

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-225

Complainant: David Stone

Judge: Caryl Parker

ORDER

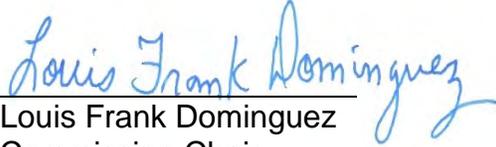
After reviewing the recording of the proceeding and the response filed by Judge Parker, the commission finds that the justice of the peace in this case violated the Code of Judicial Conduct.

Rule 2.2 of the Code requires judges to uphold and apply the law and Rule 2.16(A) requires a judge to cooperate candidly and honestly with the commission. In this case, the judge incorrectly stated that she lacked jurisdiction to consider a punitive damages claim and prevented the complainant from asking leading questions of an adverse witness, both of which were misstatements of clear law. While the commission does not believe either legal error effected the outcome of the case, the judge clearly misapplied or ignored the law. Further, in her response to the commission, the judge provided inaccurate and misleading information on two points. First, she claimed that the complainant had offered 26 photographs as separate exhibits and thus they were cumulative. The recording of the proceeding clearly established that the 26 exhibits the complainant offered were separate documents establishing the communication history of the parties. Second, the judge claimed that she had to "continually admonish [the complainant] for interrupting when others were speaking on the record." This is inconsistent with the recording of the proceeding which shows that the complainant did not interrupt others.

Accordingly, the judge is hereby reprimanded for her 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: December 20, 2011,

FOR THE COMMISSION


Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on December 20, 2011.

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

David Stone
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Phoenix, Arizona 85029-2713
Telephone: (602) 371-8772
Facsimile: (602) 371-8772

SEP 07 2011

August 29, 2011

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

RE: Judicial Complaint against the Honorable Justice of the Peace C. Parker
Stone v. Directv, Inc., et al., Desert Ridge Justice Court Case No. CC2010230549

Dear Commission:

This complaint is directed towards the conduct of Justice of the Peace C. Parker.¹ Judge Parker was assigned to hear the matter on May 10, 2011, following the court's granting the motion for new trial. The motion for new trial was granted after a hearing on December 15, 2010 conducted by Justice of the Peace David Lester.² Judge Parker's conduct not only evidences that Judge Parker is not qualified to sit as a judge, it evidences a failure to comply with applicable provisions of Arizona's Code of Judicial Conduct because she was neither impartial, nor fair and her conduct of the hearing evidenced a lack of understanding of the requirement that the end result of judicial process is justice. In light of the significance of the concerns detailed here, I would hope the Commission acts to help restore and preserve public confidence in the judicial process.

Judges perform a simple and important task - to perform justice. However, justice is a process, not a result. When a predetermined result is obtained, there can be no justice, even if a "just result" occurs. When a judge fails to act with impartiality, it compromises the process that provides a just result. When a judge is not qualified to sit as a judge, then justice is compromised. When a judge fails to abide by the law, not only is respect for the judiciary diminished, but justice is perverted. Judge Parker fails on each of these basic requirements and therefore this complaint is submitted. Judge Parker was not qualified to sit as a judge and it is troubling that an unqualified individual was selected to preside at the May 10, 2011 hearing.³

¹ Judge Parker's first name has never been made public.

² In significant part, the motion for new trial was granted because of the unusually large number of procedural and legal errors conducted at and prior to the December 15, 2010 hearing.

³ At the May 10, 2011 hearing, Judge Parker announced that after the matter had been transferred to Justice of the Peace Clancy Jayne, Judge Jayne had recused himself. However, Judge Jayne never issued any order recusing himself, and there was never any order appointing Judge Parker. Does Maricopa County now conduct star chamber proceedings, with judicial business now conducted behind closed doors and in secret? Is there such hostility to the public the judiciary is supposed to serve that no public announcement can be given of the court's action, before that action is known?

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The compelling reasons justifying this conclusion follow and Judge Parker is not qualified to sit as a judge because:

1. Judge Parker does not know or understand even the fundamental law. At the May 10th hearing, Judge Parker revealed she is ignorant of even the fundamental basis of the court's jurisdiction, claiming that a justice court had no jurisdiction over a complaint with punitive damages, because the justice court "is a court of limited jurisdiction".

