

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

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

FOR OFFICE USE ONLY

2018-406

COMPLAINT AGAINST A JUDGE

Name: Leroy Monroya Judge's Name: Hon. Lee F. Janzen

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.

SEE:

STATEMENT OF

FACTS

STATEMENT OF FACTS:

1. My release date from Arizona Dept. of Correction (i.e. prison), should have been 12-21-2017.

2. According to Hon. Lee F. Jantzen's, three (3) court orders (i.e. 7-12-13, 11-10-14, and 10-16-18). See: Appendix A. i.e. certified court copies.

3. Defendant (i.e. Leroy Montoya) has been trying for approx. 13 months to resolve this issue and to get his time computation - Record Audited, per. D.O. (Dept. order) policies 201, 901, 1001, & 1002, with AZDOC, Mohave County Superior Court, the Attorney General's office (i.e. Mark Broovich), Christopher Stavris (Attorney for Defendant), and Hon. Billy K. Sipe, JR.

4. I have received no help, no response's, no cooperation and broken promises, lies, deceit, and B.S. from AZDOC, Administration, staff, the courts, etc.

5. Defendant has addressed this in-custody credit and due process issue in court on 2-21-18 and 5-15-18, with Hon. Billy K. Sipe, JR. and basically he said, "it is between you & ADAC." I then tried to explain again and Hon. Billy K. Sipe, JR., did not want to address the problem or my dilemma. Mr. Stavris, also tried to address the problem/issue/dilemma, with Hon. Billy K. Sipe, JR. and the Judge wasn't in the mood to hear

1 it, resolve it, or rule on Judge Jantzen's previous
2 orders (i.e. 7-12-13 & 11-10-14). See: Appendix A.

3 6. Defendant has requested the transcripts from
4 Judge Sipe, however, he continues to deny my request
5 for several different reasons. Defendant has once again
6 filed a "motion to supplement the Record" (4th Request).
7 See: Appendix B.

8 7. Defendant files a "motion for clarification"
9 (i.e. CR-2007-0058 & CR-2007-0095), dated 8-1-18. Regarding
10 clarification on Judge Jantzen's two (2) court orders,
11 dated 7-12-13 and 11-10-14. See: Appendix C.

12 8. Hon. Billy K. Sipe, JR. in a court order dated
13 8-21-18, states: "As to the motion for clarification
14 regarding Judge Jantzen's July 12, 2013 order, the court
15 is not going to "clarify" an order that was entered
16 by a different judge." (end quote). See: Appendix D.

17 9. However, Hon. Billy K. Sipe, JR., then states:
18 "The court will note that on July 12, 2013, in CR-2007-
19 00058, at a Post-Conviction Relief Hearing, Judge Jantzen
20 granted the defendant an additional 148 days credit
21 for a total of 2,409 days credit as of July 12, 2013.
22 On November 10, 2014, Judge Jantzen entered an order
23 in CR-2007-00095 granting the defendant one hundred
24 forty-eight (148) additional days credit for time
25 served, for a total of two thousand four hundred and
26

1 nine (2,409) days credit for time served from July 12,
2 2013." (end quote). see: Appendix D.

3 10. Defendant filed an "Arizona Commission on
4 Judicial Conduct" complaint against Hon. Lee F. Jantzen
5 (see; case no. 17-232). And, Hon. Lee F. Jantzen recused
6 himself in all three (3) criminal case's on 11-21-2017.

7 11. Defendant has continued his plight in the
8 dilemma of his release, in-custody credit, the removal
9 of in-custody credit, by AZDOC, Judge Jantzen's orders,
10 Judge Sipe's order, Administration, Staff, Attorney General's
11 office, Brad Kengh (AZOC General Counsel) and Kelly Dudley
12 (AZOC Attorney General's Liaison), All refuse to help,
13 give clarification and/or release me and/or record
14 audit my time computation, per. Judge Jantzen's
15 two court orders (7-12-13 & 11-10-14) and Judge Sipe's
16 order (8-21-18)! And, signed ex Parte order (dated 10-16-18 & filed 10-18-18).

17 12. Defendant for the first time in his 52 years,
18 felt as if he was anthropomorphism and lost!

19 13. Defendant had absolutely no other choice, but to
20 file an "ex Parte motion; Notice of filing Documentation"
21 to: Hon. Lee Jantzen. see: Appendix E.

22 14. Hon. Lee F. Jantzen, on October 16, 2018, sign's
23 "ex Parte order." Filed 2018 Oct 18 Am 9:58. see:
24 Appendix A, third (3rd.) order.

1 15. Finally, I will be released within 72 hours,
2 per. Hon. Lee F. Jantzen - signed "ex Parte order."

