

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-321

Complainant: No. 1379500144A

Judge: No. 1379500144B

ORDER

The complainant alleged that a superior court judge failed to disclose an attorney-client relationship with attorneys appearing before him, failed to take action against an official for disclosing grand jury information, and improperly threatened and was biased against the complainant's law enforcement agency. Following a comprehensive review and analysis of all the issues, the commission found no evidence of ethical misconduct on the part of the judge and dismissed the complaint pursuant to Rules 16(a) and 23.

Dated: June 18, 2010.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed
to the complainant and the judge
on June 18, 2010.

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



MARICOPA COUNTY SHERIFF'S OFFICE

JOSEPH M. ARPAIO
SHERIFF



November 30, 2009

DEC 01 2009

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

Re: Judicial Complaint Regarding Maricopa County Superior Court Judge

Dear Commissioners:

Please accept this letter as a formal complaint against _____ for violating of the judicial canons, failing to uphold the integrity and independence of the judiciary, failing to perform the duties of his office impartially, and displaying conduct that brings the judiciary into disrepute.

My name is _____ and I am the _____ of the Maricopa County Sheriff's Office, 100 West Washington Suite 1900 Phoenix, Arizona 85003. My telephone number is:

I respectfully request that the Commission investigate Judge _____ for conduct that may violate the Judicial Code of Conduct. The incidents that may violate the Judicial Code are specifically alleged below as follows:

I. Judge _____ Misconduct During Criminal Court Tower Grand Jury Proceedings.

First, Judge _____ failed to disclose his attorney-client relationship with attorneys appearing before him on a grand jury investigation into Maricopa County's new criminal court tower. The Maricopa County Board of Supervisors hired Attorneys _____ and _____ to quash a grand jury subpoena related to the criminal court tower investigation. The investigative subpoenas targeted Mr. _____ Mr. _____ the court, and the Board, as all were under investigation for potential wrongdoing. However, Judge _____ refused to send the case to another county and also refused to remove Messrs. _____ and _____ from the case. Instead, Judge _____ removed the Maricopa County Attorney's Office, finding a conflict existed because MCAO had assisted the Sheriff's Office the criminal investigation. Judge _____ never addressed the fact that the court itself had entered into a contract with

Messrs. and so that Mr. could serve as the "Space Planner" for the Superior Court's new criminal court tower. To make matters worse, Judge failed to see that a conflict existed or that allowing Messrs. and to appear before him could raise an appearance of impropriety. The MCAO appealed Judge disqualification decision. The Arizona Court of Appeals refused to exercise jurisdiction over that Special Action (See 1 CA-SA 09-0056). After the Court of Appeals refused to hear the Special Action, the Sheriff's Office and the MCAO discovered the true relationship between the Court and Messrs. and

A local news media investigation revealed that the Court hired Mr. to serve as more than a Space Planner. Instead, the Court hired Messrs. and as attorneys for the court on the project under a contract approved by the Arizona Attorney General, who was also under investigation by the Sheriff's office. As the criminal presiding judge, Judge surely knew what attorneys represented the Court in the criminal court tower project. Given this knowledge, Judge acted improperly by quashing a subpoena at the request of his counsel on a matter involving their contractual, attorney-client relationship and never disclosing that attorney-client relationship to either the opposing party or the appellate courts. Prosecuting authorities appealed Judge astonishing decision to the Arizona Supreme Court, and that matter is currently pending (CV-09-).

Similarly, Judge failed to hold County Supervisor in contempt for disclosing grand jury information to his personal criminal attorney. Mr. learned the grand jury information in his professional capacity as a County Supervisor, yet he disclosed this confidential information to his personal defense attorney for use in his personal criminal case. Mr. disclosure stymied the investigation and clearly raised serious ethical and obstruction of justice concerns, yet Judge took no action against Mr.

II. Misconduct Related to the Stapley Prosecution.

Earlier this year, County Supervisor faced pending criminal charges. After a Search Warrant was executed on the premises of one of his associates, Attorney filed a motion to controvert. Despite the clear statutory scheme requiring that the motion to controvert be filed in the court where the search warrant was obtained (here, the Justice Court), presiding criminal court Judge picked up the case one day after Mr. filed the motion and set the matter for a hearing. (See CV2009-). The prosecuting authorities presented Judge with the law, and Judge even acknowledged that the Mr. motion should have been filed in the justice court. However, Judge did not end his involvement in the matter. When Mr. later appealed the justice court decision, Judge who is not the assigned lower court appeals judge, somehow assigned himself to the case and ruled against the Sheriff's Office. (See LC2009-).

