

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-024

Complainant: No. 1402610678A

Judge: No. 1402610678B

ORDER

The complainant alleged that a superior court judge improperly denied his request to have transcripts prepared for his Rule 32 motion for post-conviction relief. The commission reviewed the allegations and found no evidence of ethical misconduct on the part of the judge. The judge acted within his authority in denying the request. The commission is not a court and cannot change judicial decisions. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: April 27, 2011

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed
to the complainant and the judge
on April 27, 2011

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

JAN 24 2011

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

STATE OF ARIZONA
Commission on Judicial Conduct

Complainant

COMPLAINT

NO: _____

Judge

Comes now the Complainant, _____ and hereby
requests this commission on Judicial Conduct, pursuant to commission on Judicial
Conduct Rules, Supreme Court Rules and other well-established Arizona law to investigate
and discipline _____, Judge, Superior Court of the State of Arizona,
County of Maricopa to protect the Public, Defendants, and maintain high standards
for the judiciary and administration of justice. Complainant's Complaint is
based on the following memorandum of Points and Authorities,

Memorandum of Points and AuthoritiesFactual Background

On August 31, 2010 Complainant filed a "motion for Preparation of Post Conviction relief" Pursuant A.R. crim. P. Rule 32.4, Art. II § 4 Const of Ariz, and the XIV Amendment due process Const of U.S. Complainant requested the court to order preparation of the transcripts for the Initial appearance, Preliminary hearing, arraignment and each Settlement Conf. in cases 2003- and CE 2006- except Settlement Conf. on June 22nd, 2009 and that the transcripts be sent to the complainant for preparation of Post Conviction Relief.

Complainant specifically stated he "needs them to show the court that he was denied bail unlawfully by the Court of Maricopa."

Complainant specifically stated "Hon ... den[ied] complainant his right to counsel, right to release, the right to examine any forms presented to the judge, the right to examine any forms presented to the judge, the right to cross examine the alleged witnesses in case # 2006- the right to a hearing inherently similar to a preliminary hearing, and the right to testify and present witnesses depriving [complainant] of liberty without due process of law in violation of the XIV Amendment," due process, Const of U.S.

Complainant specifically stated he needed the transcripts "to show how my Attorney was ineffective in representing me..."

On September 14, 2010 Hon states, "Defendant's explanation of why he needs the transcripts prepared do not fall within the Scope of a Rule 32 proceeding." IT IS ORDERED denying defendant's motion. (CE 2006- minute entry 9/14/2010.)

I A The Commission on Judicial Conduct should investigate and discipline Hon because is unethical by denying Complainant's request for transcripts, preparation for Post Conviction Relief by stating, "Defendant's explanation of why he needs the transcripts prepared do not fall within the Scope of a Rule 32 proceeding."

The Commission on Judicial Conduct should investigate and discipline Hon

because is unethical by denying Complainant's request for transcripts, preparation for Post Conviction Relief by stating, "Defendant's explanation of why he needs the transcripts prepared do not fall within the Scope of a Rule 32 Proceeding," when in fact Complainant's explanation why he needs the transcripts do fall within the Scope of Rule 32 proceedings-

"Complainant requested the court to order preparation of the transcripts for initial appearance, preliminary hearing, arraignment and each Settlement Conf in cases CR 2003- and CR 2006-

"(motion for preparation of Post Conviction Relief filed 8-13-2010)

"Complainant specifically stated 'Horn ... denied complainant his right to counsel, right to release, the right to examine any forms presented to the judge, the right to ~~examine~~ ~~my~~ ~~these~~ cross examine the alleged witnesses in case #2006- , the right to a hearing inherently similar to a preliminary hearing, and the right to testify and present witnesses depriving complainant of liberty without due process of law in violation of the XIV Amendment," due process, const of U.S.

Complainant specifically stated he needed the transcripts, "to show how my Attorney was ineffective in representing me."

B A.R. Crim P. Rule 32.1 Scope of Remedy provides Ground for relief are:

- a. The conviction or the Sentence was in violation of the constitution of the United States or of the State of Arizona.
- e.(2) The defendant exercised due diligence in securing the newly discovered material facts.

