

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-246

Complainant: No. 1428100502A

Judge: No. 1428100502B

ORDER

The complainant alleged that two superior court judges were biased and improperly handled two cases in the late 1990s and early 2000s.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judges engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainant, the members of the commission concluded that the allegations raised in this matter involved issues that occurred too remote in time to justify an investigation. Under Commission Administrative Policy 4, investigations are limited to alleged misconduct occurring within three years, unless there is an allegation of a long-term pattern of misconduct. The commission found no basis to justify an exception to this policy in this case. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: November 16, 2011.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on November 16, 2011.

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

ATTACHMENT TO JUDICIAL COMPLAINTOF

This complaint addresses the misconduct of Pima County Superior Court Judges _____ and _____ in State of Arizona v. _____. In their mishandling of the subject case, both Judge _____ and Judge _____ violated the following Canons of the Arizona Code of Judicial Conduct ([http://supreme.state.az.us/ethics/NewCode/2009 Code Internet Maste 5-03-110.pdf](http://supreme.state.az.us/ethics/NewCode/2009%20Code%20Internet%20Maste%205-03-110.pdf)):

- Canon 1: A Judge Shall Uphold the Integrity and Independence of the Judiciary;
- Canon 2: A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities; and
- Canon 3: A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

My involvement in State v. _____ was as a Federal Bureau of Investigation Special Agent assigned to investigate allegations that Tucson Police Department _____ provided perjured testimony in two homicide cases. One case involved the 1992 triple homicide at the El Grande Market in Tucson. Deputy Pima County Attorney Ken Peasley prosecuted this case and sought the death penalty against the three defendants: Christopher McCrimmon; Andre Minnitt; and Martin Soto Fong. In essence, the allegation in this case was that Peasley solicited perjured testimony from _____ to bolster the credibility of the State's material witness against McCrimmon and Minnitt, which witness was a convicted felon named Keith Woods. Although both Peasley and _____ knew that _____ had focused his investigation on all three defendants prior to interviewing Woods regarding the murders, Peasley solicited false testimony from _____ that none of the defendants' names had come up in the investigation prior to talking to Woods. The purpose of this perjured testimony was to eliminate any defense that _____ had fed Woods information about the defendants prior to obtaining a recorded statement from Woods, since _____ had spoken to Woods at length prior to conducting the recorded interview. _____ conduct in this case was the subject of some scrutiny, as _____ testified at a hearing in the Fong prosecution that Fong participated in the confession to Woods, when in fact this defendant was not present during any such confession [See Exhibit 7 of attached Motion in Limine, p.50-52].

_____ testimony at this hearing was based on Woods' statement, but Woods actually told _____ that Woods had never seen Fong a/k/a Cha-Chi before [See Exhibit 46 of attached Motion In Limine, p. 14,]. After _____ perjured testimony in a prior separate trial against Minnitt came to light, McCrimmon was acquitted at trial and the Arizona Supreme Court reversed Minnitt's conviction, dismissing the case with prejudice based on the fact that Peasley had solicited perjured testimony by _____

The other case involved a homicide in 1995. The defendant in that case was Vicente Segura, who allegedly participated in a robbery that resulted in the murder of Phillip Quinsler. In that case, _____ testified in the grand jury and made several material false statements. One such statement was that _____ had interviewed a witness who picked Segura out of a lineup as the person he had seen driving Quinsler's car after the homicide. In fact, this witness advised _____ that the person he saw driving Quinsler's car was not in the lineup. Due to _____ perjured testimony in the grand jury, Segura

was charged with first degree murder. Segura's defense attorney vigorously attacked credibility due to the fact that had made numerous false statements in the grand jury. Segura, who apparently did participate in the burglary that cost Mr. Quinsler his life, was ultimately allowed to plead guilty to second degree burglary.

The criminal case against was prosecuted as a state perjury case. Due to the fact that Peasley had tried so many murder cases and the Arizona State Attorney General's office handled appeals from the Pima County Attorney's Office, The Attorney General's Office recused itself from the case and specially appointed the Mohave County Attorney's Office. Matthew Smith was the prosecuting attorney.

