

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

---

Disposition of Complaint 21-210

---

Judge: Cathleen Brown Nichols

Complainant: Coconino County Legal Defender's Office

---

**ORDER**

The Complainant alleged that a superior court judge violated Rules 1.1, 1.2, 2.4(C), 2.6(A), 2.9(A), 2.9(B), and 2.9(C) after she ordered an individual be transported for psychiatric admission for medication management and stabilization at an out-of-county facility. The judge did not inform or give the individual's legal counsel an opportunity to be heard prior to issuing the order.

On or about April 1, 2021, L.M. was arrested for felony offenses. On April 2, an Initial Appearance was held by a different judicial officer. No complaint was filed and L.M. was ordered to be released on April 7. However, L.M. was not released.

Instead, after 5:00 p.m. on April 7, 2021, Judge Brown Nichols issued an order that L.M. be transported to a Mohave County recovery unit for "psychiatric admission for medication management and stabilization." The order was not associated with an existing case number – because no case had been filed – and that portion of the order was left blank. L.M.'s attorney was not notified of this order or its consideration until after it had been issued.

Judge Brown Nichols informed the Commission that her order was issued pursuant to a conversation she had with the Coconino County Detention Facility's Psychiatric Nurse Practitioner. The Nurse Practitioner had informed Judge Brown Nichols that she believed L.M. posed a danger to himself and others while in the jail. The Nurse Practitioner had attempted to initiate a Title 36 Evaluation with the county's contracted facility, but due to a recent prior incident, the facility would not accept L.M. The Nurse Practitioner consulted with doctors at Southwest Behavioral Health Services, who in turn coordinated with the Kingman Recovery Unit in Mohave County for admission of L.M. It was based upon this information, as well as consultation with the Presiding Judge of Coconino County Superior Court, that Judge Brown Nichols issued her April 7, 2021 order, wholly circumventing the due process requirements contained in Title 36.

Judge Brown Nichols did not communicate the information provided by the Nurse Practitioner to the County Attorney's Office or L.M.'s legal counsel prior to issuing her order transporting L.M.

The Commission found clear and convincing evidence that Judge Brown Nichols violated the following provisions of the Code of Judicial Conduct:

- Rule 1.1 (Compliance with the Law) states "A judge shall comply with the law, including the Code of Judicial Conduct."
- Rule 1.2 (Promoting Confidence in the Judiciary) states, "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) states, "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(B) (Ex Parte Communication) states, "If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond."

Accordingly, Judge Brown Nichols is hereby publicly reprimanded for the conduct described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judicial officer's response, and this order shall be made public as required by Commission Rule 9(a).

Commission member Barbara Brown did not participate in the consideration of these matters.

Dated: March 21, 2022

FOR THE COMMISSION

/s/ Louis Frank Dominguez  
Hon. Louis Frank Dominguez  
Commission Chair

Copies of this order were distributed to all appropriate persons on March 21, 2022.

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

21-210

**COMPLAINT AGAINST A JUDGE**

**Name:** Erika Arlington, Jillian Marini, Joseph Carve **Judge's Name:** Cathleen Brown Nichols

**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 attached

In a nutshell, Judge Nichols issued an order which resulted in a person (LM) being detained and then transported to a different county's psychiatric unit, when there was no case, pleading, or proceeding in front of her, with no prior notice to anyone and no representation provided to the person involved, all based on an ex-parte communication with jail personnel, in violation of several Canons of judicial conduct as described in detail below.

**Statement of Facts:**

On or about April 1, 2021, law enforcement arrested LM for alleged felony offenses. On April 2, 2021, an Initial Appearance was held. However, no complaint was filed and Flagstaff Justice Court, Judge Grodman, ordered the release of LM on April 7, 2021 (Exhibit A) in accordance with Rule 4.1(b) of the Arizona Rules of Criminal Procedure. However, LM was not released.

Instead, after 5pm on April 7, 2021, Judge Nichols issued an order that LM be transported to a Mohave County recovery unit for psychiatric admission. The Legal Defender received this order via email at 5:28 pm on April 7, 2021 (Exhibit B). The Legal Defender forwarded it to staff counsel who had previously represented LM in other matters.<sup>1</sup>

The Order specifically stated that LM shall be transported out of Coconino County by the Coconino County Sheriff's Office (CCSO) to the Kingman Recovery Unit in Mohave County for psychiatric admission for medication management and stabilization. The order listed no case number and referenced no pleading nor any statutory authority for the issuance of the order. The caption just reads "In re LM". The Legal Defender has since confirmed there was no such case in the court's Onbase system on April 7, 2021.<sup>2</sup>

Having received no previous notice of Judge Nichols' actions or intent, perceiving no active case or controversy, and the order itself lacking any case number, staff counsel emailed Judge Nichols' judicial assistant at 6:40 p.m. on April 7, 2021, requesting an audience with the Court (Exhibit C).

At 8:04 a.m. on April 8, 2021, staff counsel called the Coconino County Jail to inquire into LM's custody status. A jail employee informed staff counsel of the following:

1. LM was scheduled for release that morning;
2. LM had been held pursuant to IA2021-0455, a Flagstaff Justice Court case;
3. LM was being released because no complaint had been filed in that case;
4. LM was to be "released to treatment."

---

<sup>1</sup> Hereinafter "Legal Defender" refers to Erika Arlington, staff counsel refers to other attorneys in the Legal Defender's office.

<sup>2</sup> Counsel notes that the mental health evaluation ordered by Judge Slayton that Judge Nichols refers to had already been completed by the local behavioral health care provider, the Guidance Center. Further, notice regarding the evaluation had already been provided to Judge Slayton via a letter dated March 19, 2021. This letter stated LM had been evaluated and that LM did not require treatment. Therefore, there was no valid or active order requiring evaluation or treatment of LM on April 7, 2021. See Exhibit G.

Staff counsel received no response to the email requesting an audience.<sup>3</sup>

At 2:13 p.m. on April 8, 2021, staff counsel received an email from the Honorable Dan Slayton's judicial assistant with another attached order (Exhibit D). This order is identical to Exhibit B, the Judge Nichols' order from April 7, 2021 except it was now signed by Judge Slayton with a cause number of [REDACTED] added. However, the caption remained Re: LM as versus the actual caption for case number [REDACTED] which is State of Arizona, Plaintiff v. LM., Defendant.

This second order was emailed to the Coconino County Detention Facility at the same time it was emailed to staff counsel, 2: 13 p.m. on April 8,2021.

At 2:32 p.m. on April 8, 2021, staff counsel again called the Coconino County Jail to inquire into LM's custody status.

A jail employee informed the Legal Defender's Office that the Coconino County Sheriff's Office (CCSO) had "released" LM between 8:00 a.m. and 9:00 a.m. April 8, 2021. The employee indicated that the CCSO itself had transported LM to "treatment." In later responsive pleadings, CCSO indicated that they were acting pursuant to Judge Nichols April 7, 2021 order. (Exhibit E, Petition for Writ of Habeas Corpus (without exhibits) and Response). Further, it is clear that CCSO could not have been acting pursuant to the second order (Exhibit D) because LM had been "released" hours before the second order was emailed to the jail.

Other documentation indicates that Division 2 had previously released LM in cause number [REDACTED] on March 26, 2021 (Exhibit F). Further, it appears no notice or hearing was held in [REDACTED] before Judge Slayton issued his duplicate of Judge Nichols' order. Therefore, at the time of Judge Nichols' order, LM had been released by two different judges in two different cases and no new actions had been filed that allowed for his continued incarceration and subsequent secured transport out of the county.

The Legal Defender and staff counsel confirmed that LM had been transported to Mohave County where other proceedings were initiated against him.

