

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-012

Complainant: Laurie Herman

Judge: Mark Chiles

ORDER

After reviewing the response filed by Judge Chiles, the commission finds that the justice of the peace in this case violated the Code of Judicial Conduct.

Rule 1.2 of the Code requires judges to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." Rule 2.2 similarly requires judges to perform all judicial duties fairly and impartially. Rule 2.3 prohibits a judge from exhibiting bias or prejudice. Finally, Rule 2.6 requires a judge to ensure that all parties and litigants have the right to be heard according to law.

In this case, Judge Chiles facilitated an impression of bias in favor of the prosecutors who were aware through prior experience that they could knock on the court's door and be allowed into the locked facility. The judge failed to make other litigants aware that there was a way for them to enter the facility while the front door was locked, resulting in a defendant and counsel being unable to enter the building in advance of a hearing set for 8:00 a.m.

Compounding this conduct, Judge Chiles abruptly dismissed the jury when defense counsel had not arrived in the courtroom by 8:00 a.m. despite his knowledge that the building remained locked until that time. He then refused to allow defense counsel an opportunity to explain what happened on the record, instead abruptly disqualifying himself and submitting the matter for reassignment, causing the parties substantial delay and inconvenience.

Accordingly, the judge is hereby reprimanded for his conduct pursuant to Rule 17(a), and the record in this case, consisting of the complaint, the judge's response, and this order, shall be made public as required by Rule 9(a).

Dated: April 9, 2012,

FOR THE COMMISSION

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on April 9, 2012.

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

My name: Laurie A. Herman

Judge's name: Mark Chiles, East Mesa Justice Court

On December 2, 2011, I was scheduled to start a jury trial with my client Jason Yetman, before Judge Mark Chiles. The trial notice and court staff said the trial was set to start at 8:00 a.m. that Friday. My client, his mother and I arrived a few minutes before 8:00. The jury panel was waiting in front of the locked front door. I stood back in the parking lot away from the group of jurors but in sight of the state's witness, Officer Rodriguez, who was waiting in his patrol car in sight of the front door. A large SUV parked in the disabled spot blocked my direct view of the door but I could see the jurors and Officer Rodriguez clearly.

At about 8 a.m., the jurors started to walk away from the front door. I quickly walked up to them as they headed to their cars and asked what happened. A juror said, "we're excused, no defendant, no defense attorney." I excitedly said, "We're here! We've been here, the door was locked!" I repeated it so the security guard just inside the door could hear me and I asked the jurors to wait. Judge Chiles rushed into the lobby and stated loudly, "stop talking, stop talking." I repeated the same thing not knowing whether he heard me explain that we had been there all along but the door was locked. He yelled, "stop talking!" again as he walked quickly back toward the courtroom. I shut up and followed.

Confused, my client, his mom, the officer and I walked back to the courtroom skipping the security check. The jurors started to file through security into the lobby.

When we entered the courtroom it was empty except for two prosecutors calmly seated with their papers on the desk. I asked "how did you get in here? The door was locked and I didn't want to stand around with my client and his mom waiting with the jurors at the front door." The prosecutors said they knocked and the security guard let them in. I asked how were we supposed to know to do that or know that the court would cancel the jury if we didn't come to the door to be let in. We had no notice about this situation.

Judge Chiles then took the bench. I asked him if we were on the record so I could explain what happened. He said, "whenever I'm wearing a robe and sitting here, we are always on the record." I tried to make a record to ask why the jurors were excused at 8:05. Judge Chiles interrupted me and repeatedly prevented me from making a record.

He gave the prosecutors a brief explanation about what happened and added that his staff had called outside for my client and I but heard no answer. The judge asked the prosecutors if they wanted to dismiss the jury and start over. The prosecutors declined.