3 16. Christopher Stavris (PCR Attorney for Defendant),
4 set up a legal with me on 10-19-18 @ 12 noon.

5 17. Mr. Stavris told me a strange, bizarre and
6 an unbelievable (i.e. too improbable for belief; inconceivable)
7 story about Hon. Lee F. Jantzen, my ex Parte motion,
8 signed ex Parte order, AZDOC, Judge Jantzen's staff,
9 and second court order (dated October 19, 2018) from Hon.
10 Lee F. Jantzen. See: Appendix F.

11 18. In Judge Jantzen's second court order dated
12 10-19-18 is wrong, misleading and a lie! See: Appendix
13 G.

14 19. Christopher Stavris is my PCR Attorney for
15 criminal case's CR-2007-0058 and CR-2007-0095. Mr. Stavris,
16 has spoken to AZDOC, the courts, Mr. Schoppmann (I.D.S.).
17 Regarding both orders (i.e. 10-16-18 and 10-19-18) and I
18 believe it would be improper for me to do any of his
19 talking for him in regards to his conversations in this
20 matter and I give my permission for the Commission on
21 Judicial Conduct to interview Mr. Stavris.

22 20. I am pro-per on criminal case CR-2007-0363.
23 I have done a "Motion For Rehearing" dated 9-18-18 and
24 filed 9-26-18. I also did a "supplemental to: Motion For
25 Rehearing" dated 9-29-18. I then submitted another
26
27

1 Supplemental to: motion For Rehearing dated 11-9-18
2 (i.e. Judicial bias), see: Appendix H.

3 21. I am waiting for a Ruling on my Motion For
4 Rehearing (CR-2007-0363) from Hon. Billy K. Sipe, JR.
5

6 22. Violations of the code of Judicial conduct:
7 Regarding Hon. Lee F. Jantzen's behavior and conduct;

8 1. Canon 1. et al.

9 2. Canon 2. et al. (i.e. competence, decorum, ex parte
10 communications, bias, mental health issues, etc.).

11 3. Canon 3. et al.

12 4. Willful misconduct in office.

13 5. Willful and persistent failure to perform duties.

14 6. Conduct that brings the judiciary into disrepute.

15 7. malpractice based on wrongful sentence.
16

17 23. Hon. Lee F. Jantzen's Prior Discipline's:

18
19 Hon. Lee F. Jantzen prior's, case no. 2010-242,
20 regarding "delayed ruling." sanction: Private warning.

21 Hon. Lee F. Jantzen (prior no. 2) falsely certifying
22 he had no matters under submission that were pending.
23 Pursuant to A.R.S. 12-129.01. (c), class 3 misdemeanor.

24 Hon. Lee F. Jantzen (prior no. 3), case no. 17-232
25 regarding "delayed ruling." sanction / censured.
26

24.

Conclusion:

Trial judges are presumed to know the law and to apply it in making their decisions, *State v. Trustle*, 191 Ariz. 4, 22, 951 P.2d 869, 887 (1997). I/we assume trial courts know the law in the absence of evidence to the contrary. *State v. Williams*, 220 Ariz. 331, 9, 206 P.3d 780, 783 (App. 2008). Trial judges are presumed to know the law and to apply it in making their decisions. *State v. Lee*, 189 Ariz. 608, 616, 944 P.2d 1222, 1230 (1997). We/I assume the court knew the law, applied it correctly, and made all findings necessary to support its order! (quoting *State v. Trustle*, 191 Ariz. 4, 22 (1997); *Chudzinski v. Chudzinski*, 26 Ariz. App. 130, 133 (1976)).

I was wrong! Hon. Lee F. Jantzen is an embarrassment to the Judicial branch, oath of office and to himself! Hon. Lee F. Jantzen Kangaroo Court (i.e. justice are disregarded, perverted, and parodied; a sham legal proceeding), has violated my 5th., 8th., and 14th. Amendments to the United States Constitution and of course, the violations of the code of Judicial Conduct.