### **Judicial Misconduct:**

#### **Canon 1**

**Rule 1.1** *A judge shall comply with the law, including the Code of Judicial Conduct.*

**Rule 1.2** *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.*

Judge Nichols did not comply with the law. There was no case or controversy regarding LM before her. There were no pleadings filed by anyone giving her jurisdiction to make any orders

---

<sup>3</sup> Staff counsel began preparation of a petition for a writ of habeas corpus which was filed in the afternoon of April 8, 2021 and is attached hereto as Exhibit E.

in regards to LM at the time the order was issued. There are no statutes, rules or case law that counsel is aware of that allow a judge to simply issue an order regarding a person without a case or some sort of pleading being filed. This action is especially egregious as based on Judge Nichols' order LM was not released on April 7<sup>th</sup> and instead remained in CCSO custody until April 8<sup>th</sup>. On April 8<sup>th</sup>, based on Judge Nichols' order, he was then transported by deputies to another county's secure psychiatric unit. These actions were taken based on what should clearly be seen as an illegal order issued by Judge Nichols.

It is also unclear how Judge Nichols generated this order as there was no case number referenced and no random case titled "Re: LM" existed in the Onbase system at that time.

This action does not promote public confidence in the integrity and impartiality of the bench and indeed promotes the opposite. The judge acted on information she received from a jail nurse without any input from anyone else. This action lacks integrity as there was no jurisdiction to take such action here. It lacks impartiality as she heard only one version of facts. The order indicates that the jail nurse and judge substituted their own judgments regarding whether LM should be released over that of the local behavioral health provider and the other two judges who had ordered his release, without any authority to do so. No Title 36 matter had been re-initiated, no other valid order existed requiring him to be taken to a behavioral health authority. While the refusal of the local behavioral health provider to admit LM may be problematic, their refusal does not confer authority or jurisdiction to the judge to sua sponte make orders that detain and transport an individual against their will.

## **Canon 2**

### **Specifically:**

**Rule 2.4 (C)** *A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.*

**Rule 2.6 (A)** *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.*

**Rules 2.9 (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 exceptions listed do not apply as further discussed below.)*

**Rules 2.9 (B)** *If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision to promptly notify the parties of the substance of the communication and provide the parties with an opportunity to respond.*

**Rules 2.9 (C)** *Except as otherwise provided by law, a judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.*

It is unclear why the jail nurse believed she could call Judge Nichols and discuss an inmate with her when Judge Nichols did not have an open case with this inmate. It is also unclear why Judge Nichols would accept such a call and engage in the described conversation in this situation. However, by accepting the phone call and holding the discussion regarding LM with the jail nurse, and then issuing the order to hold LM and have him transported out of county, the judge permitted and considered ex parte communications. She further considered this communication

in regards to a person or matter that was *not* before her. Judge Slayton's orders in some other case did not convey authority to Judge Nichols to listen to the jail nurse and issue an order. By doing so she conveyed the impression that the jail nurse, and arguably the treatment team the nurse referred to, were a person or persons, in a position to influence the judge.

Further, Judge Nichols took this action *sua sponte* and gave *no one* besides the jail nurse, least of all "every person who has a legal interest in a proceeding or that person's lawyer" the right to be heard. To be clear, the discussion with the jail nurse was not a legal or authorized "proceeding", but counsel undersigned submit that this does not negate a judge's duty to afford basic due process before detaining and transporting someone.

Judge Nichols received unauthorized *ex parte* communication bearing upon the substance of LM's release (which had already been ordered by other judges). Rather than promptly providing notification to anyone and affording an opportunity to respond, the Judge just issued a rogue order without a case or cause number. Again, while there was no action so arguably no "parties" to notify, counsel submit issuing the order based on the *ex parte* communication was misconduct.

Further, the Judge's participation in the phone call with the nurse could be construed to be an independent investigation of facts. Certainly, the nurse's phone call was not presented as "evidence" in any valid proceeding, but it was nonetheless considered by Judge Nichols in issuing the order.

There are some exceptions regarding *ex parte* communication that do not apply here. Rule 2.9 (A) 1, allows for communications for administrative or emergency purpose but only if the communications do not address substantive matters. Clearly, the continued detention and transport for treatment of an individual who has been ordered released is substantive. Regardless, the judge did not provide any opportunity for parties to respond *before* issuing the order and effectuating the transport. Nor was the judge expressly authorized by law to engage in *ex parte* communications in this matter. In fact, the judge had zero authority to issue orders of any kind in regards to LM as no case, pleadings, or action was in front of her.

Judge Nichols' actions in this matter are extremely troubling. The filing of a judicial complaint is a serious matter and is not entered into lightly. However, taking Judge Nichols' actions here to their logical conclusion would mean that anytime jail staff (or conceivably anyone else) thinks someone should be held beyond a release order signed by other judges all they have to do is call Judge Nichols. Realizing these are unlikely scenarios, it is still concerning that a Judge would issue an order that results in continued detention of an individual and ultimately transport to another county when she has no case, no pleadings and no conceivable jurisdiction. It is additionally egregious that this was done with no counsel or parties present, and no due process at all for LM. It is too late for LM, but it is hoped that this commission will do what it can to prevent this from happening to someone else.

# Exhibit A



FLAGSTAFF JUSTICE COURT  
COUNTY OF COCONINO, STATE OF ARIZONA

STATE OF ARIZONA,

Plaintiff,

vs.

Defendant.

Case No(s) \_\_\_\_\_

COMMITMENT/RELEASE ORDER

TO THE SHERIFF OF COCONINO COUNTY, IT IS ORDERED THAT:

Defendant be imprisoned in the Coconino County Jail for a period of \_\_\_ days, \_\_\_ months, \_\_\_ years.

Defendant be imprisoned in the Az Dept. of Corrections for a period of \_\_\_ days, \_\_\_ months, \_\_\_ years.

Defendant be imprisoned in the Coconino County Jail until further order of the Court.

Defendant be given credit for \_\_\_ days of pre-sentence incarceration.

Defendant shall self-report to the Coconino County Jail no later than \_\_\_, AM./PM. on \_\_\_\_\_.

Defendant \_\_\_ may or \_\_\_ may not be on school/work release.

Pre-trial services shall conduct an interview/evaluation for \_\_\_ possible release, \_\_\_ work/school release or \_\_\_ other \_\_\_\_\_.

Defendant's prior release conditions are revoked.

Defendant's prior release conditions, \_\_\_\_\_ are affirmed.

Defendant shall be released upon posting a \_\_\_ cash only; \_\_\_ cash or secured; or \_\_\_ unsecured bond in the amount of \$ \_\_\_\_\_, plus a surcharge of \_\_\_\_\_ %

Defendant shall be released from custody forthwith because:

- No complaint filed
- Defendant released third party
- Charges dismissed/deferred
- Other reason: 13-1204A8A, 13-1204ARE
- Defendant released on own recognizance
- Defendant sentenced to time served
- Defendant sentenced to probation

IT IS FURTHER ORDERED THAT THE DEFENDANT: \_\_\_ Report to Adult Probation, \_\_\_ Report to Pre-trial Services, \_\_\_ Comply with all standard conditions of release.

YOU ARE THEREFORE COMMANDED to receive said Defendant into custody and to detain such until legally discharged or you are otherwise to carry out the Order of the Court as indicated above.

DATED THIS 7 day of April, 2021.

JUDGE ✓

DEFENDANT: You are required, and have the right, to be present at your trial and at any other proceedings in your case. If you fail to appear without first being excused by the Court your appearance bond will be forfeited, the trial or proceedings will begin without you and a warrant for your arrest may be issued. It is your responsibility to keep track of and appear for your Court dates.