The judge turned to me and asked if I accepted the jury. I started to say I didn't have a problem with the jury I just didn't know why the court would excuse the jurors and cancel the trial before we could enter the building. The judge abruptly cut me off - "Just yes or no counsel, yes or no!" After several attempts to make a record with the judge cutting me off each time, I hastily said something to the effect of "I don't have a problem with the jurors, it's the court I have a problem with...." Judge Chiles snapped back that since I had a problem with him he would recuse himself, get a judge pro tem, cancel this

jury and set the case for another date. He ran off the bench and his smirking clerks glowered at me like I was a child molester as they left the courtroom. It was about 8:15.

At least 20 jurors had shown up that morning. Officer Rodriguez who works nights was present. The State had two other witnesses on standby. My client and his mother had taken off work to prepare for and attend the trial. I had spent two days preparing for trial and scheduled all Friday and Monday afternoon off for this trial.

I came to the court *the day before trial* to drop off my requested jury instructions. When I spoke with the clerk as I filed them the morning of December 1, she asked me to fax over the standard DUI jury instructions because the court did not have any. I faxed them to the court that afternoon and have the fax confirmation. I also said to the clerk and the security guard that was on duty December 1 and 2, "I'll see you bright and early tomorrow." My client, his mom and I had shown up to that court on at least 10 prior occasions for hearings and conferences, including the firm trial conference the Tuesday before this trial date. Judge Chiles had never acted the way he did on December 2. His behavior seemed out of character as if he did not want to have a trial that day.

This case was transferred to the Desert Ridge Justice Court on 44th Street and Union Hills in Phoenix, 28 miles away from the East Mesa court, by Judge Lester Pearce (who was the subject of a change of judge motion at the beginning of this case but still ruled on my 10.2 motion and Judge Chiles' recusal). The case is reset for a pre-trial conference on January 11, 2012.

MAR 05 2012



Maricopa County

East Mesa Justice Court
4811 E. Julep Ste #128
Mesa, AZ 85205

February 21st, 2012

Commission on Judicial Conduct
1501 W Washington Ste 229
Phoenix, Arizona 85007

Dear Commission Members,

In response to complaint #12-012 State of Arizona vs. Jason Yetman, Case # TR2010104578. I absolutely deny any of the allegations made by Ms. Herman. There has been no misconduct that brings the judiciary into disrepute.

On 12-2-11 a jury trial was scheduled with potential jurors waiting outside the front door arriving at approximately 7:40 a.m. The state arrived at 7:30 a.m. as per instructions by the Judge at the Status Conference and allowed access by security. Bailiff, Mary Summus, opened the front door at 7:55 a.m. and asked if the Defendant, Jason Yetman, or his counsel were here and no one responded.

At 8:00 a.m. the Bailiff informed Security that the jurors could be excused. At 8:00:58 Security went outside and excused the jurors. The bailiff then proceeded down to the Judge's chambers to tell him that the jurors had been dismissed. Upon arriving at the Judge's chambers, bailiff noticed that the outside door to Judge's chambers was opened so the bailiff walked outside and found the Judge thanking the jurors for appearing. While in the parking lot I, Judge Chiles, heard a female voice yelling "I was here on time" and asking loudly to those potential jurors still there "wasn't I here on time?" I, Judge Chiles approached defense counsel and asked her to, "Stop, and let's go inside and go into the courtroom" but Ms. Herman continued yelling. I, Judge Chiles, reiterated to Ms. Herman again; "let's just go into the courtroom where we can work this out." Counsel ignored my request and kept repeating that which is quoted above. I, Judge Chiles, entered the building thinking that counsel would follow; turning around again and requested that counsel please follow me into the courtroom. Again counsel ignored my request wherein I stated "Counsel, you may be tainting the jurors, please come in now." Once this was stated, Counsel for the Defendant did finally follow my instructions and followed me past security and into the courtroom.

