

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaints 18-389, 18-398 & 18-406

Judge: Lee F. Jantzen
Complainants: James M. Schoppmann
Christopher Stavris
LeRoy Montoya

ORDER

All three complainants allege that a superior court judge engaged in improper ex parte communications and handled matters on which he had previously recused. Additionally, one complainant also alleged the judge was biased against him.

Judge Jantzen previously recused himself from handling Mr. Montoya's post-conviction matters following the initiation of the Commission's investigation into Judge Jantzen's delayed rulings on those post-conviction matters. (CJC Case No. 17-232). Judge Jantzen was censured for his conduct in that case.

Before recusing, Judge Jantzen had imposed certain sentences on Mr. Montoya. On or about September 18, 2018, Judge Sipe, who is now handling Mr. Montoya's post-conviction matters, asked Judge Jantzen to respond to an inquiry from the Arizona Department of Corrections (ADOC) about application of pre-sentence incarceration credit to Mr. Montoya's sentences. Judge Jantzen, through his judicial assistant, responded to those inquiries via email. The Commission did not find any improper conduct by Judge Jantzen in responding to this clarification request from the ADOC.

However, on or about October 16, 2018, Judge Jantzen received a hand-written proposed order in the mail from Mr. Montoya related to the same issue. The order stated, "Upon Motion for the Defendant . . .," but no motion was submitted with the order. The motion was not filed with the Clerk of the Court until approximately one week later and was entitled "Ex Parte Motion." Judge Jantzen signed the order without attempting to locate the accompanying motion or attempting to ascertain if the prosecutor and Mr. Montoya's court-appointed attorney agreed with the order (or had even seen the order). When asked by the Commission about the matter, Judge Jantzen's explanation was that he believed the order simply confirmed the prior information he had communicated to the ADOC via email. The signed hand-written

order, however, had the unintended consequence of accelerating Mr. Montoya's release date because it recited certain ADOC commitment codes corresponding to his sentences. Upon receiving the signed order, Mr. Montoya's defense attorney notified the prosecutor, who then took steps to prevent Mr. Montoya's premature release from ADOC. Judge Jantzen issued a minute entry on October 19, 2018, which clarified Mr. Montoya's sentences. The minute entry stated, "The Court has no idea what the codes that the Defendant had written in parentheses after the order mean and probably should have removed those codes from the order."

The Commission found that Judge Jantzen's conduct in signing an ex parte order on matters in which he previously recused as described above violated the following Code provisions:

Rule 1.2 (Promoting Confidence in the Judiciary): "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

Rule 2.6(A) (Ensuring the Right to be Heard): "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."

Rule 2.9 (Ex Parte Communication):

"(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers concerning a pending or impending matter . . ."

The Commission found no clear and convincing evidence of a Code violation as to the remaining allegations of the complaints.

Accordingly, Judge Lee F. Jantzen is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The Commission further directs that Judge Jantzen complete the web-based course, "Ethics and Judging: Reaching Higher Ground," offered through the National Judicial College, beginning June 10, 2019, or an alternative course approved by the Commission Chair, at his own expense.

...

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: May 13, 2019

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were distributed to all appropriate persons on May 13, 2019.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

18-389

COMPLAINT AGAINST A JUDGE

Name: James Schoppmann Judge's Name: Lee F. Jantzen

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.

After a discussion with Ethic's Counsel for the Arizona State Bar via the Ethic's Hot-line on December 7, 2018 and pursuant to E.R. 8.3(b) and Rules 1.2 and 2.5(A) of the Code of Judicial Conduct, the following information is provided without comment or argument. The undersigned is aware of the following facts:

- The Honorable Billy K. Sipe is assigned to the Mohave County Superior Court cases in State v. Leroy Montoya (CR-2007-0058 and CR-2007-0095).
- At one time the Honorable Lee F. Jantzen was assigned to the same cases.
- The undersigned is the assigned prosecutor for the State.
- An Order of Censure issued from the Arizona Supreme Court on 6/15/2018 against Judge Jantzen.
- It is the undersigned's belief that said censure resulted from conduct in the Montoya case.
- Undersigned is aware that paragraph 15 of the Factual Background section of the Commission on Judicial Conduct's Stipulated Resolution for Purposes of Discipline by Consent (Filed 5/17/18) indicates that Judge Jantzen "...indicated that he would recuse himself from Mr. Montoya's case."
- On or about October 16, 2018, Judge Jantzen signed an Order in the Montoya cases regarding release credits. The order was handwritten by Defendant Montoya. (The Order was filed on October 18, 2018). See Attachment #1.
- The undersigned was not aware of any related motion and only learned of the Order from the attorney representing Montoya.
- For a short period of time the undersigned was in doubt as to the authenticity of the Order but later learned that Judge Jantzen did in fact sign the Order.
- The undersigned spent several hours trying to ensure the Defendant was not released from prison because of the order. See Attachment # 2.
- Judge Jantzen issued a minute order in these cases on October 19, 2018. See Attachment # 3.
- At the time the Order was filed the undersigned could not find a filed motion in the Court's system. The related motion was later filed October 23, 2018. See Attachment # 4.



