



STATE OF FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION

1110 THOMASVILLE ROAD
TALLAHASSEE, FLORIDA 32303-6224
(850) 488-1581

July 13, 2010

Mr. Neil J. Gillespie
8092 SW 115th Loop
Ocala, FL 34481

Re: Docket No. 10278, Judge Nielsen

Dear Mr. Gillespie:

The Commission has completed its review of your complaint dated June 9, 2010 and has determined, at its meeting held on Friday, July 9, 2010, that the concerns you have expressed are allegations of substantive or procedural error. An erroneous decision is not judicial misconduct within the jurisdiction of the Commission. It is also noted that in the 2002 case that formed the basis for your complaint, the judge ultimately appointed counsel following determination of the family's indigency.

The purpose of the Commission is to determine the existence of judicial misconduct and disability as defined by the Constitution and the laws of the State of Florida. If such misconduct or disability is found, the Commission can recommend disciplinary action to the Florida Supreme Court. The Commission has found no basis for further action on your complaint that therefore has been dismissed.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Michael L. Schneider".

Michael L. Schneider
General Counsel

MLS/bsk

Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481

Telephone: (352) 854-7807
email: neilgillespie@mfi.net

June 9, 2010

Mr. Michael Schneider, General Counsel
Florida Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, FL 32303-6224

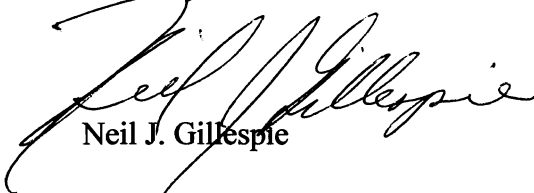
Dear Mr. Schneider,

Enclosed you will find my signed complaint against Hillsborough Circuit Judge Richard A. Nielsen and supporting documents. This is the complaint we discussed during our telephone call of June 4, 2010. Enclosed is the following:

1. A signed JQC complaint form, Judge Nielsen
2. May 28, 2002, news story by Kathryn Wexler, published in the St. Petersburg Times about Judge Nielsen "Without an attorney, boy falters before judge"
3. May 31, 2002, news story by Kathryn Wexler published in the St. Petersburg Times about Judge Nielsen "Teen who defended self gets attorney"
4. May 29, 2002, St. Petersburg Times editorial about Judge Nielsen, "Judge should have known better"

Thank you for your consideration.

Sincerely,



Neil J. Gillespie

enclosures

FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

1110 Thomasville Road
Tallahassee, FL 32303-6224
(850) 488-1581

COMPLAINT FORM

This form is designed to provide the Commission with information required to make an initial evaluation of your complaint.

PLEASE NOTE: COMPLAINT FORM MUST BE TYPED OR LEGIBLY HAND PRINTED, DATED AND SIGNED BEFORE IT WILL BE CONSIDERED.

(Note: This form can be typed into here, then printed, or print it out and fill it in by hand.)

I. Person Making Complaint

Name Gillespie Neil J
Mr. (Last) (First) (Middle)
Ms.
Mrs.

Address 8092 SW 115th Loop
Ocala, FL 34481

Telephone Number(s): (Day) (352) 854-7807 (Evening) (352) 854-7807

II. Judge Against Whom Complaint is Made

Name Nielsen Richard A
(Last) (First) (Middle)

Address 800 E. Twiggs Street
Tampa, Florida 33601

Supreme Court _____

District Court
of Appeal _____

Circuit Court 13th Judicial Circuit

County Court _____

III. Statement of Facts

Please provide in as much detail as possible the information which you have knowledge which you believe constitutes judicial misconduct or disability. Include names, dates, places, addresses and telephone numbers which may assist the Commission.

This complaint against Hillsborough County Circuit Court Judge Richard A. Nielsen is based on two (2) newspaper articles by Kathryn Wexler and an editorial published in the St. Petersburg Times. According to the Times, Judge Nielsen mistreated an indigent minor during a restitution hearing. Copies of the news stories and editorial accompany this complaint.

