

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 18-234

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge was biased against him, engaged in ex parte communications, ignored evidence, and made improper rulings in his criminal case.

The responsibility of the Commission on Judicial Conduct is to impartially determine if a judicial officer 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 a judicial officer's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judicial officer did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

Commission member Anna Mary Glaab did not participate in the consideration of this matter.

Dated: November 14, 2018

Copies of this order were distributed to all appropriate persons on November 14, 2018.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2018-234

COMPLAINT AGAINST A JUDGE

Name: _____ **Judge's Name:** _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

(Please see attached)

I. INTRODUCTION

Overall, this case is quite simple. The Complainant (herein after), was accused of he did not commit. When he was finally able to provide (prior to), it looked like the case was to lean in his favor. Consequently, one of most was forced off this case due to his from a plea agreement.

Then, Judge and its entire posture instantly changed. Judge brought with him an undeniable open display of bias-whether sourced from personal issues or from new or existing alliances-that manifested in a pattern of understands that this Commission is not an and cannot change a Judges ruling – it is authorized to investigate a Judges ethical and personal conduct and take appropriate action where violations and misconduct are found. outline ethical violations and misconduct herein. Additionally, this complaint is based upon following constitutional

1. Willful misconduct in office
2. Willful and persistent failure to perform duties
3. Multiple violations of the Code of Judicial Ethics
4. Conduct prejudicial to the administration of justice that brings the judicial office into disrepute

will offer extensive of the following specific acts:

1. communications (participation in “judge-shopping”)
2. to remain neutral and detached
3. Engaged in illegal “ ” or ‘ ’
4. Repeatedly refused to recuse when his bias became apparent
5. Intentionally misrepresented facts – “ ’ in ruling
6. Ignored exonerating evidence –
7. Issued legal rulings in bad faith
8. Undue delay in issuing rulings
9. Left several arguments of law and fact in filed pleadings
10. – with no cause – removing and delaying ability to effectively argue or challenge specific issues on :
11. Ordered

II. BRIEF FACTUAL BACKGROUND

In , was indicted in Cause No. . The purportedly illegal acts were captured on video tape via home security system. The video and playback technology of the time rendered the video grainy, dark, and with audio that was narratively unclear. Despite the State’s best efforts, the video tape could not be enhanced. Upon the advice of counsel and the spin on the video entered into a plea agreement but failed to appear for sentencing.

In , with Court permission, the Honorable Judge allowed defense counsel to contract a team of reputable forensic audio and video experts to analyze, digitize and enhance the video tape. Due to the extreme advances in the field of audio and video since coupled with modern playback technology, a monumental improvement to the image and sound quality was achieved. and his team of experts carefully and exhaustively reviewed the enhanced audio and video using state of the art external listening devices. Defense then retained a Court transcriptionist and private

forensic investigator to transcribe and complete transcripts of the interactions in their entirety. These transcripts were promptly filed with the Court. See EXHIBIT (TRANSCRIPTS).

The post-analysis video irrefutably proved what asserted from the start – that This newly discovered evidence reveals extensive portions of dialogue and video previously indiscernible in which directly refutes much of the relevant police reports in this matter. It now shows conscious, willing, and engaged participants, that the the State presented was wholly inaccurate. Accordingly, this necessitated to withdraw from the after having relied on misapprehended/incorrect facts.

On , prior to sentencing and to correct a manifest injustice, counsel filed his Motion to Withdraw from the plea agreement to Judge who appeared and prepared to vacate the plea due to this new evidence that changed the landscape of the case. See EXHIBIT (Motion to Withdraw from Plea Agreement)

However, on days after the filed withdrawal Motion and before he could decide the issued Motion before the Court, Judge was suddenly removed from the case. See the Courts Minute Entry dated (EXHIBIT).

Judge was immediately assigned after being transferred from Court and now the Judge presiding over case. This pattern of inappropriate Judge changes and subsequent actions by Judge would confirm concerns of the prohibited use of Judge-shopping and warrant the necessary investigation into the matter herein.

III. JUDGE-SHOPPING – EXTERNAL INFLUENCES – EX PARTE COMMUNICATION

suspected Judge-shopping because there had been judges (judges from and judges from assigned to this case. See EXHIBIT (Judge timeline)

Pursuant to Rule 10 Ariz. R. Crim. P, motions supported by affidavit should appear on the record. However, here there are only It appears when a judge was leaning or ruled in favor of they were either removed or replaced by a judge more partial to the states position in obtaining and preserving i.d.; EXHIBIT

The following summary is helpful to see the pattern of Judge-shopping:

- , Judge assigned.
- , Judge assigned due to Notice to change Judge.
- , Judge is assigned.
- , Judge is also assigned.
- , Judge dismisses the case without prejudice.
- Judge remands the case back to the Jury,

- , Judge orders Trial.
- , Judge removed.
- , Judge is assigned.
- , Judge refuses to recuse on defendant's () Motion.
- , Judge orders and is removed.
- Judge summarily denies and grants oral Motion to out of presence of Defendant's.

