

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-193

Judge:

Complainant:

ORDER

The complainant alleged one superior court judge and five appellate court judges improperly denied him court-appointed counsel on appeal.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judges 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.

The commission does not have jurisdiction to review the legal sufficiency of the judges' rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judges did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety as to all six judges, pursuant to Rules 16(a) and 23.

Dated: August 19, 2015

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the six judges on August 19, 2015.

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

COMPLAINT AGAINST JUDGES

A. Regarding Judge _____ of the

Court:

1. The failure of Judge _____ to appoint appellate counsel for _____ as required by Rules 6.1(a) and (b), Ariz.R.Crim.P. and "Comment" to Rules 6.1(a) and (b); "Comment" to Rule 6.3(b); Rule 6.6 and "Comment" to Rule 6.6; U.S. Const. Amend.14; and Ariz.Const.art.2, § 24, constituted not only a qualified failure to follow the law but also a violation of his "Oath of Office" under Ariz.Const.art.6, § 26, and Rule 81, Rules of the Supreme Court, Canon 1, Rules 1.1; 1.2; and Canon 2, Rules 2.2; and 2.5(A).

B. Regarding Judges _____ and _____

of the Arizona Court of

1. The failure of Judges _____ and _____ to appoint appellate counsel for _____ as required by Rules 6.1(a) and (b), Ariz.R.Crim.P. and "Comment" to Rules 6.1(a) and (b); "Comment" to Rule 6.3(b); Rule 6.6 and "Comment" to Rule 6.6; Rule 31.5(a) and "Comment" to Rule 31.5(a); U.S. Const. Amend. 14; and Ariz. Const.art.2, § 24, constituted not only a qualified failure to follow the law but also a violation of their respective "Oaths of Office" under Ariz.Const.art.6, § 26, and Rules 81, Rules of the Supreme Court, Canon 1, Rules 1.1; 1.2; and Canon 2, Rules 2.2; and 2.5(A).
2. The intentional disregard of the law in this case— having been brought to _____ Judges' attention in no less than _____ proceedings over the past _____ —constitutes an additional violation of their respective "Oaths of Office" per Ariz.Const.art.6, § 26; also Canon 1, Rules 1.1; 1.2 and "Comment" to Rule 1.2, at 5; Canon 2, Rule 2.2 and "Comment" to Rule 2.2, at 1.3; Rule 2.5(A) and "Comment" to Rule 2.5, at 1.4.

C. Regarding Judges _____ and _____ of the Arizona Court
of _____

1. During the course of _____ Petition for Review proceedings, both Judges _____ and _____ were made aware of the constitutional structural defect in _____ direct appeal by virtue of the failure to appoint appellate counsel by Judges _____ and _____. Nonetheless, Judges _____ and _____ took no remedial action as is required by Canon 2, Rule 2.15(A)(C) and the "Comment" to Rule 2.15, and simply deemed _____ uncounseled direct appeal—a proceeding which violated Rules 6.1(a) and (b), Ariz.R.Crim.P. and "Comment" to Rules 6.1(a) and (b); "Comment" to Rules 6.3(b); Rules 6.6 and "Comment" to Rule 6.6; Rule 31.5(a) and "Comment" to Rule 31.5(a); U.S. Const.Amend.14; and Ariz.Const.art.2, § 24—as an "oversight".
2. This intentional disregard by Judges _____ and _____ of the failure to follow the law by Judges _____ and _____ constitutes a violation of their respective "Oaths of Office" to uphold the constitutions of the United States and Arizona as to _____ proceedings before _____ in violation of Ariz.Const.art.6, § 26; also Canon 1, Rules 1.1; 1.2 and "Comment" to Rule 1.2, at 5; Canon 2, Rule 2.2 and "Comment" to Rule 2.2, at 1.3; Rule 2.5(A) and "Comment" to Rule 2.5, at 1.4.