Although the attached Government's Motion *In Limine* Concerning a Potential Witness and its exhibits sets forth the facts that form the basis for my complaint, the core issues are outlined below.

I.

Judge

Prior to initial indictment, attorney, Michael Piccarretta, sent Matthew Smith a letter dated May 15, 2001 [See Exhibit 12 in Government's In Limine Motion]. In this letter, Piccarretta requested that he be allowed to present character witnesses for One such witness listed by Piccarretta was Judge [See Exhibit 12, p.2, footnote 1]. However, neither Smith nor myself became aware of this fact until years later [See Exhibit 6, paragraph 5].

After was indicted by a grand jury in Phoenix, the case was transferred back to the Pima County Superior Court and assigned to Judge Instead of instantly recusing himself for the obvious conflict of interest, Judge merely disclosed to the parties that he had contacts with wife, father, and due to the fact that had testified previously in Judge court [See Exhibit 16]. Judge did not volunteer that he had such a favorable opinion of that he previously had volunteered to be a character witness for in his criminal case, the very one that was in front of Judge

Piccarretta filed a motion to remand the case against back to the grand jury. This motion essentially made the same allegation as later filings [See Exhibits 29 and 31, attached]. Despite the fact that he had no legitimate basis for granting motion, Judge did so, anyway [Exhibit 17]. Because of the lack of any legitimate basis for Judge granting the motion to remand the case, Matthew Smith filed a request that Judge provide finding of fact and conclusion of law supporting his ruling. Inexplicably, Piccarretta objected to this motion, and Judge never responded to it [See Exhibit 6, paragraph 7].

After the State reindicted the case again was assigned to Judge At that point, even though Matthew Smith was unaware that Judge had volunteered to be a character witness for he nevertheless was convinced that Judge was biased against the prosecution of and thus filed a motion for Judge to recuse himself. On September 30,

2001, Judge [redacted] denied this request, and the minute entry for the hearing stated, "THE COURT FINDS no basis for the Court to recuse itself" [See Exhibit 27]. Judge [redacted] did grant a motion for a new judge, not for cause. The case was then transferred to Judge [redacted]

Judge [redacted] finding that there was no basis to recuse himself is completely contradictory to the fact that Judge [redacted] offered to be a character witness for [redacted] prior to [redacted] being indicted, after which the case was assigned to Judge [redacted] court. In addition, Judge [redacted] had the following to say in a hearing in an unrelated criminal case against Chris McCrimmon on August 14, 2000: "I became concerned that your client (McCrimmon) may be concerned given my contact with Detective [redacted] and the wife and the father that perhaps I should not be the Judge hearing this ongoing case and that is something we have not resolved yet and I want you to know about it, more importantly, your client. And there maybe (sic) a conflict right now for more me. I think you need to know about it" [See Exhibit 11, p.5]. Judge [redacted] subsequently recused himself based upon this conflict. This hearing took place prior to Judge [redacted] offering to be a character witness for [redacted] before the grand jury.

Judge [redacted] personal opinion about Peasley and [redacted] was perhaps best illustrated in an article in *The New Yorker* written by Jeffrey Toobin and published on January 17, 2005. Toobin had interviewed Judge [redacted] for the article, and Judge [redacted] had the following to say about Peasley: "'The defense lawyers hated him' [redacted], a Pima County Superior Court judge, said. 'But I always thought that was because he was so good. Watching Ken was like watching great theatre. He had an instinct for the jugular like no prosecutor I ever saw.'" [See Exhibit 1, page 54]. Not surprisingly, Judge [redacted] was also very complimentary toward [redacted] in this article, stating that, "'Joe is just totally likeable, and juries loved him,' Judge [redacted] said. 'He was very soft-spoken, very credible, very sympathetic'" [See Exhibit 1, p. 57].

In short, Judge [redacted] had an obvious conflict of interest in that he was so favorably disposed towards [redacted] that he offered to be a character witness against [redacted] in his criminal case. Thus, it was blatant misconduct for Judge [redacted] to: (1) fail to immediately recuse himself on his own initiative upon being assigned to hear the case; (2) fail to disclose the most material fact, that he had offered to be a character witness, when he disclosed other more innocuous facts to Smith when addressing a possible conflict of interest; and (3) conceal his conflict and misconduct by making a false finding that there was no basis to recuse himself. Judge [redacted] acted upon this significant conflict and bias when he granted [redacted] motion to remand the case to the grand jury without any legal or factual basis for doing so. His actions significantly undermined the integrity of the justice system.

