

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-260

Complainant: No. 1295710389A

Judge: No. 1295710389B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The issues raised are legal or administrative in nature.

The commission is not an appellate court and cannot change a judge's decisions; therefore, the complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: February 20, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on February 20, 2007.

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

OCT 10 2006

[REDACTED]

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

October 5, 2006

To Whom It Concerns:

I am filing this complaint after learning from [REDACTED] in July 2006 that this is my last option. I presume [REDACTED] to be an employee of the State of Arizona-Commission on Judicial Conduct, since she answered the phone and was the person I spoke to at length regarding the series of events surrounding my civil traffic case. My lack of knowledge of the law (right to a speedy trial), misconduct by both a judge and police officer once the trial date was FINALLY set, as well as, misinformation given me by employees of the court, who I trusted gave me accurate information in regard to the appeal process, have all contributed to my now seeking justice before this Commission by the filing of this complaint.

This complaint is my attempt to find justice in what I feel is an egregious violation of judicial procedure/s and misconduct by 2 officers in the state of Arizona. I have enclosed evidence that will expose the previous 'claim' by the inclusion of several 'exhibits,' including the audio transcript on the CD sent to me by [REDACTED] Justice Court, at my request and at a cost of \$17.00. I learned too late that I could have used my right as a citizen of the state of Arizona, to have a speedy trial.(60 days max to set the trial) This information was volunteered to me by a court official only after the trial in [REDACTED] Justice Court on [REDACTED] and is documented in Exhibits 'A' through 'E.' The initial court date of [REDACTED] that I originally anticipated would be upheld, was changed by [REDACTED] Justice Court after their receipt of my 'not guilty' submission to the court, selected under Option 2 of the pamphlet given me by Officer [REDACTED] on the day of the original citation. (Exhibit 'B') The subsequent 'reschedules' moved the court date up over 90 days from the original court date. This is evidenced by the three enclosed 'reschedule' letters from [REDACTED] Justice Court showing the 'excuses' for the changed trial dates, with the first and third reschedules being done by the court (Exhibit 'C' & 'E') and the second being done at the request of Officer [REDACTED] (Exhibit 'D') The original CD which I received from [REDACTED] Justice Court (Exhibit 'H'), proves there was judicial misconduct occurring in [REDACTED] Justice Court on [REDACTED] Civil Traffic Hearing-St. vs. [REDACTED] The CD clearly shows there was an almost 10 minute omission of the hearing, as indicated with the stop time at 1:54:55, restarting at 2:03:42.

indicative of 'tampering' with evidence. The contents of the missing minutes would have revealed 'leading' statements by Judge [] and circular answers by Officer [] that validate my complaint and which will come to light later in this complaint. During this 'missing' time, Officer [] described in detail the 'reason' he pulled me over proving to both the court and myself that he was clearly and willfully in violation of ARS 28-909C, as highlighted in blue in Exhibit 'F.' It is also during this 'missing' time that Judge [] asked me several questions in regard to the seatbelt device that I spoke of during my trial. As well, this same evidence was presented to Officer [] on the date he gave me the original citation; [] I will prove that this seatbelt device does exist and is used in most Ford Sterling 2000 tractors and that my wearing it 'loosely' is not in violation of any seatbelt law/s. It was worn properly, using the safety feature made by IMMI and called the 'Komfort Latch.' I have also attached several documents that will PROVE that these 'IMMI Komfort Latch Seatbelts' are used in almost 90% of all medium and large trucks in the United States and have been since 1986. (Exhibit 'J') Yet, both Judge [] and Officer [] have never heard of them?! I intend to eliminate all doubt and show that because the Officer and Judge involved claimed to have never 'heard' of these seatbelt mechanisms or 'believe such a device exists,' this does not negate the fact that they DO exist and are used daily by truck drivers and have been in use for 20 plus years. Ultimately the facts will reveal to this commission that I was not in violation of 28-909A1 and that the judicial misconduct of [] was a willful violation of Arizona Law, Court Procedure/s and of my rights. As well, the Traffic Statutes of the State of Arizona were willfully violated by Officer [] first on [] [] This was followed by Officer [] willful violation of the laws in both his testimony and his collaboration with Judge [] to conceal a portion of the trial, that took place on [] and is further evidenced by the 'missing minutes' of the CD transcript.(Exhibit 'I') I am ultimately seeking to have the original ruling by Judge [] overturned, based on the facts presented in this complaint and after a thorough investigation by the Commission. It is also my hope that all fines and money paid to the court, while seeking justice in this matter, are eventually returned. As well, it is my hope that the original citation will be dismissed, as it has reflected negatively on my driving record at work. (Exhibit 'M') No violation was ever committed to warrant the initial traffic Complaint [] Based on all the evidence, I am confident that this Commission will restore justice and correct the willful misconduct practiced by both Judge [] and by Officer []