Hon. Lee F. Jantzen is the Judge. He is suppose to be impeccable, intelligent, indecorous, extraordinary and improbable to be believed, Honorable, and anthropocentric!

once again, I was wrong! I'm the convicted felon, I'm the convict and i'm the one in prison on case's and

1 charges that are absurd and puerile! However, i am trying
2 to follow the rule of law in my appeals and no matter
3 what i do according to the rule of law in my motions,
4 PCR's, Pleadings, etc., and even when the Judge sign's
5 orders or state's something on record or produces not
6 1 court order but 4 court orders in a 5 year period
7 (i.e. court orders. 7-12-13, 11-10-14, 8-21-18, and 10-16-18). the
8 rule of law is not working! Why is that? I believe
9 i have done everything humanely possible to resolve a
10 very simple "question of law" to Hon. Lee F. Jantzen in
11 my very simple "ex parte motion; Notice of filing
12 Documentation (dated 10-1-18), with a "blank order" and
13 Appendix 1" to Hon. Lee F. Jantzen (see: APPENDIX E),
14 for Hon. Lee F. Jantzen to do His Job (i.e. investigate,
15 research court files, make calls, form an intelligent decision,
16 research the rule of law, etc.,) and Hon. Lee F. Jantzen
17 had two (2) choices (i.e. selected with care; of high quality)
18 with my "ex parte order." choice #1, "sign order." choice
19 #2 "don't sign order."

20 HONORABLE (i.e. A title of respect given
21 to judges.) LEE F. JANTZEN picked choice #1!
22 He signed my "ex parte order" on 10-16-18 and filed on
23 10-18-18 @ 9:58 am. Hon. Lee F. Jantzen in a court order
24 dated 7-12-13 for CR-2007-0058 (i.e. for court 5 only),
25 see: Appendix G. And in another signed order (dated
26 11-10-14 & filed 11-13-14 @ 10:02 am) for CR-2007-0095 from
27

1 Hon. Lee F. Jantzen.

2 Now, Hon. Lee F. Jantzen, in a 5th. court
3 order (dated 10-19-18), approx. 5 years after 1st. court
4 order (dated 7-12-13). Hon. Lee F. Jantzen is
5 renegeing (i.e. to fail to keep a promise or commitment) on
6 court order dated 7-12-13, signed order dated 11-10-14 and
7 signed order dated 10-16-18, all from Hon. Lee F. Jantzen.

8 Here is the dilemma. Hon. Lee F. Jantzen
9 recused himself from all three (3) of my criminal case's
10 i.e. CR-2007-0363, CR-2007-0058, and CR-2007-0095 - on
11 11-21-17. Hon. Billy K. Sipe, JR. was assigned to all three
12 (3) of my criminal cases by Hon. Rick Lambert on
13 12-4-17. Kangaroo court to the maximum!

14 If, Hon. Billy K. Sipe, JR, would have addressed this
15 issue on 2-21-18 & 5-15-18 status hearing and in my
16 morias for clarification (dated 8-1-18), see: Appendix C.
17 And, do his job as a superior court Judge. I believe
18 this issue would have been resolved and i would be
19 released from prison and home with my family!

20 I believe Hon. Billy K. Sipe, JR. is being pusillanimous
21 in his court order clared 8-21-18. see: Appendix D.

22 Christopher Stavris (PCR Attorney for CR-2007-0058
23 and CR-2007-0095), Has filed a Perition For Post-conviction
24 Relief and/or in the process. i.e. "Based on orders issued by
25 the sentencing Judge in both matters, Defendant Is
26 currently being imprisoned Past the Expiration of His sentences."

1 See: Appendix I.

2 I believe the Rule of Law is very clear on Hon.
3 Lee F. Jantzen decisions, behavior, priors, bad acts, misconduct
4 in office, decorum and violations of the code of judicial
5 conduct. see: Appendix J. For example; "from June 30,
6 2015 through September 30, 2017, Hon. Lee F. Jantzen signed
7 statements pursuant to A.R.S. 12-128.01, falsely certifying
8 that he had no matters under submission that were pending
9 and undermined for more than sixty days." "The evidence
10 was so overwhelming against Hon. Lee F. Jantzen, that he
11 concedes (i.e. to admit to be true) that these facts
12 would support a finding of judicial misconduct/bias
13 should this matter proceed to a formal hearing."

14 LAW; "falsely certifying court records. Pursuant to
15 A.R.S. 12-128.01. (i.e. falsifying a record is the crime
16 of making false entries or otherwise tampering with a
17 public record with the intent to deceive (i.e. the act of
18 intentionally giving a false impression) or injure, or to
19 conceal wrongdoing). 18 USCA 1506, 2071, 2073; model
20 Penal code 224.4." (i.e. A.R.S. 12-128.01 (c), class 3, misdemeanor).