II.

Judge

After Judge [redacted] granted prosecutor Matthew Smith's motion for a change in judge on October 8, 2002, the [redacted] case was assigned to Judge [redacted]. After defense attorney Michael Piccarreta filed his motion to dismiss/remand [see Exhibits 29-31], Judge [redacted] filed a 37 page "minute entry" on July 16, 2003 granting the motion to dismiss. This "minute entry" is replete with inaccurate legal and factual findings. One of the many examples that demonstrates the blatant nature

of Judge bias against prosecution occurred when Judge engaged in actually altering a portion of a trial transcript that had been presented to the grand jury by changing the punctuation in a statement made by Peasley from a period to a question mark, thus attempting to completely change the statement from an incriminating one to one that could arguably be exculpatory [See Exhibit 4, p. 29 including the footnote]. Comparing the "minute entry" to the actual record in the case makes clear that Judge was biased against the prosecution. However, it was not until years later that I discovered the source of Judge bias: she had authored a letter dated June 20, 2001 in support of Peasley, the prosecutor who had solicited the perjured testimony of which was the basis of the criminal case Judge dismissed two years later [See Exhibit 13]. At the time of Judge ruling in July of 2003, Peasley was still undergoing an Arizona State Bar proceeding in which he ultimately was disbarred for his participation in the El Grande perjury matter with

Judge without the support of the facts or the law, falsely accused me of providing misleading and exaggerating statements in my testimony before the grand jury in her "minute entry" in order to achieve her ultimate goal of helping her longtime friend, Ken Peasley, avoid disbarment. Not only did Judge fail to recuse herself immediately upon being assigned to the case, she also concealed this significant conflict of interest from Smith. Through this deceitful tactic, she was able to remain on the case and use her authority to falsely allege significant misconduct by myself and Smith in order to support her decision to dismiss the criminal case against

The attached Motion in Limine sets forth a more detailed analysis of Judge ruling, and Exhibit 5 of that motion provides a detailed response to each specific allegation made by Judge concerning the testimony in the grand jury proceeding in which was indicted.

The result of Judge misconduct is that she obstructed justice by sabotaging a legitimate criminal case that exposed the truth: that committed several acts of perjury in two different homicide cases. The consequence of perjury was that several defendants, who may well have been guilty, escaped being held fully accountable for their actions. Furthermore, due to Judge actions, himself was never held accountable for his own criminal conduct. Her actions have had a significant and detrimental impact on the criminal justice system.

Additionally, not only did Judge misconduct allow to escape being held accountable for his criminal conduct, but her false allegations against me have had a significant and lasting detrimental impact on my professional career. Although every prosecuting attorney who has reviewed the matter has agreed that Judge findings are unsupported and biased due to her clear and gross conflict of interest, several have declined to use me as a witness, for fear that a jury might learn that a judge has found me to have committed misconduct, which can be difficult to overcome even with the opportunity to rehabilitate my character. Consequently, my ability to do my job as an investigator of criminal activity, such as public corruption, has been significantly damaged.

I understand that it is not the role of the Judicial Committee to overturn a judge's findings. However, one must evaluate the facts of this case in order to determine how the conduct of Judges

and amounted to nothing more than a gross abuse of the authority entrusted to them in order to help their friends. An objective analysis of the facts can lead to no other possible conclusion than that both of these judges committed the gravest misconduct to the criminal justice system and to the people of the State of Arizona. As Supreme Court Justice George Sutherland has said about the role of a prosecutor, "He may prosecute with earnestness and vigor – indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger v. United States, 295 U.S. 77, 88 (1935). Ken Peasley and struck foul blows to secure convictions, but the foul blows struck by Judge and Judge for the purpose of protecting Peasley and were even more egregious. Failure to hold these judges accountable for their actions is to condone it.