

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-254 (amended)

Complainant: No. 1420310321A

Judge: No. 1420310321B

ORDER

The complainant alleged a superior court judge made various erroneous rulings in his case and failed to timely rule on his supplemental petition for post-conviction relief.

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 court records available online, the commission initially found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. After reviewing new information provided by the complainant, the commission decided to send the judge an advisory letter regarding delay. The case is dismissed pursuant to Rules 16(b) and 23(a). The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings.

Dated: December 4, 2012.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on December 4, 2012.

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

ON 31 MAY 2011, I SUBMITTED A SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF RAISING A COLORABLE CLAIM OF "INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, RE JUDICIAL BIAS". THIS CLAIM WAS BASED ON THE FOLLOWING FACTS:

ON 9 JANUARY 2009, UPON COMPLETION OF YOUR DIRE, THE HONORABLE (HEREINAFTER "TRIAL COURT") ISSUED TO THE FACTFINDERS JURY INSTRUCTIONS THAT GOVERNED ADMITTANCE OF EVIDENCE, KNOWN AS PRELIMINARY CRIMINAL 7-2011B OF THE COURT, STATING IN PART:

ADMISSION OF EVIDENCE IN COURT IS GOVERNED BY THE RULES OF LAW. I WILL APPLY THOSE RULES AND RESOLVE ANY ISSUES THAT ARISE DURING THE TRIAL CONCERNING THE ADMISSION OF EVIDENCE. IF AN OBJECTION TO A QUESTION IS SUSTAINED, YOU MUST DISREGARD THE QUESTION, AND YOU MUST NOT GUESS WHAT THE ANSWER TO THE QUESTION MIGHT HAVE BEEN...¹

TRIAL COMMENCED SHORTLY THEREAFTER RESULTING IN THE FOLLOWING QUESTIONABLE ACTIONS BY THE TRIAL COURT. ALL OBJECTIONS INITIATED BY THE DEFENSE LEADING TO SIDEBAR CONFERENCE PRODUCED THE ENSUING INSTRUCTION (s) TO THE TRIER-OF-FACT, REGARDLESS OF THE DECISION MADE AT SIDEBAR, ENUMERATED AS:

1. "GO AHEAD, [STATE]"²
2. "GO AHEAD, [STATE]"³
3. "GO AHEAD, [STATE]"⁴
4. "GO AHEAD, [STATE]"⁵
5. "GO AHEAD, [STATE]"⁶

WHEREAS, SIDEBAR CONFERENCE(S) INITIATED BY STATE'S OBJECTION (s) RESULTED IN CLEAR, CONCISE AND INTELLIGENT INSTRUCTION (s) TO THE TRIER-OF-

¹ SEE, EXHIBIT A.

² SEE, EXHIBIT B.

³ SEE, EXHIBIT C.

⁴ SEE, EXHIBIT D.

⁵ SEE, EXHIBIT E.

⁶ SEE, EXHIBIT F.

FACT, ENUMERATED AS:

6. "THE OBJECTION IS OVERRULED AS SET OUT AT SIDEDAR."⁷
7. "THE STATE'S OBJECTION TO 86, 87, 88 IS SUSTAINED."⁸
8. "THE OBJECTION IS SUSTAINED."⁹
9. "OBJECTION IS SUSTAINED."¹⁰
10. "THE LAST ANSWER THAT [DEFENDANT] GAVE AND HE BELIEVED THAT G.L.H. DID SOMETHING ILLEGAL IS STRICKEN FROM THE RECORD AND THE JURY IS ORDERED TO DISREGARD IT."¹¹

AT THE CONCLUSION OF TRIAL, THE TRIAL COURT REITERATED PRELIMINARY CRIMINAL² IN ITS FINAL JURY INSTRUCTIONS, STATING IN PART:

