

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-129

Complainant: No. 1362710651A

Judge: No. 1362710651B

ORDER

The commission reviewed the complaint filed in this matter and found no evidence of ethical misconduct on the part of the judge. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: December 18, 2009.

FOR THE COMMISSION

 /s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on December 18, 2009.

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

May 8, 2009

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

MAY 11 2009

Re: Case No.

Subject: Complaint of Judicial Misconduct

Dear Commission Members,

I hereby respectfully submit a formal complaint for an independent investigation into the conduct of four
County Judges who demonstrated partiality towards Defendant, Mr. [redacted] who is a
for the [redacted] County Sherriff's Department.

General information of the Judges' names, attorney who appeared in the case for the defendant and
witnesses' names/addresses and telephone numbers are provided herein:

History of Case No.

On May 18, 2005, I purchased a Real Estate Property from Defendant, [redacted] the Deputy County
Attorney of [redacted] Az. On the purchase contract and on the Seller's Property Disclosure Statements
(SPDS), the Defendant stated that the property was connected to a public sewer. He named [redacted] County
as the sewer provider. Believing that the Defendant was acting in good faith and was telling the truth, I
relied on his assertion that the property was, in fact, connected to a public sewer. An investigation, beyond
that of a reasonable, prudent home inspection, would have required digging up the sewer to determine if
Mr. [redacted] contract's and SPDS' assertions were true.

On, or around May 19, 2008, my sewer line had to be dug up due to some drainage problems. Upon the digging process, it was discovered that instead of being legally connected to a public sewer as stated by the Defendant, my property (formerly known as the guest house), was in fact, connected, not to a public sewer, but to the Defendant's adjacent house (formerly known as the main house). Prior to this problem, I was not aware that, for ten years, the Defendant had owned the two houses conjointly. The Defendant did not disclose this crucial material fact in the contract nor in the SPDS.

As a direct result of the Defendant's false assertion and failure to comply with his Statutory Duty to disclose, I incurred costs in the amount of \$5,376.30 to sever my sewer line from the Defendant's property (main house). A new sewer had to be put in, in order that my property's sewer could become legal and up to building code.

Prior to severing the illegal sewer system, I attempted in vain to meet with the Defendant. Declining a person to person meeting, the Defendant sent his father, _____ to assess the problem. When I pointed out to _____ that this was the seller's problem, and therefore, it should be corrected by the seller, _____ refused to take corrective action.

After I had the new sewer installed, I continued to try, in vain, to resolve the issue with Defendant, _____. He ignored, declined, rejected, refused and stone-walled all my efforts for resolution by reimbursement, thru mediation or arbitration. Finally, on August 26, 2008, left with no other recourse, I filed a legal civil complaint against him.

On January 22, 2009, _____ County Justice of the Peace, _____ issued a court date for April 10, 2009, Case No. _____ to my utter surprise and dismay, a duplicate of this court document contained a hand-written note which I considered to be a red flag. Judge _____ note reads: "Assuming this is not the same Mr. _____ who is a member of the State Bar & who has provided legal counsel previously to the court."

On February 18, 2009, in a certified letter to Judge _____ I expressed my concerns that given Mr. _____ prominent status within the legal system, I might not receive a fair and impartial judicial proceeding. This certified letter should have raised the question that perhaps this case should be heard in an impartial court outside _____ County.

When I did not get a response to my certified letter, _____ and I, went to _____ County Consolidated Justice Court on 27 Feb 2009, where I approached Judge _____ expressing my concerns. Judge _____ admitted knowing the Defendant. He offered to recuse himself from the case stating that it would be very difficult to find a court Judge who did not know, or who had not had any dealings with the Defendant.

On March 23, 2009, Judge _____ too, recused herself. Judge _____ note reads: "It appearing that the Defendant is Mr. _____ of the County Attorney's Office, the undersigned hereby recuses and refers the file for reassignment to the Presiding Judge, Judge _____. The trial date of April 10, 2009 3p.m. is still calendared but subject to change as the newly-assigned Judge may determine".

On March 26, 2009, deeply frustrated that the Defendant, Mr. _____ had failed to serve fully responsive and complete answers or objections to the Interrogatories duly served on him on, or about November 11, 2008, also failing to produce requested documents, I proceeded to file a Motion to Strike Answer and Render Judgment by Default against Defendant.

On 9 April 2009, the day before my scheduled trial, a _____ County representative, who identified himself as _____ informed me that once again, my case had been reassigned to Judge _____

By now, three Judges had recused themselves. With each recusal, I became increasingly concerned whether I would receive an impartial trial proceeding. I still do not understand why, after three Judges recused themselves, my case was not transferred to a different county. The Judges' recusals conveyed a disturbing

message that the Defendant, Mr. [redacted] was in a special position to influence the court and the legal system. This message did not promote my confidence in the [redacted] County Judiciary System.

