

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-073

Judge: Dan R. Slayton

Complainant: Commission on Judicial Conduct

ORDER

The Commission initiated an investigation into the conduct of a superior court judge who, in conjunction with another superior court judge, authorized an individual to be transported for psychiatric admission for medication management and stabilization at an out-of-county facility. The Commission publicly reprimanded the other superior court judge (Judge Cathleen Brown Nichols) in CJC Case No. 21-210.

Coconino County Superior Court Judge Dan R. Slayton previously found L.M. not competent and not restorable in a criminal proceeding, but he retained jurisdiction over the matter pursuant to A.R.S. §13-4517 (A) – (E). After a psychiatric facility in Coconino County refused to initiate Title 36 (civil commitment proceedings) on L.M., Judge Slayton released him from custody. On or about April 1, 2021, L.M. was arrested on new felony offenses. Although no criminal complaint was timely filed on the new criminal charges, L.M. remained at the Coconino County Jail for unknown reasons.

As found by the Commission in CJC Case No. 21-210, another judge, Judge Brown Nichols, had a conversation with a Psychiatric Nurse Practitioner at the jail on April 7, 2021. 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.

Judge Brown Nichols contacted Judge Slayton to discuss these matters, and he learned that doctors had arranged for L.M. to be admitted to a mental health facility in Mohave County. He assumed this was in connection with the new felony charges. Judge Slayton could not recall if he and Judge Nichols had reached a mutual decision on whether they could order another Title 36 proceeding. However, he denied specifically authorizing Judge Brown Nichols to issue an order to

transport L.M. to Mohave County for Title 36 proceedings. However, 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.

The following day, April 8, 2021, Judge Brown Nichols contacted Judge Slayton and advised the jail needed a case number on the order for tracking purposes. She requested that the case number for the old criminal case for L.M. be used. Judge Slayton agreed to this request, and the order was issued. Judge Slayton did not recall if he signed this order or authorized Judge Brown Nichols to sign it for him, but he did agree that the order could be amended to include the criminal case number. This order was also issued without prior notice to the County Attorney’s Office or L.M.’s legal counsel.

Judge Slayton later presided over a petition for habeas corpus filed by L.M.’s attorney on April 15, 2021, at which time he dismissed the petition, finding that Mohave County had initiated Title 36 civil commitment proceedings on L.M., and that L.M. was no longer in the custody of Coconino County.

The Commission found clear and convincing evidence that Judge Slayton’s conduct 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(A)(3) (Ex Parte Communication) states, “A judge may consult with other judges or with court personnel whose functions are to aid the judge in carrying out the judge’s adjudicative responsibilities. If in doing so the judge acquires factual information that is not part of the record, the judge shall make provision promptly to notify the parties of the substance of the

information and provide the parties with an opportunity to respond. The judge may not abrogate the responsibility personally to decide the matter.”

Accordingly, Judge Dan R. Slayton 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 members Denise K. Aguilar, Roger D. Barton, Colleen E. Concannon, and Delia R. Neal did not participate in the consideration of this matter.

Dated: September 19, 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 September 19, 2022.

COMPLAINT

On March 11, 2022, the Commission considered Case No. 21-210 and chose to issue a public reprimand to Judge Cathleen Brown Nichols. The Commission also authorized a Commission initiated investigation into Judge Slayton's conduct in the underlying matter.

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.¹

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, 2021.²

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 _____, 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."

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

² 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.³

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 _____ added. However, the caption remained Re: LM as versus the actual caption for case number _____ 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 _____ on March 26, 2021 (Exhibit F). Further, it appears no notice or hearing was held in _____ 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

³ 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 7th and instead remained in CCSO custody until April 8th. On April 8th, 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

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

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

Exhibit C

Mr. J

From: Mr. J
Sent: Wednesday, April 7, 2021 6:40 PM
To: AOC - Stump, Christal
Cc:
Subject: Mr. J

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. J 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 9th.

Jill N. M.
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. 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 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

J M (State Bar #)
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 2021-00177

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 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

J Mi
Deputy Legal Defender

STATE OF ARIZONA }
County of Coconino } ss.

