

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-313

Complainant: No. 1433210942A

Judge: No. 1433210942B

ORDER

The complainant alleged that a superior court judge made incorrect decisions and failed to issue timely rulings.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainant, along with the online minute entries, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to investigate the legal sufficiency of the judge's rulings. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: January 24, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on January 24, 2012.

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

2011-313

COMPLAINT AGAINST A JUDGE

Your name: _____ Judge's name: _____ Date: _____

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.

Pursuant to Article VI of the Constitution of the United States of America and Article IV, Section 26 of the Constitution of the State of Arizona, the Hon-
orable Superior Court before entering upon the duties of his office, took and subscribed an oath that he would support the Constitution of the United States and the Constitution of the State of Arizona, and that he would faithfully and impartially discharge the duties of his office to the best of his ability. This oath was filed in the office of the secretary of the State of Arizona. Judge has consistently failed to do so as the following facts clearly show.

Issue # 1

On _____ at approximately 1945 hrs, I was arrested by _____ in relation to DR 2010-
_____ the listed Transporting officer, was also present. (See Attach-
ment A). On _____ I was brought before the Justice Court of
County Precinct 2 for my Initial Appearance; I was not represented
by any attorney for this hearing. I was ordered to appear on Thursday,
_____ at 9:00 am for my preliminary hearing at the
Justice Court, _____ Az. A \$,000 Surety Bond was also ordered. (See Attach-
ment B). On the advice of my attorney, Deputy Public Defender _____
waived my preliminary hearing. My arraignment was set for
_____ at 1:30pm in the Superior Court. (See Attachment
C). At my Arraignment in Superior Court I was represented by Deputy Public
Defender _____ The court assigned my case to Division I and
scheduled a Release Hearing/Case Management Conference on:
_____ at 8:45 am. Previous release conditions were affirmed. (See Attachment D.)

(Attach additional sheets as needed)

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Between my arraignment on _____ and my
 Release Hearing/Case Management Conference on _____ at
 8:45am. I was held in custody at the _____ County Adult Detention
 Center here in _____ Arizona. During this time I was visited by
 Pretrial Services. During this visit I disclosed that I had been previous-
 ly convicted of Attempted Sexual Conduct with a minor, a Class 3 Felony
 in _____ (_____ County Superior Court Case _____) and Failure to
 register as a sex offender, a class 4 Felony, in _____ County
 Superior Court Case _____ . I also disclosed that I had had
 2 Failure to Appear misdemeanor warrants issued from _____ Municipal Court
 and that they had been dismissed by the same court after a finding
 was made that the summons had been sent to a wrong address. Finally
 I also informed Pre-trial services that I had been released on my
 Own Recognizance on three (3) misdemeanor O.R. releases in _____
 by the _____ Municipal Court and showed up to each court
 date until all three (3) cases had been dismissed. Based on
 this interview, Pretrial Services recommended that my secured bond
 be reduced to \$2,500 and Pre-trial Services II.

On _____ I was brought before _____ for
 my Release Hearing + Case Management Conference. I was represented
 at this hearing by Deputy Public Defender _____ because
 my assigned Deputy Public Defender _____ was unavailable. At this
 the the Hon. _____ ordered my bond reduced to \$2,500 secured
 and Pretrial Services, level II supervision if released. (See Attachment E)
 For the record Judge _____ gave, as grounds for not OR releasing
 me, that I had three (3) prior felony convictions and that I had

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Failure to appear in Municipal Court is (see Court Record for details).

On (See Attachment F) and March 7, 2011 (see Attachment G) I filed a Waiver of Counsel and request for Advisory Counsel with the Court. Deputy Public Defender was assigned to represent me at the time. On I submitted a motion to reconsider release conditions with the Clerk of the Court, however it was never placed on Court file.

On at my scheduled Case Management Conference, the Court found that I had knowingly, intelligently, and voluntarily waived my right to counsel and appointed the Public Defender's Office as advisory counsel. I advised the Court that I had filed a motion to reconsider release conditions, the Court noted for the record that the motion was not in the Court file, and advised me that it would schedule a hearing on the motion when it was filed with the Clerk's office. A further case management conference on at 3:00pm. (See Attachment H).

provided me with the discovery from the state using the Arizona Rules of Criminal Procedure, as well as the fact that I had only two (2) prior felony convictions, and the circumstances surrounding the misdemeanor failure to appear, I sent my motion TO RECONSIDER RELEASE CONDITIONS to the Clerk of Superior Court to file; it was filed on (see Attachment I (page 8 missing)).