On 10 April 2009, my case was finally tried. Judge [redacted] did not allow me to present all arguments and evidence that had been submitted through the legal process. My witnesses, [redacted] and [redacted] and myself, perceived an immediate partiality towards the Defendant, Mr. [redacted].

On April 14, 2009, Judge [redacted] ruled on the trial and the Motion to Strike Answer and Render Judgement by Default against Defendant, in favor of the Defendant. Judge [redacted] did not provide me with any rationale or basis for her ruling. In my viewpoint, Judge [redacted] rewarded the Defendant Mr. [redacted] for making material fact misrepresentations and negligent and reckless false statements on the Real Estate Contract and on the SPDS, and by telling the Judge that he had done nothing improper.

The Defendant's testimony, in my viewpoint, is highly questionable since he basically testified that he was unaware that the main house and the guest house which he owned conjointly for ten years, shared the same sewer system. Furthermore, I find it rather suspicious that prior to selling the guest house independently from the main house the Defendant severed all the obvious utilities between the two conjoint properties except for the not so obvious sewer. I particularly find the Defendant's alleged innocent claims of unawareness hard to believe considering that his father, [redacted] an Architect in the [redacted] County, should have known that you just don't sell a house without an independently functional legal sewer system.

Specific Arguments of Judicial Misconduct

- 1) On 27 February 2009, Judge [redacted] statement made to the Plaintiff.
- 2) All the judges have the option of transferring a case when the Code of Judicial Conduct requires a matter to be heard by a judge from another county. The [redacted] County judges failed to transfer my case from the very same court system where the Defendant, Mr. [redacted] is a prominent public figure and a well known Judicial System Insider. Defendant's position within the [redacted] County Justice System automatically put me in a direct and clear disadvantage. This glaring imbalance should have been sufficient to form the basis of the court's disqualification.
- 3) Judge [redacted] recklessly ruled in favor of the Defendant by totally disregarding the Defendant's own false negligent SPDS (Seller's Property Disclosure Statements) and accepting instead, the Defendant's denials that he had any knowledge of the sewer problem. Judge [redacted] failed to apply fair and impartial justice conveying a negative message of mistrust towards the court and the judicial system. The Code of Judicial Conduct requires a judge to disqualify himself or herself when the judge's impartiality might reasonably be questioned.
- 4) Judge [redacted] failed to disqualify herself notwithstanding that the Defendant in this case is an insider and a servant of the court she presided over.

Closing Remarks

For Ten years the Defendant owned the two conjoint properties; the main house which he kept, and the guest house which he sold to me. Ten years of ownership provided the Defendant with ample time and opportunity to become intimately familiar with the property's inner-workings. Without a doubt, the Defendant was fully aware that a new legal sewer connection would be expensive. And without a doubt, he figured that the illegal buried sewer connection would not be easily discovered. Discovery would actually require digging it up and following it to his other adjacent property.

Notwithstanding that the Defendant made written false assertions on the Real Estate Contract and on the Seller's Property Disclosure Statements, that the property was connected to a public sewer, Defendant now adamantly refuses any acceptance of any knowledge or any responsibility for selling a house without a sewer.

Knowledge of the illegal sewer however, can be imputed to the Defendant by circumstantial evidence. For example, why did the Defendant said on the Real Estate Contract and on the Seller's Property Disclosure Statements that the property was connected to a sewer when in fact he should have said, "unknown" or connected to the seller's other property?

Defendant's negligent and reckless material misrepresentation should have been more than sufficient grounds for Judge [redacted] not to rule in the Defendant's behalf. Judge [redacted] ruling, a disturbing miscarriage of justice and a railroading, spills over and compromises the Pima County court's integrity.

Until the negative trial experience, I thought that the court and the legal system were there to impart fair and equitable justice. I also thought that a sworn Sheriff Deputy Attorney, such as Defendant, Mr. [redacted] had the duty "to serve and to protect" the community he represents.

Requested Relief

Request the Commission of Judicial Conduct to re-examine my case or the Commission grant such other relief or compensation as may be deemed appropriate.

Very respectfully,

Cc:

Attorney General – State of Arizona
Attn: Terry Goddard
Consumer Information and complaints
1275 W. Washington
Phoenix, Arizona 85007-2926

Enclosures:

- 1) Court Proceedings
- 2) Case No. [redacted] Motion to Set and Certificate of Readiness dated 1/22/09 (containing Judge [redacted] hand-written note).
- 3) Certified letter, dated 18 Feb 2009, to Judge [redacted]