# Exhibit B

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF COCONINO**

**Cathleen Brown Nichols, Judge**  
**Division 5**

**Date: April 7, 2021**

**Christal Stump, Judicial Assistant**

---

RE:

L M

ORDER

---

Order re: L M

Judge Slayton has recently found, in an unrelated criminal case, that L M not competent and not restorable within the statutory time period, and in need of a mental health evaluation and mental health treatment. This Court was advised today that Dr. S W, Psychiatric Nurse Practitioner, at the Coconino County Jail, contacted the Guidance Center requesting that they admit Mr. M psychiatric treatment, and she was informed that the Guidance Center would not under any circumstances with absolute certainty, admit Mr. M voluntarily or under a Title 36 Application for psychiatric evaluation and treatment.

Dr. W has been in contact with Mr. M's treatment team at Southwest Behavioral & Health Services, and Dr. A G and Dr. A J at Health Choice Arizona, and Dr. H at the Flagstaff Medical Center, and they all agree that Mr. M meets the criteria for danger to self and danger to others for a court ordered psychiatric evaluation under Title 36, and Dr. G and Dr. J also support Mr. M being transported to the Kingman Recovery Unit in Mohave County for psychiatric admission for medication management and stabilization.

**IT IS ORDERED:** Based on the forgoing reasons, Mr. M shall be transported to the Kingman Recovery Unit in Mohave County for psychiatric admission for medication management and stabilization.

Dated: April 7, 2021

\_\_\_\_\_  
**Cathleen Brown Nichols, Judge**

cc: CCSO, via email  
 Hon. Dan Slayton, Presiding Judge

**Coconino County Attorney, via email**  
**Coconino County Legal Defender's Office, via email**

# Exhibit C

**Marini, Jillian**

---

**From:** Marini, Jillian  
**Sent:** Wednesday, April 7, 2021 6:40 PM  
**To:** AOC - Stump, Christal  
**Cc:** Byrnes, Mark; Kircher, Jonathon; McVickers, Roberta J; Garns, Paul; Arlington, Erika  
**Subject:** L: M

Hi Christal,

I received an order stating that Mr. M will be transferred to Mohave County for an evaluation. The order has no cause number on it. There is no mention of Mr. being referred for appointment of counsel in Mohave County. There is no mention of a petition for evaluation being re-filed. I was not privy to any of the conversations that occurred between the court and Mr. M's treatment team at Southwest Behavioral & Health Services. I am gravely concerned about my client's rights. Can I please have a cause number related to the order? I would also like to request an in chambers meeting with the judge. I am available all day on Friday, April 9<sup>th</sup>.

Jillian N. Marini  
Deputy Legal Defender  
110 E. Cherry Ave (mailing)  
220 N. Leroux St. (physical)  
Flagstaff, AZ 86001  
928-679-7740

# Exhibit D

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

Dan R. Slayton, Presiding Judge  
Division 2  
Cathleen Brown Nichols, Judge  
Division 5

Date: April 8, 2021

Christal Stump, Judicial Assistant

O R D E R

RE:	)	
	)	
L. M.	)	CR.
	)	(Division 2 case)
	)	
	)	

Order re: L. M.

Judge Slayton has recently found, in an unrelated criminal case, that L. M. is not competent and not restorable within the statutory time period, and in need of a mental health evaluation and mental health treatment. This Court was advised today that Dr. S. W. Psychiatric Nurse Practitioner, at the Coconino County Jail, contacted the Guidance Center requesting that they admit Mr. M. for psychiatric treatment, and she was informed that the Guidance Center would not under any circumstances with absolute certainty, admit Mr. M. voluntarily or under a Title 36 Application for psychiatric evaluation and treatment.

Dr. W. has been in contact with Mr. 's treatment team at Southwest Behavioral & Health Services, and Dr. A. G. and Dr. A. J. at Health Choice Arizona, and Dr. H. at the Flagstaff Medical Center, and they all agree that Mr. M. meets the criteria for danger to self and danger to others for a court ordered psychiatric evaluation under Title 36, and Dr. G. and Dr. J. also support Mr. M. being transported to the Kingman Recovery Unit in Mohave County for psychiatric admission for medication management and stabilization.

**IT IS ORDERED:** Based on the forgoing reasons, Mr. M. shall be transported to the Kingman Recovery Unit in Mohave County for psychiatric admission for medication management and stabilization.

Dated: April 8, 2021

\_\_\_\_\_  
Dan R. Slayton, Judge

CN/DRS  
cc: CCSO, via email  
Hon. Cathleen Nichols, Judge  
Coconino County Attorney, via email  
Coconino County Legal Defender's Office, via email



# Exhibit E

CLIENT

RECEIVED

APR 08 2021

VALERIE WYANT  
Clerk of the Superior Court

**Jillian N. Marini** (State Bar #032063)  
**Coconino County Legal Defender's Office**  
110 E. Cherry (Mailing), 220 N. Leroux St. (Physical)  
Flagstaff, AZ 86001  
(928) 679-7740  
legaldef@coconino.az.gov  
Attorney for the Petitioner

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO

CV

I M.

Petitioner,

PETITION FOR WRIT OF HABEAS  
CORPUS

vs.

JIM DRISCOLL, COCONINO COUNTY  
SHERIFF

Hon. Ted Reed, DVI

Respondent.

**TO:** The presiding judge of the Coconino County Superior Court.

The Petitioner petitions for the issuance of a writ of habeas corpus as follows:

1. This court has jurisdiction because:
  - a. Pursuant to Art. 2, §14, Constitution of the State of Arizona, the "privilege of the writ of habeas corpus shall not be suspended by the authorities of the state."
  - b. Pursuant to A.R.S §13-4121, a "person unlawfully committed, detained, confined or restrained of his liberty, under any pretense whatever, may petition for and prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint."
  - c. Pursuant to A.R.S §13-4123, the writ of habeas corpus may be granted... by the superior court or a judge thereof, in their respective counties.

- d. Pursuant to A.R.S §13-4132, when the jurisdiction of the court or officer has been exceeded, when the process is defective in some matter of substance required by law rendering the process void or when the process though proper in form has been issued in a proceeding not authorized by law, the prisoner shall be discharged.
2. The Petitioner is currently detained by the respondent, Jim Driscoll, Coconino County Sheriff.
  - a. On or about April 1, 2021, law enforcement arrested the Petitioner for alleged felony offenses.
  - b. On April 2, 2021, an Initial Appearance was held. However, no complaint was filed, and Flagstaff Justice Court ordered the release of the Petitioner on April 7, 2021 (Exhibit A).
  - c. Rule 4.1(b) of the Arizona Rules of Criminal Procedure states that “if a complaint is not filed within 48 hours after the initial appearance before the magistrate, the arrested person must be immediately released from custody and any pending preliminary hearing dates must be vacated.”
3. Therefore the Petitioner is being held illegally beyond the forty-eight (48) hours mandated by law and in violation of the Flagstaff Justice Court’s order for release.
4. The Legal Defender’s Office received an Order from the Honorable Cathleen B. Nichols at approximately 5:28 p.m. on April 7, 2021 (Exhibit B). The Order stated that the Petitioner shall be transported out-of-county to the Kingman Recovery Unit in Mohave County for psychiatric admission for medication management and stabilization by the Coconino County Sheriff’s Office.
5. Having received no notice of Judge Nichols’ actions or intent, perceiving no active case or controversy, and the Order itself lacking any case number, Counsel

undersigned emailed Judge Nichols' judicial assistant at 6:40 p.m. requesting an audience with the Court (Exhibit C).