I will begin with the events that occurred on [] which is the date of the original citation that was issued by Officer [] I was driving east on I-10 and observed the ADOT vehicle sitting in the median of I-10. After I drove by, I noticed that Officer [] had pulled out of the median onto I-10 and after driving beside me for approximately 2-3 miles, he then fell behind and turned on his lights. I pulled over, perplexed as to the reason I was being pulled over and after he approached the truck, on the passenger side, I asked him directly, 'What was the purpose of my being pulled over?' To which Officer [] replied, "You were not wearing your seatbelt." (This is also the exact statement made by Officer [] at my trial, showing that he clearly violated ARS 28-909C. At this point of the trial, Judge [] should have dismissed the

complaint.) Officer [] then said, "Get your log book, license and insurance card and step to the back of the vehicle. At this time, Officer [] watched me as I unlatched my seatbelt from the 'hip' location. I got out of my truck and followed Officer [] to the rear of the truck. This is when I began to explain to Officer [] that I was in fact wearing my seatbelt, but that I had used the comfort mechanism on the seatbelt, which is typical for long trips of many OTR drivers. Officer [] observed that I was in fact wearing my seatbelt, but that it was 'loosened' which is the reason it is called 'Komfort Latch.' This particular seatbelt with the 'Komfort Latch' is manufactured by IMMI and I have enclosed the literature seen in Exhibit 'J' along with pictures of the seatbelt in the crew cab of the truck I use where I'm employed. (Exhibit 'K') I proceeded to explain to Officer [] that the seatbelt is legal and if the truck were to hit a bump or if I were to apply the brakes, that the mechanism then activates, so the seatbelt retracts and does its 'job' of holding me in my seat, in the unfortunate event of an accident. Then Officer [] explained that he was going to cite me for "not wearing my seatbelt properly" to which I objected, due to the fact that I was wearing it properly, but that I was merely using the option of having it loosened, explaining again that the mechanism is a comfort feature for long trips. At this point, Officer [] began an official ADOT inspection, to which I fully complied with his requests through the duration of the inspection, which resulted in Officer [] writing me a 'fixer' ticket. He explained that a mud flap is to hang at a 90 degree angle, etc. and finished filling out the Complaint [] He then gave me both the 'tickets' and I proceeded east toward [] upset by what had just taken place. I was in absolute disbelief of the entire situation, even at this point, but figured that I could clear up the 'misunderstanding' at my trial, as I fully intended to plead 'Not Guilty.'

The original trial date of [] was moved up to [] by the court; Exhibit 'C,' after the court received my 'not guilty' plea; Exhibit 'B.' I anticipated the [] trial date, but to my surprise, I received another letter from [] Justice Court, moving the trial date [] at the request of Officer [] (Exhibit 'D') For a third time, I had to request a different day off of work, and much to my chagrin, I received yet another letter from [] Justice Court moving the trial date [] (Exhibit 'E') This alone was a violation of my right to a speedy trial, which as I stated earlier, I was not aware was available to me and I'm sure most citizens of Arizona are 'naive' when it comes to this 'right' as well. This court's inability to give me a speedy trial should have been grounds alone, at this time, for the traffic complaint to be dismissed. Again, had I known of Rule 15 in the 'Rules of Procedure in Traffic Cases and Boating Cases,' I would have filed the proper form to the court. Unfortunately, it was only after Judge [] unexpected ruling in my case that I was informed of this 'right' by a court clerk, who also told me that the court would have had to dismiss the complaint given me on [] due to the length of time it had taken the court to finalize a trial date. The final date set for trial was over 90 days from the original date of [] In my recent research of the Rules of Procedure in Traffic Cases and Boating Cases, I subsequently learned that 'Rule 15. Continuances,' states...(a) The court may, upon motion of a party or witness, or on its own motion, continue the hearing on a civil traffic case for a period not exceeding 60

days, if it appears that the interests of justice so require.' Suffice it to say, I anticipated having my day in court and prepared to present my side of things to the judge at the trial of [redacted] which ultimately was the date adhered to by the court. I begrudgingly went to my supervisor and requested the day off to be moved, for a fourth time, from [redacted] [redacted] showing them the letter and apologizing for this inconvenience. They accommodated my request, again.