A.R. Crim P. Rule 32.1 Scope of Remedy Comment [Amended 2007]

General, the unified procedure of Rule 32:

(1) Consolidates the last five avenues into a single comprehensive remedy, (Arizona habeas corpus, writ of coram nobis, motion to modify or vacate judgement (under Court Rule 60(C)) motion for new trial or newly discovered evidence and delayed appeal)

A.R. crim P. Rule 32.1 Scope of Remedy comment [Amendment 2007] continued

Rule 32.1 (e). most traditional collateral attacks are encompassed within paragraph (e). Claims of denial of counsel, of incompetency of counsel, and of violations of rights based on the federal or Arizona constitution are included.

C

Complainant specifically stated he needed the transcripts, "to show how my attorney was ineffective in representing me" falls under the A.R. crim P. Rule 32.1 Scope of Remedy a. the conviction or the sentence was in violation of the Constitution of the United States or of the State of Arizona; A.R. crim P. Rule 32.1 Scope of Remedy comment [Amendment 2007] Rule 32.1 (e) "most traditional collateral attacks are encompassed within paragraph (e) claims of denial of counsel, of incompetency of counsel."

Complainant specifically stated "Hon ... denied complainant his right to counsel, right to release, the right to cross examine any forms presented to the judge, the right to cross examine the alleged witnesses in case #2006- the right to a hearing in front of a judge, and the right to testify and present witnesses depriving complainant of liberty without due process of law in violation of the XIV Amendment "due process, Const of U.S. falls under the A.R. crim P. Rule 32.1 Scope of Remedy a. The conviction or the sentence was in violation of the Constitution of the United States or of the state of Arizona; A.R. crim P. Rule 32.1 Scope of Remedy comment [Amendment 2007] Rule 32.1 (e) ... "and of violations of rights (emphasis added) based on the federal or Arizona constitutions are included."

D

Hon conduct is unethical because he denied complainant's request for transcripts, preparation for Post Conviction Relief by stating, "Defendants explanation of why he needs the transcripts prepared do not fall within the Scope of a Rule 32 proceeding" when in FACT complainant's explanation why he needs the transcripts do fall within the Scope of Rule 32 proceedings.

II

It is unethical for Hon

to deny complainant's requests for transcripts

when the explanation given by complainant falls within the Scope of Rule 32 because
 His conduct does not conform to moral norms-fairness and standards of the
 judicial conduct. Specifically "Rules of the Supreme Court Code of Judicial Conduct" Canon 2
A judge shall Avoid Impropriety and the appearance of impropriety in All of the Judge's
Activities. A judge shall respect and comply with the law and shall act at all times
 in a manner that promotes public ~~the~~ confidence in the integrity and impartiality of
 the judiciary. Commentary [Canon 2A] [2004] "Actual improprieties under this
 standard include violations of law, "COURT RULES" (emphasis added), or other
 specific provisions of this code.

"Order denying defendants motion" because "Defendant's explanation of why he
 needs the transcripts prepared do not fall within the Scope of a Rule 32 proceeding" when in
 FACT complainant's explanation why he needs the transcripts prepared do fall within the
 Scope of Rule 32 proceedings is a violation of "Court Rules" and is therefore
 conduct that is unethical.

III

The Commission on Judicial Conduct should investigate and discipline His
 because is unethical by denying complainant's request for transcripts,
 preparation for Post Conviction Relief by stating, "Defendant's explanation of why he needs
 the transcripts prepared do not fall within the Scope of a Rule 32 proceeding."

This Commission on Judicial conduct, pursuant to Commission on Judicial Conduct Rules,
 Supreme Court Rules and other well-established Arizona law should investigate and discipline
 Judge Superior Court of the State of Arizona, County of Maricopa to protect the
 Public, Defendants, and maintain high standards for the judiciary and the administration
 of justice for the reasons stated in this Complaint.

Dated January 14th, 2011

Respectfully,

Attached: August 3rd motion

and 9/14/2010 minute entry