

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-068

Complainant: Russ Rallo

Judge: Hon. Gerald A. Williams

ORDER

After reviewing the complaint, the evidence gathered during preliminary investigation, and the judge's response, the Commission on Judicial Conduct finds that the judge's conduct in this case violated the Code of Judicial Conduct.

Canon 3B(4) of the code requires that a judge be patient, dignified and courteous to litigants. During the hearing described in the complaint, the judge became angry with the complainant, argued with him from the bench, and raised his voice in a manner inconsistent with the canon. The judge also told the complainant that he would incur attorney's fees when he lost the case, implying that the judge had already made up his mind in a case that had not yet been set for trial, contrary to Canon 3B(5), which requires a judge to perform his duties without bias or prejudice. This conduct is unacceptable.

Accordingly, the judge is hereby reprimanded for his conduct pursuant to Rule 17(a), and the record in this case, consisting of the complaint, the judge's response and this order, shall be made public as required by Rule 9(a).

Dated: June 14, 2006.

FOR THE COMMISSION

/s/ J. W. Brammer, Jr. _____
Hon. J. William Brammer, Jr.
Commission Chair

Copies of this order were mailed to the complainant and the judge on June 14, 2006.

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

CJC-06-068

COMPLAINT AGAINST A JUDGE

Your name: **Russ Rallo**

Judge's name: **Gerald Williams**

Date:

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

In January 2005 the complainant, Russ Rallo, filed a civil lawsuit in North Valley Justice Court against his landlord Tom Carrico, for abuse of access amounting to harassment as per the Arizona Residential Landlord Tenant Act.

As a result of that lawsuit, the landlord obtained an Attorney, Craig Boates, and set about exacting revenge in every way possible in retaliation for the lawsuit.

After months of abuse, I refused to pay rent until the landlord came into compliance with the ARLTA. After 1 week, Landlord filed a forcible detainer action in the North Valley Justice Court.

I know the law and knew that I was entitled to a jury trial, as well as some other due process considerations that virtually assured I would be victorious in this action. According to several opinions of the Superior Court on appeal from the lower courts, due process has been forcefully established in concerns to forcible detainer because the ramifications of a tenant losing are so severe.

Walking into the North Valley Justice Court that day was like walking onto another planet. 4 forcible detainer cases before mine went just like this;

Judge: Did you pay your rent? (A clear procedural mistake.) Guilty or Not Guilty is the required procedure.)

Defendant: No, your honor, but he did this and he did that....

Judge: You can't "not" pay your rent. You lose this case and the landlord is entitled to the following...

When I was called, I was ready. I had exhibits, questions for witnesses, and a demand for a jury trial at the ready which is your right in forcible detainer cases.

What followed was an absolute nightmare. Justice Williams didn't like someone demanding their rights and refusing to be railroaded by anyone. The complaining party wasn't even in attendance. How do you have a "trial" where the accusers don't show up? Their lawyer was present, but a forcible detainer is clearly a TRIAL, not a hearing.

I will provide a tape of the proceedings if necessary, but I am including the Appeal that I filed in Superior Court LC2005-000299.

This justice was so arrogant, so smug and so matter of fact about his rape of our legal system that I was in shock. AND HE HAS A LAW DEGREE!

After filing the appeal with his court, it was "misplaced" twice. The opposition was allowed to file their memorandum well past the deadline. The Appeal did not reach the Superior Court for 8 months. It took another two months to decide it. This inordinate amount of time saw the original Appellate Judge, whose words in previous opinions were specifically relied on by this Appellant, Judge Michael Jones, be rotated out of the position of deciding appellate cases. Thank God that Margaret Downie was his replacement. She did not have to rely on his opinions.

During all of this, I had filed many, many motions in the North Valley Justice Court for return of funds (which the Judge erroneously calculated, forcing me to pay thousands more on bond than was appropriate. Then he allowed the opponents, after ex-parte communication, to obtain a writ of restitution, regardless of bond, and illegally attempt to remove the Appellant from his home.)

Every single motion, whether replying to the opponents or of my own volition was tossed out the door and sometimes without even any notice at all. The opposition was allowed whatever they wanted. They delayed things to go on vacation, with my money, that the judge let them keep, even obtained some of the bond for "rent".

