

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 23-104

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Judge:

Complainant:

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**ORDER**

December 22, 2023

The Complainant alleged improper delay by a justice of the peace considering a request to expunge a criminal case record.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Louis Frank Dominguez and Regina L. Nassen did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on December 22, 2023.

CONFIDENTIAL

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

## COMPLAINT AGAINST A JUDGE

Name:

Judge's Name:

I have been trying since \_\_\_\_\_ to have a misdemeanor marijuana possession charge expunged in \_\_\_\_\_ Justice Court. The court is not responding despite numerous requests for action. The Honorable \_\_\_\_\_ is the judge for this court and is ultimately responsible for the inaction of the court.

In \_\_\_\_\_, I submitted a Marijuana Expungement Petition on the \_\_\_\_\_ County Web-site per the on-line instructions. I received confirmation of my submittal. Multiple e-mails to check status were not answered.

In \_\_\_\_\_ I contacted \_\_\_\_\_ to get advice on how to proceed. The website showed a different process than what I followed initially. There was a new form and the form was to be sent via e-mail to the county attorney's office versus the on-line portal. The \_\_\_\_\_ attorney reviewed my request and confirmed the charge met the eligibility requirement for expungement. I submitted the form via e-mail to the county attorney's office on \_\_\_\_\_ as instructed. I did not hear anything back regarding my petition.

In \_\_\_\_\_ I contacted the \_\_\_\_\_ Attorney's Office to confirm receipt of my petition. The person answering the phone stated that the request had been received and was under review. I checked back several more times telephonically and it was always under review.

In \_\_\_\_\_ I submitted a certified letter to the Clerk of the Court, along with a copy of my last expungement request, requesting that action be taken on the request since the County Attorney's Office was not responding. I called the attorney's office in \_\_\_\_\_ and was told that they had been informed of the letter by the court and that the lawyer would be picking up the letter that was sent to the court in person in the next few days. However, again, no action was taken.

In \_\_\_\_\_ I submitted a second certified letter to the Clerk of the Court requesting assistance from the judge in getting this petition before the court. I stated in my letter that the statute regarding expungement said that reviews are to be completed within 30 days of receipt by the court, but it had been over a year since my initial petition and many months since the issue had been brought to the attention of the court. I received no response to my certified letter.

Since Judge \_\_\_\_\_ is responsible for the actions of the court, I, unfortunately, request your review of this situation. I fear that I am not the only person that have submitted similar petitions which have been ignored.

## Attachments

1. Last certified letter to the court,
2. Original Petition for expungement,

Clerk of the Court

Subject: Marijuana Expungement Petition,

Dear Clerk of the Court,

References:

1. Original Marijuana Expungement Request on County Portal.
2. 2<sup>nd</sup> Marijuana Expungement Request, email to County Attorney's Office,
3. 3<sup>rd</sup> Marijuana Expungement Request, Certified Letter to Clerk of the Court,

I submitted my original request in [redacted] It is now [redacted] and I have still not received a response on any of my multiple requests or seen any action in bringing this matter before the court. I have been advised to file a formal complaint with the Arizona Judicial Commission and to contact my congressman to get the petition to move, but would rather not do that. I just want my request considered in accordance with the law. As Clerk of the Court, I am requesting that you inform the judge of this matter so he is aware that petitions to the court are not being processed and reflect poorly upon the court.

A recap of events is as follows:

In [redacted] I submitted a Marijuana Expungement Petition on the [redacted] County Web-site Portal in accordance with the on-line instructions. I received confirmation of my submittal, but never heard anything further. I contacted them via e-mail to check status, but did not receive responses.

In [redacted] I contacted [redacted] to get their advice on how to proceed since I wasn't hearing anything. The website showed a different process than what I followed initially. There was a new form and the form was to be sent via e-mail to the county attorney's office versus the on-line portal. The [redacted] attorney reviewed my request and confirmed the charge met the eligibility requirement for expungement. I submitted the attached form via e-mail to the county attorney's office on [redacted] as instructed. I did not hear anything back regarding my petition.

In early March, a call was placed to the [redacted] County Attorney's Office to confirm receipt of my petition. The person answering the phone stated that the request had been received and was under review. She suggested a call back in two weeks. In two weeks, another call was placed and she said it was still under review and that she would send an e-mail to the prosecutor to request status. She said she would let them know that I needed the expungement in order to get a

Attachment 1

said that the petition filed in \_\_\_\_\_ was still under review and she had not received a response to her e-mail. She stated that the new \_\_\_\_\_ petition had not been logged into the system yet and the petition that was in their system was my original request dated \_\_\_\_\_

In \_\_\_\_\_ I submitted a certified letter to the Clerk of the Court, along with a copy of my last expungement request, requesting that action be taken on the request since the County Attorney's Office was not responding. I called the attorney's office in \_\_\_\_\_ and was told that they had been informed of the letter by the court and that the lawyer would be picking up the letter that was sent to the court in person in the next few days. There has been no further communication since that phone call.