IF THE COURT SUSTAINED AN OBJECTION TO A LAWYER'S QUESTION, YOU MUST DISREGARD IT AND ANY ANSWER

GIVEN.¹²

UPON RAISING THIS COLORABLE CLAIM, I ASSEVERATED THE TRIAL COURT'S GUIDANCE, PRE AND POST TRIAL, INSTRUCTING THE TRIER-OF-FACT AS TO THE APPLICATION OF LAW AND ITS INFERENCE AS TO HOW SUSTAINED OBJECTIONS ARE TO BE HANDLED SET FORTH A FOUNDATION TO WHICH THE TRIAL WAS TO BE CONDUCTED. IT IS CLEARLY ASCERTAINED THE TRIAL COURT'S WITHHOLDING OF ITS DECISION MADE DURING DEFENSE INITIATED SIDEDAR CONFERENCES TO BE FLAGRANTLY PREJUDICIAL, SEE, STATE V. STAROVICH, 125 ARIZ 379, 388, 678 P.2D 958, 969 (1984); CITING, UNITED STATES V. BERRY, 627 F.2D 193 (9TH CIR, 1980), CERT DENIED, 447 US 113, 101 L.ED. 813, 101 S. CT 225 (1981) (A TIMELY INSTRUCTION FROM THE JUDGE USUALLY CURES THE PREJUDICIAL IMPACT UNLESS IT IS HIGHLY PREJUDICIAL OR THE INSTRUCTIONS IS CLEARLY INADEQUATE), BUT COMPLYANCE OF ONLY INSTRUCTIONS FROM STATE INITIATED SIDEDAR CONFERENCES HELD THE BAR OF PREJUDICE SUFFERED TO THE LEVEL OF BIAS. EMPHASIS ADDED. SEE, HAOPI V. DILLARD, 17 F.3D 285 (9TH CIR, 1994); SEE ALSO, MILJERBURG V. HEALTH SERVICE CORPORATION, 486 US 547, 100 L.ED. 855, 108 S. CT 2174 (1988) (RIGHT TO A FAIR TRIAL IS A REQUIREMENT OF DUE PROCESS AND INCLUDES RIGHT OF UNBIASED JUDGE).

⁷ SEE, EXHIBIT G.

⁸ SEE, EXHIBIT H.

⁹ SEE, EXHIBIT I.

¹⁰ SEE, EXHIBIT J.

¹¹ SEE, EXHIBIT K.

¹² SEE, EXHIBIT L.

THIS DISPLAY OF BIAS ROCKS THE VERY FOUNDATION OF THE TRIAL PROCESS, WHEREBY, THE TRIAL COURT POSITIONED THE STATE AND PETITIONER ON TWO SEPARATE FIELDS OF PLAY. ONE WHERE THE STATE RECEIVED THE FULL PROTECTION OF THE ARIZONA AND FEDERAL CONSTITUTIONS, AND ONE WHERE I WAS GROSSLY DEPRIVED OF SAID PROTECTION. I ADAMANTLY DECLARE, WHEN A TRIAL COURT:

1. FAILS TO PROPERLY INSTRUCT THE TRIER-OF-FACT AS TO DEFENSE INITIATED OBJECTIONS;
2. SUPPLIES CLEAR, CONCISE AND INTELLIGENT INSTRUCTIONS TO THE TRIER-OF-FACT FOR STATE INITIATED OBJECTIONS;
3. ACTS IN A MANNER CONTRARY TO THE PRE AND POST JURY INSTRUCTION IT POSTED; AND,
4. FAVORS ONE PARTY OVER THE OTHER

IT CAN NO LONGER BE CONSIDERED FAIR AND IMPARTIAL. THESE ACTS RAISE QUESTIONS AS TO THE VERY INTEGRITY OF THE CRIMINAL JUDICIAL PROCESS; WHETHER, THESE ERROR(S) WERE INTENTIONAL OR NOT, ERROR HAS OCCURED. SEE, UNITED STATES V. FUCHS, 218 F.3D 957 (9TH CIR, 2000) (A TRIAL COURT COMMITS PLAIN FUNDAMENTAL ERROR WHEN (1) THERE IS ERROR, (2) THAT IS PLAIN FUNDAMENTAL, AND (3) THE ERROR AFFECTS SUBSTANTIAL RIGHTS). IN CHAPMAN V. CALIFORNIA, THE UNITED STATES SUPREME COURT HEARD, "HARMLESS PLAIN FUNDAMENTAL ERROR DOES NOT EXIST, ALL PLAIN FUNDAMENTAL ERROR ARE HARMFUL." 386 US 18, 17 LED2D 705, 87 S.Ct 824 (1967).

THE TRIAL COURT'S ERRORS CORRUPTED THE STRUCTURAL FOUNDATION OF THE CRIMINAL JUDICIAL PROCESS. SEE, SHELDON V. ALASKA, 228 F.3D 1088 (9TH CIR, 2000) ("STRUCTURAL ERROR" CALLS INTO QUESTION THE VERY ACCURACY AND RELIABILITY OF THE TRIAL PROCESS AND ARE NOT AMENABLE TO HARMLESS ERROR ANALYSIS, BUT REQUIRES AUTOMATIC REVERSAL). EACH ERROR THOUGH CLEARLY PREJUDICIAL TO MY CASE-IN-CHIEF WAS COMPOUNDED BY THE TRIAL COURT'S CUMULATIVE ACTIONS. SEE, MARCUSO V. OLIVAREZ, 292 F.3D 932 (9TH CIR, 2000) (CUMULATIVE ERROR APPLIES WHEN, ALTHOUGH NO SINGLE TRIAL ERROR EXAMINED IN ISOLATION IS SUFFICIENTLY PREJUDICIAL TO WARRANT REVERSAL, THE CUMULATIVE EFFECT OF MULTIPLE ERRORS MAY STILL PREJUDICE DEFENDANT).