The complaint in this matter was filed with a punitive damages claim and pursuant to the relevant procedural statute.⁴ The punitive damages claim was proper, given both the law and the facts of the case. However, without any legal basis for doing so, Judge Parker simply dismissed the punitive damages claim. When questioned during the hearing about the basis for her decision, Judge Parker stated her reason for doing so was because the justice court was a "court of limited jurisdiction" and therefore lacked authority to entertain a punitive damages claim, and that she based this conclusion on her "training" and "years of experience".⁵ Judge Parker's stated reason is wrong and the fact that Judge Parker is ignorant of fundamental Arizona law as it pertains to the jurisdiction of the justice court - and particularly because she is someone who claims to have such significant judicial experience - is compelling evidence that Judge Parker was not qualified to act as a judge in this matter.

The fundamental law in Arizona clearly contradicts Judge Parker. For the Commission's benefit, the following supports this conclusion:

Article 6, Section 32 of the Arizona Constitution states, in relevant part:

C. The civil jurisdiction of courts inferior to the superior court and of justice courts shall not exceed the sum of ten thousand dollars, exclusive of interest and costs. . . .

Consistent with the Arizona constitutional requirement, A.R.S. § 22-201 states, in relevant part:

B. Justices of the peace have *exclusive original jurisdiction of all civil actions when the amount involved, exclusive of interest, costs and awarded attorney fees when authorized by law, is ten thousand dollars or less.*

A.R.S. § 22-201 emphasis added.

⁴ The complaint specifically referenced A.R.S. § 22-201 as the basis for the complaint; therefore, Judge Parker cannot have been uninformed, particularly since she stated at the hearing that she had reviewed the file completely.

⁵ The hearing was recorded. The CD of the hearing is provided herewith ("CD"). The relevant timepoints from the CD are referenced as "Timepoint". See CD at Timepoints 9:20.

A judge who is hearing a case is required to be competent and fair to ensure that justice is properly administered and that a just and reasonable decision will result from the process. As a result, that judge should know the law that establishes the fundamental basis for the judge's decision. Judge Parker's statement that punitive damage claims are precluded from a justice court proceeding and that she would not consider appropriate claims, and thereafter dismissed the properly presented punitive damages claim on the eve of the May 10, 2011 hearing is unconscionable. How can a stupid *pro se* know more than the judge assigned to the case? An unqualified judge is an embarrassment and affront to state government, the people the State who created the judicial system. Moreover, such conduct does nothing to foster a respect for the law, particularly where the judge is so fundamentally unqualified to perform the assigned judicial tasks, as in this instance.

2. Judge Parker's conduct during the May 10, 2011 hearing evidences that she was not impartial while sitting as judge. During the course of the May 10, 2011 hearing, Judge Parker exhibited conduct on a number of occasions that reflected that she was not impartial and that she was jumping to conclusions, without any reasonable basis for so doing. Examples supporting this conclusion are found on the recording of the proceeding. See CD at timepoints 9:30; 9:32; 11:08 and 11:09-11:16. This conflicts with her obligations as a judge, particularly when the CD evidences that she engaged in *ex parte* communications with counsel when I stepped out of the courtroom to locate a witness. See CD at 10:19. With ethical rules that separately counsel attorneys and judges from engaging in *ex parte* communications, how can the conduct evidenced be supported at any time? Such examples add further evidence to concerns about Judge Parker's competence, impartiality and ability to sit as a judge.

Arizona's Code of Judicial Conduct contains standards of conduct for judicial persons. This code includes Canon 2, that requires a judge shall perform the duties of judicial office impartially, competently, and diligently. Pursuant to Rule 2.2, a judge is required to be impartial and fair. In relevant part, Rule 2.2 states:

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

Pursuant to the Rule's comment, "To ensure impartiality and fairness to all parties, a judge must be objective and open-minded." Further, "A good faith error of fact or law does not violate this rule. However, a pattern of legal error or an intentional disregard of the law may constitute misconduct."

Finally, a judge is supposed to avoid bias and prejudice. Pursuant to Rule 2.3, which states in relevant part:

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

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Pursuant to the Rule's comment, "A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute." As evidenced by the judge's videotaped comments and conduct, Judge Parker made a number of overt expressions of bias against me, all apparently stemming from a judicial complaint filed that involved Judge Lester. See e.g. CD at timepoints 9:32, 11:08 and 11:09-11:16.⁶ Clearly, this conduct fails to comport with that required of a judge and evidences that Judge Parker was not qualified to sit as a judge. This provides another significant concern that merits the Commission's review, with sanctions for Judge Parker's conduct.⁷

As further evidence of the judge's lack of impartiality, bias and prejudice, and unwillingness to follow the law in Arizona, there is Judge Parker's response to the application for attorneys' fees filed by counsel for the defendant. Rather than impartially consider the application and my response that included the reasoned points warranting the inevitable conclusion that the claim for fees was unsupported even by the documents provided by counsel, Judge Parker granted the application without even considering the response. However, Judge Parker's decision was unsupportable because even the evidence submitted in support of the applicable counseled against granting the application as submitted. There can be no more compelling reason to conclude that Judge Parker was biased.