6. At 8:04 a.m. on April 8, 2021, the Legal Defender's Office called the Coconino County Jail to inquire into the Petitioner's custody status.
7. A jail employee informed the Legal Defender's Office of the following:
  - a. The Petitioner was scheduled for release that morning;
  - b. The Petitioner had been held pursuant to \_\_\_\_\_, a Flagstaff Justice Court case;
  - c. The Petitioner was being released because no complaint had been filed in that case;
  - d. The Petitioner was to be "released to treatment."
8. On information and belief, then, the Petitioner was to be released because no complaint had been filed, yet a condition of his release remained in effect, i.e., that he was to be released "to treatment."
  - a. It is axiomatic that release cannot be conditioned where there is no pending case to begin with.
9. Counsel undersigned received no response to the email requesting an audience.
10. At 2:13 p.m. on April 8, 2021, Counsel received an email from the Honorable Dan Slayton's judicial assistant with another attached order (Exhibit D).
  - a. This order is identical to Exhibit A, the Judge Nichols' order from April 7, 2021, except that a case number has been added and it is now signed by Judge Slayton;
  - b. The cause number added is \_\_\_\_\_ ;
  - c. This second order was emailed to the Coconino County Detention Facility at the same time, i.e., 2:13 p.m., it was emailed to Counsel.

11. At 2:32 p.m. on April 8, 2021, the Legal Defender's Office again called the Jail to inquire into the Petitioner's custody status.
  - a. A jail employee informed the Legal Defender's Office that the Coconino County Sheriff's Office had "released" the Petitioner between 8:00 a.m. and 9:00 a.m. April 8, 2021;
  - b. The employee indicated that the CCSO itself had transported the Petitioner to "treatment."
12. On information and belief, the CCSO could not have been acting pursuant to the second order (Exhibit D) because the Petitioner had been "released" hours before the order was emailed to the jail.
13. On information and belief, Division 2 released the Petitioner pursuant to CR2021-00122 on March 26, 2021 (Exhibit E).
14. On information and belief, no notice or hearing was held in \_\_\_\_\_ in accordance with any statute or rule prior to either Judge Nichols' Order or Judge Slayton's Order.
15. Therefore, on information and belief, the Petitioner's release conditions were altered, changed, or revoked without notice or process of any kind.
16. Therefore, on information and belief, a Judge or Judges ostensibly made substantive rulings regarding the Petitioner's criminal case without notice to counsel or process of any kind.
17. Therefore, on information and belief, a Superior Court judge sua sponte, ex parte, and without legal basis initiated detention proceedings against the Petitioner depriving him of his liberty without any kind of due process.
18. Further, to the Petitioner's knowledge, no application for emergency admission to an evaluation agency has been made.

- a. A.R.S. § 36-524(A) states “a written application for emergency admission shall be made to an evaluation agency before a person may be hospitalized in the agency.” An “evaluation agency” is “a health care agency that is licensed by the department and that has been approved pursuant to this title, providing those services required of such agency by this chapter.” A.R.S. § 36-501(13).
  - b. Pursuant to A.R.S. § 36-501(2) an “admitting officer” means a psychiatrist or other physician or psychiatric and mental health nurse practitioner with experience in performing psychiatric examinations who has been designated as an admitting officer of the evaluation agency by the person in charge of the evaluation agency.”
19. To the Petitioner’s knowledge, no admitting officer has ordered the Petitioner to be taken into custody.
- a. A.R.S. § 36-524(E) states “If the person to be admitted is not already present at the evaluation agency and if the admitting officer [...] has reasonable cause to believe that an emergency examination is necessary, the admitting officer may advise the peace officer, that sufficient grounds exist to take the person into custody and to transport the person to the evaluation agency.”
20. Judges are not “admitting officers” at an evaluation agency. A psychiatric nurse practitioner employed by the jail is not an admitting officer at an evaluation agency. Doctors at Southwest Behavior Health & Services are not admitting officers at the Kingman Recovery Unit in Mohave County.
21. The Petitioner is being detained unlawfully because more than forty-eight (48) hours have elapsed since his Initial Appearance on April 2, 2021 and no complaint has been filed. Further, no application for emergency admission has been made and no admitting officer of an evaluating agency has requested that the Petitioner be taken into custody. Finally, the Petitioner’s release conditions were modified without notice

or process of any kind. Petitioner remains in custody despite the Arizona Rules' clear mandate that he be released under such circumstances.

WHEREFORE, the Petitioner asks that this Court order the Clerk of this Court to issue a Writ of Habeas Corpus directing the Respondent Jim Driscoll, Coconino County Sheriff to have Petitioner before this Court at a time and place certain, to show cause why the Petitioner should not be released.

RESPECTFULLY SUBMITTED, this 8 day of April, 2021.

ERIKA ARLINGTON  
COCONINO COUNTY LEGAL DEFENDER

---

Jillian N. Marini  
Deputy Legal Defender

STATE OF ARIZONA }  
County of Coconino } ss.

Jillian N. Marini, upon being duly sworn, deposes, and says: I am counsel for the  
Petitioner in the foregoing Petition for Writ of Habeas Corpus. I am aware of the contents of the  
foregoing Petition and avow that all of the statements in it are true and correct to the best of my  
knowledge, information, and belief.

Jillian N. Marini  
Deputy Legal Defender  
SBN 032063

SUBSCRIBED AND SWORN before me this 8<sup>th</sup> day of April 2021.

JJC  
Notary Public

My commission expires:

5-23-23





Copy of the foregoing Motion mailed/delivered  
this \_\_\_\_ day of \_\_\_\_\_, 2021 to:

Honorable Dan Slayton, Presiding Judge  
Coconino County Superior Court

Honorable Cathleen B. Nichols  
Coconino County Superior Court

Sheriff Jim Driscoll  
Coconino County Sheriff's Office

Coconino County Attorney  
Attn: Rose Winkeler and Paul Garns

Coconino County Public Defender's Office

Petitioner  
CCDF

By \_\_\_\_\_

**WILLIAM P. RING**  
COCONINO COUNTY ATTORNEY  
110 E. CHERRY AVENUE  
FLAGSTAFF, ARIZONA 86001-4627  
(928) 679-8200

1 **WILLIAM P. RING**  
2 **COCONINO COUNTY ATTORNEY**

3 Mark D. Byrnes  
4 Deputy County Attorney  
5 State Bar No. 031720  
6 110 E. Cherry Ave.  
7 Flagstaff, Arizona 86001  
8 (928) 679-8200  
9 [mbyrnes@coconino.az.gov](mailto:mbyrnes@coconino.az.gov)  
10 *Attorney for Coconino County*

11 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
12  
13 **IN AND FOR THE COUNTY OF COCONINO**

14 L M

15 Petitioner,

16 v.

17 JIM DRISCOLL, COCONINO COUNTY SHERIFF

18 Respondent.

No. CV:

**RESPONSE**

(Assigned Honorable Dan  
Slayton, Division 2)

19 In response to the Petition for Writ of Habeas Corpus filed on April 8, 2020, Jim  
20 Driscoll, in his official capacity as Coconino County Sheriff, provides the following  
21 information as required for a return of writ of habeas corpus in A.R.S § 13-4128:

- 22 1. Petitioner L M is not presently in the custody of the Coconino County  
23 Sheriff.
2. In reliance on the order of the Coconino County Superior Court issued by the Hon.  
Cathleen Brown Nichols on April 7, 2021, Mr. M was transported by the

**WILLIAM P. RING**  
COCONINO COUNTY ATTORNEY  
110 E. CHERRY AVENUE  
FLAGSTAFF, ARIZONA 86001-4627  
(928) 679-8200

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

Coconino County Sheriff's Office on April 8, 2021 to Kingman, Arizona at approximately 8:30 a.m.

3. Mr. M was delivered to Southwest Behavioral Health at 1301 W. Beale Street #5434, Kingman, Arizona 86401 at approximately 10:46 a.m. on April 8, 2021. Since that time, Mr. M has not been in the custody of the Coconino County Sheriff's Office.

RESPECTFULLY SUBMITTED this 13 day of April, 2021.

WILLIAM P. RING  
COCONINO COUNTY ATTORNEY

---

Mark D. Byrnes  
Deputy County Attorney

**WILLIAM P. RING**  
COCONINO COUNTY ATTORNEY  
110 E. CHERRY AVENUE  
FLAGSTAFF, ARIZONA 86001-4627  
(928) 679-8200

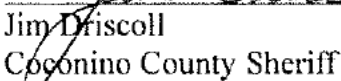
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**DECLARATION**

(Pursuant to Rule 80(C), Ariz. R. Civ. P.)

