

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-056

Complainant: No. 1412510580A

Judge: No. 1412510580B

ORDER

Seven complainants related to or friends of the defendant in a murder trial alleged that a superior court judge intentionally disregarded the law and demonstrated bias by denying a motion to dismiss the charges when the prosecution failed to file a timely response. After considering the allegations and listening to the recordings of the hearings, the commission found no evidence of ethical misconduct on the part of the judge. Although the judge's tone was incredulous when defense counsel continued to argue that the entire case should be dismissed, the judge did not make any improper statements or otherwise evidence bias. Whether a technical procedural rule violation should have resulted in the dismissal of the entire case is an appellate issue that is outside the jurisdiction of the commission. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: June 1, 2011.

FOR THE COMMISSION

/s/ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on June 1, 2011.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2011-056

COMPLAINT AGAINST A JUDGE

Your name _____

Judge's name: _____

Date: 02-23-11 *of hearing*

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

HAST BEAT TO DISMISS over technicality

CR 2008 -

I Believe

① Following R 16:1b & c + 35.1b

should have recused self it is LAW!

② Made up mind ahead of time stated that he would not dismiss over something so trivial *BAD JUDGE.*

③ Can't get ^{word} out of his mind as he recid answers that are not allowed. said a simple instruction to jury would suffice. LAW does not allow for that

④ The answer was not on time & should have been thrown out. this has happened numerous (5) times. should be dismissed ~~then~~

⑤ When Judge became aware that there was evidence of ~~per~~ perjury to grand jury he did not take that into acct. He should have dismissed. you cannot prosecute a case based on PERJURED TESTIMONY TO GRAND JURY!!!

⑥ When prosecution said there were witnesses to the deceased attacking STUARTS CAR - well couple that with above perjury given to grand jury - well should recuse self for already making up mind OR dismiss based on motions to dismiss. 5 late responses by prosecution have been accepted and read by judge in contradiction to Rule 16:1B where PRECLUDE is the Rule - not include.

(Attach additional sheets as needed)

⑦ Prosecutor was not speaking into mic &

difficult to understand.

⑧ Judge instructed Prosecutor on

(over)

how to circumvent Rule 16.1 b by
reading ^{answers} ~~motions~~ in court record orally.
yeah that would circumvent
Rule 16.1 b - I interpret this as
practising law and/or teaching the
law from the bench.

⑧ When informed that 8 pieces of
evidences are missing. The major
ones that would prove self defence
and innocence (truck) was
found after 1 year cleaned (tamped with)
the judge has not dismissed despite
the exculpatory evidence being lost by ^{prose} _{cution}
Scott's rulings - after 2 is not really
accidental - ya know -
Judge is not following proper procedures
in my opinion.

⑨ Rush to Judgement wanted this
to just get to trial to address issues
In fact every hearing seems rushed.

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2011-056

COMPLAINT AGAINST A JUDGE

Your name: _____

Judge's name: _____

Date: 2/23/2011

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

Rule 16.1(b) - The following is what I observed on February 23, 2011 at a hearing for John Stuart, Case # CR2008 -
Upon opening statement of Defense attorney, Jeffrey A. Swierki, it was stated, among other arguments, that this case should be dismissed based upon the prosecution's numerous late responses to defense motions in violation of rule 16.1b including the late response to the motion being considered by this hearing, today dated 2/23/2011. Defense argued that at least the written argument submitted after the required time limit should not be considered according to Rule 16.1b.

I was shocked to hear the response from judge as in no uncertain terms he stated that it was a little late as he had already read the late response and as such had made up his mind and in addition would never dismiss something so trivial. Excuse me but cases are dismissed regularly in courts for something as "trivial" as "Rule 16.1b". In addition it was not only violated this one time but 5 times in regard to this same case by prosecution.

Judge seemed indignant that a dismissal was even suggested based on this rule even though it was clearly violated and acknowledged as such by judge

A particularly disturbing action by judge was what appeared to me as a judge practicing law from the bench FOR the prosecution. In his response to defenses' opening statement, judge responded with what appeared to me as clear instructions to the prosecution that they could - (see additional page)

(Attach additional sheets as needed)

Continued

get around Rule 16.1b by including their response (which the judge had already read) into oral arguments and therefore it is not incumbent upon his court to follow and/or enforce Rule 16.1b.

At that point without any words or arguments from the prosecution the judge Elena had pretty much informed the parties involved that this was over and he had already made his decision without hearing from the prosecution side and based upon prosecution late ~~re~~ "written" response.

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2011-058

COMPLAINT AGAINST A JUDGE

Your name: _____

____ Judge's name: _____

Date: 7/23/11

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

Judge _____ violated Rule 16 B by reading all of the Plaintiff's late responses. Judge _____ was unfair and did not follow the law. Judge _____ also presumed that the Plaintiff would orally argue her same responses that were in writing that judge _____ unlawfully read. It was clear that the judge was not going to follow the law.

