

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 09-053

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Complainant: No. 1356410397A

Judge: No. 1356410397B

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**ORDER**

The commission reviewed the complaint filed in this matter and determined that the judge's inappropriate use of bench warrants did not merit a sanction, but voted instead to dismiss the case with a private comment to the judge. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: December 1, 2009.

FOR THE COMMISSION

\s\ J. William Brammer

\_\_\_\_\_  
Commission Chair

Copies of this order were mailed to the complainant and the judge on December 1, 2009.

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

**LAW OFFICE OF**

MAR 09 2009

March 6, 2009

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

Re:

Dear Commission Members:

I am writing to file a formal complaint against \_\_\_\_\_ Municipal Court Judge  
I am a member in good standing of the Arizona Bar and have been so  
for approximately 12 years. I have practiced criminal defense in all Courts in the State of  
Arizona including Federal and State. I have also practiced in many other states and  
continue to do so as pro hac vice.

My complaint concerning Judge \_\_\_\_\_ arises out of the latest interactions I have  
had with him regarding clients' cases, which unfortunately exemplifies his unprofessional  
and erratic behavior. Judge \_\_\_\_\_ decisions are routinely arbitrary, intemperate and  
lack any basis in law or fact. He routinely treats the lawyers and litigants in  
unprofessional and unfair ways.

A summary of the type of behavior complained about is that Judge \_\_\_\_\_  
routinely issues warrants for Defendant's whose lawyers have timely articulated in  
writing their Rule 8 calendar conflicts. Not only is this unfair to the Defendant and is  
something outside of their control, but is inappropriate based on the fact that the lawyer  
has a calendar conflict as defined by Rule 8 priorities.

The following are only two examples of the type of judicial conduct exhibited by  
Judge \_\_\_\_\_ that erode confidence in the Court system and the perception of integrity  
of its most visible component—the judge. There are numerous other examples from my  
cases and that of other lawyers who have shared similar experiences, which undermine  
the “principle that an independent, fair and competent judiciary will interpret and apply  
the laws that govern us.” *Ariz.CJC Comm. Preamble.*

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In *State of Arizona v. TR* the matter was set for trial by the Court. The trial was scheduled for a day on which Counsel was already scheduled for a Superior Court, in-custody, felony matter. Judge also set a trial management conference in the matter where he occasionally, and without warning expects the lawyers to be present. Counsel filed a Motion indicating he was already in trial on a felony in-custody matter on the date set for the management conference and trial dates. Counsel filed Motions concerning both of the calendar conflicts and cited to Rule 8 priorities concerning the conflicts. The State did not object to the Motion.

Judge denied the Motions despite the fact that another matter was already scheduled for a firm trial in his courtroom and the matter was necessarily going to be continued by operation of the Court's calendar. Judge issued a warrant for the Defendant who was never required to be present for the management conference and had not yet failed to appear for the trial date that was in the future.

The Defendant did nothing wrong and did not fail to appear for his matter. Rather, Counsel had a Rule 8 calendar conflict, which was articulated to Judge. Further, it is absurd to issue a warrant for a failure to appear, where the appearance had not even occurred yet, and was not going to proceed, because the Court had a firm trial scheduled in another matter that was affirmed to proceed. In other words, one cannot fail to appear for something that is to occur in the future and from all indications will not occur anyway. The appearance then is that Judge decision was arbitrary and based on personal reasons rather than good cause.

After learning of the warrant being issued at the trial readiness conference, Counsel appeared the next day to ask the Court to reconsider its decision. It is also important to note that, the State did not oppose the original Motion and did not oppose the oral Motion to Reconsider. Judge response was that there had already been four continuances in the matter and that the case needs to be resolved. This was an absurd comment when one considers the fact that the matter was not going to proceed anyway because the Court already set another older case to firm trial on the same day. Counsel raised the issue of the firm trial in the other matter being set and taking priority on the Court's calendar over the matter. Judge had never mentioned this and it was only because the other attorney, who was scheduled to proceed to trial that day, was present in Court and informed counsel of the firm trial in his matter. Put another way, Judge issued a warrant in the matter where he knew it was going to be continued by operation of the Court. Judge refused to discuss the matter further or provide a rational basis for the issuance of a warrant.

Judge improper issuance of a warrant for failure to appear has adverse and detrimental affects on the Defendant, who did nothing wrong. He did not fail to appear; his attorney properly notified the Court of a Rule 8 calendar conflict. Put simply, there was no legal cause for a warrant to issue.

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In *State of Arizona v.* CR the Defendant has two separate cases in the City Court for similar offenses occurring on different dates that are set in two different courtrooms. Counsel has reached a resolution on both matters with the prosecutor. One of the matters was set for trial before Judge Counsel filed a Motion to Vacate and set to change of plea with the other matter, so that a plea proceeding on both matters could be set.

The Judge completely ignored the sound reasons behind the request, which furthers the interest of justice, judicial economy, and the time of the officers and parties involved and issued a warrant. It is important to note, that the State did not intend to proceed to trial on that day based on the agreement concerning both cases. The basis for the warrant is unknown, given the agreement of the parties and the intent to resolve the matters in a global fashion.

Once again, there was timely and proper notice by the parties of the intention to resolve the matters and not proceed to trial. The Court was aware that neither party had the intent to proceed to trial on the one matter. Nevertheless, for some inexplicable reason, Judge issued a warrant.

Unfortunately, these are not isolated incidents. This arbitrary and irrational conduct is more the rule than the exception in Judge courtroom. His conduct smacks of imperialism and further deteriorates public trust and confidence in our legal system. If you have any questions please feel free to contact me. Thank you.