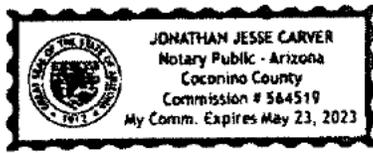
Ji Mi, upon being duly sworn, deposes, and says: I am counsel for the
Petitioner in the foregoing Petition for Writ of Habeas Corpus. I am aware of the contents of the
foregoing Petition and avow that all of the statements in it are true and correct to the best of my
knowledge, information, and belief.

J N M
Deputy Legal Defender
SBN 032063

SUBSCRIBED AND SWORN before me this 8th day of April 2021.

J J
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: R. W. _____ and P. G. _____

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 M B
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
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. 1

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.
- 24 2. In reliance on the order of the Coconino County Superior Court issued by the Hon.
25 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

M By
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

Ji Mi
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 :

SUMMARY SHEET

ATTORNEY FILING:

M B

Bar Number: -----, Issuing State: AZ

Law Firm: Coconino County

Address: 110 E Cherry Ave

Flagstaff, AZ 86001

Telephone Number: (928) 679-8280

DEFENDANT SUBMITTING FILING:

JIM DRISCOLL

ATTACHED DOCUMENTS LIST:

Response - Response: To Petition

Exhibit F

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. I. M.* Case No.

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,



T. B. , M.D.

Medical Director

The Guidance Center, Inc.

Cc: County Attorney, Legal Defender



SUPERIOR COURT OF ARIZONA

Superior Court Division 2



**Honorable Dan R. Slayton
Presiding Judge**

June 17, 2022

The Honorable Louis Dominguez
Chair, Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, AZ 85007
Re: Response to Complaint No. 22-073

Resp (Slayton)
22-073
6/17/22

Chair Dominguez and Members of the Commission,

On March 9th 2021, I found Mr. M not competent/not restorable pursuant to the stipulation of Mr. M attorney J K and deputy county attorney P G. I signed the findings of incompetency on March 10th and retained jurisdiction over Mr. M case pursuant to A. R. S. 13-4517 (A)-(E). On March 19th, this Court received a letter from the Guidance Center indicating that they would not be filing a Title 36 petition. This was unusual in that I had never received such a letter and due to Mr. M long history of mental illness including a previous Title 36 petition filed by the Guidance Center the previous year. On March 26th, after briefing by his attorney and the deputy county attorney, I released Mr. M from custody, but still retained jurisdiction over the case under the criminal cause number as the parties were still seeking to address Mr. M mental health condition through a potential Title 14 guardianship.

On April 1st, Mr. M was arrested on new felony charges and initialed in Flagstaff Justice Court on April 2nd. No complaint was filed by April 4th. On April 9th, Mr. K filed a motion to dismiss the charges on Mr. M under A. R. S. 13-4517 (A). I set the matter for an oral argument on April 15th. I do not know what mechanism kept Mr. M in custody between April 4th and April 8th as I had released Mr. M on my criminal case and the only matter remaining was my determination as to a potential guardianship for Mr. M as well as the pending motion to dismiss the charges.

I believe on or about April 7th, I was informed by Judge Nichols that in her conversations with Ms. S W, other doctors familiar with Mr. M mental health history believed he met the definition for placement into Title 36 proceedings. Title 36 proceedings were overseen by Judge Nichols for our county. According to Judge Nichols, his doctors believed transfer to Mohave County was appropriate for an evaluation to determine whether a petition for evaluation under Title 36 was appropriate. I assumed this was based on the new felony charges. I am not always aware of Title 36 actions as those actions are confidential and separate from criminal matters. Judge Nichols issued her order April 7th to transfer Mr. M to Mohave County. To my understanding, he was transported on the morning of April 8th. However, there was no cause number associated with the transfer and the jail requested that some cause number be assigned to

the order for case tracking purposes. To the best of my recollection, I spoke with Judge Nichols who requested that my criminal case number be used as that case was still active. The order was then prepared for me by Judge Nichol's judicial assistant. At a hearing held on April 15th, with both L. M.'s criminal defense attorney and the prosecutor present, I was then informed that a Title 36 petition had been filed in Mohave County on L.M.. At that hearing and after consulting with defense counsel and the prosecutor, I affirmed the dismissal of the charges against L.M. and allowed the Public Defender's Office to withdraw from further representation of L.M. on the criminal matter.