THE STATE'S RESPONSE TO THIS SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF WAS FILED ON 22 AUGUST 2011 AND THE PETITION WAS PERFECTED ON 9 SEPTEMBER 2011 WITH THE FILING OF THE CORRESPONDING REPLY TO SAID PETITION.

BASED ON THE NATURE OF THE COLORABLE CLAIM RAISED I COLLATERALLY MOTIONED FOR A CHANGE OF JUDGE, PURSUANT TO ARIZONA RULES OF CRIMINAL PROCEDURE 10.1. THIS ACTION WAS SUMMARILY DENIED.¹³ A SPECIAL ACTION WAS SUBMITTED ON 28 JULY 2011, WHEREBY, THE ARIZONA COURT OF APPEALS - DIVISION ONE REFUSED JURISDICTION.

¹³ SEE, EXHIBIT Q - APPENDIX A.

IMMEDIATELY THEREAFTER AND PRIOR TO STATE'S RESPONSE TO MY SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF, I SUBMITTED ANOTHER COLLATERAL ACTION - MOTION REQUESTING REASSIGNMENT OF JUDGE PURSUANT TO ARIZONA RULES OF CRIMINAL PROCEDURE 32.4 (E). I BASED THIS ARGUMENT ON:

THE ARIZONA RULES OF CRIMINAL PROCEDURE EXPRESSES A PREFERENCE FOR THE ORIGINAL SENTENCING JUDGE TO PRESIDE OVER A PETITION FOR POST-CONVICTION RELIEF. HOWEVER, THE RULE STATES "IF IT APPEARS THAT THE SENTENCING JUDGE'S TESTIMONY WILL BE RELEVANT, THAT JUDGE SHALL TRANSFER THE CASE TO ANOTHER JUDGE." IT IS IMPORTANT TO NOTE, THE JUDGE'S TESTIMONY DOES NOT HAVE TO BE RELEVANT IN ORDER FOR THE CASE TO BE REASSIGNED. IF IT MOST APPEAR TO BE RELEVANT, THE REASSIGNMENT OF JUDGE IS MANDATORY AND NOT DISCRETIONARY UNDER THESE CIRCUMSTANCES.

HERE, I EXPLAINED TO THE PRESIDING JUDGE OF COCHISE COUNTY SUPERIOR COURT, HONORABLE MARK MORAN THAT ANY EVIDENTIARY HEARING ON THIS COLORABLE CLAIM WOULD PLACE THE HONORABLE DAN SWAYTON IN A CONFLICT OF INTEREST, WHEREAS, THE UNITED STATES CONSTITUTION ENTITLES ME TO CALL WITNESSES TO TESTIFY, THEREBY PLACING THE HONORABLE DAN SWAYTON IN THE WITNESS STAND TO EXPLAIN HIS ACTIONS AND SIMULTANEOUSLY PRESIDING ON THE BENCH OVER SAID PROCEEDINGS. ON 7 OCTOBER 2011, MY MOTION WAS DENIED AND ON 26 OCTOBER 2011, I SUBMITTED A PETITION FOR SPECIAL ACTION AND MOTION TO STAY PROCEEDINGS ON MY SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF. THE ARIZONA COURT OF APPEALS - DIVISION ONE DECLINED JURISDICTION (CASE NO. 1 CA-JA 11-026) ON 1 NOVEMBER 2011. MY NEXT STEP WAS TO TAKE THIS FOR REVIEW TO THE ARIZONA SUPREME COURT (CASE NO. CV 11-0348 PR), WHEREAS, ON 25 NOVEMBER 2011, I FILED A PETITION FOR REVIEW AND MOTION TO STAY ANY PROCEEDINGS ON MY SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF.

