

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-067

Complainant: No. 1280510200A

Judge: No. 1280510200B

ORDER

The commission's review of the complaint filed in this matter and the recording of the proceeding in court revealed no ethical misconduct by the judge. The complainant was cited for criminal speeding, not civil speeding, and this distinction was not made clear to him by the prosecutor. Traffic school is only an option in civil traffic cases. The judge's behavior, as reflected on the tape, did not violate applicable standards.

The complaint is dismissed pursuant to Rule 16(a).

Dated: July 11, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on July 11, 2006.

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

February 25, 2006

CJC-06-067



State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite # 229
Phoenix, Arizona
85007

RE: Complaint [redacted]

Judicial Complaint against Judge [redacted]

On [redacted] at 11:20 AM I received a speeding ticket while northbound on [redacted] I was speeding, traveling at 74 miles per hour. My complaint in this matter is not centered on the facts of speeding, but rather on the court proceedings that adjudicated the matter.

I was wrong to speed and admitted that I was speeding to the officer at the time of the infraction, to the prosecutor during my private conversation with him in the Court on [redacted]

My complaint is concerned around the proceedings involving my case. Specifically with the following statute: 28-1596 Traffic Complaint; proceedings – paragraph 2-C.

"If the allegations are admitted, the court shall enter judgment for the state and shall impose a civil penalty. The person may admit the allegations with an explanation, and then the court shall enter judgment for the state and impose a civil penalty. In determining the civil penalty, the court shall consider the explanation submitted."

Judge [] denied me the right to provide an explanation, and thus my explanation was not considered.

Further: CANON 1

"A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightness, and soundness of character."

In my opinion – a reasonable person witnessing the events in Judge [] courtroom would agree that he lacked any of the qualities mentioned above in my particular case.

CANON 3

(4) "A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control."

Judge [] did not exhibit any of the qualities mentioned above.

- (5) "A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age sexual orientation or socioeconomic status and shall not permit staff, court officials and others subject to the judge's direction and control to do so."

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

- (6) "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that":

Judge [] denied my right to be heard and did not perform his duties in an impartial and fair manner. He had a predisposition and a bias in this particular matter. Judge [] in doing so relied on "ex parte communications" to deny my rights under the law. He lacked judicial temperament by accusing me in open court of being a "flagrant criminal" and a "whiner". Yet at no time did I nor was I given the opportunity to be

heard according to the law. More importantly he had no evidence to substantiate his remarks.

SUBSTANTIVE EVENTS:

What follows are the events in the proceeding that took place in my case on

I arrived at about 9:32 AM and signed in with the Court Clerk and took my seat in the court room. Approximately 25 minutes later my name was called by the Prosecutor – I stepped forward and took a seat next to him at the prosecutions table. After we exchanged pleasantries he opened the file with my case number on it and explained the citation to me and the penalties and options that existed. I admitted to him that I had been speeding and discussed some of the details of the event.

I specifically said to the Prosecutor that I did not come to argue the issue of speeding, but rather that for 35 years I have had an excellent driving record during which time I have received 3 citations, and never been involved in an accident and wanted to find out if I could mitigate my speeding infraction by going to traffic school – my wife had suggested this to me.

I was informed by the prosecutor that “Traffic School” was against the policy, I was surprised and asked to find out what the policy was? – What was the criteria? The prosecutor never provided an explanation of the policy; he would only indicate that it was the policy.

He indicated that this was the policy and that if I asked the Judge for this option that he the Prosecutor would object. I advised the Prosecutor that I would plead guilty to the violation but would present the traffic school option to the judge as well as ask the court to consider my driving record as a circumstance that stood in my favor. I was being open and cooperative.

That ended my conversation with the Prosecutor, and I resumed my seat in the courtroom and waited to be called by the Judge.

The Judge called my name and I presented myself in a polite and courteous fashion by saying good morning to the judge.

The judge did not return my greeting instead he looked at me and said in a loud and stern voice with significant emphasis “Absolutely Not” – he said this a second time “Absolutely Not” – “It is out of the Question”.

At first I was startled and was not sure what he was saying – in what context he was saying it, but he was saying it directly to me, as he looked directly at me.

It was clear to me that he had ruled and that nothing I would say would change his mind – further he did not indicate to me that I should provide him with any further argument. The case was settled and he had made his ruling. In the back of my mind I also was aware that the prosecutor had told me that he could throw me in jail for 48 hours if he wanted. I remained silent.

He then indicated without pause that 74 miles per hour on [] did not merit going to traffic school. He asked me how I would plead and I indicated that I would plead guilty to speeding. He told me to sit down and wait for the prosecutor to call me. The Prosecutor was not in the courtroom to the best of my knowledge; if he was he remained silent when I appeared before the Judge.

The Court Clerk indicated to me to approach and she gave me some paperwork.

I waited to be called by the prosecutor, and he called me about 25 minutes later.