Resp
18-389
3/29/19

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KINGMAN, ARIZONA 86402

HONORABLE LEE F. JANTZEN
JUDGE - DIVISION IV

SUPERIOR COURT OF ARIZONA
COUNTY OF MOHAVE

(928) 753-0785
FAX (928) 718-5506

March 25, 2017

Re: Judicial Conduct Commission

Response to Complaints – Case No. 18-389, 18-398 and 18-406

Ms. Elliott:

Thank you for the opportunity to respond to the Judicial Complaints filed by James Schoppmann, Christopher Stavris and Leroy Montoya concerning my conduct in two pending post-conviction relief cases (CR20070058, CR20070095). These complaints are made by the State, defense counsel and the Defendant, all alleging that I acted improperly in attempting to clarify an order in cases involving Leroy Montoya in which I am recused.

Synopsis of what I did

In September 2018, I received word from my Judicial Assistant that the Judge handling the case wanted me to clarify an issue with the Department of Corrections (hereinafter “DOC”) relating back to the last time I had sentenced the Defendant in November 2014. The DOC had sent an email to Judge Sipe’s Judicial Assistant, Wendy Perkins, asking for clarification. The Defendant had been sentenced three different times in this case and I had been the sentencing judge each time. I didn’t really want to do it or to do anything ever again with this case, because this is the same case I received public censure for my dilatory behavior, but I did not see clarification of the sentence as entering back into the case or to create new rulings. It is routine for us to receive requests from the local jail and the DOC to clarify sentencing orders and so I did so by reviewing the file, specifically looking back at the sentencing in November 2014.

A few weeks later, on October 16, 2018, my Judicial Assistant said she had receive a hand-written order with my name and a signature line on it from the Defendant. I walked over to her desk looked at the order and it listed the exact same credit for time served I had told her to send to DOC a few weeks earlier. I said to her something like “he must need this for whatever argument he is making”. The order had the same specific numbers regarding credit for time served that were in the November 2014 ruling and I so signed it. I did not have it in my possession for more than thirty seconds. I did not think it was connected to any motion. I did not believe it to be anything more than clarifying the sentence that I had issued previously. Due to the history of my involvement in this case, I wanted to react quickly and not let something sit.

A few days later, on October 19, 2018, we received a call from the County Attorney's Office saying that the Defendant was going to be released because the hand-written order I had quickly signed contained code numbers the Defendant had entered and that I had ignored that meant something to the prison different from my intent. I quickly had my Judicial Assistant prepare the October 19, 2018 minute entry vacating the order I signed on October 16, 2018 and clarifying the only thing I was attempting to accomplish in this case was trying to clarify the November 2014 sentencing order.

Answering the Committee's specific questions

Q1. - You issued orders in this matter after previously recusing yourself from Mr. Montoya's cases.

I did recuse myself from Mr. Montoya's cases in November 2017, during the Judicial Commission complaint process where I eventually received a public censure for my dilatory handling of the cases. I was first assigned these cases back in late 2007 or early 2008 when Judge Chavez recused himself.

In September 2018, I was asked by the Honorable Billy K. Sipe, Jr. to "clarify" a sentencing order I had issued in November 2014 for the Department of Corrections. This, in my opinion, was a routine request from the Department of Corrections and I was asked to clarify because I had a long history with these cases and I was the sentencing judge in these cases. I did not read any pleadings. I simply looked at the file and told my Judicial Assistant what I had ordered in November 2014, and she sent the DOC an email. **Those e-mails are attached.**

I did later sign the hand-written order sent by the Defendant, but only in an attempt to clarify the sentence issued in November 2014. This is addressed in detail below.

I did issue a minute entry immediately after I found out from the County Attorney's Office about the effect of the order I had signed.

My involvement in September and October 2018, including the order and the minute entry were done for the sole purpose of clarifying a sentencing order I issued in these cases in November 2014.