Judge _____ told the Defense Attorney that he would discuss things at trial. The problem with that is the case should be dismissed because of the law. The judge refused to follow the law.

(Attach additional sheets as needed)

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2011-058

COMPLAINT AGAINST A JUDGE

Your name: _____

Judge's name: _____

Date: 2/23/11

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

Judge Refused to Follow rule 161B by
reading all of the plaintiffs responses which were
late. That also confirms that the judge did
not follow the law and is fully aware. He
Presumed that the prosecuting attorney would
argue the same defense orally therefore directing
the attorney to do so to help the prosecutions
case. Judge = was bias. This case was
handled unfairly

(Attach additional sheets as needed)

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2011-056

COMPLAINT AGAINST A JUDGE

Your name:

Judge's name:

Date: 2/23/11

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

~~John~~ Judge was in violation of Rule 16.1 B - Prosecutor responded late + Judge chose to ignore. Defense attorney Swenson asked that sealed evidence be admitted to assist Johans case + judge refused. Judge also allowed Prosecutor Chappel to continue with her blatant lies. Judge was obviously prejudiced against Defendant when he is supposed to be an independent arbiter. Who is paying the Judge's retirement or some other form of B.U.B.? Internet shows that there are many contributors to all judges retirement + benefits. This is allowing judges to be callous + indifferent to the peoples rights.

Judge was intially expressing need, callous indifference and in a great hurry to dismiss + move case to Trial.

"It would be the last resort to dismiss a murder case on a technicality".

Yet evidence in favor of Johans Stewart is sealed ~~which~~ and so called evidence + samples were not taken. What is fair + equitable here? Eight pieces of evidence are missing or sealed!

(Attach additional sheets as needed)

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2011-056

COMPLAINT AGAINST A JUDGE

Your name: _____

Judge's name: _____

Date: 2/23/11

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

JEFF SWIERSKI IN OPENING ORAL ARGUMENTS INFORMED JUDGE _____ THAT PROSECUTOR RESPONDED LATE TO MOTIONS AND VIOLATED RULE 16.1(b) AND SHOULD NOT BE CONSIDERED AND THE CASE SHOULD BE DISMISSED. THE PROSECUTOR TALKED SO LOW AND NOT INTO MICROPHONE. THE JUDGE HELPED PROSECUTOR AND INSTRUCTED HER TO PUT INTO THE RECORD WHAT WAS IN THE MOTIONS THAT HE WAS NOT SUPPOSED TO HAVE READ. JUDGE _____ DOES NOT SEEM CONCERNED THAT EVIDENCE IS MISSING AND THAT THE STATE AND POLICE HAVE BEEN ACCUSED OF FRAMING DEFENDANT FOR MURDER, INSTEAD OF SELF DEFENSE. JUDGE _____ AND THE COURT HAS ROUTINELY NOT ALLOWED THE PRESUMPTION OF INNOCENCE TO SURFACE. JOHN STUART IS INNOCENT AND SCREAMING INTO THE WIND. WHEN MOST EVIDENCE DISAPPEARS, THE COURT SHOULD DISMISS WITH PREJUDICE. JEFFREY SWIERSKI SPECIFICALLY ASKED THE JUDGE "ARE WE NOT GOING TO FOLLOW THE RULES?" THE JUDGE HEDGED AND COULD NOT REALLY ANSWER. THE JUDGE SEEMINGLY HAS IN HIS MIND TO GO TO TRIAL REGARDLESS OF THE CIRCUMSTANCES. THIS IS A TRAGEDY OF JUSTICE. IT WAS SICKENING TO WATCH HOW AMERICA HAS DECLINED. JUDGE _____ SHOULD DISMISS OR RECUSE HIMSELF CONSIDERING THERE ARE AT LEAST 100 FELONIES COMMITTED BY THE STATE WHICH HE WILL NOT ADDRESS. EVERYTHING STATED IS TRUE AND CORRECT.

(WITHOUT RECOURSE)

(Attach additional sheets as needed)

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1501 W. Washington Street, Suite 229

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2011-056

COMPLAINT AGAINST A JUDGE

Your name: _____

Judge's name: _____

Date: 2-28-11

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

The Judge is not following Rules of Court 16.1B/

So much evidence is lost or destroyed by the police The case must be dismissed for the lack of care by the police.

How do you lose a truck in evidence for almost a year and then find the truck and it's been cleaned by some one?

So many lies by the prosecutor and the cop to the Grand Jury, and Judge knows or should know this case cannot continue.

I think and believe John Stuart is being framed in this case and the Judge should stop it and Dismiss this case.

- 1 The cops destroyed evidence
- 2 The cops committed perjury
- 3 The cop is breaking the law
- 4 The prosecutor lied to the grand jury
- 5 The judge dismissed the case against Stuart ones already.

(Attach additional sheets as needed)