I know Judge Nielsen from my civil lawsuit where he presided over Gillespie v Barker, Rodems & Cook, case 05-CA-7205. I am suing my former lawyers for fraud and other misconduct from their former representation of me. The lawsuit commenced August 11, 2005 and is currently active.

Judge Nielsen recused himself from my case November 22, 2006. This complaint is not about that matter, although I plan to make another complaint against Judge Nielsen when the facts are ripe. The misconduct of Judge Nielsen that I observed in my case led me to search the Internet and I found the news stories and editorial by the St. Petersburg Times.

May 28, 2002, news story by Kathryn Wexler, St. Petersburg Times, about Judge Nielsen entitled "Without an attorney, boy falters before judge". The story describes how Judge Nielsen failed to provide an attorney to an indigent minor during a restitution hearing.

May 31, 2002, Kathryn Wexler wrote "Teen who defended self gets attorney".

May 29, 2002, the St. Petersburg Times published an editorial about Judge Nielsen entitled "Judge should have known better". The editorial begins "What was Hillsborough County Circuit Judge Richard Nielsen thinking when he forced a 16-year-old to represent himself in court?"

When a circuit judge mistreats a minor in court it is a violation of the public trust, reflects discredit on the judicial process and suggests partiality in the consideration of matters by the judge.

If additional space is required, attach and number pages.

IV. Additional Information (if available)

a. If your complaint arises out of a court case, please answer the following questions:

1. What is the name and number of the case?

Case name: _____ Case No. _____

2. What kind of case is it?

civil criminal domestic relations probate

small claims traffic other (specify)

3. What is your relationship to the case?

plaintiff/petitioner defendant/respondent

attorney for _____: _____

witness for _____: _____

other (specify)

b. If you were represented by an attorney in this matter at the time of the judge's conduct, please identify the attorney:

Name _____

Address _____

Phone _____

c. List and attach copies of any relevant documents which you believe support your claim that the judge has engaged in judicial misconduct or has a disability. (Note: Retain a copy for your records as these documents shall become the property of the Commission and may not be returned.)

Accompanying this complaint are copies of the 2 news stories and editorial published in the St. Pete Times.

d. Identify, if you can, any other witnesses to the conduct about which you complain:

Name(s): Kathryn Wexler

see story for other witnesses.

Addresses: _____

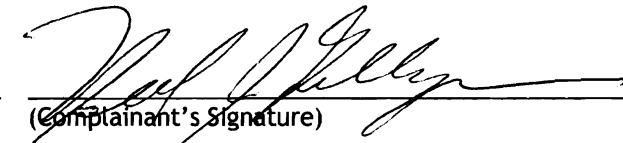
Phone Numbers: _____

IN FILING THIS COMPLAINT, I UNDERSTAND THE COMMISSION'S RULES PROVIDE THAT ALL PROCEEDINGS OF THE COMMISSION, INCLUDING COMPLAINTS FILED WITH THE COMMISSION, SHALL BE KEPT CONFIDENTIAL PRIOR TO THE FILING OF FORMAL CHARGES. I FURTHER UNDERSTAND THAT THIS RULE OF CONFIDENTIALITY ATTACHES AND BECOMES EFFECTIVE UPON THE FILING OF THIS COMPLAINT AND THAT ANY VIOLATION COULD RESULT IN A CITATION FOR CONTEMPT BY THE COMMISSION.

V. Under penalty of perjury, I declare that I have examined and understand this complaint form and to the best of my knowledge and belief, the above information is true, correct and complete and submitted of my own free will.

June 9, 2010

(Date)



(Complainant's Signature)

(Note: Only signed complaints will be considered.)

Please note that the Commission only has authority to investigate allegations of judicial misconduct or permanent disability by persons holding state judicial positions. The Commission has no jurisdiction over and does not consider complaints against Federal Judges, magistrates, lawyers, police, court personnel, or State Attorneys. The Commission does not act as an appellate court and cannot review, reverse or modify a legal decision made by a judge in the course of a court proceeding. For example, the Commission does not investigate claims that a judge wrongfully excluded evidence; imposed an improper sentence, awarded custody to the wrong party; incorrectly awarded alimony or child support; incorrectly resolved a legal issue or believed perjured testimony.