Ms. Herman states that she had arrived a few minutes before 8:00 and saw the jurors leaving (Video surveillance cameras show the Defense Counsel and defendant in the parking lot at 8:01:22 and opening the front door to the Court at 8:01:46). At no time prior did Ms. Herman come to the door to see if it was opened or if she would be allowed access as the State did, per instructions given to the State and the Defense at the status conference. (Exhibit A and B indicate "Be in court at least 15 minutes before the scheduled hearing/trial"). When Ms. Herman saw people leaving she quickly walked up to the people standing outside and asked what happened; she was told by one of the people that the trial had been cancelled. As stated above the Judge asked defense counsel and defendant to stop shouting and to go into the courtroom as not to taint the jurors.

As to Ms. Herman's allegation that the Court did not allow her to make a record: The Court did not stop Ms. Herman from making a record it was trying to inform both State and Defense as to what had taken place and ask, in turn, if either side had an objection to proceeding with the jury trial with the jurors remaining prior to Ms. Herman making her record. I then asked the State if they had any objection and they said no. I then asked Defense Counsel, Ms. Herman, do you have any objection at this point she said, on the record, "I have no objection going forward with the jury but I do have an objection to the Judge." At this point I, Judge Chiles, recused myself as Ms. Herman looked to be confrontational; therefore, I adjourned the Court. The fact that both sides had no objection to the jurors and the court would go forward shows that her being late or not knowing about knocking on the door was irrelevant at this point.

At no time did I snap back at Ms. Herman and I don't understand why Ms. Herman would attack my staff by making a personal assumption as to the clerk's behavior in the courtroom by stating in her complaint, "his smirking clerks "glowered" at me like I was a child molester as they left the courtroom." Again, I believe Ms. Herman is assuming something that didn't take place. In fact while exiting the courtroom Ms. Herman was so upset that she swung her bag over her shoulder striking one of the staff and gave no apology to the clerk.

As to Ms. Herman's comment "His behavior seemed out of character as if he did not want to have a trial that day." This is a false statement due to the fact that at the Status Conference on 10-4-11 Ms. Herman was notified that a Pro tem, Mike Osterfeld, would be overseeing the jury trial. Ms. Herman expressed her concerns over this announcement and requested that I, Judge Chiles, hear the case. State objected to her request, stating that it is normal for one judge to rule on motions and/or proceed over the status conference and then a different Judge proceed over the jury trial. Needless to say I granted Ms. Herman's request and said that the jury trial would be scheduled to a date and time that I, Judge Chiles, would be able to handle even if we had to bump another case. (Exhibits C)

On 11-29-12 a final Status Conference was held with Pro tem Sonia Feffer presiding. Pro tem Feffer's notes indicate that at the Status Conference all parties were informed that all voir dire, jury instructions and criminalist testifying must be submitted no later than Thursday at noon. Pro tem Feffer's notes also indicate that the parties should be here at 7:30 a.m. and the trial would last one day. (Exhibit D)

It should be noted that on 12-19-11 Ms. Herman presented a Motion for Recusal under Rule 10.1 to the East Mesa Justice Court alleging the avoidance of the appearance of impropriety or bias against her client Mr. Brown. As Ms. Herman had already presented the same motion for a change of judge on 1-26-10 to the North Mesa Justice of the Peace, Judge Lester Pearce I, Judge Chiles, was significantly concerned by the motion filed by Ms. Herman in our court; therefore an Oral Argument was scheduled with Pro Tem Sonia Feffer presiding; Ms. Herman failed to meet the burden of proof in this case. (Exhibit E)

In conclusion whether Ms. Herman and Jason Yetman arrived late or not; whether or not some jurors were dismissed the Court still retained a sufficient amount of jurors to proceed with the scheduled jury trial. The only reason the Court cancelled the jury trial was because of the statement Ms. Herman made on the record in the courtroom, "I don't have a problem with the jury, I have a problem with the Judge." I feel the Court did not error in cancelling the jury trial and transferring the case, per Maricopa County Transfer Policy, to the Presiding Justice of the Peace to be reassigned. A copy of the proceedings is attached for your review.

Sincerely,

Mark K Chiles
Justice of the Peace
East Mesa Justice Court