I was in error to allow my criminal cause number to be used in this manner. I had released Mr. M on this cause number. I allowed my understanding of Mr. M life-long mental health history, including previous Title 36 commitments, and his recent assaultive behavior in our community to not question Judge Nichols' request to use my cause number. Without any other mechanism to hold him, I should have inquired of Judge Nichols as to how and why he was transferred to Mohave County without a cause number. In reviewing my actions, I believe this conversation with Judge Nichols was a violation of Rules 2.5 (A) and 2.9 (A), Rule 81, Arizona Code of Judicial Conduct.

Respectfully submitted,

Judge Dan R. Slayton



SUPERIOR COURT OF ARIZONA

Superior Court Division 2

Resp Supp1 (Slayton)
2022-073

AUG 01 2022



Honorable Dan R. Slayton
Presiding Judge

July 29th, 2022

The Honorable Judge Louis Dominguez,
Chair, Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, AZ 85007

Re: Addendum to Response to Complaint No. 22-073

Chair Dominguez and Members of the Commission,

I have reviewed the response written by Judge Cathleen Nichols and her statements regarding my involvement. I have divided her statements into three areas and offer my response as follows:

1. Factual Background And Issuance Of The April 7th/8th Orders.

I have no personal knowledge of the communications between Judge Nichols and Nurse S W preceding the issuance of Judge Nichol's April 7th order and have no reason to disagree with her recitation of those conversations. I disagree with her statement that I was contacted by her because of my position as the Presiding Judge regarding her concerns about L.M.. My conversations with Judge Nichols were because Judge Nichols understood I was the judge presiding over L.M.'s criminal case and not because of my administrative authority as Presiding Judge. I had made Judge Nichols aware of the email/letter "evaluation" that was sent to me by The Guidance Center (TGC) in response to my determination that L.M. was not competent and not restorable pursuant to Arizona Rules of Criminal Procedure, Rule 11. Judge Nichols presides over Title 36 actions in our county.

I had requested that the County Attorney pursue a Title 36 petition and while I do not know specifically what happened after my request, I received this evaluation after my Rule 11 competency determination. I recall speaking to Judge Nichols about this evaluation, and what next steps might be available under Title 36 civil commitment proceedings. This conversation may have taken place during the time L.M. was rearrested for assaultive behavior while on release from my criminal cause number. Given TGC's refusal to evaluate L.M. further, my recollection is this is what began the conversation between Judge Nichols and Nurse W .

Sometime prior to April 7th, in response to Judge Nichols communication with me about transferring L.M. to Mohave County based upon her conversations with Nurse W , I asked Judge Nichols if she believed we could transfer jurisdiction under Title 36 to Mohave County. She was not certain if we could transfer jurisdiction as well. I offered to contact the Presiding Judge of Mohave County, Judge Charles Gurtler (ret.) and ask his opinion. In my conversation

with Judge Gurtler, he indicated that Mohave County would accept jurisdiction for L.M.'s Title 36 evaluation proceedings and potential treatment. I relayed this information back to Judge Nichols.

I deny telling, authorizing or directing Judge Nichols 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...and that the Court could issue said order under said criminal case." That was my ultimate and continuing question to Judge Nichols: Was there a legal basis for either Judge Nichols or me to issue such an order? I remember we discussed this question extensively and I expressed concern about using my jurisdiction under the criminal statutes to order another Title 36 evaluation since an evaluation by TGC was already conducted. The "nature" of the evaluation and whether we could order another one under an additional Title 36 proceeding was one of the major issues Judge Nichols and I wrestled over. I do not recall ever reaching a decision. However, I cannot say with certainty that we did not reach a mutual decision that L.M. could be transferred to Mojave County. I can state that I never instructed Judge Nichols to transfer L.M. for Title 36 proceedings in Mojave County.

