

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 09-187

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Complainant: No. 1242010319A

Judge: No. 1242010319B

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**ORDER**

The commission reviewed the complaint filed in this matter and found no evidence of ethical misconduct on the part of the judge. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: October 14, 2009

FOR THE COMMISSION

    \s\ Keith Stott      
Executive Director

Copies of this order were mailed to the complainant and the judge on October 14, 2009.

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

IN THE Superior Court OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF

STATE OF ARIZONA  
PLAINTIFF

Apache County NO. CR

NOTICE OF JUDICIAL COMPLAINTS FILED AGAINST  
Judge ON Aug 9, 2004; May  
30, 2006 AND SEPT. 11, 2007

v.

MOTION TO SHOW CAUSE AND SANCTION

NOTICE AND AFFIDAVIT TO DISQUALIFY JUDGE

NUNC PRO TUNC TO JAN.

2004: VIOLATIONS OF CONSTITUTIONAL RIGHTS,

STATUTORY LAW, ARIZONA SUPREME COURT

RULES, RULES OF COMMISSION OF JUDICIAL

CONDUCT, ARIZONA RULES OF CRIMINAL PROCEDURE,

PRECEDENT LAW AND OATH OF OFFICE

DEFENDANT

Comes Now, the defendant without benefit of counsel, Request  
the Court take Judicial notice of Judicial Complaints in Exhibit #2 pursuant  
to A.R. Evid. Rule 201(d), and request the Court issue an Order for Judge  
Presiding Judge of the County, Arizona

to show cause why she should not disqualify herself *Neunc Pro tunc* to January 6, 2004, for violating Defendant's Constitutional rights under the U.S. Constitution, Arizona Constitution, statutory law, Arizona Supreme Court Rules, Rules of Commission on Judicial Conduct, Arizona Rules of Criminal Procedure, Precedent law and her Oath of Office. Judge [redacted] should be publicly censured with appropriate sanctions to deter similar conduct by others to the detriment of self policing system of the Arizona Judicial Department. The Court has jurisdiction pursuant to Ariz. Const., Art. 6, § 14.

### Statement of Facts

Judge [redacted] was appointed to be judge of County Superior Court on Dec. 23, 2003, to take effect on Jan. 23, 2004.

Defendant was arrested and has been incarcerated since that time. Prior to appointment, Judge [redacted] (*pro tem*) presided over Defendant's divorce and the custody of his two minor children, (son's) who defendant had sole physical and legal custody. Both boys were witnesses in defendant's criminal case and there had been allegations against the youngest who was 12 yrs. at the time.

Judge [redacted] has incessantly ignored defendant's rights in receiving a fair and impartial proceeding and manifested contempt for a fundamental right to have one's day in court before an impartial tribunal.

Memorandum Points and Authorities

¶ 1. Defendant's initial notice and request for counsel to be appointed, was filed on Sept. 11, 2002 (ROA # 293, as amended and filed on June 18, 2003) which required Judge Nelson to appoint Counsel within 15 days. See FN 6. Footnote are contained in Exhibit #2. This request was ignored.

¶ 2. Defendant filed a Motion To Appoint Counsel For Notice and Petition For PCR on July 29, 2003 (ROA # ). Judge appointed Ms. on Aug. 1, 2003 (ROA # ).

Ms. was defendant's attorney on direct appeal, due to a conflict of interest defendant filed a Motion For Change of Counsel on Aug. 7, 2003 (ROA # ). Ms. also filed a motion to withdraw on Aug. 26, 2003 (ROA # ). The court ruled on Counsel's motion ignoring defendant's and appointed Ms. on Sept. 5, 2003 (ROA # 302) rendering defendant's motion moot.

¶ 3. It is defendant's understanding and for the record was temporarily assigned to be County pending the resolution of a Judicial Commission proceeding involving Judge Presiding Judge of - County and who presided over both trials of defendant's case at bar. Judge resigned the day his response was due to be filed with the Judicial Commission. See In re 5C-03- As such judge was unfamiliar with defendant's case.

¶ 4. After a number of attempts to contact Ms. with no results, defendant filed a "Motion To Provide Transcripts and Documentation of Criminal Prosecution

to Defendant." on Dec. 18, 2003 (ROA# ) and a "Motion For substitution of Counsel" on Dec. 18, 2003 (ROA# ). This motion identified the fact that Ms. stood in violation of A.R. of Professional Conduct, Rule 42, Ethic Rules 1.3 and 1.4. See FN 37, 38, 39, 40 & 41, which constituted a conflict of interest. Additionally, defendant was forced to file his own Notice of Post Conviction Relief on Dec. 26, 2003 (ROA# ).

¶ 5. On Jan. 6, 2004 (ROA# ) Judge Pro Tem set the matter of Defendant's two motions for a telephonic status conference to be held on Jan. 26, 2004. Prior to the status conference Judge Pro Tem was sworn in as the Presiding Judge for County to take effect on Jan. 23, 2004. Judge should have disqualified herself *ma sponte* to avoid the appearance of impropriety, as she had presided over defendant's divorce and the custody of his two minor children, since his arrest. Both minor children were witnesses in defendant's criminal case and there were allegations against the youngest, age 12. Defendant was not present for the custody hearing and has no knowledge of adverse information that may have been developed at the custody proceedings. See FN 31, 34, 42 & 43.

¶ 6. Defendant's Motion for Substitution of Counsel identified a potential conflict of interest with Ms. Judge. had a legal and moral duty to investigate the defendant's allegations and failed to do so. a violation of Canon 3 (D) (2). FN 33.

¶ 7. Defendant was excluded from the telephonic conference in violation of A. R. Crim. P., Rules 9.1 & 19.2