This justice, Gerald Williams cost my family thousands upon thousands of dollars and DARED me to do anything about it. I filed a Special Action to ensure that some kind of revue could be had considering the "loss" of the Appeal. He lied to the County Attorney and told them he had never been served, not knowing that I paid a private process server who served this man at the court house, WHEN I WAS THERE FOR A TRAFFIC TICKET. I saw the whole thing. And this was the second time he was served, not the first. He hid, he lied, he schemed, and the administration of his court is catastrophic. They are rude and incompetent, but I believe it is at his direction.

(Attach additional sheets as needed)

The Superior Court website says this man wasn't elected. He was placed in the position because of the death of the incumbent.

He must be replaced, immediately.

Forcible detainers are the "meat and potatoes" of the Justice Courts. How many forcible detainer cases are heard daily, or weekly?

The number is quite big.

I believe this Justice has been in office for 2 years, approximately.

Add together the amount of forcible detainers heard weekly to two years; making allowances for missed days by this particular Justice, and how many families has this man displaced without having the benefit of their due process.

Due process is in the CONSTITUTION! Both our State's and our Country's. Who is this "man"? How can someone be allowed to spit in the face of the very citizens who "elected" him?

The fact that he has a law degree only proves that he deserves a much greater punishment than a justice who merely meets the minimum requirements. This is an abuse of power by someone who thinks there will be no retribution. He believes that Glendale is so far removed from the Superior Courts, that the lack of oversight is so real, that he dares anyone to call him on anything. Listen to the tape of the proceeding, you'll hear it in his voice the same way I did that day.

While recently listening to the tape again, I decided to keep it playing after I left the courtroom. You hear an individual, maybe an attorney or clerk, say to the justice, "well it does say that in the statute" clearly alluding to my testimony in which I told the Justice that he was wrong and that the statute says (which I had in my hand for him to read) a certain thing.

You hear this cretin give a smug little laugh as to say, "I don't care what the statutes say, this is my courtroom".

Back to the ramifications of my appeal; how many thousands of families has this person displaced, illegally, capriciously, arrogantly????

I told Judge Margaret Downie during one of the many hearings in the Appeal and special action when she asked, "What do you want me to do"? "You can't get any money from him; you can't put him in jail".

My reply was that she could never make things right as far as my case is concerned. Nothing can address the damage that this man did to my family, BUT, I want this stopped. I don't want this man to be able to do this.

I am lucky. I have legal training. I have money. The home in question during this case was a half-million dollar home. What about these poor families that are thrown out in the street daily by this man who is entrusted with their care?

This man's court is in Glendale. I live in Anthem. Somehow Anthem is in his jurisdiction, but couldn't be further demographically.

How many people who were weak financially, emotionally, in ill-health, etc... has this person destroyed?

There is no greater affront, no greater humiliation, and no greater devastation then being thrown out of your home.

The one thing these people have, maybe the only thing, is their constitutional rights. To have that and everything else thrown into the trash by someone who probably doesn't deserve to serve them coffee is an offense that could only initially be served by throwing him into a jail cell for at least a year, possibly more.

This man needs to learn a lesson. He might get a chance to live with some of the very people he "stole" from.

Make no mistake; taking someone's constitutional rights is stealing. It is grand theft. You can't put a price tag on those rights. They are priceless. And to have them stolen by the very person who you have entrusted them with is tantamount to sending your children, day after day, to a day-care provider who you find out is a pedophile.

Maybe I'm overly sensitive because I love the law and our legal system. I don't know.

Can we go back two years and make things right for these people? Can we at least send him packing so he can't continue to do this?

I don't know the answer, but I have done my duty. At great financial and emotional expense, I have vowed to fight this man and anyone else determined to take the law into their own hands. I have a duty to the people who don't have the knowledge or resources that I do. I fight for them, not myself.



NORTH VALLEY
JUSTICE COURT

Gerald A. Williams
Justice of the Peace

15 March 2006

MAR 15 2006

Linda Haynes
Staff Attorney
Commission on Judicial Conduct
1501 West Washington, Suite 229
Phoenix, AZ 85007

Re: Case No. 06-068

Dear Commission Members,

I only had one interaction with the complainant but I do remember the case that is the subject of this complaint. While we would no doubt disagree with the complainant on the law, I deny that any of the four trial level judges associated with this case committed judicial misconduct. The complainant apparently did not want to pay his last month's rent and through a bizarre series of it events, he was not required to do so.

Unfortunately, no audio tapes of any of the proceedings are available. I was informed three-weeks ago by the court manager that nearly all of this court's tapes were boxed up in connection with the court's pending move. But instead of being moved, they were inadvertently destroyed.