III. Misconduct Related to Alleged Criminal Defendant Transport/Attendance Problems.

On or about April 24 , 2009 , Judge wrote an e-mail to Judges Judge and Judge complaining that the Sheriff's Office and the Court Security Division failed to transport criminal defendants to court in a timely manner. Judge indicated that the late arrivals might be due to "budget crisis." That same day, Judge e-mailed Captain of the Sheriff's Office Court Security Division. Judge informed Captain that he had concluded defendants were more

likely to arrive to court on time if they were not in the Sheriff's custody. Judge further stated that according to that morning's newspaper, the "sheriff" had committed over 200 deputies to an operation. Judge therefore concluded that the late arrival issue "doesn't appear to be a staff shortage issue but rather a 'staff allocation' issue." Judge closed this e-mail by stating that he was inclined to begin reviewing release conditions and "getting the number of defendants under the control of the sheriff down."

Several days later, on or about April 28, 2009, Judge e-mailed to Captain. noting that "things haven't improved." Judge stated that the Sheriff's Office used "200 deputies and posse for a crime sweep [immigration detail] but insufficient deputies to carry out the mandated function of transporting defendants to court - something just isn't right here." Judge told Captain that his next step would be to advise defense agencies that due to MCSO's inability to transfer inmates, the court would review defendants' release conditions in an effort to "reduce" the number of inmates needing transport. Judge concluded by asking Captain to advise him (Judge) if the Captain would get "permanent and sufficient staffing" in the "next few days." That same day, Deputy Chief met with Judge in an effort to clarify that the Sheriff's Office would do the best it could given the circumstances. Judge quickly and sharply stated that he would inform criminal defense counsel to file motions to release their in-custody clients and would then "blame the Sheriff []" for this to the media and citizens. Captain Sergeant and Lieutenant from the Sheriff's Office and and from the Superior Court all witnessed Judge threat. Judge unprofessional threat to use both the Court's power and the media to embarrass Sheriff clearly violates canons of judicial ethics.

IV. Judge Recent Conduat Shows His Bias Against the Sheriff's Office.

On information and belief, on July 17, 2009, Deputy Chief sent a letter to Chief Judge in which he complained about Judge April 2009 conduct, discussed above. Deput Chief also complained about several statements that Judge made to the media and pointed out statistical figures compiled by the Sheriff's Office showing that the Court and other judicial office personnel - not the Sheriff's Office - caused late starts for court appointments roughly 65% of the time.

On information and belief, Judge is biased against the Sheriff and Sheriff's office and working in concert with Chief Judge to publicly attack the Sheriff's Office for its role in pending investigation in Maricopa county. Several recent rulings demonstrate Judge bias. First, after the July 17 letter, Judge charged Deputy Chief with contempt and fined him for his conduct. Second, Judge held a detention officer in contempt over a security matter. Judge also issued a bizarre and inappropriate ruling in the detention office matter requiring the detention officer to call a **public** press conference and apologize to the citizens or face jail. These issues place a serious cloud over the ethics and tactics currently employed in the Maricopa County Courts.

V. Additional Concerns and Conclusion.

The Commission should note that when Judge [redacted] worked in private law practice, his partner from 1979-1989 was Attorney [redacted]. For the last seventeen years, Mr. [redacted] has used his law practice to sue and publicly criticize the Sheriff and to participate actively in an election campaign to unseat Sheriff [redacted]. The Sheriff's Office has filed a number of State Bar complaints against Mr. [redacted] for his unethical conduct in court. On information and belief, based on the long relationship and communications history between Judge [redacted] and Mr. [redacted], I believe Mr. [redacted] and Judge [redacted] share a mutual dislike of Sheriff [redacted]. Moreover, given the lifelong personal and business relationships generally between law firm partners, Judge [redacted] must, at a minimum, disclose his bias and remove himself from all matters involving the Sheriff's Office.

Finally, on information and belief [redacted] Judicial Services Administrator - Trial Courts of Arizona for Maricopa County Superior Court, spoke in person with MCSO Court Security Division Sergeant [redacted] in the Superior Court hallways. Because of his position within the Court system, Mr. [redacted] would have personal knowledge of the Court's strategy on various issues. During his conversation with Sergeant [redacted], Mr. [redacted] told Sergeant [redacted] that "they" (referring to Judge [redacted] and other judges) felt that they only going to get one shot at Sheriff [redacted]. I believe that this reference led to numerous Order to Show Cause filings, which in turn led to the contempt holding against Deputy Chief [redacted].

I affirm, under penalty of perjury, that the foregoing information and the allegations contained in the attached complaint are true to the best of my knowledge and belief.

Signature _____

Date: 11/30/09

Sworn before me this 30th day of November, 2009

(Signature of Notary Public)

My Commission Expires:

