conflict Mr Jones requested a continuance till March 2, 2007.

On March 2, 2007 the judgment and sentence/ determination of trial date was set for Mr Shuck's case. Pro-tem Judge Meringola handled court on that date. The tape clearing indicates that the Judge gave Mr Jones a two week continuance for an omnibus hearing. From the tape all parties were in agreement. Normally the court would hold the omnibus hearing the same day of the Judgment and Sentence. Because of scheduling situations the Court set the omnibus hearing three (3) weeks out instead of two as indicated by Judge Meringola. The trial date would be scheduled out a month or more after the omnibus hearing.

On March 16,2007 the Omnibus hearing was scheduled for 0830hrs. I was the assigned judge. After listening to the tape I am not very proud of my poor attempt to interject humor into the conversation during the hearing. I am referring to the pigeon comment and the doctor comments. I can and will do better without the humor.

As indicated on the recording, the omnibus hearing was completed as far as we could handle it for that day. I had given both Counsel deadlines for an motions, and the case would not more forward till they were handled. As indicated on the recording, Mr Jones made some statement about not understanding the court scheduling situation. I did not want to embarrass Mr Jones in open court. The Court room was full of pro-per defendants, City Prosecutors, other private attorneys. I realized Mr. Jones was confused regarding the court dates from the last hearing with Judge Meringola. I tried to move on but Mr. Jones kept going on and on. When I told Mr. Jones I was not going to argue with him, I thought he would get the message. Mr. Jones is a good attorney but did understand my message or was not listening that day. To remain in control of the courtroom, and stop the unnecessary debate, I did state I would hold him in contempt. That did stop the debate. I was not agitated as indicated at the end of the tape, Mr. Jones asked a question on another matter and I let him ask the question, and we resolved that issue.



Clyde Andress

City Magistrate Lake Havasu City