THE MOTION FOR STAY FILED IN CONJUNCTION WITH THE PETITION FOR REVIEW, WHEREAS, THE SIXTY-DAY TIME PERIOD FOR WHICH THE SUPERIOR COURT MUST PROVIDE A DISPOSITION HAD LAPSED BY SEVENTEEN DAYS, PURSUANT TO:

ARIZONA RULES OF THE SUPREME COURT 91 (E). DETERMINATION OF MATTERS WITHIN SIXTY DAYS REPORT.

EVERY MATTER SUBMITTED FOR DETERMINATION TO A JUDGE OF THE SUPERIOR COURT FOR DECISION SHALL BE DETERMINED AND A RULING MADE NOT LATER THAN SIXTY DAYS FROM SUBMISSION THEREOF, IN ACCORDANCE WITH SECTION 21, ARTICLE VI OF THE ARIZONA CONSTITUTION.

AND,

CONSTITUTION OF THE STATE OF ARIZONA. ARTICLE VI, SECTION 21 - SUPERIOR COURT; SPEEDY DECISIONS.

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 SUPREME COURT SHALL BY RULE PROVIDE FOR THE SPEEDY DISPOSITION

OF ALL MATTERS NOT DECIDED WITHIN SUCH PERIOD.

THE ARIZONA SUPREME COURT PROMPTLY ISSUED AN ORDER DENYING THE MOTION FOR STAY.¹⁴ EVEN THOUGH, MY MOTION FOR STAY WAS SEVENTEEN DAYS AFTER THE SUPERIOR COURT WAS OBLIGATED TO PROVIDE A DECISION ON MY SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF, THE SUPREME COURTS DENIAL SHOULD HAVE TRIGGERED THE SUPERIOR COURT TO ACTION. ON 8 MAY 2012, I RECEIVED A LETTER FROM THE ARIZONA COURT OF APPEALS-DIVISION I INFORMING ME OF AN "ORDER DECHINING JURISDICTION."¹⁵ AGAIN, THIS SHOULD HAVE TRIGGERED THE SUPERIOR COURT TO ACTION, WHEREAS, I HAVE BEEN DEPRIVED OF MY CONSTITUTIONAL RIGHTS FOR ONE HUNDRED EIGHTY-ONE DAYS.

TWO HUNDRED FORTY-ONE DAYS AFTER THE SUPERIOR COURT WAS CONSTITUTIONALLY OBLIGATED TO PROVIDE A DECISION ON MY PETITION, I FILED A MOTION TO SAID COURT REQUESTING A DECISION, 6 AUGUST 2012.¹⁶ IN RESPONSE, THE STATE COUNTERED WITH A "MOTION TO STRIKE PLEADINGS,"¹⁷ CLAIMING THE FOLLOWING ISSUES:

1) MY SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF DID NOT CONFORM TO ARIZONA RULES OF CRIMINAL PROCEDURE 31.12, THAT IS:

a) TEXT SHALL BE DOUBLED-SPACED; AND,
b) PROPORTIONATELY SPACED TYPEFACE OF 14 POINTS OR MORE, OR A MONOSPALED TYPEFACE OF NO MORE THAN $10\frac{1}{2}$ CHARACTERS PER INCH, E.G. AN ACCEPTABLE PROPORTIONATELY SPACED TYPEFACE IS TIMES NEW ROMAN, 14 POINT; OR, AN ACCEPTABLE MONOSPALED TYPEFACE IS COURIER NEW, 12 POINT.

2) THE STATE ALSO REFERENCED A NOTICE, DATED 27 JUNE 2011,¹³ FROM THE TRIAL COURT DIRECTING ME TO ADJUST SIZE OF HANDWRITING OR "ANY OTHER PLEADINGS WITH THE SAME SIZE OF PRINTING WILL NOT BE ADDRESSED OR ACTED UPON BY THIS COURT."

IN RESPONSE TO STATES MOTION TO STRIKE PLEADING, I INFORMED THE TRIAL COURT THAT SAID MOTION WAS FRIVOLOUS AND MALICIOUS, BECAUSE:

1) CONTRARY TO THE STATE MISGUIDED NOTION, ARIZONA RULES OF CRIMINAL PROCEDURE 31.5, DICTATED FORM AND STYLE OF MY SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF AND ABSENT ANY DIRECTION FROM THE TRIAL COURT I CAN ONLY ASCERTAIN THIS

¹⁴ SEE, EXHIBIT M.

¹⁵ SEE, EXHIBIT N.

¹⁶ SEE, EXHIBIT O.

¹⁷ SEE, EXHIBIT P.