I, Jim Driscoll, declare under penalty of perjury that the statements in this Response are accurate and complete to the best of my knowledge and belief.

Dated this 13 day of April, 2021

  
Jim Driscoll  
Coconino County Sheriff

**WILLIAM P. RING**  
COCONINO COUNTY ATTORNEY  
110 E. CHERRY AVENUE  
FLAGSTAFF, ARIZONA 86001-4627  
(928) 679-8200

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**CERTIFICATE OF SERVICE**

ORIGINAL of the foregoing electronically filed via the Court's electronic filing service, AZTurboCourt, on **April 13, 2021** with:

Clerk of the Court  
COCONINO COUNTY SUPERIOR COURT

A Copy of the foregoing mailed/email on, **April 13, 2021** to:

Honorable Dan Slayton – Div. 2  
Coconino County Superior Court  
c/o Courthouse box

Coconino County Public Defender  
c/o Courthouse box  
*Attorney for Petitioner*

Jillian N. Marini  
Coconino County Legal Defender  
c/o Courthouse box  
*Attorney for Petitioner*

By:  \_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO**

**[This is not an official receipt.]**

**Case Number:**

*Form Set 1*

**SUMMARY SHEET**

**ATTORNEY FILING:**

Mark Byrnes

Bar Number: 031720, Issuing State: AZ

Law Firm: Coconino County

Address: 110 E Cherry Ave

Flagstaff, AZ 86001

Telephone Number: (928) 679-8280

Email: mbyrnes@coconino.az.gov

**DEFENDANT SUBMITTING FILING:**

JIM DRISCOLL

**ATTACHED DOCUMENTS LIST:**

Response - Response: To Petition

# Exhibit F

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

**IN AND FOR THE COUNTY OF COCONINO**

**STATE OF ARIZONA,**

**Plaintiff,**

**v.**

**L**

**M**

**Defendant.**

**Cause Number: CR:**

**ORDER RE: MOTION TO MODIFY  
RELEASE CONDITIONS**

Pursuant to the grounds stated in the foregoing motion and good cause appearing therefor:

**IT IS HEREBY ORDERED** granting the motion releasing L M on his own recognizance.

**IT IS HEREBY ORDERED** granting the motion releasing L M to Pre-Trial Service supervision.

**IT IS HEREBY ORDERED** setting a hearing on this motion on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ a.m./p.m. in Division.

**IT IS HEREBY ORDERED** denying said Motion.

Dated this: March 26, 2021

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT



# Exhibit G

THE  
Guidance  
CENTER

March 19, 2021

Hon. Dan Slayton, Presiding Judge  
Coconino County Superior Court, Division 2  
200 N. San Francisco St.  
Flagstaff, AZ 86001

Via email to Clerk of Superior Court email filing address

RE: *State of Arizona vs. L. M.* Case No. CR2021-00122

Dear Judge Slayton,

Pursuant to your Order Regarding Findings of Incompetency in the above-entitled case, dated March 10, 2021, the Guidance Center, by its Medical Director undersigned, hereby notifies the Court that the ordered evaluation has been completed. Two psychiatrists supervised by the undersigned have evaluated the Defendant and concluded that the behaviors at issue cannot be shown by the requisite clear and convincing evidence to be attributable to a "mental disorder" as that term is particularly defined for court ordered treatment purposes in ARS 36-501(25).

Accordingly, the evaluation is complete, and its conclusion is that a petition for Court Ordered Treatment will not be filed regarding this Defendant at this time.

Sincerely,

To: B. , M.D.

Medical Director

The Guidance Center, Inc.

Cc: County Attorney, Legal Defender

December 4, 2021

Commission on Judicial Conduct  
1501 W. Washington Street, Suite 229  
Phoenix, Arizona 85007  
Sent Via E-Mail

Re: Notice of Complaint and Opportunity to Respond (Case No. 21-210)

Members of the Commission:

Thank you for this opportunity to address the Commission regarding the subject complaint. As you are aware, the Complainant has alleged, in part, that I:

1. Improperly held an individual without a case or controversy before me;
2. Had ex parte communications about this individual before deciding he should be held;
3. Conducted an independent investigation of facts; and
4. Did not afford the individual, or his attorney, the right to be heard before holding him and transferring him to Mohave County.

In addition to the above, the Commission would like to know why or how I became involved in this matter. In addition, I have been asked what was L.M. being held for between April 1, 2021 and April 7, 2021, and was this on my order, another judge's orders, or was it the jail acting on its own accord.

Also, included in this complaint, is information from The Guidance Center that states, "Two psychiatrists supervised by the undersigned have evaluated the Defendant and concluded that the behaviors at issue cannot be shown by the requisite clear and convincing evidence to be attributable to a 'mental disorder.'" This statement was sent in a letter on March 19, 2021 to Judge Slayton in CR . Given this information, I have also been asked to address how I "came to my decision that L.M. should be held without a case number or hearing." Very importantly, as I address in greater detail below, I never issued any order holding L.M. in the subject matter.

## Factual Background/Chronology of Events

The subject events occurred almost eight (8) months ago, and my best recollection is as follows. Along with this Response, I am also submitting a Statement prepared by S        r W        , Psychiatric Mental Health Nurse Practitioner (“Nurse”), at the Coconino County Detention Center (“Jail”). I asked Nurse W        to prepare this Statement to document what she recalled telling me on April 7, 2021.

Late in the day, at what I recall being about 4:30 p.m., on April 7, 2021, I spoke to Nurse W        . She had called me. I do not recall why she specifically called me versus another Judge. I believe I was the duty Judge that day, and Judge Slayton was out of the office when I spoke to Nurse W        . In our Court, when you are the duty Judge, you are required to handle all emergency matters, and urgent matters assigned to other Judges that are not available to handle said matters. These duties are in addition to handling your own caseload.

During the above-mentioned phone call, Nurse W        advised me that L.M. was going to be released from the Jail that day, April 7, 2021 (pursuant to a release order signed by Judge Grodman in the Flagstaff Justice Court because a Complaint had not been filed regarding criminal charges he had been booked into the Jail on), and that his mental health status had seriously deteriorated while in custody, so she had contacted The Guidance Center (the only mental health evaluation/treatment facility on contract with Coconino County to perform Title 36 evaluations), that same day, to coordinate mental health care for L.M., and to inform them that due to L.M.’s seriously deteriorated mental health status, she was going to prepare and send them an Application for Involuntary Evaluation, pursuant to A.R.S. Section 36-520 (“Application for Involuntary Evaluation”), that day.

Nurse W        further stated that when she contacted The Guidance Center (“TGC”) earlier that day, informing them that she was going to be sending them the Application for Involuntary Evaluation, a staff person at TGC informed Nurse W        that with absolute certainty, voluntary or involuntary, L.M. would not be re-admitted to the inpatient unit even though L.M. continued to present as a danger to himself and a danger to others.

TGC’s position that they would not evaluate or admit L.M. for psychiatric evaluation and care, pursuant to an Application for Involuntary Evaluation, was very concerning and troubling

because TGC is the only entity on contract with Coconino County to perform psychiatric evaluations pursuant to Applications for Involuntary Evaluation.

Nurse W also stated that due to the risk associated with releasing L.M. back into the community, and because TGC would not evaluate and treat L.M., voluntary or involuntary, pursuant to an Application for Involuntary Evaluation, she consulted L.M.'s treatment team at Southwest Behavioral Health Services ("SWBHS"). Nurse W further stated that L.M.'s treatment team at SWBHS had coordinated L.M.'s inpatient admission for medication management and stabilization at the Kingman Recovery Unit in Kingman, Arizona. Nurse W also stated that Dr. G and Dr. J, with Health Choice Arizona, and Dr. H with the Flagstaff Medical Center, all agreed that L.M. met the criteria for danger to self and danger to others. Nurse W then asked me to issue an order transporting L.M. to the Kingman Recovery Unit in Kingman, Arizona, so L.M. could be admitted for medication management and stabilization that his treatment team at SWBH had coordinated and arranged.

