

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-328

Complainant: No. 1348810838A

Judge: No. 1348810838B

ORDER

The complainant alleged the judge refused to appoint counsel to represent him because of bias. After reviewing the complaint and listening to the recording of the complainant's hearing, the commission found no evidence of misconduct on the part of the judge. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: February 26, 2010.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on February 26, 2010.

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

DEC 03 2009

Defendant

November 27, 2008

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

Re: Complaint Against Judge
Court, Division I, Courtroom

Mohave County Superior

Dear Sir or Madam:

For the following reasons, I believe that on September 30, 2009 and November 24, 2009, Judge [redacted] violated the following Canons of Judicial Ethics;

1) Canon 2 Rule 2.2(A) - "A Judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially...."

2) Canon 2 Rule 2.3(A)(B) - "A Judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice"
(B) - "A Judge shall not, in the performance of judicial duties, by

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Words or Conduct Manifest bias or Prejudice"

3) Canon 2 Rule 2.6 (A) - "A Judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard to law"

4) Canon 2 Rule 2.7 (A) - "A Judge shall hear and decide matters assigned to the Judge, except where disqualification is required by Rule 2.11 or other law"

5) Canon 2 Rule 2.8 (B) - "A Judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers"

(See attached additional sheets)

Complaint against a Judge

Continued.

6) Canon 2 Rule 2-11.(A)(1) - "The Judge has a Personal Bias or Prejudice Concerning a Party or a Party's Lawyer, or Personal Knowledge of facts that are in dispute in the Proceeding...."

7) Canon 2 Rule 2-15. (B)(D) - "A Judge having knowledge that a Lawyer has committed a Violation of the Rules of Professional Conduct that raises a Substantial Question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer...." (B) - "A Judge who receives information indicating a Substantial likelihood that a Lawyer has committed a Violation of the Rules of Professional Conduct shall take appropriate action...."

8) Canon 3 (B)(8) - "A Judge shall dispose of all Judicial Matters.. fairly!"

The reason for this is that Judge threaten to abolish my Constitutional right to access to the Court for attempting to make a record in a Court Proceeding. This was in the context of my objection to his decision to preclude me the right to be heard in which an Oral Argument had commenced pursuant to a Motion I filed to dismiss defense Counsel. There are Audio recordings and Court transcripts of the relevant hearings from September 30, 2009 and November 24, 2009 which should confirm my allegations

The fundamental facts material to this Complaint against Judge are set forth in my "Brief - Motion to Dismiss Defense Counsel." Attached hereto dated October 20, 2009, these facts will not be repeated here but are incorporated by this reference. Additional

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necessary facts are set forth hereafter.

A bit of background is necessary, I am an indigent defendant who was initially appointed attorney but due to a conflict with Lead Defender's Office Case was reassigned to Private Practice Attorney. I have been charged in a felony criminal case. I was charged with one count arson of an occupied structure and one count attempted fraudulent scheme and artifice. The arson resulted in a \$250.00 carpet burn, "strangely generating an exorbitant amount of States disclosure, nearly 3000 pieces of paper and 1500 photographs." During my initial meeting with Mr. [redacted] he informed me that he believed he will soon be appointed the seat as Judge in Division 5, as he was at the time seeking selection for judicial office (Judge) further indicating that I would soon need to find other counsel. As such I invoked my Sixth Amendment right to self representation, Court appointed attorney as my advisory counsel. Mr. [redacted] soon after encouraged me to petition the Court regarding Motion Rule 11 Screening. Due to my recent exposure to Carbon Monoxide Poisoning which has deemed me with cognitive disorders (Brain damage) Court revoke my proper status and ordered a Rule 11-examination to be conducted appointing attorney of the Mohave County Public Defenders Office as my new attorney while medical examinations were being conducted. Rule 11 Clinical findings were that I am competent to stand trial. At my next hearing December 15, 2008 I requested Court to reinstate my self representation status, granted.

At March 5, 2009 hearing the "Court expressed some concern with me continuing in proper." The State concluded that I should be

Complaint against a Judge

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Appointed Counsel, and Mr. [redacted] Concurred but wished to Withdraw. Consequently, "Court feels it is in the best interest of the Defendant to be appointed Counsel." This is important due to Court (Judge [redacted]) wanting/demanding during November 24, 2009 hearing that I not be appointed Alternate Counsel and relentlessly demanding that I represent Myself, when I refused self representation and again requested Court to appoint the New Counsel, Judge [redacted] stated I have forfeited My right to Counsel. Judge [redacted] further stating if I continued to speak he Judge [redacted] will not allow me back into the Court. My voice was not raised, I did not use profanity, nor did I do anything improper. March 26, 2009 Mohave County Public Defenders Office assigned as advisory Counsel in all further proceedings.