Brief Procedural History of Complainant's Cases

On April 21, 2005, the complainant's landlord filed a forcible/special detainer action against him for nonpayment of rent in the amount of \$1,661 plus, late fees, costs and attorney's fees. On April 25, the complainant filed a typed answer that inferred that he had not paid his rent but instead claimed that his landlord had been harassing him. (Exhibit 1). He also filed a counterclaim that alleged this harassment consisted in part of telephone calls and driving by the residence slowly. (Exhibit 2). In neither document did the complainant request a jury trial.

On April 28, all parties were present in court. The Defendant admitted that he had not paid rent but stated that he did not believe that he needed to do so because his landlord had been harassing him. Because he admitted to not paying his rent, and because he had no valid defense, I entered a judgment against him for \$2,566.00. His counterclaim was verbally consolidated with a

GERALD A. WILLIAMS
Justice of the Peace

PHIL HAZLETT
Constable

pending suit that he had already filed against his landlord. It also claimed that his landlord was harassing him.

I had no other involvement in the case until my constable called me on May 10 as he was serving the writ of restitution. (Exhibit 3). He indicated that the tenant had posted over \$3,000 with the court and wondered if he should be given more time to post the correct amount if that amount was insufficient. I agreed that he should hold off the eviction action until I could look into the matter. When I did, I issued a minute entry and order that same day. (Exhibit 4). It documented the history of the case and explained why the amount posted was insufficient. The complainant later used this minute entry to claim that I did not know what I was doing because I relied on the Arizona Rules of Civil Procedure, which in his opinion, do not apply to justice courts. (Exhibit 5).

In his lawsuit against his landlord, on September 20, the complainant filed a pleading titled "Motion for Change of Venue" under A.R.S. § 22-204 and alleged that he anticipated I would deny him due process once again. The motion did not meet the requirements of the statute but I ruled on it without getting to the merits of it. (Exhibit 6). A pro tem judge was scheduled to hear the case and I therefore allowed the trial to proceed as scheduled. At trial, the complainant announced that he was dismissing his case and apparently believed that by doing so that his lawsuit against his landlord for harassment would be over. However, the trial then proceeded on the landlord's counterclaim for damages to the property. A second judgment was issued against the complainant for \$3,368.70.

The complainant did successfully appeal his landlord tenant case (first judgment) and deserves credit for doing so. I will discuss the appellate opinion in a different section of this response but when I received an electronic copy of it, I immediately recused myself. (Exhibit 7). The court manager eventually issued a check to the complainant for \$2,830 in accordance with the appellate opinion. (Exhibit 8).

Response Specific Allegations

Denial of Request for Jury Trial, Questions to Complainant & Landlord Not Present

The appellate opinion in this case caught me off guard and represents a fairly radical view as to how forcible detainer cases should be done in Maricopa County. When I received it, I invited the superior court judge that authored it to come and explain her position at a justice of the peace bench meeting but she never responded to my e-mail. Even though it was personally embarrassing, I circulated the opinion to other JPs because it reflected a significant policy and procedure change. I also gave it to Kevin Holliday, who is one of the attorneys who routinely represents landlords, and asked that he circulate it among his peers.

The superior court judge in her appellate opinion focused the reversal what she called a "very informal discussion" between the judge and the complainant. In her

opinion, there should have been an actual trial with a plea, witness testimony and evidence. I disagree.

Although the forcible entry and detainer summons indicates that the case is set for a trial to be held at 1:00 p.m., in reality, if the tenant appears, then it is more like a pre-trial conference or screening. If the tenant articulates a possible defense, then it is set for a trial the following Tuesday or Thursday afternoon. This practice is consistent with script produced by the Arizona Supreme Court's Judicial College of Arizona. (Exhibit 9). In fact, I no longer ask tenants to enter a plea of either guilty or not guilty because I found that many thought they were facing a criminal action and would ask me about jail time.

The standard case generally goes as follows. I call the case and if the tenant is there, I say something like, "Your landlord is alleging that you have not paid rent for February. Is that true?" Most tenants answer by saying either that they did not have money to pay the rent or that they were withholding rent due to some type of dispute with the landlord. The second answer triggers additional questions so that I can determine whether they might have a legal defense. However, if their answer is some version of "my landlord is a jerk," those tenants are generally not entitled to a trial. In Arizona, there is no authority that allows a tenant to rent strike. Also, if the landlord is represented by counsel, there is no requirement that he or she be present at that time. (See Forcible Detainer Checklist).