Please return this form and direct all future communications to:

Florida Judicial Qualifications Commission
1110 Thomasville Road
Tallahassee, FL 32303-6224

Without an attorney, boy falters before judge

[SOUTH PINELLAS Edition]

St. Petersburg Times - St. Petersburg, Fla.

Author: KATHRYN WEXLER

Date: May 28, 2002

Start Page: 1.B

Text Word Count: 961

Document Text

The 16-year-old boy sat before the Hillsborough County judge, asking for an attorney. He didn't understand what was going on, he kept saying.

Juan Carlos Elias was in the middle of a restitution hearing. He had pleaded guilty to stealing one car and burglarizing another. Reimbursing the victim was the issue at hand now.

But Elias said he didn't know what restitution meant. His frustrated mother repeatedly rose from the first row, instructing her son in Spanish.

Judge Richard Nielsen, relatively new to the bench, had her tossed out of his courtroom.

"You don't have a lawyer, Mr. Elias," Nielsen said. "So you're going to represent yourself in this matter."

And so, for more than two hours on May 6, the 16-year-old struggled to deal with the arcane language and procedures of a courtroom. It was a scene unfamiliar to some observers. Under Florida law, juveniles are entitled to legal counsel unless they and their parents waive that right.

"Mr. Elias, any objection to these exhibits?" Nielsen asked at one point, referring to car repair bills submitted as evidence.

"I don't have nobody representing me?" said Elias. "I don't understand these things."

"Show these to Mr. Elias," Nielsen instructed the prosecutor.

Soon after, Nielsen asked Elias whether he had trouble understanding English.

"No, but sometimes the words you all use, like, um, I don't really get 'em that much. But I understand English," said Elias, whose family is Puerto Rican.

Restitution hearings are routine and are rarely covered by the press. A reporter for the St. Petersburg Times chanced upon Elias' hearing. His mother later gave a tape recording of the proceeding to the reporter.

Nielsen did not return repeated calls from the Times. Nor did officials at the Hillsborough County Public Defender's Office.

Pinellas-Pasco Public Defender Bob Dillinger said he has never seen a juvenile represent himself during such a hearing.

"That would really bother me," he said, when told that Elias had asked for a lawyer and had said he didn't understand the proceedings. "I would be surprised if our judges (in the Pinellas- Pasco circuit) wouldn't give him a lawyer."

Nielsen, 52, built his reputation in civil litigation with an emphasis on business law. He was head of the litigation department at a Tampa firm, Salem, Saxon & Nielsen, when Gov. Jeb Bush appointed him to the bench in November 2000.

Nielsen graduated from the University of New Mexico and got a law degree from the University of Florida. He had no judicial experience before his appointment. In his application for nomination to the circuit court, Nielsen wrote that certain traits would serve him well on the bench, including honesty, integrity and fairness.

Elias' mother, Evangeline Castillo, had hired a private attorney to hammer out a plea agreement weeks earlier. But she could not afford to retain the lawyer, Tina Dampf, any longer.

She figured her son would be assigned to a public defender for the restitution hearing.

"Mr. Elias, do you have a lawyer representing you in this matter?" Nielsen asked the youth at the beginning of the hearing. He said he did not.

"So, Ms. Dampf is no longer representing you in this matter, is that correct?" Nielsen asked.

Yes, Elias said.

"All right, well we're going to proceed . . . at this time," Nielsen said.

Elias, lanky and wearing a shirt that showed off his abdomen, said nothing. Nearby was a co-defendant represented by Public Defender Elizabeth Beardsley.

At one point during the proceedings, Elias asked whether the prosecutor was representing him.

"No, sir, she's not . . . she is handling that case on behalf of the state," Nielsen said.

"On my behalf?" Elias asked.

"Not on your behalf. Against you, sir. Now, in a moment, you'll get an opportunity to ask questions of the witness."

"I don't know what to say," Elias said.

His mother spoke up. "You want me to say it for you?" she asked her son in English.

"No, if you're going to do anything, you need to tell him what to say," Nielsen told her. "You're not the attorney."

