

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-041

Complainant: No. 1412000144A

Judge: No. 1412000144B

ORDER

The complainants alleged that a superior court judge demonstrated bias against them and their attorneys, exhibited an improper demeanor, and violated their constitutional rights at a hearing in which the judge mishandled a subpoena. After reviewing the allegations, the related hearing recording, and the judge's response, the commission decided to dismiss the complaint with a private but strongly worded warning letter reminding the judge of his obligation to comply with Rules 2.2, 2.3, 2.6, and 2.6(a) of the Arizona Code of Judicial Conduct. The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: July 26, 2011.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on July 26, 2011.

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

In the above captioned case, Judge _____ abandoned his judicial role, and displayed deep-seated antagonism and prejudice toward us, our son, _____ our daughter, _____ our son-in-law, _____ and _____ daughter,

as well as all of our attorneys. In doing so, he has violated, not only our constitutional rights, but he has also violated:

- Rule 1.1, *Arizona Code of Judicial Conduct* (2009) – Compliance with the Law
- Rule 1.2, *Arizona Code of Judicial Conduct* (2009) – Promoting Confidence in the Judiciary
- Rule 2.2, *Arizona Code of Judicial Conduct* (2009) – Impartiality and Fairness
- Rule 2.3, *Arizona Code of Judicial Conduct* (2009) – Bias, Prejudice, and Harassment
- Rule 2.6, *Arizona Code of Judicial Conduct* (2009) – Ensuring the Right to Be Heard
- Rule 2.8, *Arizona Code of Judicial Conduct* (2009) – Decorum, Demeanor, and Communication with Jurors
- Rule 2.9, *Arizona Code of Judicial Conduct* (2009) - Ex Parte Communication
- Rule 2.11, *Arizona Code of Judicial Conduct* (2009) – Disqualification

The following is an account of Judge _____ transgressions in our case.

Relevant Factual History.

On or about October 28, 2010, all the parties in this matter and their attorneys were ordered by Judge _____ to appear before him on November 1, 2010 regarding a subpoena _____ and her attorney had issued to the court appointed doctor, Pamela Willson. The subpoena ordered Dr. Willson to produce:

Copies of any and all reports you have written or signed after January 1, 2005 concerning or related to the competency or capacity of any person but only if the reports were prepared, provided or disclosed in connection with your appointment in any case filed in any court in the State of Arizona, or in connection with any

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services where you were engaged as an expert witness or consultant to give opinions related to any case filed in any court in the State of Arizona.

The subpoena contained the required language on the right to object to the subpoena. Mr.

Sannes also attached a letter to the subpoena that explained:

Since we do not desire to take oral testimony from you at this time, but merely wish to obtain a copy of the documents requested, you may comply with the Subpoena by simply mailing us a copy of the documents and records prior to the date listed on the Subpoena, along with an executed Certification from the Custodian of Records, which is also enclosed. Your reasonable costs to produce the requested documents will be paid in accordance with A.R.S. §12-351. The \$12.00 witness fee is also enclosed.

Importantly, a copy of the subpoena was sent to opposing counsel, Brian Murphy, and the Guardian *ad litem* for Joseph Boyle. Neither Mr. Murphy nor Mr. Boyle expressed

any opposition to the subpoena. Conversely, in response to the subpoena, Dr. Willson sent a resignation letter to the court on or about October 26, 2010. On or about October 28, 2010,

Judge ordered all the parties in our case, and their attorneys to appear before him on

November 1, 2010 regarding the subpoena. At the November 1, 2010 conference Judge

revealed he had discussed the subpoena and her resignation with Dr. Willson. Judge

concluded, without allowing us to present any evidence or any meaningful defense, that the issuance of the subpoena had been a "gross abuse of the discovery process." In fact,

shockingly, Judge actually declared that no one but he had a "speaking part" that day.

After predetermining that the subpoena issued by and her attorney was

"overbroad and oppressive," as well as "harassing" and "un-called for," Judge ordered

all of us and our attorneys to appear on November 4, 2010 to show cause why we should not be

sanctioned for the issuance of the subpoena. Importantly, Judge not only

predetermined guilt, but he ordered all of us to appear, even though only one party had issued the

subpoena. Judge also ordered:

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Any other attorney that participated with Mr. Sannes in the decision to serve this subpoena on Dr. Willson. . .to appear along with your clients and show cause why you and/or your clients should not be sanctioned. In other words, if this was part of a joint litigation strategy where Mr. Sannes ran the idea by other counsel before serving the subpoena, you'll need to tell me about your involvement on Thursday, and I'll decide whether any sanctions are appropriate.¹

Further, Judge ordered that, "Failure to appear will result in the Court issuing a warrant for your arrest."²

At the hearing to show cause on November 4, 2010, Judge refused to consider the evidence and legal arguments we offered, admonished us for speaking to the newspapers, (thereby revealing that he had obtained extrajudicial information by reading publicity on the case while it was pending before him), participated in *ex parte* communications with the court appointed doctor and investigator, used at least one of those conversations as the basis of his opinion, made unfounded accusations that we were in a conspiracy, and ultimately chilled us and our counsel in presenting a full and fair legal defense to which we are entitled. As a result, we file this complaint demonstrating Judge violation of the Arizona Code of Judicial Conduct, and ask that Judge receive the disciplinary actions in accordance to the gross abuse of his judicial power.