I'm writing this second certified letter to the court to request assistance from the judge in getting this petition before the court. The statute says that reviews are supposed to be completed within 30 days of receipt by the court, but it has been over a year since my initial petition and over four months since my last certified letter to your office. I prefer not to elevate or publicize this matter, but I may be forced into doing so. Please, please help to resolve this so I don't have to elevate this matter further.

A copy of my expungement request is attached for ease of reference. My e-mail address is \_\_\_\_\_  
Please call \_\_\_\_\_ if you need any further information.

Sincerely,

Telephone Number(s): \_\_\_\_\_  
(Attorney or LDP only): \_\_\_\_\_  
State Bar or LDP Number: \_\_\_\_\_  
Party you are representing: \_\_\_\_\_

In the Superior Court of Arizona for \_\_\_\_\_ County

Plaintiff vs. _____ Defendant (FIRST, MI, LAST) Date of Birth: _____	Case Number: _____  <b>Petition to Expunge Marijuana-Related Offense Records and Restore Civil Rights, Including Firearm Rights, Pursuant to ARS § 36-2862</b>
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The above-named Petitioner, pursuant to ARS § 36-2862, hereby requests that the Court order expungement of Petitioner's criminal history records. As grounds for this petition, Petitioner states as follows:

**A. REQUIRED INFORMATION**

1. **Eligible Charge.** I hereby request that the law enforcement and court records for the following offense, eligible under ARS § 36-2862, be expunged (choose from the following; if you had more than one eligible offense under more than one case number, file a separate petition for each offense):

- Possessing, consuming, or transporting two and one-half ounces or less of marijuana, of which not more than twelve and one-half grams was in the form of marijuana concentrate.
- Possessing, transporting, cultivating, or processing not more than six marijuana plants at my primary residence for personal use.
- Possessing, using, or transporting paraphernalia related to the cultivation, manufacture, processing, or consumption of marijuana.

- 2. Name of citing or arresting law enforcement agency: \_\_\_\_\_ Police Department
- 3. Superior court case number: Not Superior Court. Justice Court
- 4. My name at the time of arrest was (if different): \_\_\_\_\_

Attachment 2

2. My court case began in a Justice Court  Yes  No. If Yes, insert name of Justice Court here: \_\_\_\_\_, and the Justice Court case number here: \_\_\_\_\_
3. Name of prosecuting agency: County Attorney's Office
4. I was convicted of the offense  Yes  No. If Yes, insert date of conviction here: \_\_\_\_\_
5. One or more non-eligible charges were filed against me in this same case  Yes  No.
6. My sentence included a term of probation  Yes  No.
7. My case was dismissed  Yes  No. If Yes, insert date of dismissal here: \_\_\_\_\_
8. There is an outstanding arrest warrant in this case  Yes  No.
9. There is an active payment plan on my case  Yes  No.

### C. SUPPORTING DOCUMENTATION (Optional)

Attached is documentation that supports my petition (*The court may find it helpful to have documents that support your request for expungement, for example, the complaint against you, judgment and sentencing order, payment plan, or any other official document showing a superior court case number, crime lab report showing weight of marijuana seized; or DPS or FBI case extract. However, you are not required to provide any supporting documents*): Please attach supporting documentation to your email to \_\_\_\_\_  
See attached public court record information.

See attached public court record information.

### D. HEARING REQUEST

I understand that I can request a hearing on my petition, but the court may choose to proceed without a hearing. I hereby request a hearing  Yes  No.

### E. ACKNOWLEDGEMENT REGARDING RESTORATION OF FIREARM RIGHTS

I understand that even if I am granted restoration of my civil rights, including firearm rights pursuant to this petition, I may still be prohibited from having my civil rights restored or the right to possess and carry a firearm under other state or federal laws.

### DECLARATION

I declare under penalty of perjury that the information I have provided in this petition and any attachments is true and correct to the best of my knowledge.

I understand that this petition may be dismissed if the information I have provided is insufficient. I also understand that this petition may be denied if information in this petition is found to be inaccurate.

Date) \_\_\_\_\_

(Petitioner's Phone Number)

**THE COMMISSION'S POLICY IS  
TO POST ONLY THE FIRST FIVE  
PAGES OF ANY DISMISSED  
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE  
REMAINDER OF THE  
COMPLAINT IN THIS MATTER,  
PLEASE MAKE YOUR REQUEST  
IN WRITING TO THE  
COMMISSION ON JUDICIAL  
CONDUCT AND REFERENCE  
THE COMMISSION CASE  
NUMBER IN YOUR REQUEST.**