At the April 21, 2009 hearing, "Court notes that there has been some confusion in the appointment of Counsel for defendant." The Court had ordered the Public Defenders Office to assign Counsel to represent me, not as advisory Counsel. The Court noted Court did explain and expect that this case would be assigned out to Counsel but did not expect or order for it to be assigned out limiting the role only to advisory Counsel. Subsequently, [redacted] and [redacted] had been assigned and have filed there Notice of Appearance. After spending a short time with me [redacted] and [redacted] inform the Court that they decline the assignment due to the complexity of the case.

April 28, 2009 Mohave County Public Defenders Office assigned attorney [redacted] to represent me. On June 5, 2009 an interview were conducted present at the interview were [redacted] and Myself, during our Meeting I submitted 110 pages of defense disclosure to [redacted] that would later prove to get into the hands of the prosecution

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Off the record. Several Meetings took place between June 5, 2009 and June 30, 2009.

On June 30, 2009 Meeting between Attorney and I there were Specific Communications that revealed engage in conduct involving dishonesty, deceit and Misrepresentations Arizona State Bar Complaint file number: 09-1176. — Unequivocally Colluding with Prosecution.

At the September 30, 2009 hearing — Motion to Dismiss Counsel. I pointed out clear Political dimensions, Cooperated with Prosecution in deceiving me, thereby Subverting the truth-finding Process. Instead of addressing the issue, Judge Responded that I have no rights to any decision making concerning my defense. When I attempted to address these concerns, he got angry and interrupted me. I was unable to speak about any of these issues. He then stated words to the effect that the Court is unlikely to appoint alternate Counsel for the defendant if the next Counsel doesn't workout. Motion to Dismiss granted.

Finally reference to attached Brief — Motion to Dismiss Defense Counsel

I would note that when a defendant voices a seemingly substantial complaint about Counsel the Court should inquire into the reasons for dissatisfaction. United States v. Simeonov, 252 F3d 238 (2nd Cir. 2001).

October 9, 2009 I received the appointment of Counsel and on this same day met with me reference Brief — Motion to Dismiss attached herefo for details. —

Complaint against a Judge

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At the November 24, 2009 hearing concerning Oral Arguments Pursuant to Motion to Dismiss Counsel When I attempted to address these concerns and an additional concern regarding a Motion filed by [redacted] and dated October 29, 2009 Pursuant to Defense Counsel Motion Rule 11 to have defendant's Mental Condition Examined, it should be noted that [redacted] mailed me a letter subsequent to filing aforesaid Motion Rule 11, in which he writes "P.S. You write well Mr. [redacted]" Signing his initials. I was unable to speak about any of these issues. Instead of addressing any of these concerns Judge [redacted] Lokinah stated that I have two choices continue to be represented by [redacted] or you can represent yourself. I formally objected and attempted to state that the entire point of this hearing would be to hear arguments concerning whether or not grounds exist to dismiss the defendant's current appointed Counsel.

When I attempted to place these concerns on record, my voice was not raised, I did not use profanity nor did I do anything improper. Judge [redacted] quite up-set, stated words to the effect that he did not care about the record. He also stated that if I said another word that he would not allow me to return to any further hearings, further indicating that trial will proceed without me present and without counsel to represent me. I then articulated to the court I have a constitutional right to be present at my court hearings. Chappell v. Rich, 346 F3d 1279 (11th Cir 2003).
Chriceol v. Phillips, 169 F3d 313 (5th Cir. 1999).

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I then proceeded to ask Judge ~~if I haven't unequivocally~~ shown a conflict of interest, what constitutes a conflict of interest? Judge ~~completely ignored me and my question~~ I then reiterated that same question concluding that ~~conduct~~ is obviously suspicious... At this point ~~painfully~~ jerked the restraints that confined my wrists and ankles, simultaneously court officials hurried me out of the courtroom.