IS A NON-ISSUE;

2) IT IS COMMON KNOWLEDGE THROUGHOUT THE LEGAL COMMUNITY INCARCERATED WARDS OF THE STATE DO NOT HAVE ACCESS TO TYPEWRITERS, COMPUTERS AND/OR ANY OTHER PRINTING DEVICE, THEREFORE, TO HOLD ME TO ARIZONA RULES OF CRIMINAL PROCEDURE 31.12 WOULD BE ASHINE, AT BEST;

3) AS FOR STYLE AND SIZE OF HANDWRITING I MADE REFERENCE THAT AFTER THE TRIAL COURT'S "NOTICE", I HAVE SUBMITTED SEVERAL PLEADINGS TO THE TRIAL COURT, ARIZONA COURT OF APPEALS AND ARIZONA SUPREME COURT WITHOUT INCIDENT;

4) I PROVIDED THE TRIAL COURT AND STATE OF AN ARIZONA RULES OF CRIMINAL PROCEDURE, FORM 25 - PETITION FOR POST CONVICTION RELIEF DERIVED FROM A WESTLAW WEBSITE¹⁸, WHEREBY, BOTH WESTLAW FORM AND FORM 25, PAGE 445 OF THE RULES OF COURT DEPICT SIBBLES SPACE AND ENOUGH ROOM ONLY TO ACCOMMODATE MY SIZE AND STYLE OF WRITING;

5) I REMINDED THE STATE THAT THEY FILED A MEANINGLESS AND INTELLIGENT RESPONSE TO MY SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF, AND THAT ANY ISSUE ON THEIR PART AS TO FORM AND/OR STYLE SHOULD HAVE BEEN RAISED BEFORE RESPONDING; NOT THREE HUNDRED FIFTY-NINE DAYS AFTER THEIR FILING.

6) I REMINDED THE STATE AND TRIAL COURT THAT STATE'S ACTION TO STRIKE MY PLEADING WAS FRIVOLOUS AND MALICIOUS; AND, I WAS STILL AWAITING A DECISION ON MY SUPPLEMENTAL PETITION FOR POST CONVICTION RELIEF.

AS OF THE DATE OF FILING SAID RESPONSE, 11 AUGUST 2012, TWO HUNDRED FIFTY-SIX DAYS HAS ELAPSED WITHNO DECISION.

TWO HUNDRED SEVENTY-THREE DAYS BEYOND THE CONSTITUTIONAL LIMIT FOR A DECISION, I HAVE FILED A "PETITION UNDER ARTICLE VI, SECTION 21 OF THE ARIZONA CONSTITUTION FOR A WRIT OF MANDAMUS", OF WHICH, I AM STILL AWAITING A DECISION.

IT IS EXTREMELY CLEAR THE HONORABLE DAN STAYTON SHEDDED HIS RESPONSIBILITIES AS SETOUT IN ARIZONA COMMISSION ON JUDICIAL CONDUCT - CANON 3 (ADJUDICATIVE RESPONSIBILITIES):

- (1) A JUDGE SHALL HEAR AND DECIDE MATTERS ASSIGNED TO THE JUDGE;
- (5) A JUDGE SHALL PERFORM JUDICIAL DUTIES WITHOUT BIAS OR PREJUDICE; AND,
- (6) A JUDGE SHALL DISPOSE OF ALL JUDICIAL MATTERS PROMPTLY, EFFICIENTLY AND FAIRLY.

HERE, THE HONORABLE DAN STAYTON'S CONDUCT UNQUESTIONABLY BROUGHT THE JUDICIARY INTO DISPUTE, REFLECTED POORLY ON THE INTEGRITY

¹⁸

SEE, EXHIBIT Q - APPENDIX B.

OF THE JUDICIARY, AND CREATED THE APPEARANCE OF BIAS. COLLECTIVELY, THESE UNCONSTITUTIONAL ACTS CONSTITUTED ABUSE OF THE JUDICIAL OFFICE AND SHOWS CONTEMPT FOR A PERSON'S RIGHT TO DUE PROCESS AND FAIR TRIAL.

AS OF THE DATE OF THIS LETTER, THE HONORABLE DAN STAYTON HAS VIOLATED MY CONSTITUTIONAL RIGHT, TWO HUNDRED NINETY DAYS, AS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION; ARTICLE II, SECTIONS 4 AND 24, AND ARTICLE VI, SECTION 21 OF THE ARIZONA CONSTITUTION. I FILE THIS COMPLAINT IN HOPES THAT JUSTICE WILL PREVAIL AND THE HONORABLE DAN STAYTON CANNOT NO LONGER DEPRIVE LITIGANTS OF THEIR INALIENABLE RIGHTS.

24 SEPTEMBER 2012