The basis of these complaints is more fully set forth in the accompanying Memorandum and Joint Appendix attached hereto; the relevant facts and attached documents are applicable to all 6 complaints herein.

MEMORANDUM

Statement of Relevant Facts:

On _____ after a jury trial, _____ was sentenced in _____ County
(App. at 1,2.) At sentencing, _____ court-appointed trial counsel,

filed a [redacted] and a [redacted] (App. at 2 through 7.) In the [redacted] regarding the motion for new trial, notice was given that, “Pursuant to Rule 31.5, Ariz.R.Crim.Proc., [redacted] appointed counsel at the determination of guilt and proceeds on appeal as an indigent without further authorization. (Rule 31.5.a.1).” (*id.* at 6.)

The next day, Mr. [redacted] filed a [redacted] from the Judgment of guilt and sentence ...”[App. at 8.] as well as a [redacted] as counsel for [redacted] on this matter. ..” (App. at 9.) On [redacted] Judge [redacted] ordered “that [redacted] may withdraw as [redacted] counsel of record ” [App. at 10.] but neglected to appoint counsel for [redacted] appeal.

On [redacted] the [redacted] Court Clerk's Office notified [redacted] of the [redacted] (App. at 11, 12.) Then, on [redacted] the [redacted] Court Clerk's Office notified [redacted] of the appeals from the [redacted] and [redacted] for [redacted] (App. at 13 through 15.) In this [redacted] the court was informed that “ [a]t the determination of guilt and sentencing, [redacted] was: 'Represented by court appointed counsel'” (*id.* at 13.)

On _____ relying on the
Minute Entry which erroneously stated that _____ had
and entered _____ [App. at 1.], issued an order to show cause
this _____ No. _____ should _____ (App.at 16.) This
order was sent to Mr. _____ [App. at 17.], who had withdrawn from
representing _____ a month earlier. (App. at 10.) Next, on
_____ dismissed _____ (App. at 18.) This order was also sent to Mr.

_____ (App. at 19.) Neither order was sent to _____ (App. at 17, 19.)

The day after the _____ Mr. _____ submitted a
to _____ for _____ on this matter''' in _____ and explained
_____ (App. at 20.) Mr. _____ did
not further notify the court that he had already been withdrawn as _____ counsel
pursuant to Judge _____ order. (App. at 10.) Thereafter, Mr.

_____—for the first time—notified _____ that (1) the _____ had
been _____ and (2) he had filed a _____ as

On _____ who had been corresponding with _____
Clerk, _____ in regards to _____ [No. _____
_____ wrote a letter to Mr. _____ about _____ (App. at 21, 22.)

_____ explained that the court should be receiving a corrected

from Judge [redacted] which would show that [redacted] went to trial and did not take a plea. (*id.* at 21.) [redacted] included documents in support of this issue with the letter and updated Mr. [redacted] as to [redacted] then-current [redacted] mailing address. (*id.* at 22.)

On [redacted] relieved Mr. [redacted] in connection with [redacted] [No. [redacted] and, despite the fact that [redacted] had been dismissed, further ordered that [redacted] shall transmit the record [redacted] forthwith to [redacted] with a notice of transmittal to be filed with this Court.” (App. at 23.) Notably, Mr. [redacted] did not have the record [redacted] had ordered that the

[redacted] on [redacted] (App. at 16.) Additionally, the court extended the “[t]ime for filing a [redacted] and/or [redacted] for Review.. [redacted] from its order that allowed Mr. [redacted] to withdraw. (App. at 23.) Although the [redacted] order was sent to Mr. [redacted] it was not sent to [redacted] at his then current [redacted] mailing address [App. at 24.] of which [redacted] had been advised in [redacted] letter to Mr. [redacted] (App. at 22.)

Next, on [redacted] in an apparent response to [redacted], letter, [redacted] ordered the direct criminal appeal “reinstated” [App. at 25.]

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**