After speaking with Nurse W, in the above-mentioned conversation, I immediately called our Presiding Judge, Judge Dan Slayton, to advise him of what Nurse W had relayed to me, and that she was asking the Court to issue an order transporting L.M. to the Kingman Recovery Unit in Kingman, Arizona, so L.M. could be admitted for medication management and stabilization that his treatment team at SWBH had coordinated and arranged. I called Judge Slayton to discuss this matter for the following reasons.

First, Judge Slayton is our Presiding Judge, and I was very concerned about the information relayed by Nurse W that TGC was refusing to evaluate or admit L.M. voluntary or involuntary, pursuant to an Application for Involuntary Evaluation, that TGC is legally required to accept and consider, since they are the only entity on contract with Coconino County to perform said evaluations. I was also concerned, and relayed to Judge Slayton, that Nurse W had informed me that L.M.'s mental health status had, in her opinion as the Psychiatric Mental Health Nurse Practitioner at the Jail, who had observed L.M. at the jail, seriously deteriorated while in custody, and that the three (3) doctors, mentioned above had all opined that L.M. was a danger to himself and others. I also told Judge Slayton that Nurse W also stated that L.M.'s treatment team at SWBHS had been consulted, and they had coordinated and arranged L.M.'s inpatient admission for medication management and stabilization at the Kingman Recovery Unit

in Kingman, Arizona, and that Nurse W was asking the Court to issue an order transporting L.M. for the inpatient admission for medication management and stabilization at the Kingman Recovery Unit, that L.M.'s treatment team at SWBHS had coordinated and arranged.

The other reason I contacted Judge Slayton before making any decision regarding Nurse W's request for the order to transport L.M. for the medication management and stabilization that L.M.'s treatment team at SWBHS had coordinated and arranged, was because prior to April 7, 2021, Judge Slayton had informed me that he had a recent criminal case pending with L.M., wherein he had found L.M. not competent and not restorable within the statutory time frame, and that he had ordered the County Attorney's Office to file a Petition for Court Ordered Evaluation, which they did. That action caused a Title 36 mental health case to be opened, and although our case management system shows that case was assigned to Judge Fanny Steinlage, I believe I was asked to handle that case due to a conflict that Judge Steinlage may have had. TGC did not file a Petition for Court Ordered Treatment in that case, and, as such, that Title 36 mental health case was closed.

Although I never received a copy of the letter that TGC sent Judge Slayton on March 19, 2021, indicating that they felt he did not meet the criteria for the filing of a Petition for Court Ordered Treatment, Judge Slayton had told me about it prior to April 7, 2021. Another reason I called Judge Slayton regarding the subject matter was because he and I were both aware of the fact that in a prior and separate Title 36 mental health case, MH , which I presided over, TGC had filed a Petition for Court Ordered Treatment regarding L.M., which was contested, and wherein Jillian Marini, with the Legal Defender's Office, represented him.

At said hearing, there was testimony and evidence presented by counsel for TGC that L.M. had a long-standing history of mental illness, specifically a diagnosis of Paranoid Schizophrenia, and that he had a lengthy history of prior treatment for his mental illness at TGC for approximately 12 years, that he had recently elected SWBHS for his outpatient provider, that he had previously been determined to be Seriously Mentally Ill, and, significantly, TGC argued in said case that L.M. needed to be under a court order for mental health treatment because they maintained that L.M. was a danger to others and persistently or acutely disabled, due to his mental illness. At the conclusion of said hearing, I granted TGC's Petition for Court Ordered Treatment, which was in effect for one (1) year from the date I granted said Petition, on March 12, 2019. I mention this

matter here, because Judge Slayton was also aware of this prior mental health case, and L.M.'s long-standing history in prior mental health and criminal cases with our Court, of serious mental illness, and it was another reason why I contacted Judge Slayton immediately after Nurse W contacted me, as discussed above.

I relayed to Judge Slayton what Nurse W had stated to me, and that she was requesting that the Court issue an order that L.M. be transported to Kingman, Arizona, to be admitted for medication management and stabilization that L.M.'s treatment team at SWBHS had coordinated and arranged. Judge Slayton and I discussed that the situation was very unusual and serious, for all of the reasons discussed above. Judge Slayton and I also discussed the concerns raised by Nurse W, that L.M.'s mental health condition, as observed by her at the jail, had seriously deteriorated while he was in custody, that three (3) doctors all agreed that L.M. met the criteria for danger to self and danger to others, and if he left the jail without medical care coordinated for his mental health condition, he posed a danger to himself and others in the community.

In discussing the matter with Judge Slayton, he stated that he believed he still had jurisdiction over L.M. in the criminal case assigned to him, discussed above, because he had retained jurisdiction pending the outcome of the mental health case that was commenced when he ordered the County Attorney's Office to file a Petition for Court Ordered Evaluation of L.M. And, as such, Judge Slayton also relayed to me that he believed that the Court could and should issue the order to transport L.M. to the Kingman Recovery Unit for the inpatient admission for medication management and stabilization that L.M.'s treatment team at SWBHS had coordinated and arranged, and that the Court could issue said order under said criminal case. Judge Slayton also stated to me that I could sign said Order for him.

I did not believe it was appropriate for me to sign the subject order for Judge Slayton or for me to list his criminal case number on said order, since that case had been concluded. I also did not list a case number on the subject Order to transport L.M. for the inpatient admission for medication management and stabilization that L.M.'s treatment team at SWBHS had coordinated and arranged, because I did not believe there was a pending criminal case with L.M. in our Court at the time.

This matter was very unusual and serious for the reasons stated above. I was concerned that L.M. was not being afforded the opportunity to be evaluated and possibly treated for his serious

mental health illness, pursuant to an Application for Involuntary Evaluation that TGC refused to consider. And, after consulting with Judge Slayton, we both agreed that under the subject circumstances, the Court should issue the order to transport L.M. for the inpatient admission for medication management and stabilization that L.M.'s treatment team at SWBHS had coordinated and arranged.

I also thought that under these unique circumstances, the Court should immediately notify the Coconino County Legal Defender's Office (who represented L.M. in the past and who is appointed to represent all patients in Coconino County when TGC files Petitions for Court Ordered Evaluation and Petitions for Court Ordered Treatment) and the Coconino County Attorney's Office (who represents TGC when they file Petitions for Court Ordered Treatment), so they could take action if they had any concerns about the Court's order transporting L.M. for the medication management and stabilization that L.M.'s treatment team at SWBHS had coordinated and arranged. As such, within a minute or two of me signing said Order, at my request, my judicial assistant ("JA"), emailed a copy of said Order to the Coconino County Legal Defender's ("LD") Office and the Coconino County Attorney's Office, so that counsel would know about the Order, and the contents of the Order.

A little over an hour after the LD's Office received a copy of the subject order via email from my JA, Jillian Marini, an attorney with the Legal Defender's Office, contacted my JA, about the subject Order and asked to meet with me in Chambers the next day. I was informed about the request for a meeting the next morning by my JA, and I told her that I would absolutely meet with Ms. Marini and counsel from the Coconino County Attorney's Office to discuss and address the matter, and I asked my JA to contact Judge Slayton's JA and ask her if Judge Slayton wanted to participate in the meeting, since he was involved in the decision to issue the subject Order. I checked with my JA later that day and asked if the meeting had been set up, and she advised that she was still waiting to hear back from Judge Slayton's JA. After receiving this Complaint, I asked my JA if she recalled why the meeting requested by Ms. Marini did not take place since I had agreed to meet with her and counsel from the Coconino County Attorney's Office. My JA recalls that when she checked with Judge Slayton's JA again that day asking about the meeting, Judge Slayton's JA advised my JA that they were taking care of it.



