

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint

Judges:

Complainant:

ORDER

July 23, 2020

The Complainant alleged multiple judicial officers had failed to abide by the rules of court pertaining to post-conviction relief.

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 does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. 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 member Michael J. Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on July 23, 2020.

State Bar of Arizona
Ariz. Comm. on Judicial Conduct

Re: Judiciary Complaint

I, _____ Complainant, do hereby swear that the following statements are true, to the best of my abilities, I so swear under threat of perjury. This is a formal written complaint that the Judges herein are not abiding by the Rules of the Court pursuant to Arizona's Rules of Appellate Procedures and Enforcement Act of 1870, 16 stat 140.

The following are statements of fact, I do swear.

The Arizona legislature established Rules of the Court to ensure a defendant may exercise the right to be fully and fairly heard in an appeal of any conviction as secured by the Constitution and laws of this state.

A. The Rules that are in question, in my complaint are:

1. Ariz. Rules of Crim. Proc. Rule 32.4 (4)(A). This rule requires that the court send copies of the notice to all interested parties (defendant, counsel, prosecutors office and the Attorney General) and make a note on the record the

date and manner of sending copies of the notice.

This was not done in my case.

2. Ariz. Rules of Crim. Proc. Rule 32.4(4)(c). This rule requires the court to send a copy of the notice of p.c.r. to the appropriate appellate court within days and also must make a not of the date and manner it was sent. This was a requirement because I had a pending appeal in the Ariz. Supreme Court.

This was not done in my case.

3. Ariz. Rules of Crim. Proc. Rule 32.6(c). States that "The court shall review the petition within days after the defendant's reply was due. On reviewing the petition, response, reply, files and records, and disregarding defects of form, the court shall identify all claims that are procedurally precluded..."

The Newly minted rules has modified this section by moving it (renumbered) as Rule 32.11. Court Review of the Petition, Response, and Reply. Also, not done in my case.

The problem is I filed for an extension of time to file the Petition due to the discovery of the newly minted Rule 32, by order No. R-19-002 (Ariz. Supreme Court), and I had filed separate motions for appointment of counsel for cause, motion for the need of discovery. Then I filed on an amended Notice of PCR.

The problem is the Court did not respond to any motion filed leading to next section, herein.

4. Arizona's Rules of the Court-

County Rule 4.5

Rule 4.5 PCR clarifies the role of the courts, where a petitioner files a Rule 32. This clarification is because County has established a Rule 32 Management unit to insure a petitioner is heard fairly. (See Exhibit 1 attached).

Briefly, Rule 4.5 mandates that all preliminary stages of a post-conviction relief proceedings are settled before assigning the case for a ruling. Preliminary

- stages are:
1. Assignment of Counsel;
 2. Request for discovery;
 3. Request for extension of time;
 4. Setting the briefing schedule;
 5. and any other requests made by defendant.

This was not done in my case.

5. This was not an isolated instance. This procedural due process of established rules violation occurred in my previous PCR notice. Which, I made clear in my notice of PCR that the previous court did not follow the rules of the court. This was the basis of my recent claim of deprivation of due process and equal protection, giving notice to this reviewing court its need to follow the established laws.

This reviewing court still disregarded the law. It stated:

"In addition, Defendant complains that he was deprived of due process and equal protection rights in the course of litigating previous Rule 32 proceedings. (Amended Notice 7)

His remedy was to seek review of those proceedings,

1 Defendant is not entitled to relitigate those proceedings here."

Ruling, by the

Judge

I was not relitigating those proceedings. I was filing a claim (Timely-as it just occurred in the previous PCR) of Due Process of law, which no court has yet to address. Yes, I "complained" in my previous PCR, but it was not an actual claim. Now it was and to make matters worse it occurred again. The court also did not address why it too did not follow the established laws.

There is, however, a motion for reconsideration pending and I am filing an appeal to the Court of Appeals. But, if history repeats itself the trial and appellate courts will not address my complaint or, now, claims. Requiring me to file a complaint with the Ariz. State Bar - Judiciary Committee and Attorney General of Arizona () and the Federal authorities (U.S. Dept. of Justice), herein.

5. Finally, the courts have acted as adversary and fact finder in Petitioners claims, without benefit of rebuttal, at least no reason given thus far. Our system of justice is founded on the adversarial process in any judicial court. Each Party must present its claims and defenses, then and only then must a court rule on the actual papers and arguments presented.

Instead the courts have filed arguments on behalf of the state and made its decision based on its findings. Not

allowing the Petitioner to have a full, fair and impartial hearing before an impartial judiciary.

B. Authority

I. Due Process of Law:

The guarantee of due process is founded in the Fifth and Fourteenth Amendments to the Constitution.

The Supreme Court of the United States (SCOTUS) has ruled that "due process of law, when applied to judicial proceedings mean course of legal proceedings according to rules and principles established in our system of jurisprudence for protection and enforcement of private rights."

Scott v. McNeal, 154 U.S. 34, 145 S.Ct. 1108 (1894) also: Duncan v. Missouri, 152 U.S. 377 (1894).

The Arizona Supreme Court has also made clear that, "Our system represents a rule of law based upon the principle that officers of the law are bound by and must act within the law... Any other system is a step which will inevitably lead us, as it has led others, to a society where the worst criminals are often those who govern and administer law." Pool v. Superior Court, 139 Ariz. 98 at 103 (1984).

The Ninth Circuit, of which I fall under, has made clear that "A defendant has a due process right to a record sufficient to allow him a fair and full appeal of his conviction."

Ayala v. Wong, 730 F.3d 831 (9th Cir. 2013).

I have been denied the vested right of procedural

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COMPLAINT ON ITS WEBSITE.**

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COMPLAINT IN THIS MATTER,
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IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**