I appeared at [redacted] Justice Court on [redacted] and as Judge [redacted] began the trial, he offered me a sheet of paper (Exhibit 'F'), which appears to be the court's 'justification' for the ultimate ruling made by the judge at the commencement of my trial. I accepted the sheet of paper (Exhibit 'F') and at that time, looked at the area that had been highlighted by the court, which was [redacted] at the top of the sheet. I was asked a question by Judge [redacted] in regard to the sheet he had just given me, in reference to the areas the court had highlighted and didn't read further, nor did I feel that I was given the opportunity. Had I been instructed to do this by Judge [redacted] I would have seen that the very issue that I brought to the attention of Officer [redacted] at the time of the original citation and Judge [redacted] during this trial, was on the sheet that the Judge had given to me. During the trial, it is clear that Judge [redacted] disregarded Section 28-909C, which states, 'a peace officer shall not stop or issue a citation to a person operating a motor vehicle on a highway in this state for a violation of this section (Section 28-909), unless the officer has reasonable cause to believe there is another alleged violation of a motor vehicle law of this state.' Officer [redacted] admits to pulling me over on [redacted] because he 'observed that the driver was not wearing a seatbelt,' which is a willful violation of Statute 28-909C, to which I addressed, both on the original date of the citation & at the trial of [redacted]. Yet, this admission by Officer [redacted] was blatantly ignored by Judge [redacted] which also is a willful violation of the laws he is entrusted to uphold in our justice system, being a sworn officer of the state of Arizona and expected to adhere to the laws to ensure that citizens such as myself, are not denied a 'fair' trial and/or JUSTICE. Officer [redacted] admission to this fact that he pulled me over due to the fact that 'he observed I was not wearing a seatbelt,' should have warranted Judge [redacted] dismissal of Complaint [redacted] right then and there. It was clearly shown by Officer [redacted] statement to me on [redacted] (the date of the original citation) and the statement made by him to Judge [redacted] at the trial of [redacted] that Officer [redacted] in fact, clearly violated Statute 28-909C. After Officer [redacted] testimony in court, I was allowed to question him. After some purely fabricated statements made by Officer [redacted] where he says that I had told him that, 'he had the strap loosened because he has a port pass and pushes a button, and when he was going through the Port of Entry, it allows him to go through without stopping.' What I actually said to Officer [redacted] is, "I ride with my seatbelt 'loose' all the time, mostly for comfort, but it is convenient in the event of my having to reach over for anything, so that I have freedom of movement, though it is a standard in the industry." I said nothing like what he has just testified to. Officer [redacted] states that he issued a 'driver vehicle evaluation report, a Federal form?' I was confused as to what Officer [redacted] was referring to here, unless this is the 'fixer' (ticket for the 'flimsy mud flap' or if this is a reference to the ADOT inspection he performed at the cite. He continues saying, "I ALSO issued the citation for

ARS 28-909A1." Officer [] circular statements expose his own misconduct, in that he says many times that he 'didn't see me wearing a seatbelt' and 'we look for straps across the shoulder when we're looking for seatbelt violators,' indicative of a practice by this peace officer, that he first looks for seatbelt violation/s and then, anticipates he will find another 'alleged violation' so that he is not in violation of 28-909C, once he has pulled the commercial vehicle over. His violation of ARS 28-909C is without a doubt documented by his own admission through his testimony to the court. After my first question to Officer [] he again testified, 'I could not see any strap around the shoulder, and that's what we look for when we look for seatbelts not being worn.' I countered with, 'You stated at the cite that I wasn't wearing a seatbelt at all...when you first pulled me over. I asked you a question, 'what was the reason you pulled me over and you (Officer []) said? Officer [] then responded with, "You weren't wearing your seatbelt." The fact that Officer [] was fully aware of his violation of ARS 28-909C, is repeatedly reiterated in his own testimony, both to Judge [] and myself. Officer [] testimony also proves that he pulled me over simply because he didn't observe me wearing a seatbelt and this is abuse of his 'authority' as a peace officer sworn to uphold the very law he broke that day. I anticipate that this Commission will recognize this to be the case, after listening to what remains of the transcripts of the trial of [] in [] Justice Court. For reasons unbeknownst to me, Judge [] continued the trial, even after discovery of Officer [] willful violation of the law, by the officer's own testimony.