Several attorneys sounded perplexed when told of Elias' travails. George Richards, deputy chief of the juvenile division at the Hillsborough State Attorney's Office, said indigent youths are appointed an attorney unless they specifically decline one.

"A judge has to find that it's a knowing waiver," Richards said. "If the child understands, the parent understands that they're waiving their right, and they say, 'No, we don't want an attorney,' then (an attorney) won't be appointed."

Judy Estren, executive assistant public defender at the Pinellas- Pasco Public Defender's Office, said the co-defendant's attorney should have intervened. "I would have instructed my attorney to jump in."

Castillo, 36, was a janitor at the Hillsborough courthouse for years until she was injured a few years ago. She got to the courthouse an hour before the hearing May 6, she said, to line up a public defender. Castillo said a bailiff she knew told her not to worry, that the judge would handle everything.

Nielsen ordered restitution of \$4,608.94. Elias, who has dropped out of school, is on probation. He is doing his court-ordered public service at a youth center, Castillo said.

On Monday, Elias said he was still reeling from his day in court.

"They were acting like I was a lawyer and I know how to speak," he said.

"I'm like, dang. The way they speak and the way they put their words, I don't understand."

- Kathryn Wexler can be reached at wexler@sptimes.com or (813) 226-3383.

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Abstract (Document Summary)

"Mr. [Juan Carlos Elias], any objection to these exhibits?" [Richard Nielsen] asked at one point, referring to car repair bills submitted as evidence.

Nielsen ordered restitution of \$4,608.94. Elias, who has dropped out of school, is on probation. He is doing his court-ordered public service at a youth center, [Evangeline Castillo] said.

Evangeline Castillo stands with her son Juan Carlos Elias, 16, outside their home in Tampa.; Judge Richard Nielsen examines documents during the restitution hearing earlier this month for Elias in a Tampa courtroom.; Photo: PHOTO, DIRK SHADD; PHOTO, KEN HELLE

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Teen who defended self gets attorney

[LATE TAMPA Edition]

St. Petersburg Times - St. Petersburg, Fla.

Author: KATHRYN WEXLER

Date: May 31, 2002

Start Page: 1.B

Text Word Count: 603

Document Text

Evangeline Castillo returned to the Hillsborough County Courthouse on Thursday, gripping documents she hoped would prove that she could not afford an attorney for her 16-year-old son.

Among them was a \$198 utility bill and her brother's death certificate.

The man she would have to persuade was Circuit Judge Richard Nielsen.

The judge had made her teenage son defend himself during a recent restitution hearing involving the theft of two cars. No lawyer was appointed, and Castillo was tossed out of the courtroom after trying to counsel her son in Spanish.

"I'm a nervous wreck," she said Thursday. Her son, Juan Carlos Elias, sat nearby in baggy jeans and a short-sleeve shirt.

Two days after the St. Petersburg Times detailed the teen's courtroom predicament, Nielsen made room on his docket to determine whether the family was indigent and, hence, entitled to free counsel.

The hearing was over in 10 minutes.

Castillo got a court-appointed Spanish translator. She also got Dee Ann Athan, an assistant public defender, who came as a friend of the court to ask Nielsen to consider appointing a public defender.

The judge swiftly granted the family free counsel.

Nielsen has not discussed the case. He continued to decline to comment Thursday.

He is running unopposed in judicial elections in September. Gov. Jeb Bush appointed him to the bench in 2000. His legal background is in civil litigation.

Attorney Tina Dampf also showed up Thursday. She represented Elias during the plea bargain phase of the trial.

"They could no longer afford to keep paying us," Dampf told Nielsen.

Even so, Dampf did not withdraw from the case. But the clerk of the court failed to notify her of the restitution hearing, she said. And Castillo, figuring she was now on her own, did not contact Dampf about it.

"I should have been here and would have been here," Dampf said.

Athan said she would likely file a motion for another restitution hearing. Otherwise, the Public Defender's Office can

appeal the restitution, she said. The amount, which involves a co-defendant, is \$4,608.94.

