

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-315

Judge:

Complainant:

ORDER

December 4, 2024

The Complainant alleged the superior court judge in his criminal case was incompetent and entered erroneous rulings.

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 members Denise K. Aguilar and Delia R. Neal did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on December 4, 2024.

COURT OF ARIZONA

2024-315

(Petitioner)

Court

No.

v.

Hon. Commissioner of the Court of the State of Arizona

No.

in and for County

(Respondent, Commissioner)

County

Court

State of Arizona,

No.

(Real Party in Interest)

CERTIFICATE OF SERVICE

I, [Name], Petitioner pro per, on the [Day] day of [Month], [Year], filed an original and one (1) copy of the PETITION AND APPLICATION FOR SPECIAL ACTION in the [County] Court; and served one copy to the following parties in compliance with Rule 1.7(c) of the Arizona Rules of Criminal Procedure as follows:

• Hon.

County

Court

•

County

Court

Presiding Judge/Court Administration

via USPS

via USPS

• Court of Arizona

(2 copies)

via USPS

• Arizona Commission on Judicial Conduct

1501 W. Washington St., Ste. 229

Phoenix, Az. 85007

via USPS

via USPS

via USPS

Petitioner pro per

COURT OF ARIZONA

(Petitioner)

Court

No.

v.

Hon. Commissioner of the
Court of the State of Arizona,

No.

in and for County
(Respondent, Commissioner)

County, Court

State of Arizona,
(Real Party in Interest)

No.

PETITION AND APPLICATION FOR SPECIAL ACTION

I, _____, Petitioner pro per, petition this Court for Special Action Relief. I am not versed in, nor a professional of, laws, and ask this Court to bare with me. Furthermore, the rules regarding Special Action's are not clear nor provide any kind of template as to how to do this.

I present to this Court "a matter of first impression and statewide importance that is likely to recur again," regarding the Arizona Constitution, Arizona Revised Statutes, and Rules of _____ Court. As far as I can determine, and as far as my limited research has been unable to turn up, this issue has never come up or been addressed before, in this or any other of the State's courts, except by me in _____ of _____.

I am not writing this as a motion for reconsideration, since Rule 8 of the Special Action Rules of Procedure do not allow it. And I am not writing this as a "Petition for Review of a Special Action Decision of the Court of Appeals," as stated in Rule 8(e) of the Special Action Rules of Procedure, since

the Court of Appeals technically didn't rule on the Petition or its merits but simply "decline[d] to accept special action jurisdiction" (Exb. 14). The arguments to the merits of the special action are better suited to be brought before this Court anyway since it is THIS Court, that writes the Rules of Court anyway.

STATEMENT OF THE MATERIAL FACTS

I went to trial in the _____ County _____ Court on _____ where the Master Calenciar judge, NOT the Presiding Judge, appointed Commissioner _____ as the trial judge. This was not and IS NOT ALLOWED by applicable law and this Court's rules. During trial, Commissioner _____ repeatedly made many mistakes and damning comments which violated my Constitutional and Due Process Rights, and which support the basis for this Petition.

ISSUES PRESENTED FOR REVIEW

Rule 3 of the Special Action Rules of Procedure state that "the only questions that may be raised in a special action are: (a) Whether the defendant has failed to exercise discretion which he has a duty to exercise; or to perform a duty required by law as to which he has no discretion; or (b) Whether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority; or (c) Whether a determination was arbitrary and capricious or an abuse of discretion." I will now present these questions to the Court.

(a) Has the defendant failed to exercise discretion which he had a duty to exercise?

Pursuant to the State Constitution, along with the Arizona Revised Statutes (A.R.S.), and the Rules of Supreme Court of Arizona (R.S.Ct Ariz.), the trial court, more specifically, the trial judicial

officer, LACKED THE AUTHORITY and REQUIREMENTS to conduct the trial, let alone render judgment or impose a sentence, because he lacked subject matter jurisdiction. "Subject matter jurisdiction may be raised at any time and is never waived." *Mammo v. State*, 138 Ariz. 528, 675 P.2d 1347 (Ariz. Ct. App. 1983); *State v. Jacobsen*, 141 Ariz. 421, 687 P.2d 946 (Ct. App. 1984).

While the court had original jurisdiction, Ariz. Const., art. 6 § 14 (4), the judicial officer presiding over the trial was BARRED from doing so per Ariz. Const., art. 6 § 24, and A.R.S. § 12-213, because they both deferred his powers to the Rules of Court, Rule 96(a)(11), which as written, prohibits Commissioner from conducting any trials (Ex's 1, 2, 3).

"The court... like any court, should on its own motion consider its jurisdiction." *State v. Avila*, 147 Ariz. 330 (1985). Nowhere in Rule 96(a)(11) does it say that "a commissioner" can "hear and determine any matter governed by Rules" 18 through 23, of the Rules of Criminal Procedure. It does say however, that "if approved by the PRESIDING JUDGE due to a COMMISSIONER'S EXTENSIVE LITIGATION OR JUDICIAL EXPERIENCE," he may hear further matters.

By his own admissions, Commissioner "LACK OF EXPERIENCE in [his] career WITH CRIMINAL LAW" (T.R. 5-16-19, p. 99:19-21) (Ex. 5), and "

The answer is one, now two[!]" (T.R. 9-26-19, p. 12:7-10) (Ex. 6), should have made him aware of his abuse of discretion that he had a duty to exercise. In *Powell v. Alabama*, the U.S. Supreme Court said that the 5th and 14th Amendment rights to due process were violated when one is not tried by a "legally competent tribunal having jurisdiction of case, constitut[ing] basic elements of constitutional requirement of due process of law," 287 U.S. 45, 53 S.Ct. 55 (1932). This begs repeating *Avila*, supra, that Commissioner should have used his discretion and "consider[ed] his] jurisdiction" when he realized he couldn't competently perform his judicial duties, with consequences of such magnitude.

In the " " OVERTURNED County Court

**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.**