Judge [] seemed to be leading Officer [] to change his testimony to reflect that he pulled me over because of the 'flimsy mud flap,' which has been shown through the audible transcript, not to be the case. Officer [] admits to pulling me over due to not seeing a strap, etc, etc. This is documented in the enclosed audible transcript (CD-Exhibit 'I') in which he discloses that he pulled me over because of 'his observation that the driver was not wearing a seatbelt.' The leading done by Judge [] is conveniently absent from the court transcripts (CD) evidenced by the 'missing minutes' of the trial. It is during this time that Judge [] had said to Officer [] after he testified again, that he had observed the driver didn't have his seatbelt on, to which the judge, inquired more than once, if that is the testimony that Officer [] wanted to 'give.' Finally Officer [] caught on" and said that he pulled me over due to the 'flimsy mud flap,' which then became the accepted statement by the court, though the oral exchange to arrive at this, has mysteriously disappeared. Despite the facts I presented to the court about the fact that I was not in violation of ARS 28-909A1 and explanation of the Komfort Latch mechanism, Judge [] used Officer [] statement of, 'I pulled the vehicle over because I noticed the vehicle had a 'flimsy mud flap.' This is a blatant lie, but since Judge [] lead Officer [] to the 'changed' testimony. Only upon discovery by Officer [] after pulling me over, that I was in compliance with the law (I was wearing my seatbelt), with a legitimate explanation as to why Officer [] couldn't see it from his vantage point, did Officer [] find (he need to 'scramble' for a 'reason' in order to 'cover' his own willful violation of ARS 28-909C. Officer [] clearly admits to Judge [] that I did have my seatbelt on, but that it was loosened and lies again when he states that I had loosened it to lean over to get something from the glove

compartment, etc. I had fully explained the mechanism, but had told Officer [] that I had been wearing it this way, due to the long haul and because of its comfort and ease when driving. This 'flimsy mud flap' was accepted as valid by Judge [] when in truth, this was actually 'discovered' by the officer only AFTER my questioning of the purpose of his pulling me over based alone on his perception of a seatbelt not being worn, hence, this became the justification for the 'false' citation and the ultimate judgment of the court, resulting in a small fine of [] debited from my checking account. (Exhibit 'N')

The amount I paid to [] Justice Court is not what is at issue here. Because of this experience and the outcome, it is my hope that an investigation will be done, in order that no one else is subjected to the 'antics' that I endured, which I find to be reprehensible. I have never experienced such utter disregard of the laws by either a Judge or an Officer, and would like to see this practice end. It is my hope that I am the exception and not the rule, but if this is typical practice at [] Justice Court, I am sure that the Commission will take appropriate action to ensure that this ends. I am stunned that such a collaborative and willful violation of justice has taken place. It began on [] [] at the moment that Officer [] pulled me over and is evidenced all the way through to the trial, from the extension of the trial, exceeding 60 days outlined in the '...Procedure in Traffic Cases...' and appallingly continued by Judge [] during my trial, by his leading the officer to the erroneous ruling, despite the facts presented at the trial of [] I am absolutely dismayed that such a miscarriage of justice has occurred and am confident that the evidence presented to the Judicial Commission, encompassing this entire case will ultimately prove there was willful misconduct demonstrated, not only by Judge [] but also by Officer []

It is my contention that the behavior demonstrated by Judge [] on [] is unethical and should not be tolerated. This DPS officer committed perjury in his lying to the judge and the subsequent ruling by the court, in regard to this erroneous citation, constitutes gross misconduct, from its very inception.

I presented facts and explanations about the IMMI Komfort Latch seatbelt mechanism, allowing for OTR drivers comfort, without compromising their safety. Despite the thorough explanation given in regard to this comfort feature built into these seatbelts, specifically for long haulers, it was deliberately ignored and questioned by both Judge [] and Officer [] even though, they should fully be aware of this seatbelt, since it is used in 90% of all medium and large trucks. (Exhibit 'J') I know that I am not the first truck driver ever pulled over by Officer [] nor is it feasible that I am the first truck driver to appear in [] Justice Court. I find it incomprehensible that this judge and officer have both never heard of this seatbelt, especially if they have been a judge and officer for even just a few years. This seatbelt, as the evidence shows, has been in existence and use since 1986. In retrospect, I recall almost feeling that the judge and officer were 'mocking' the testimony I was giving. I have also enclosed pictures from the crew cab of the 2000 Ford Sterling that I drive for the company where I have been

employed for several years.

While I may be the first that has had an absolute nightmare of an experience in Justice Court, it is my hope that I will be the last to see such a travesty of justice. I thank the Commission for their time and consideration of all the facts and evidence that I have presented, and anticipate that you will recognize the misconduct that occurred which began on

