

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 07-150

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Complainant: No. 1311710490A

Judge: No. 1311710490B

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**ORDER**

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The issues raised involve legal and procedural matters outside the jurisdiction of the commission. The commission is not a court; therefore, the complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: August 28, 2007.

FOR THE COMMISSION

/s/ Keith Stott  
Executive Director

Copies of this order were mailed  
to the complainant and the judge  
on August 28, 2007.

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

To: Commission On Judicial Conduct,  
1501 W. Washington St. Suite 229,  
Phoenix, AZ 85007

CJC-07-150

Re: Complaint Concerning Judicial Misconduct:

Date: May 31<sup>st</sup>, 2007

Pursuant to Rule 20 of the Rules of the Commission on Judicial Conduct, this letter is intended to serve as a complaint about, and notice to the Commission on Judicial Conduct, concerning the actions of the Honorable Judge [redacted] Magistrate Judge for [redacted] Arizona.

It is with some angst that I author this correspondence, as it saddens me to feel compelled to bring this Judge's conduct to this august commission's attention.

During an ongoing investigation into the legality of photo radar enforcement in [redacted] my agency uncovered evidence of violations of Rule 6 of the Rules of the Commission on Judicial Conduct (Hereinafter, Rule 6), and Rule 81 of the Code of Judicial Conduct (Hereinafter, Rule 81).

Specifically, Canons 1, 2, and 3 of Rule 81 have been violated by Judge [redacted]

Cannon 1 states, "A judge shall uphold the integrity and independence of the judiciary."  
Cannon 2 states, "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities."  
Cannon 3 states, "A judge shall perform the duties of judicial office impartially and diligently."

As this Commission is aware, Rule 6 provides many grounds for discipline of a judge. Specifically these include, "...willful misconduct in office, willful and persistent failure to perform judicial duties, habitual intemperance, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or a violation of the Code.

Judge [ ] has engaged in willful misconduct in office, willful and persistent failure to perform judicial duties, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and violations of Rule 81 of the Code of Judicial Conduct.

The misconduct in question is fivefold. Knowingly allowing a non-attorney employee of a government contractor with a pecuniary interest to represent the State of Arizona in legal proceedings in a civil traffic case against a citizen of the State of Arizona, allowing a law enforcement officer from a police department with a pecuniary interest to act as a representative of the State of Arizona in many other instances, failing to take action to prevent the unauthorized practice of law as contemplated in Rules 31, 32, 75, and 76 of the Rules of the Supreme Court of Arizona, allowing a hearing to go forward after the court has lost jurisdiction of the matter in question, and the Judge allowing a proceeding to be commenced and continue even though the Judge knows, or should know, that the proceedings were commenced in violation of Arizona Revised Statutes.

For your information I have attached a copy of a tape (Exhibit A) of one such hearing held in [ ] and a transcript (Exhibit B) of the same for your review. On the tape and transcript you will note language from Judge [ ] in the matter of [ ] asking, "Is the State ready to proceed", and [ ] an employee of [ ] states "Yes your Honor." At this point, [ ] is already sworn in as a witness. Nonetheless, the Judge continues on saying, "Alright, you may proceed." [ ] is not an attorney licensed to practice law in the State of Arizona. A search of the State Bar's Attorney Locator indicates that "no record found" is the result of the search for an [ ] (the name and spelling was verified by an employee of [ ] by telephone) a copy of the search and result are attached (Exhibit C).

[ ] clearly indicates that he works for [ ] and that he is a co-custodian of records for the company. He never claims to be an attorney, and the court does not inquire; however, the Court does allow [ ] to represent the State of Arizona. [ ] then states that the [ ] Chief of Police has appointed [ ] as an agent of the [ ] Police Department for the issuance of traffic citations, which result from traffic camera enforcement. The witness is testifying under oath that his company is appointed as an agent of the [ ] Police Department to issue traffic citations. A.R.S. § 28-627 (G) states in pertinent part, "Notwithstanding subsection E of this section (pertaining to enforcement of ordinances regulating standing or parking of vehicles),...a municipally approved private contractor...shall not serve any process resulting from a citation issued for a violation of article 3 or 6 of this chapter or of a city or town ordinance for excessive speed or failure to obey a traffic control device that is obtained using a photo enforcement system." (Emphasis added).

An additional instance of this type of circumstance is a transcript of another hearing dated in [ ] (Exhibit D) This hearing is from the matter of [ ] [ ] In this transcript, [ ] is engaging in the unauthorized practice of law, and Judge [ ] is allowing the hearing to go forward anyway. The critical issue to note in this circumstance is the defendant objecting to flaws in the State's Exhibit One, which consists of the original citation and all supporting documentation. Judge [ ] does not allow this exhibit to be entered as evidence. Despite this, he makes a finding of responsibility for [ ] with no verifiable evidence that he ever committed an offense being entered into the court record. The only testimony is hearsay from a person who works for a company with a pecuniary interest, who was not physically present to observe any of the alleged conduct.

Finally, the [ ] court recently made available a variable speed tape player to facilitate a person's right to appeal, but this does not take into consideration the possibility of multiple defendants needing this singular piece of specialized equipment at the same time. There is a 14-day time limit placed on everyone who wishes to exercise their right to appeal. The tape machine is loaned out for one week to each person. This is the established policy of the local magistrate court staff. This, in effect, makes it nearly impossible for a person to exercise their right to an appeal. Even though Judge [ ] knows (or should know) the Arizona Revised Statutes, he allows hearings to go forward when an employee of the corporation who served process indicates under oath that they are acting illegally to enforce the law. Such conduct is clearly detrimental to the appearance of judicial propriety. Allowing a Law Enforcement Officer who was not present during the alleged offense to testify about the alleged offense, let alone to represent the State of Arizona even though the officer is not an attorney, is also egregious conduct. Clearly blatant disregard for the prohibition of the unauthorized practice of law and failure to recognize the validity of A.R.S. § 28-627 (G); for the purposes of generating revenue for the [ ] and a private corporation, constitutes willful misconduct in office, willful and persistent failure to perform judicial duties, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and violations of Rule 81 of the Code of Judicial Conduct; by failing to uphold the integrity and independence of the judiciary, demonstrating impropriety and the appearance of impropriety, and failing to perform the duties of judicial office impartially and diligently.

Please feel free to contact me should you have any questions, or if I may be of any assistance to your investigation of this deeply troubling matter.

**" I AFFIRM, UNDER PENALTY OF PURJURY, THAT THE FOREGOING INFORMATION AND THE ALLEGATIONS CONTAINED IN THE ATTACHED COMPLAINT ARE TRUE AND CORRECT."**

