

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-043

Complainant: No. 1307110703A

Judge: No. 1307110703B

ORDER

The commission reviewed the complaint filed in this matter and found no evidence of ethical misconduct on the part of the judge.

The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: June 9, 2009.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on June 9, 2009.

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

FEB 24 2009

ATTORNEY AT LAW

Phoenix, Arizona

Phone:

Fax:

23 February 2009

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

To Whom it May Concern;

I am a lawyer that has practiced primarily criminal defense law throughout the State and mostly in _____ since admission to the Bar in 1995.

I was retained by a defendant's family to represent him in a felony DUI case that had been originally filed in one of the regional court centers for purposes of a "status conference." After I replaced the previous lawyer, I filed my Objection to the Status Conference and a Notice Of Appearance. Conformed copies of those documents are included. The preliminary hearing was affirmed and then subsequently vacated. Apparently, as is the practice of the _____ Attorney's office, when the Defendant does not agree to plead guilty before the probable cause hearing and affirms the preliminary hearing, that the preliminary hearing is vacated in favor of seeking an indictment before the grand jury. That appears to be what happened in this case, however, there was no notice that the Defendant had been indicted or that he was set for an arraignment back downtown in the Superior Court. Not only did the Defendant, who was in custody not get any notice, as counsel of record, neither did I. Not only was I not notified, there never was a minute entry generated to inform ANYONE that the Defendant would be held to answer and that an arraignment was set. My client, who was and remains in custody, did not know himself, until brought to the arraignment himself. This was apparently set December 29, 2008. Obviously, I did not appear. I had no notice and I didn't know about it. Commissioner _____ re-set the matter to December 31, 2008, but again, without notice to me, counsel of record. I did not even receive an informal phone call or a courtesy call from court staff advising that my client's arraignment had been scheduled or re- set.

Subsequently, on December 31, 2009, when his arraignment took place, because I was not there, Commissioner _____ simply removed me, that is withdrew me, and appointed the public defender. The record is clear that she, with no lawful authority and in the most unprofessional behavior, simply removed his retained counsel. I'm not sure how she

expected me to be there when I had no notice.

I find it beyond troubling that the Court not only requires the Defendant to avail himself for purposes of pleading guilty at the "status conference" (see enclosed pleading) but then removes his lawyer for not appearing when they have chosen to not give notice to that lawyer. Because this complaint is not meant to address a legal issue, that is a Defendant's right to counsel of his choice whom he has RETAINED, but rather the ethical issues, I won't elaborate on Mr. [redacted] having the public defender appointed. This is simply about Commissioner [redacted]'s inappropriate behavior and abuse of her power by deciding that a Defendant will have his retained lawyer removed for not appearing when there's been no notice of the hearing at which I was to appear.

Additionally, I believe that this move on the part of Commissioner [redacted] was retaliatory in nature, given that I had objected to the Status Conference and wouldn't be part of the machine that seeks to eliminate the Defendants' procedural rights as a matter of common practice in the [redacted] Superior Court. I have been repeatedly admonished by at least a few commissioners for not participating in this practice and objecting to the so called "Donald hearings" (the court, at the request of the county attorney requires that the Defendant be advised of a plea offer and that advisement is given by the court) they try to impose on my client at this stage, that is before the probable cause determination. Because Commissioner [redacted] did not participate in that stage of the case, I am simply assuming she read the pleadings in the court file, along with my notice of appearance. I can't be sure.

In any event, the idea that she would simply decide for a defendant that he can't have the lawyer he retained is inappropriate and unprofessional, at the very least. To cloak the decision in my non appearance would seemingly at least require the court to give notice to Defense Counsel, would it not? The court had no problem sending notice that I wouldn't be this Defendant's lawyer. I find the whole fiasco just another symptom of the County Bench aligning themselves with the goal of "processing" cases, all to the detriment of the integrity of the system and Commissioner [redacted]'s behavior seems to be another shining example of this.

Sincerely,