Violations of the Arizona Code of Judicial Conduct

The Preamble of the Arizona Judicial Code of Conduct reads:

An independent, fair, and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. . .Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

¹ November 1, 2010 status conference transcript ("SCT"), pg. 5:17-25; pg. 6:18-22.

² SCT, pg. 6:22-23.

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Arizona Code of Judicial Conduct (2009). In contrast with the principles set forth at the very beginning of the Judicial Code of Conduct, Judge [redacted] blatantly violated the following rules of the Arizona Code of Judicial Conduct at the November 1, 2010 and November 4, 2010 hearings in our case by violating the following rules:

Rule 1.1, Arizona Code of Judicial Conduct (2009). Rule 1.1 requires a judge to comply with the law. However Judge [redacted] conduct violated both Arizona case law and the Arizona Rules of Civil Procedure in the November 2010 hearings. First, Judge [redacted] predetermined our guilt in issuing the subpoena, without allowing us to even defend ourselves, and based on his *ex parte* conversation with Dr. Willson. The very concept of due process allows us to present a defense prior to a determination of guilt. Judge [redacted] flat out denied our right to due process by predetermining our guilt, using extrajudicial sources to form the basis of his determination, and refusing our defense without any explanation whatsoever. Furthermore, Rule 45 provides the process by which an individual can challenge and/or object to a subpoena. Rule 45, *Arizona Rules of Civil Procedure*. Dr. Willson was informed of this process through Mr. Sannes' letter to her. However, rather than follow the formal procedure of Rule 45, Dr. Willson chose to write an inflammatory resignation letter. To make matters even worse, Judge [redacted] failed to follow the procedures set forth in Rule 45, and, instead of finding a way to tailor the subpoena or just quashing the subpoena³, found us and our attorneys guilty for a "gross abuse of the discovery process."

Second, at the November 4, 2010 hearing, Richard Segal, counsel for Mr. Sannes brought established Arizona case law to Judge [redacted] attention for allowing discovery of court-

³ Judge [redacted] ultimately quashed the subpoena at the end of the November 1, 2010 hearing.

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appointed experts, therefore, establishing the validity of the subpoena served on Dr. Willson.⁴

Without any explanation, Judge _____ summarily dismissed Mr. Segel's legal argument and established Arizona case law: "[I] don't accept your argument on the subpoena."⁵ Judge

also summarily rejected Don Bivens' (counsel for Ms. Slaton and Mr. Shumway) legal argument and Arizona case law later in the hearing regarding the validity of the subpoena, proclaiming the subpoena "over the top" with no explanation.⁶ When Mr. Bivens proffered that a subpoena such as this would be "fairly common" in litigation, Judge _____ proclaimed, "Not in this kind of case."⁷

Third, Judge _____ attempted to violate our attorney/client privileges, as well as the work product privilege, and ultimately punished our attorneys for refusing to violate either privilege. At the November 4, 2010 hearing, Judge _____ concluded there was no privilege, and questioned Mr. Sannes, after swearing him in, on discussions between counsel and clients regarding the issuance of the subpoena and the common-interest agreement⁸ we had between all Respondents and their counsel. Judge _____ stated he was limiting his probe into conduct, however, there was no way his questions could be answered without disclosing conversations between counsel themselves, and counsel and their clients. The Common Interest agreement was revealed to the Court on November 3, 2010 by Mr. Bivens and by Evan Borges (former *pro hac vice* counsel for _____). Mr. Sannes explained to Judge _____ that he could not answer Judge _____ questions question without violating the attorney/client privilege. Judge _____ ultimately had Mr. Sannes handcuffed and arrested in the middle of the court room for

⁴ November 4, 2010 hearing transcript ("HT"), pg. 8: 15-25; pg. 9:1-25; pg. 10:1-25; pg. 11:1-25; pg. 12:1-15.

⁵ HT, pg. 12:20-21.

⁶ HT, pg. 37: 1-25; pg. 38:1-20.

⁷ HT, pg. 38:7-12.

⁸ Written consent for disclosure of the common interest agreement was first obtained from all parties involved in the agreement.

NOTICE

The complaint in this case is too long to post on the website. Rule 9(b) of the commission's rules provides that dismissed complaints and related orders must be made public but leaves the method of disclosure to the commission's discretion.

As a convenience to the public, complaints are posted on the commission's website after confidential information has been redacted. The commission may not post complaints that are lengthy because of the excessive amount of time needed to prepare the material for publication. When this occurs, a copy of the redacted complaint may be ordered from the commission at the current photocopy rate approved by the Clerk of the Supreme Court.

A complete copy of the redacted, 25-page complaint in this case may be obtained by sending a check or money order made out to the Commission on Judicial Conduct in the sum of \$12.50 to the address below. Please allow ten days for processing.

Commission on Judicial Conduct
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