I also recall learning that the LD's Office, on April 8, 2021 (the day after I signed the subject order), had filed a Writ of Habeas Corpus on behalf of L.M. to address the subject Order, and that the matter was assigned to Judge Ted Reed. At that time, I assumed that a hearing would be set immediately to address the subject Writ. Since this Complaint was filed, I have learned that the Writ of Habeas Corpus matter was reassigned to Judge Slayton, and that he denied said Writ without a hearing. I was not aware that the Writ of Habeas Corpus matter was reassigned to Judge Slayton, and that he denied said Writ without a hearing, until I looked into the matter after receiving the subject Complaint.

At my request, the LD's Office and the Coconino County Attorney's Office were notified immediately after I signed the subject order so they could take any action they wished. I assumed that when the LD's office filed the subject Writ the day after I signed the subject order, that a hearing would be held on the subject Writ immediately so that the Court could address the subject order, that the Court only relied on the information contained in the subject order, and to consider and address any arguments about the subject order from counsel for the parties.

Quite honestly, under all the subject circumstances regarding this matter, I am very concerned that a hearing was not held the same day that the Writ was filed. I am also very sorry that I did not meet with counsel, when Ms. Marini requested the meeting, the day after I signed the subject order. As stated above, I wanted to meet with counsel to discuss the matter, and the only reason I did not was because I was waiting to hear back from Judge Slayton regarding if he wanted to also participate in the meeting, since he was also involved in the decision to grant the subject order. As stated above, the requested meeting did not take place for the reasons stated above. I made a mistake in not meeting with counsel the day after the order was granted. As discussed above, the meeting did not take place because Judge Slayton's JA told my JA they were handling the matter.

In reviewing the subject order that I issued, I now realize and acknowledge that I made a mistake in not clearly stating in said order that L.M. was being transported to the Kingman Recovery Unit for the **inpatient admission** for medication management and stabilization **that L.M.'s treatment team at SWBHS had coordinated and arranged**. That was my intent in issuing the subject order. My order states that L.M. was to be transported to the Kingman Recovery Unit in Mohave County for psychiatric admission for medication management and stabilization. My

order should have clearly stated that L.M. was to be transported to the Kingman Recovery Unit for the inpatient admission for medication management and stabilization **that L.M.'s treatment team at SWBHS had coordinated and arranged.** That was my intent and belief when I issued the subject order. I made a mistake in not clearly stating such in the subject order.

I am not, as the Legal Defender's office states in their Complaint, a rogue Judge. At the time that I issued the subject order, I thought I was acknowledging and recognizing L.M.'s due process rights by immediately notifying the Legal Defender's Office (his counsel in prior mental health cases) by e-mail within minutes of signing the subject order, so they could take action if they objected to or wanted clarification regarding the subject order. I truly wish I had met with counsel when they requested the meeting to discuss the subject order.

As I stated above, I wanted to meet with counsel to discuss the matter and address any concerns they may have had. I should have met with counsel the same day they requested the meeting, and I should have not waited to hear back from Judge Slayton regarding whether he wanted to participate in the meeting. And, although I recall asking my JA twice that day if the meeting had been scheduled, I should have told my JA to set up the requested meeting with counsel that day regardless of whether Judge Slayton wanted to participate in the meeting, and I should have met with counsel that day to address any due process concerns they may have about the subject order.

I made a mistake, that I sincerely regret, in not meeting with counsel the day they requested the meeting to discuss the subject order. It is a mistake I will never make again.

I also acknowledge that given what transpired in this matter, that I made a mistake in issuing the subject order. After receiving this Complaint, I have given considerable thought as to how I should have and could have handled this matter differently. Given what occurred in this matter, I now believe that it was a mistake to issue the subject order without first having a hearing with counsel for the parties so that they could address the Court regarding any concerns or issues that they may have had about whether it was appropriate under the subject circumstances to issue the subject order.

I have been a Judge for 17 years at the end of this month. Counsel know that I am not a rogue Judge, and that I have always taken an individual's rights, including their due process rights, very seriously. I made a mistake in issuing the subject order. I have never in the past almost 17

years ever issued an order like the one I issued in this matter, and I can assure the Judicial Commission and counsel in this case, that it will never happen again.

I have tried to explain the extenuating circumstances that led me to issue the subject order, and what occurred after the subject order issued. I issued the subject order, after consulting with our Presiding Judge, because I was concerned that L.M. was a danger to himself and a danger to others in the community, based on the opinion of three (3) doctors, due to his very serious mental health condition, which was well known to the Court and counsel for many years, also that TGC was refusing to evaluate or admit L.M. voluntary or involuntary, pursuant to an emergency Application for Involuntary Evaluation, that TGC is legally required to accept and consider, since they are the only entity on contract with Coconino County to perform said evaluations, and the subject order was issued to transport L.M. to the Kingman Recovery Unit for inpatient admission for medication management and stabilization **that L.M.'s treatment team at SWBHS had coordinated and arranged.**

At the time, under all of the subject circumstances outlined above, I thought it was appropriate to issue the order to transport L.M. to the Kingman Recovery Unit for inpatient admission for medication management and stabilization because L.M.'s treatment team at SWBHS had coordinated and arranged said treatment. The subject order did not state that L.M. was to be held, or that he must participate in said treatment. The subject order specifically states that L.M. was to be transported to the Kingman Recovery Unit for medication management and stabilization (that L.M.'s treatment team at SWBHS had coordinated and arranged).

#### The Judicial Commission's Specific Questions

I have been specifically asked to address the following by the Judicial Commission.

- That I improperly held an individual without a case or controversy before me. The Order that I issued was an order to transport L.M. for medication management and stabilization that his treatment team at SWBHS had coordinated and arranged. I did not issue any order holding L.M. in custody. It is correct, as stated in more detail above, that at the time I issued the subject order, L.M. did not have a pending case in our Court.
- Had ex parte communications about this individual before deciding he should be held. I have explained in detail above that Nurse W contacted me. Since L.M. did not have a pending case with our Court, at the time Nurse W contacted me, I did not consider

her call to me, or my phone calls that day with Judge Slayton, as ex parte communications. And, as stated above, I never issued any order holding L.M. I issued an order to transport him for medication management and stabilization that his treatment team at SWBHS had coordinated and arranged.

- Conducted an independent investigation of facts. I did not conduct any investigation of the facts. Nurse W contacted the Court for an order to transport L.M. for medication management and stabilization that his treatment team at SWBHS had coordinated and arranged, and she explained to me why she was asking for the order to transport L.M. as discussed in detail above. I thought I had included the relevant information that Nurse Wolfe had stated to the Court in the subject order, so that counsel for L.M. and the County Attorney's Office would be aware of why the Court was issuing the subject order. However, as I acknowledge above, I made a mistake in not specifically stating in the subject order that L.M.'s team at SWBHS had coordinated and arranged L.M.'s inpatient admission for medication management and stabilization that L.M. was being transported to receive.
- Did not afford the individual, or his attorney, the right to be heard before holding him and transferring him to Mohave County. I have addressed this issue in detail above. I have acknowledged above that I made a mistake in not meeting with counsel the day after I signed the subject order. I also acknowledged above that I made a mistake in issuing the subject order under the subject circumstances without first holding a hearing with counsel for L.M. and counsel from the County Attorney's Office. The subject order was not an order transferring L.M. The subject order was an order to transport L.M. for medical mental health treatment that his team at SWBHS had arranged and coordinated for him. Also, as previously stated, I never issued an order holding L.M.

The Commission has asked me why or how I became involved in this matter. I have answered that question in detail above.