During the initial hearing, Elias repeatedly had asked Nielsen if he had a lawyer. Florida law says juveniles are to be represented by counsel at all stages of a case.

"I don't have nobody representing me?" Elias asked Nielsen. "I don't understand these things."

Elias was put on probation. He was ordered to do public service and attend school. He had dropped out, but Thursday he re-enrolled in a vocational school, Castillo said.

Athan said the case now seems on track. "Ultimately, I think the system shakes itself out."

Dampf said she would like to see Elias cleared of paying any restitution.

The victim worked for the U.S. Army and had two cars stolen from his house in Brandon. One, a Plymouth, was issued by the government. The keys to his personal vehicle, a Honda Sierra, were in the Plymouth, and the youths stole the second car, as well. He also had a pistol and a military badge that were never recovered.

Dampf said two other teenagers involved in the case were responsible for damage to the victim's personal property, not Elias.

"Hopefully, a second restitution will be granted with an outcome far more favorable and fair to Juan Carlos," she said.

Castillo, a former courthouse custodian, smiled afterward.

"It was their mistake and they were right to correct it," she said. "Everybody is entitled to make mistakes."

- Kathryn Wexler can be reached at 226-3383.

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Abstract (Document Summary)

[Evangeline Castillo] got a court-appointed Spanish translator. She also got Dee Ann Athan, an assistant public defender, who came as a friend of the court to ask [Richard Nielsen] to consider appointing a public defender.

Even so, [Tina Dampf] did not withdraw from the case. But the clerk of the court failed to notify her of the restitution hearing, she said. And Castillo, figuring she was now on her own, did not contact Dampf about it.

Circuit Judge Richard Nielsen (ran Tampa & State, Metro & State); [Juan Carlos Elias]; Evangeline Castillo (ran Tampa & State); Photo: PHOTO, (3)

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Judge should have known better Series: EDITORIALS

[SOUTH PINELLAS Edition]

St. Petersburg Times - St. Petersburg, Fla.

Date: May 29, 2002

Start Page: 12.A

Section: EDITORIAL

Text Word Count: 352

Document Text

What was Hillsborough County Circuit Judge Richard Nielsen thinking when he forced a 16-year-old to represent himself in court? Juveniles in Florida are entitled to a lawyer. The defendant, Juan Carlos Elias, whose family is Puerto Rican, clearly showed he had trouble understanding the rules and language of court procedure. What teenager wouldn't? Nielsen showed poor judgment and a striking inability to balance competing rights.

This isn't a mistake Nielsen can chalk up to being a newcomer on the bench. When he asked for the job, which Gov. Jeb Bush gave him in 2000, he credited himself with being thoughtful and fair, qualities necessary every day as a judge.

This wasn't even a gray area of the law. Children are entitled to a lawyer "at all stages of any" delinquency proceeding. The right to an attorney is fundamental, and not only is a judge obligated to ensure that right upon children in his court, he also can act against parents who fail to provide their child a lawyer.

Nielsen could have ordered that Elias be represented by a lawyer, but he failed to do so. He also chose not to seek a determination on whether Elias' family finances had sunk to the point the boy needed a public defender. He simply told the teen: "You don't have a lawyer, Mr. Elias, so you're going to represent yourself in this matter" - a restitution case involving the theft of one car and the burglary of another.

The judge later tried to characterize his decision as "a balancing act" - and what he balanced was Elias' right to competent legal representation against the inconvenience of asking the victims to return for a later court date. Nielsen later added he thought Elias was somehow protected by the fact his co-defendant had an attorney. That is either an alarming perspective on the law or an inept attempt at damage control, for he also said, in the same breath, that the attorney may have had a conflict playing two roles in the case. In any event, a mistake was made, and the court needs to correct it.

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Abstract (Document Summary)

[Richard Nielsen] could have ordered that [Juan Carlos Elias] be represented by a lawyer, but he failed to do so. He also chose not to seek a determination on whether Elias' family finances had sunk to the point the boy needed a public defender. He simply told the teen: "You don't have a lawyer, Mr. Elias, so you're going to represent yourself in this matter" - a restitution case involving the theft of one car and the burglary of another.

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