In this case, my initial questions were no different than any other case. The interaction did break down, in part due to the complainant's behavior. After I told him that he did not have a legal defense to non-payment of rent, he started demanding a jury trial. I viewed this as a delay tactic but initially considered it and then denied it. However, due to the appellate opinion in this case, I will now modify my practice.

A jury trial in a forcible detainer case is almost a practical impossibility. Justice courts have no standing jury pool and this court is set up to hold jury trials only on Fridays, which are often booked solid with DUI cases. Another scheduling issue is that under state statutory law, a continuance cannot be granted for more than three days in a forcible detainer case. About a year ago, there was a discussion at a JP bench meeting to transfer forcible detainer cases that requested a jury trial downtown to be heard by Jerry Porter or another commissioner. Doing so would allow us to tap into the standing jury pool at superior court. Judge Porter said that he would be willing to hear the cases on a day's notice and I briefly considered transferring this case. As tempting as it was to dump a problem litigant on another judge, I decided it was inappropriate to do so and changed my mind in part because the complainant had failed to articulate anything close to a legal defense to nonpayment of rent.

Ex Parte Communication with Landlord's Attorney

I never had any *ex parte* communication with the landlord's attorney. The complainant, based some of the pleadings he has filed in connection with this case, is

well aware that I was not the judge that signed the writ of restitution. All writs of restitution are filed *ex parte* and this allegation has no basis in law or fact.

Unlawful Writ of Restitution

I had no knowledge that the complainant had posted a bond or that a pro tem judge had signed a writ of restitution in this case until I received a phone call from my constable on May 10, 2005. That information and my position on this issue is documented in the attached minute entry (Exhibit 4). It is somewhat ironic that the complainant has such a negative attitude toward me because I was the judge that cancelled the order that would have evicted him.

Avoided Service of Process

The complainant filed a series of motions, special actions and amended special actions against me. In one, he compared me to the Taliban organization in Afghanistan. At one point, he filed an *ex parte* action with Division One of the Arizona Court of Appeals.

There is no clear guidance for judges on whether or how to accept service on special actions but under *Herles v. Superior Court*, 174 Ariz. 331, 849 P.2d 1 (Ct. App. 1993), judges are nothing more than a bystander. In some situations, a clerk may have accepted service on my behalf. In other cases, perhaps a clerk did not. In either event, I deny that I avoided service of process. In searching through documents to respond to this allegation, I did find the complainant's "First Amended Special Action Complaint." It is dated as being filed stamped in with the court on July 14, 2005 but the place for my signature is blank. I did not know the complainant had hired a process server until I read his complaint with the commission.

There was some confusion concerning service because the complainant initially refused to serve the landlord's attorney with any of his special action pleadings. Some additional information on issues concerning service is included in the attached document from the county attorney's office (Exhibit 10) but I had no involvement in the special actions other than sometimes I would be copied on the pleadings.

Rude and Arrogant

Although the complainant was disrespectful, there were clearly opportunities for me to have stated things differently than I did. Even so, I deny that I was either rude or arrogant.

Most of the statements attributed to me are false. For example, I never dared the complainant to do anything. However, one thing in his complaint triggered a specific memory. In the case after the complainant's, the next case involved a landlord represented by attorney Mark Heldenbrand. However, rather than say what the complainant alleged, Mr. Heldenbrand something similar to, "well, the statute does say

you have to request a jury trial when you first appear (e.g. file an answer).” I also remember Mr. Heldenbrand commenting that it was unfortunate that the complainant had his son with him in court because, due the complainant’s outrageous conduct, Mr. Heldenbrand wondered out loud how the complainant’s son was “supposed to know what a man looks like.”

Conclusion

I regret that I was unable to adequately and calmly explain the proceedings to the complainant during our brief interaction. He succeeded in causing me to lose my temper and there is no excuse for me doing so. The remaining allegations are without merit.

I have not discussed this complaint with Kevin Holiday, Mark Heldenbrand or the landlord’s attorney, Craighton Boates; however, I have no objection to you contacting them. If you have any questions, or need any additional information, please feel free to contact me. Thank you.

Sincerely,

Gerald A. Williams
Justice of the Peace

Attachments

1. Complainant’s Answer
2. Complainant’s Counterclaim
3. Writ of Restitution
4. Minute Entry and Order
5. Portion of Appellate Memo
6. Ruling on Motion
7. Transfer Order
8. Check to Complainant
9. Forcible Detainer Script and Checklist
10. Notice to Court