Once again I sat down next to the prosecutor and I mentioned to him what had occurred, and that I was upset that I had not had the right to affirm my rights by being able to approach the Judge and present my position in the matter. That not only had that not occurred but that essentially the Judge had decided and voiced his decision without having allowed me the defendant in the matter to be heard.

The Prosecutor indicated that he had written the Judge a note telling the Judge that I wanted to ask for traffic school and as this was against the policy, the Judge new in advance from this note what my request would be.

I thought at the time that what had transpired was an abridgement and denial of my rights – not only from the standpoint that I was not allowed to present my circumstances, but that in fact the Prosecutor had communicated with the Judge by note prior to my appearance in front of the Judge thus influencing the Judge prior to the Judge hearing from my lips what my circumstances might be.

I was not privy to the communication with the Judge so I have no idea if my convictions, arguments, were presented in an accurate manner by the prosecutor who has no interest in presenting my arguments in a representative manner that would benefit me in the least.

No doubt whatever was contained in that secret communication between the Prosecutor and the Judge influenced the Judge in such a manner that a clear bias against me the defendant was pronounced with out so much as me saying but "good morning" to the judge in a polite manner.

The Prosecutor at no time when I was in front of the Judge stood up and argued against traffic school or against any argument that I would have made had I had the opportunity to make any case for myself at all.

I agreed to pay the fine and signed papers and once again took my seat in the courtroom and waited for the Judge to call me back.

At approximately 11:10 AM the Judge called me once again and I once again took my place immediately in front of him. He proceeded to advise me of my rights and when he finished he asked me if I understood what he had read to me.

I indicated that I understood, and that in point of fact my rights had been denied. He indicated that I was a "whiner" and that in his 40 years in the legal profession "traffic violators were the very worst offenders." He continued on and stated that I was nothing more than a "Flagrant Criminal".

At this point with authority I advised him that he lacked the temperament to be a judge and that I had no issue as to my guilt or innocence but I had a significant issue in the manner in which he had handled the proceeding and that he lacked the temperament to hold the position of Judge.

He threatened to throw out my guilty plea and compel me to stand trial, I indicated to him that I did not want to take any more of the Courts time and that I would pay the fine.

I indicated to him that the Prosecutor did not know his name and that I wanted his name as I intended to file a complaint. With a flourish and with an attitude of untouchability he wrote his name on a sticky note and shoved it towards me. As I walked towards the exit he called after me and once again indicated that I was a "whiner" and a "flagrant criminal". I responded that I did not argue my guilt or innocence that my issue was the manner in which he conducted the proceedings and the manner in which he had addressed me in a prejudicial way.

At precisely I paid my fine of dollars.

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CONCLUSION:

In Conclusion both the law and the Code of Judicial Conduct clearly state specific mandates to be followed.

I was denied the right to a fair hearing.

I was denied the right to present any mitigating circumstances that would argue for traffic school while at the same time pleading guilty to speeding of which I was guilty.

The fact that I have an excellent driving record over 35 years – was not permitted to be presented in any way.

The Prosecutor communicated with the judge by note – a note that I was not privy to – thus the judge and the prosecutor communicated in an “ex parte” fashion with the intent to deprive me of my rights in this proceeding. The judge had a predetermined bias against me and he so articulated that bias in open court as a result of an “ex parte” communication.

The Judge used his overwhelming authority in order to deny my rights to present my circumstances no matter whether they might be valid or without merit.

If in fact the Prosecutor advocated my position in the note he wrote the judge I am sure that this is a violation of ethics rules as well – as he could surely not do so with a view towards advocating my rights and my position to the Judge while at the same time representing the State of Arizona position in the matter.

The Judge clearly relied on those representations provided to him by the Prosecutor “ex parte” and thus was pre disposed and biased as he did not allow me the right to express my particular circumstances and they were not considered in the proceeding.

Lastly the term “Flagrant Criminal” has a meaning in the English language, and a considerably different meaning in legal language. When you type the words “Flagrant Criminal” in Google here is an example of the results you get the first listing.

With their **flagrant criminal** violation of society's rules, serial killers like Ted Bundy and John Wayne Gacy are among the most dramatic examples of the ...
www.crimelibrary.com/criminal_mind/psychology/robert_barett_1.html - 76k =

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Three violations in 35 years does not a flagrant criminal make – but then he did not know that because he did not allow me to voice my circumstances in this matter – he just approached it from a bias point of view, lacking an open mind, judicial temperament, and relying on an “ex parte” communication.

I look forward to a prompt resolution of this matter, and it is my believe that this is the procedure in that court room with that judge and that prosecutor. This is not an isolated case, but to speak up in a courtroom directly to a judge is not for the feint of heart, and requires a degree of intellect and knowledge.

Your recommendations to me in this matter will be of some value having never written a complaint like this before in my life. Maybe it is I that is wrong and this is the proper procedure, and it is just I that is mistaken. I truly hope you can set me straight in this matter. I look forward to your invaluable communications.



Encl.