- Judge continues Motion to Suppress hearing on
- Judge at schedule Motion to Suppress hearing allows change of
- , Judge assigned.
- Judge assigned (files to Change Judge).
- , Judge assigned (Judge).
- Judge assigned.
- files Motion to Withdraw from
- Judge removed.
- , Judge assigned.
- arbitrarily remands into custody.
- Judge denies Motion to Withdraw from Plea Agreement.
- Judge files Plea Agreement
- Judge denies Motion to Continue Sentencing.
- Judge sentences
- Judge sentences
- Judge rejects Proper Recusal Motion.
- Judge denies Proper Recusal Motion.
- Judge ignores defense counsel Motion to Recuse.
- Judge summarily dismisses Petition.
- The Court denies defense counsel Motion and Reconsideration.

With the removal of Judge and questionable assignment of Judge to delay and deny Motion to Withdraw, this pattern of judge-shopping was a clear abuse of the Courts supervisory duties and Judicial Ethics Rules, 1.1, 1.2, 2.12 (A) (B) (C), 2.4, 2.5 (A) (B), 2.7, 2.9, CANON 1; Article 2 § 6, 11 Arizona Constitution.

IV. JUDGE VIOLATED HIS DUTY TO REMAIN NEUTRAL AND DETACHED, ENGAGED IN TRICKERY, AND OPENLY EXHIBITED BIAS.

When Judge was assigned to this case, had been for in complete compliance on bond and under the supervision of . Later, supervising officers would provide at sentencing for his exemplary performance. On for the first time went before Judge at a following the Hearing. The hearing was to decide the Motion to Withdraw from Plea based on exonerating post-forensic-analysis video (the same Motion submitted to Judge over prior).

A. Judge then, remanded into the custody of the revoking his bond. This arbitrary decision was far costlier than the fee for the bond now forfeited. a father of children (and all whom depend on him, were suddenly without him. Even went out of his way to explain to that he had made no such request.

B. Judge ignored Rule which permitted withdrawal and denied the motion and sealed his ruling. and his of immediately challenged the ruling with a special action to the and later a Petition to the Ultimately Courts would deny jurisdiction and would be sentenced by Judge in

of See EXHIBIT (Special Action); EXHIBIT (Petition for Review) However, in his ruling Judge misleads the defense stating, “ ” in a Proceeding brought pursuant to Rule 32.

See Minute Entry at P.

DISCUSSION

By Remanding into Custody, Judge rides the line between being a Judge and practicing law assuming the roles of both Prosecutor and Judge. was not an issue before the Court. Neither party desired remand into nor had there been any change in circumstances between hearings, only that in change of Judges. The law clearly allowed for to remain released or and bond. His Honor’s actions violate Judicial Ethics Rule 2.3, 2.6, 2.9 (C); Canons 2, 3, and 4 Ariz. R. Jud. Conduct.

Prior to sentencing where Judge rejected the and then filing the plea agreement after denying withdrawal he violated Judicial Ethics Rule 1.1, 1.2, 2.2, 2.3, 2.5, 2.9 (C); Canons 1, 2, 3 and 4 Ariz. R. Jud. Conduct.

Judge openly manifested bias that impaired the fairness of the proceedings. By ignoring the rules of procedure, the law and not allowing to withdraw when good legal cause arose due to his fact Judge took fundamental right away to try those facts to a jury.

Furthermore, these actions have diminished more than one attorney’s confidence to advocate in front of this Judge in future cases. If this conduct were known to the public, it would absolutely undermine confidence in the Judiciary. This move began a course of overt displays of Judge bias and his inability to remain neutral and detached.

Moreover, Judge engaged in unethical trickery by stating the video and audio could be brought as in a Rule 32 Proceeding and then outright denied it when it is proffered as such. Judge has no regard for judicial economy and does not mind wasting judicial and public resources. Rather than state the new evidence could be brought in Proceedings, the issue should have been dealt with as soon as it was presented.

The introduced with the Motion to Withdraw reveals a recording of clearly and is absent a no matter how distasteful the viewer finds the interactions to be. The Arizona Constitution (Art. 2 § 11) and Judicial Ethics Rules require that justice be administered openly and without unnecessary delay. That his Honor would engage in such conduct and deception only exemplifies his bias against and disregard to his Canons. Official duties and oath to office. Judge brings his office into disrepute.

V. JUDGE REFUSAL TO AND MATTERS

Following Judge harsh and unusual fine and sentence, gave timely notice to file a of Petition for Soon after, noticed the Court that both Judge and Judge testimony would be required in these matters. There were questions pertaining to any and all communication in connection to their role in the sudden Judge change. In addition to Judge conduct concerning the new evidence, rulings and impermissible statements made at sentencing as well as his rationale for

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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.**