

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 07-317

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Complainant: No. 1324710465A

Judge: No. 1324710465B

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**ORDER**

The commission reviewed the complaint filed in this matter and determined that the judge did not knowingly violate the Code of Judicial Conduct. The commission voted to issue a private comment to the judge and to dismiss the case. Therefore, the complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: April 21, 2008.

FOR THE COMMISSION

\s\ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on April 21, 2008.

*This order may not be used as a basis for disqualification of a judge.*

CJC-07-317

December 17, 2007

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

Dear Commissioners:

This Complaint arises out of  
Violations of the Code of Judicial Conduct occurred that seriously call  
into question fitness to serve as a justice of the peace.

**FACTUAL BACKGROUND**

after being retained to represent I filed a Notice of  
Appearance and a Notice of Change of Judge in this matter. Judge to whom the case had been  
assigned, granted the Notice of Change of Judge, and reassigned the case to  
after he had been removed from the case, Judge  
inexplicably rejected my *written* Notice of Appearance and the written plea of not guilty, and  
ordered me to personally appear for the arraignment which was postponed until

, I filed a motion with the Justice Court asking that it  
accept my *written* notice of appearance and set a pretrial conference in the There was  
no ruling on this motion and so I arranged for another attorney to personally appear for me at the  
arraignment of before the judge to whom the  
case had been re-assigned by At the arraignment,  
set the pretrial hearing in the for

On , I filed a request for a continuance of the pretrial conference with the  
Court because I was scheduled to be in trial in in the matter of  
at the same time the pretrial hearing was scheduled to take place. The

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<sup>1</sup> In my extensive experience as a criminal defense attorney, it is customary that Justice Courts throughout Maricopa County routinely accept written Notices of Appearance from counsel and do not require the physical presence of counsel for the limited purpose of confirming their appearance as a matter of record.

matter involved multiple witnesses and was expected to consume the entire afternoon. In requesting a continuance, I waived all time limitations of Ariz. R. Crim. P. 8.

On the day before the pretrial hearing was scheduled in and the day before the multi-witness trial was scheduled in , a clerk at the Justice Court, called me to tell me that my motion to continue had been denied by . When I explained to had been removed from the case and that the matter had been re-assigned to told me that she would take the motion to for review and that she would call my cell phone number after the Judge reviewed his motion.

Despite his removal from the motion and denied the continuance. again inexplicably ruled on the then called me to relay 's denial of the continuance.

Despite my frustration because of the denial of the reasonable and timely request for a continuance of the pretrial conference, I went to the Justice Court on to see if the pretrial conference could be held earlier in the day before I had to leave for the trial. No one was present at the court, and at approximately 1:20 p.m., after waiting for thirty minutes to speak with someone, I filed another written motion to continue the pretrial conference, again citing his trial but this time adding the ground that the prosecutor had sent a plea offer in the

Unsurprisingly, the second motion was denied.

### ANALYSIS

As noted above, I filed a Notice of Change of Judge on granted the motion . The relevant rule of criminal procedure provides:

When a motion or request for change of judge is timely filed under this rule, the judge shall proceed no further in the action, except to make such temporary orders as may be necessary in the interest of justice *before the action can be transferred to the presiding judge or the presiding judge's designee*. However, if the named judge is the presiding judge, that judge shall continue to perform the functions of the presiding judge.

Ariz. R. Crim. P. 10.5 (emphasis added); *see also Godoy v. Hantman*, 205 Ariz. 104, 67 P.3d 700 (2003); *State v. City Court of Tucson*, 150 Ariz. 99, 102, 722 P.2d 267, 270 (1986) (stating “[o]nce the Notice of Change of Judge has been filed, the procedure under Rule 10.2 is summary and automatic”); *State v. Greenlee County Justice Court, Precinct 2*, 157 Ariz. 270, 273, 756 P.2d 939, 942 (App. 1988).

After , when the Notice was granted and the case reassigned to Judge all relevant times hereto, should have resolved all matters pertaining to the matter in question. At was NOT acting under the color of ANY judicial authority.

\_\_\_\_\_ was subject to a Rule 10.2 Notice of Change of Judge and the matter was reassigned, for *all* purposes and proceedings, to \_\_\_\_\_. It seems apparent from the record that \_\_\_\_\_ was taking retaliatory action against me for requesting a change of judge. The retaliatory conduct is manifested by (1) his refusal to follow the customary protocol of the justice courts to allow me to enter an appearance in writing, without personally appearing at court, and (2) to disregard and refuse to continue a matter where there was a clear scheduling conflict based upon a *trial* in another jurisdiction where (a) said trial had been scheduled prior to the subject pretrial conference, and (b) the Junction Justice Court was placed on timely notice of the preexisting conflict.

Therefore, \_\_\_\_\_ complete and utter disregard of the Arizona Rules of Criminal Procedure is highly impolitic and unprofessional. However, far more disturbing is \_\_\_\_\_ use of the judicial office to take retaliatory action against me for exercising my client's right to a change of judge. There is simply no other explanation for \_\_\_\_\_ unreasoned action in continuing to rule on motions in a case **AFTER** being removed from that case and having that case assigned to another judge.

### CONCLUSION

\_\_\_\_\_ conduct in the matter of \_\_\_\_\_ was unprofessional and a violation of the Code of Judicial Conduct. \_\_\_\_\_ clearly exceeded his judicial authority by ruling on a case from which he was specifically and categorically removed. Further, and more distressingly, Judge \_\_\_\_\_ flouted the Code's requirement that a judicial officer uphold the independence of the judiciary, avoid impropriety and – most importantly – perform the duties of the judicial office impartially. Judge \_\_\_\_\_ was clearly acting in a manner intended to retaliate against me for exercising my client's right to a change of judge.

Please advise if I can provide further information for your inquiry.

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Enclosure