The Commission has also asked me what was L.M. being held for between April 1, 2021 and April 7, 2021, and was this on my order, another judge's orders, or was it the jail acting on its own accord. Again, I never issued an order holding L.M. I do not have any personal knowledge as to why L.M. was being held between April 1, 2021, and April 7, 2021. However, Nurse

W , in her Statement submitted with my Response, does detail the dates that L.M. was in custody, and that at one point, he refused to leave the jail. She states in said Statement that L.M. was booked into the jail after he allegedly assaulted a staff member at TGC, where he was receiving inpatient (mental health) treatment, on April 1, 2021, and that the jail received Judge Grodman's release order, on April 7, 2021, which he signed on April 7, 2021, releasing L.M. from the jail. A copy of Judge Grodman's order is attached to the subject Complaint. As such, it appears that L.M. was in custody on a criminal charge relating to his alleged assault of the staff member at TGC on April 1, 2021, and Judge Grodman signed the order releasing him from the jail on April 7, 2021, when a Complaint had not been filed.

Also, included in the complaint, is information from The Guidance Center that states, "Two psychiatrists supervised by the undersigned have evaluated the Defendant and concluded that the behaviors at issue cannot be shown by the requisite clear and convincing evidence to be attributable to a 'mental disorder.'" This statement was sent in a letter on March 19, 2021 to Judge Slayton in CR . Given this information, I have also been asked to address how I "came to my decision that L.M. should be held without a case number or hearing."

As I addressed in detail above, I never issued an order holding L.M. in custody. I have addressed above why I issued the subject order, without a case number or hearing, to transport L.M. to the Kingman Recovery Unit for inpatient admission for medication management and stabilization because L.M.'s treatment team at SWBHS had coordinated and arranged said treatment. I also discussed above that Nurse W had also stated, when she asked for the order to transport L.M., that Dr. G and Dr. J , with Health Choice Arizona, and Dr. H with the Flagstaff Medical Center, all agreed that L.M. met the criteria for danger to self and danger to others.

I sincerely apologize for my error in issuing the subject order without first having a hearing with counsel for L.M. to address any concerns and issues they may have had regarding the issuance of such an order. I apologize for my error, which has never happened before, and which I can assure the Commission will never happen again.

Sincerely,

Judge Cathleen Brown Nichols



# Coconino County SHERIFF'S OFFICE

*Jim Driscoll, Sheriff*

---

My name is S [redacted] W [redacted]; I work for the Coconino County Detention Facility in the role of Psychiatric Mental Health Nurse Practitioner.

I contacted Judge Nichols on April 7, 2021 regarding assistance with Mr. L [redacted] M [redacted]. Mr. M [redacted] was initially booked into custody on 01/11/21 and released on 03/30/21 by the court on his own recognizance. During his incarceration L [redacted] rapidly deteriorated consistently presenting with paranoid delusions. He believed that he was being threatened by individuals in his immediate environment and specifically by law enforcement officers. In addition to refusing all medical and mental health treatment, L [redacted] refused a total of 22 meals. On 03/26/21 L [redacted] was transported to Flagstaff Medical Center for a medical assessment where a title was initiated by the attending physician, Dr. H [redacted], for danger to self and danger to others. After the title was dropped by The Guidance Center, L [redacted] was medically cleared and discharged to return to the jail on 03/26/21. Late in the afternoon on 03/26/21 the jail received a release order from the court.

On 03/27/21 L [redacted] remained in custody due to his refusal to leave the facility. He continued to maintain his paranoid ideations consistently verbalizing his fear of being killed by law enforcement officers and by people in his immediate surroundings. On 03/29/21, I initiated a Title 36 under the criteria for danger to others and persistently/acutely disabled due to L [redacted]'s continued volatility, paranoid ideations, and inability to safely navigate the community. The Guidance Center admitted L [redacted] on 03/29/21 for inpatient treatment. After assaulting a staff member on 04/01/21 on the inpatient unit, L [redacted] was booked back into custody. L [redacted] verbalized during his initial court appearance that he believed a staff member brought a gun onto the unit to kill the patients so he felt compelled to act on this belief to protect them.

Mr. M [redacted] continued to deteriorate while in custody and he became increasingly more paranoid. He also continued to refuse all treatment. I contacted The Guidance Center to coordinate re-entry care after the jail received documentation from the court on 04/07/21 that a complaint was not filed on the most recent charge. L [redacted] was pending release back into the community. After contacting The Guidance Center I was informed that with absolute certainty voluntary or involuntary that L [redacted] would not be re-admitted to the inpatient unit despite the fact that Mr. M [redacted] continued to present as a danger to himself and a danger to others. He continued to verbalize threats and his intent to harm others.



*"SERVICE TO COMMUNITY"*



# Coconino County SHERIFF'S OFFICE

*Jim Driscoll, Sheriff*

---

At the time of his release he did not consent to voluntary treatment. After considering the potential risks associated with releasing L back into the community his treatment team with Southwest Behavioral and Health was consulted. The team coordinated L 's inpatient admission for medication management and stabilization with the Kingman Recovery Unit in Kingman, Arizona. Additionally, Dr. G and Dr. J with Health Choice Arizona and Dr. H with Flagstaff Medical Center agreed that Mr. M met criteria for danger to self and danger to others. Subsequently, Judge Nichols was contacted for a court order to transport L to the Kingman Recovery Unit in Kingman, Arizona.



*"SERVICE TO COMMUNITY"*

**From:** [Nichols, Cathleen Brown](#)  
**To:** [Commission on Judicial Conduct](#)  
**Subject:** Additional Attachment to Response to Notice of Complaint (Case No. 21-210)  
**Date:** Monday, December 6, 2021 6:26:09 PM  
**Attachments:** [Order Issued in CV 2021-00177 re Writ of Habeas Corpus Matter re LM.pdf](#)

---

To the Commission:

This afternoon, I learned for the first time, that Judge Slayton issued the attached Order in the Writ of Habeas Corpus matter filed by the Coconino County Legal Defender's Office on behalf of L.M., and which matter I referenced in my Response to the Commission. In the attached Order, Judge Slayton advised "all parties that this Court has continuing jurisdiction under a current and pending criminal matter regarding [L.M.] (CR 2), under which cause number [L.M.] was transferred to Mohave County pursuant to A.R.S. Section 13-4517 (D), therefore, IT IS ORDERED transferring this [Writ of Habeas Corpus] matter to Division 2 [Judge Slayton] for further proceedings."

This Order was not attached to or referenced in the subject Complaint.

I respectfully request that the attached Order be reviewed and considered by the Commission, and made a part of the file regarding the subject Complaint.

Sincerely,

Judge Cathleen Brown Nichols  
Coconino County Superior Court Division 5  
200 North San Francisco Street  
Flagstaff, AZ 86001  
(928) 679-7557



IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF COCONINO

**Dan R. Slayton, Presiding Judge**

**Division 2**

**Date: April 9, 2021**

**Carrie Faultner, Judicial Assistant**

**O R D E R**

---

L M )  
)  
Petitioner, )  
)  
vs. )  
) CV  
JIM DRISCOLL, COCONINO COUNTY )  
SHERIFF, )  
)  
Respondent. )

---

**ACTION: TRANSFER**

The Court received notice that a Petition for Writ of Habeas Corpus was filed on behalf of L M (CV: ). This Court advises all parties that this Court has continuing jurisdiction under a current and pending criminal matter regarding L M (CR: ), under which cause number Mr. M: was transferred to Mohave County pursuant to A. R. S. §13-4517 (D), therefore,

**IT IS ORDERED** transferring this matter to Division 2 for further proceedings.

\_\_\_\_\_  
Dan R. Slayton, Judge

cc: Paul Garns - \_\_\_\_\_  
Mark Byrnes - \_\_\_\_\_  
Jonathan Kircher - \_\_\_\_\_  
Jillian Marini - \_\_\_\_\_  
CCSO