On at 3:03 p.m., a Case Management Conference among many other motions addressed by the court, my motion for

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reconsider release conditions was addressed. I advised the Court that the officers who arrested me told me that I was under arrest and that I was being arrested because they had a warrant; no warrant exists. I also tried to explain to Judge that pursuant to rule 3, Arizona Rules of Criminal Procedure, I should have had a Summons issued instead of being arrested. I then tried to show him that, pursuant to Rule 7 of the ARCP (Arizona Rules of Criminal Procedure), the burden of proof lies with the state to prove that I would not produce myself if released on O-R. and that the Court was required to O-R. me if the state failed to do so. Without even taking the time to read the ARCP, Rules 3 and 7 he ruled that they were not mandatory but discretionary even though the use the word shall I then attempted to explain to Judge using the Discovery disclosed by the State, why the officers had no cause to arrest me. Without any evidence whatsoever, Judge Ruled that my arrest was a probable cause arrest in direct violation of the 1963 Supreme Court of the United States ruling in WONG SUNG V UNITED STATES, 371 U.S. 471, 83 S.Ct. 467, 9 L.Ed.2d 441. He also informed me that I had waived my preliminary hearing and that was the place to raise this issue. According to the ARCP a preliminary hearing is to determine whether or not cause exists to bound over to Superior Court for trial; nothing to do with the legality of an arrest. Finally, I explained to the Judge that I only had two (2) prior Felony Convictions, and they were 10 and 12 years past, as well as why he erred in using the Municipal Court failure to Appear against me as they had been found to be erroneously issued.

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(See Court recorded and Attachment J)

After stating the grounds for not releasing me on O-R-release, on _____, as three (3) prior Felony Convictions and the misdemeanor Failure to appears in _____ for the record, Judge _____ denied my April 1, 2001 MOTION TO RE-CONSIDER RELEASE CONDITIONS. In doing so, on open Court record, Judge _____ told me that whether or not I had Failure to appears on my Criminal record, and whether I have two (2) or three (3) prior Felony Convictions, even though they were 10 and 12 years prior, it did not matter to him at all; he felt that a \$2,500 secured bond and pretrial services it was an appropriate bond. As such, he denied my motion in direct violation of my Constitution of the United States, Constitution of the State of Arizona rights, and the Arizona Rules of Criminal Procedure.

Issue # 2

Article VI, Section 21, of the Constitution of the State of Arizona requires that "Every matter submitted to a judge of the Superior Court for his decision shall be decided within sixty days from the date of submission thereof. ---" The Hon-

County Superior Court; consistently failed to do this in my case. These are the motions he failed to rule on within sixty days of submission in violation of my United States and Arizona Constitutional rights:-

1) On _____ I filed a MOTION FOR A WRIT OF PROHIBITION in my case. This motion, pursuant to ARSP, Rule 35, this motion was considered submitted on the record 4/18/11 and was supposed to be

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ruled on by 6/17/2011; 60 days after submitted on record before the Court-Judge Failed to do so. (see court record)

2) On my Motion For a Court order was filed. On it was submitted on record before the Court-Judge Failed to rule on this within 60 days; (see court record)

3) On my REQUEST FOR ADDITIONAL DISCLOSURE was filed. On it was considered submitted on record before the Court-Judge Failed to rule on this within 60 days; (see court record)

4) On my MOTION FOR A COURT ORDER (INTERVIEWS) was filed. On it was submitted on record before the Court-Judge Failed to rule on this within 60 days; (see court record)

5) On my MOTION FOR A SEVERENCE was filed. on it was submitted on record before the Court-Judge Failed to rule on this within 60 days; (see court record)

6) On my MOTION TO DISMISS COUNT TWO was filed. On it was submitted on record before the Court-Judge Failed to Rule on this within 60 days; (see court record)

7) On my MOTION FOR CLARIFICATION ON PROPER MOTION FORMAT was filed. On it was submitted on record before the Court-Judge Failed to Rule on this within 60 days; (see court record)

8) On my MOTION FOR A SHOW OF CAUSE HEARING was filed. On it was submitted on record before the Court-Judge Failed to rule on this within 60 days; (see court record)

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9) On my second MOTION FOR SHOW OF CAUSE HEARING was filed. On it was submitted on record before the court. Judge failed to rule on this within 60 days; (see Court Record)

10) On my MOTION FOR IMMEDIATE RELEASE FROM CUSTODY OR DISMISSAL OF CHARGES was filed. On it was submitted on record before the court. Judge failed to rule on this within 60 days; (see Court Record)

11) On my MOTION TO DISMISS COUNT ONE was filed. On it was submitted on record before the court. Judge failed to rule on this within 60 days; (see Court Record)

12) On my MOTION FOR RULINGS ON MOTIONS SUBMITTED ON RECORD BEFORE THE COURT was filed. On it was submitted on record before the court. Judge failed to rule on this within 60 days; (see Attachment K).

I ask that you take note that number 12 was my attempt to deal with these issues myself (see Attachment K).

If the Court record were to be reviewed many more errors and Judicial misconduct would come to light. I cannot address them here, as I am on indigent income and have used all resources available to me.