While I was refrain from discussing these matters, I felt it necessary to re-urge my motion to dismiss Counsel. In addition to the procedural objection, there were also substantive reasons:

1) a concern about ~~Courtroom appearance on September 30, 2009, in part to take a position on my legal representation prior to being appointed as my Counsel, considering Criminal Justice Services Policy on Process and Procedure for assigning lawyers to cases.~~

2) a concern about ~~Subsequently being assigned as Counsel to represent me and the fact he knew he would be assigned to represent me before Attorney~~ were permitted to withdraw.

3) a concern that Judge ~~insisted that I represent myself during November 24, 2009 hearing even though Judge~~ Urge me to be appointed Counsel at a March 5, 2009 hearing.

Complaint Against a Judge

Continued

4) A belief that I should represent myself in a case considered to be extremely complex, rather needing a lawyer. Where there are requirements surrounding these issues. (See ER 1.1. Competence) Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation. In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include relative complexity and specialized nature of the matter...

When I attempted to address these concerns Judge ignored me, acted as if I were not even in the court. He then proceeded to address prosecution regarding a matter entirely irrelevant to discuss to the point.

In addition, I wanted to clarify that there are reasonable legitimate reasons for the reappointment of those attorneys regarding matters in my case, and so this should not be taken into account for purposes of compelling me to selfrepresentation. I also wanted the record to reflect my thoughts about the obvious prearranged appointment of counsel, obtaining new counsel, and quick resolution of the case.

I believe that Judge

conduct violated the following ethical rules:

Canon 2 Rule 2.15 (A) (B) (D)

Judge ignored taking action to address known misconduct of a lawyer. Where there are substantial questions regarding the honesty, trustworthiness, fitness of attorney; Judge failed to meet his

Complaint Against a Judge

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Obligation. It does not seem possible to have a fair Justice System if a Judge can arbitrarily and capriciously act in violation of Code of Judicial Conduct.

Canon 2 Rule 2.11 (A)(1)

Judge has demonstrated that he is unable to set aside personal biases and prejudices to decide matters concerning me in an impartial manner.

Canon 2 Rule 2.8 (B)

There was no reason for Judge to raise his voice toward me. Whatever disagreements he may have had with my position should have been handled in a more civilized manner. I simply do not understand why he became so agitated.

To be honest, I would not be filing this complaint if he had not threaten me with abolishment from the court. In the two years that I have been contending these charges, I have never had a judge threaten me with abolishment until standing before Judge

Canon 2 Rule 2.7 (A)

Consistent with Rule 2.11, disqualification is required of Judge to protect my rights. It is obvious that Judge has been swayed by local politics and should be removed from my case for bias. The Judge's decision to impose that I continue being represented by Attorney Charles or represent myself is a decision the Judge should have considered only after hearing the pertinent information concerning why counsel should be dismissed.

Complaint against a Judge

Continue

Canon 2 Rule 2.6(A)

As a defendant, I have a right to preserve the issues that I had for the record. At the very least, a Judge proceeding with a hearing that was scheduled to hear whether grounds exist to dismiss my appointed current Counsel should hardly be surprised that a defendant wants to memorialize his concerns over any prejudice that this my cause him.

Under the circumstances there was no reason to prevent me from making a record. For a Judge to suggest 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 2 Rule 2.3(A)(B)

Judge Unable to decide matters in my case in an impartial manner, excludes personal biases and prejudices

Canon 2 Rule 2.2(A)

The initial problem was not upholding and applying the law to ensure impartiality and fairness, nor was Judge objective and or openminded. At a minimum one would think that due process and fundamental fairness mean that a court should be objective and openminded. It does not seem possible to have a fair justice system if a Judge can intentionally disregard his duties of judicial office fairly and impartially. At the very least, a court should have to provide an explanation for this rather than joking about it.

Complaint against a Judge

Continued.

I do not see how I was out of line for simply trying to address my concerns to the Court, or in lieu of that, at least being allowed to make 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, a hearing was scheduled to determine whether or not grounds exist to dismiss my current appointed counsel if I did not attempt to make a record, the Court could not adequately decide whether grounds exist to dismiss counsel. As this was a hearing to hear oral argument concerning this matter. I don't believe that any one concerned in an action should be placed in a position where he or she is forced to choose between ineffective representation and being abolished from the Court. Yet this is precisely what happen to me.

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

SUBSCRIBED AND SWORN TO BEFORE ME
 THIS 30th DAY OF November 2009
 BY _____
 NOTARY