I was not aware of Judge Nichols' April 7th order transferring L.M. to Mojave County until I was contacted by her on April 8th. Again, my best recollection of that conversation was Judge Nichols called me at home and indicated that her April 7th order did not have a cause number on it because she was transferring L.M. to Mojave County for a Title 36 evaluation. The Coconino County Jail had contacted Judge Nichols and requested a cause number on her order for administrative purposes. She asked me whether we could use my criminal cause number to assist the jail. I believed that my criminal cause number could be used because that case was still pending in my court. She offered to have her Judicial Assistant copy her order with my cause number on it. I do not remember whether I signed that order or directed Judge Nichols to sign my name on that order, but I agreed to that order on April 8th on that basis alone.

As I still retained jurisdiction for a guardianship to be considered under the criminal statutes, I intended on addressing that question at the April 15th hearing. As I stated in my first response, it was at that hearing that I was advised L.M. had been placed into treatment under Title 36 and therefore there was no need to address a guardianship.

I am unable to address Judge Nichols' belief that she did not think there was an active criminal case against L.M.. That pending criminal case was part of our initial and on-going conversation on how to address L.M.'s continuing assaultive behavior and her request to use that pending cause number on the duplicate April 8th order transferring L.M. to Mojave County.

2. The Proposed Meeting With Title 36 Defense Counsel.

My Judicial Assistant and I disagree with Judge Nichols recitation of this proposed meeting. I have no specific recollection of being asked to meet with Judge Nichols and L.M.'s Title 36 Defense Counsel nor the purpose of such a meeting. Neither does my Judicial Assistant, Carrie Faultner. There is no indication that L.M.'s criminal defense counsel and the prosecutor were invited to participate in this meeting as well. At my request, Ms. F looked back in her email history and was able to locate a single email regarding a proposed meeting dated April 9th, 2021. (**Attachment**). The email contains a two-sentence response/inquiry from Ms. F. What I can say with certainty is my Judicial Assistant never received a response back from either

Judge Nichols or Judge Nichols' Judicial Assistant to her inquiry and no meeting ever took place.

3. The Writ Of Habeas Corpus.

I assigned this writ to my court as I still retained jurisdiction under the criminal rules and statutes pending criminal defense counsel's motion to dismiss the pending criminal case (addressed and granted at the April 15th criminal hearing). Pleadings that relate to the same or similar subject matter and involving the same party are normally assigned to the same judge to prevent conflicting orders from different judges. The writ was filed on the afternoon of April 8th. The County Attorney filed their response April 13th. In their response, the County Attorney indicated that L.M. was no longer in the custody of the Coconino County Sheriff and had been transported to the treatment center in Mojave County the morning of April 8th. Based upon the fact that L.M. was no longer in the custody of the Coconino County Sheriff at the time the writ was filed, that he was in the treatment center in Mojave County and pursuant to Judge Gurtler, Mojave County had accepted jurisdiction for the Title 36 proceedings, I found L.M. was not entitled to a hearing in Coconino County as he was no longer being detained in or by Coconino County.

This recollection of the events regarding L.M. are to the best of my memory. I reaffirm my admission to the violations of the judicial conduct code as set forth in my original response. In addition, my actions violated the ethical policy of maintaining the public's trust and confidence in the judiciary. I trust this response satisfies the Commission's request for further information. I thank the Commission for this opportunity to respond. I again sincerely apologize for my failures and avow to the Commission such failures will not be repeated.

Respectfully submitted,

Judge Dan Slayton
Division Two
Coconino County Superior Court
Flagstaff, AZ 86001

Faultner, Carrie

From: F C
Sent: Friday, April 9, 2021 8:21 AM
To: Stump, Christal
Subject: RE: RE: L M

I didn't know that I was setting one. I thought Judge Nichols was the one after she spoke to the judge and I.

C F
Judicial Assistant to the Presiding Judge Dan R. Slayton
Division 2
Coconino County Superior Court
200 N San Francisco St
Flagstaff, AZ 86001

From: Stump, Christal < >
Sent: Thursday, April 08, 2021 4:42 PM
To: F , C < >
Subject: RE: L M

My Judge wants to know if a meeting got set for tomorrow?
She doesn't want to leave J hanging.

Christal Stump, Judicial Assistant
to Honorable Cathleen Brown Nichols
Coconino County Courthouse
Superior Court Division 5
200 N San Francisco Street
Flagstaff, AZ 86001