21 LAW; "false claims Act is a federal statute establishing
22 civil and criminal penalties against person(s) who bill the
23 state falsely, deliver less to the state than represented,
24 or use a fake record to decrease an obligation to the
25 state. 18 USCA 286-287; 31 USCA 3729-3733." "The act may
26 be enforced (i.e. to execute effectively - the law) either by

1 The attorney general or by a private person in a qui Tam
2 action. (i.e. an action brought under a statute that allows
3 a private person to sue for a penalty)." "

4 In my 7 case's and 27 charges that were brought
5 against me by Mr. Kenneth Skousen (Mohave County Attorney's
6 office) on 1-2-07, 1-15-07, 2-12-07, 2-24-07, 2-27-07, 7-11-07,
7 and 7-12-07. Hon. Lee F. Jantzen presided over all my
8 criminal case's in 2008 (after Hon. James Chavez in 2007).
9 Everyone knew I was overcharged by Mr. Skousen. Mr.
10 Skousen literally had less evidence on all my case's and
11 I was indicted, went to trial, found guilty, and sentenced
12 and convicted, in comparing to what Hon. Lee F. Jantzen
13 has admitted and conceded too. Seriously! Hon. Lee F.
14 Jantzen in 2008 and 2009 made comments on record
15 and off record about how he couldn't understand the
16 over-reach of Mr. Skousen, why I wouldn't accept a
17 plea deal, how his hands were tied on sentencing
18 day, and that he believed that legislation didn't
19 intend for charges to be filed in this manner, etc.,
20 etc., etc.

21 Hon. Lee F. Jantzen would say on my judgement
22 and sentencing day that "he is bound by the Rule of
23 Law." Hon. Lee F. Jantzen knew how stupid and
24 ridiculous some of my case's and charges were! But,
25 in his own words, he would say: "I have to follow
26 the Rule of Law Mr. Montoya, it is my duty as a

1 Judge." (end quote).

2 "Any Judge can and will fit a square in a
3 circle if they have too. That is just human nature.

4 A Judge must follow the precedent of case law and
5 rule of law. Not "if" they like the Defendant or not.

6 There is a reason why they say "Justice is blind." A

7 Judge must hear both sides equally and apply the rule
8 of law. Justice must be blind for a Defendant, so he

9 can receive a "fair ruling" of the rule of law and the
10 United States ~~Constitution~~. Or, "Justice is blind for Hon.

11 Lee F. Jantzen," because if he wasn't a judge he would
12 be fired from his job and indicted on:

13 1. falsely certifying court records. A.R.S. 12-128-01.
14 ^{class 3} (c) misdemeanor. 2. forgery (class 4 felony).

15 3. fraudulent schemes and artifices. (class 2) felony.

16 4. Theft by deception. (class 6), felony.

17 And, 5. Theft of money. (class 5 or 6) felony.

18 And, if the Commission on Judicial Conduct do not see

19 the violations, misconduct, criminal charges, prior bad
20 acts, prior disciplinary's, willful & persistent failure to

21 perform judicial duties, ex parte orders & communication,
22 etc., etc., etc., see: Appendix K.

23
24 I am requesting a full, thorough, competent and
25 complete investigation in this complaint. And, in Hon. Lee
26 F. Jantzen judgeship in the last 10 years.

1 25. on 11-16-18, Christopher Stavris (PCR Attorney
2 for CR-2007-0095 and CR-2007-0252) came to Lewis complex,
3 Rast max. prison to visit me and to review my Petition
4 (PCR). see: APPENDIX I.

5 In reviewing my PCR, Mr. Stavris pointed out a
6 written motion dated October 3, 2014, the Trial Court (i.e.
7 Hon. Lee F. Jantzen) signed an order stating that Defendant,
8 [is to] receive 148 days of additional credit for time served
9 on this case (CR-2007-0095), or a total credit for time
10 served of 2,409 days from July 12, 2013 (order dated 11-10-14,
11 filed 11-13-14)." by Benjamin M. Brewer (PCR Attorney). see:
12 APPENDIX L.

13 Defendant was unaware of "written motion dated
14 October 3, 2014," by Mr. Brewer. Mr. Stavris said he will
15 mail me a copy for my record.

16 Defendant received "motion for order pertaining to
17 Presentence Incarceration & order, dated October 3, 2014
18 from Benjamin M. Brewer," on November 24, 2018. see:
19 APPENDIX L.

20 Defendant believes the same laws apply to Hon.
21 Lee F. Jantzen. Noone is "above the law!" see:
22 APPENDIX M.

1 Further, I, Leroy monroya says nothing.

2
3 ~~_____~~ 11-26-2018

4 Leroy monroya

DATE

5
6
7 Sworn To and subscribed before me this 20th
8 day of November, 2018;
9 by LEROY monroya

10
11
12 by: [Signature]
13 Notary Public



14
15
16 Seal



Resp
18-406
3/29/19

HONORABLE LEE F. JANTZEN
JUDGE - DIVISION IV

SUPERIOR COURT OF ARIZONA
COUNTY OF MOHAVE

401 EAST SPRING STREET
POST OFFICE BOX 7000
KINGMAN, ARIZONA 86402

(928) 753-0785
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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