Q.2 - You issued an order on an *ex parte* basis dated October 16, 2018 and the accompanying *ex parte* motion for that order was not filed with the Court until October 23, 2018.

The order I signed on October 16, 2018 was only intended to clarify the sentence from November 2014. My Judicial Assistant said she had something the Defendant wanted me to sign. I did not read or see any accompanying motions. As it turned out, a motion was filed one week later on October 23, 2018 – I have never reviewed that motion. I did not communicate with anyone, I just looked at the order, which was hand printed by the Defendant in pencil and had a signature place for my name. In looking over the order, I saw it had the exact amount of days credit that I had issued in November 2014 and that had been in the email sent by my Judicial Assistant the month before to DOC. I thought in my head this clarified my previous

November 2014 order, that the Defendant must need this with my signature for some argument he is making, and so I quickly signed the order without walking back to my desk, keeping in my mind, that I had recused on this case because I received a public censure on these same cases because I did not timely respond to Defendant's pleadings in the past, and so I wanted to react quickly. Most importantly, however, it was not intended to be a new order in the case creating anything different. It was intended by me to be an order affirming and clarifying the November 2014 sentencing order. Nothing more.

Unfortunately, it turned out the Defendant had added codes to the order that had some significance at the prison. That led to, a few days later, my Judicial Assistant receiving a call from the County Attorney's office saying Mr. Montoya was going to be mistakenly released early because of the October 16, 2018 order I signed.

I quickly issued the October 19, 2018 minute entry clarifying my intent to only clarify the 2014 sentencing order.

I did not consider the October 16, 2018 order to be a pending or impending issue in this case. I considered it only as a clarification and therefore, I did not consider this to be an *ex parte* order. It wasn't, in my mind, related to anything pending, nor was it, in my mind, changing anything in the case. If I thought it was a contested issue, I would have not signed. It was only to clarify the November 2014 sentencing order. When I realized the mistake I quickly corrected the mistake.

You possibly had *ex parte* communication with the Arizona Department of Corrections regarding time credit and/or release dates.

I did not have any communication with the Arizona Department of Corrections, but my Judicial Assistant and Judge Sipe's Judicial Assistant did receive emails from them asking for clarification of my November 2014 sentencing order. (Copies of those are included with this letter). This is not uncommon. Court sentencing orders are often confusing. This case was especially confusing because Mr. Montoya had been sentenced three separate times. I did not consider this *ex parte* communication. The Department of Corrections isn't a "side" or a party in this case, and this was an administrative issue that wasn't being contested, just clarified. They have a job to do and they have to be able to understand the Court's orders to carry out the intent of the orders. We did send them information that was already in the court file with regard to the credit for time served the Defendant received in November 2014 and what counts that credit should be applied to. I have never personally talked to the Department of Corrections or anyone from the jail about clarifying a sentence, my Judicial Assistant has, but I believe the DOC and the jail routinely communicate with the Clerk's office of this court and every other court in the state to make sure the sentencings are correct.

Judicial Canon Rule 2.9 **Ex parte Communication** states in Section (A) "a judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows (1)..... administrative...purposes."

In this case there was nothing pending or impending. The communication between the Department of Corrections and my Judicial Assistant was routine communication involving the administrative purpose of clarifying an already existing sentencing order.

Everything I did in this case was with the sole intent of clarifying an existing order. I did not take the case back and attempt to make new orders. I quickly corrected the mistake I made in signing the Defendant's hand-written order. My only role was to clarify.

Conclusion

In an attempt to clarify a three-year old sentencing at the request of another Judge, I made a mistake in signing an order without properly thinking it through in a case in which I am recused. I am aware of and I understand it is the Court's job to consider all sides prior to ruling on and signing an order, but because I thought this was just a clarification, I did not go through that normal process.

I understand that this is possibly violation of judicial code. However, if this is a violation, the error was quickly fixed, and the order was quickly vacated. The mistake was rectified immediately. Defendant was not released prematurely.

This possible violation is also not similar to the previous violation for which I have been censured, other than it is involving the same Defendant.

I also don't believe my actions reflect any bias for or against the Defendant or the State. I thought the "order" was something the Defendant must need to clarify his sentence, so I signed it. When I found out about the unintended consequences, I immediately vacated the order. I wanted to clarify the sentence that was issued in these cases and nothing more.

Thank you for your consideration in this matter. I have included e-mails and a synopsis from my Judicial Assistant, Danielle Lecher, about what occurred.

Sincerely,



Hon. Lee F. Jantzen
Mohave County Superior Court – Division IV