The application for attorneys' fees and costs was supported by the attorney's affidavit under oath that claimed fees are in the total amount of \$17,707.03. However, the supporting documentation that went with the attorney's affidavit revealed the claim was perjured, because simple second grade math revealed a claim for fees was, at most, \$15,868.50. See Plaintiff's response to defendant's application for attorneys' fees and costs, attached hereto as Exhibit 1. However, because defendant included in that latter amount claims for attorneys fees that were irrelevant to the proceeding⁸ and included duplicative and excessive claims for fees, the proper claim for fees was only \$8,400.00. Despite the overwhelming evidence that defendant's claim for fees was improper because the claimed fees were unsupported by the facts and that Arizona law compelled the court to either deny the claim for fees or severely reduce the claimed amount of \$17,707.03, Judge Parker did not even review or consider the response, granting fees in the amount of \$17,707.03. Such conduct evidences a lack of conformity with applicable judicial standards and a contempt for justice. The Commission must act to ensure that judicial integrity is restored, since Judge Parker's conduct can garner nothing but contempt for a corrupt judge

⁶ Judge Parker made specific reference to having discussed the matter with "the other judges" who allegedly were "appalled". However, a more likely conclusion is that Judge Parker was overtly exhibiting prejudice because I had the audacity to present a complaint in response to improper judicial conduct. The reaction exhibited by Judge Parker gives credence to the fears expressed by many attorneys about overtly stating concerns about specific judges, for fear the judge "will get them" in response to expressing concerns. Mine is the perfect example of why those attorneys' concerns have merit.

⁷ Again, Judge Parker's conduct takes one back to the Chicago 7 proceeding. Even at the time, that conduct was viewed as inappropriate.

⁸ A claim for fees that totaled \$801.50.

who fails to fairly, impartially consider compelling arguments and where Judge Parker's conduct violates established Arizona law.

3. Abdication of responsibility.

During the course of the proceeding, and particularly during Judge Parker's handling of the case, the judicial conduct evidenced an abdication of judicial responsibility. There can be little that is more troubling than a judge who fails to properly and competently respond to clear evidence of improper conduct by an attorney before that judge. And yet, Judge Parker ignored repeated concerns of significant and serious problems there were repeatedly presented to her. Among the issues specifically raised, and ignored, are the following:

a. Defendant's counsel⁹ lying to the court about the properly supported attorneys' fees that could be obtained. In a rush to judgment, Judge Parker conveniently ignored the law of this State and dismissed the punitive damages claim, rushed through the hearing, and entered judgement. She then invited Defendant's counsel to submit an application for attorney's fees. Upon presentation of the application, Judge Parker was in such a hurry to rule in favor of the application that she failed to review the response, and granted the application despite the fact that the law and facts presented with the application did not support the awarded fees.

On May 18, 2011, Mr. Fox submitted the application, along with his signed affidavit dated May 19, 2011 ("May 19th affidavit").¹⁰ Mr. Fox made statements under oath that he knew, and reasonably should have known, were false, including the statement that "the time and charges reflected in the accompanying records were reasonably and necessarily incurred to properly represent Defendant's interests in this action." See Response to Application For Attorneys Fees dated May 31, 2011 and the May 19th affidavit at 2.¹¹ Mr. Fox stated that attorneys' fees were in the amount of \$17,707.03. This statement was false, with the unambiguous supporting documentation showing that the most that could be sought in attorneys' fees was \$15,868.50. See Exhibit 1. Again, obvious facts did not faze Judge Parker, who simply rubber-stamped the application for fees. Judge Parker's conduct was irresponsible.

In addition to deliberately misstating the attorneys' fees sought and supportable, the supporting documentation showed supporting entries that were clearly not relevant to the proceeding, were duplicative and showed excessive time being claimed, all in violation of the

⁹ Defendant was represented by Frank Fox.

¹⁰ The dates are correct. As one will no doubt wonder, how can an application be submitted before the date of the affidavit that is concurrently submitted with it? As has become clear during the course of the proceeding, things like accuracy and true statements are not one of Mr. Fox's big concerns or a forte of his professional conduct.

¹¹ The Response and May 19th affidavit are provided herewith as Exhibit 1. The Response includes its Exhibit A that details the concerns with Mr. Fox's billing entries; although a summary of the concerns about certain billing entries is set forth here. Please see the response and attachments thereto for a detailed listing of concerns with many of the billing entries provided by Mr. Fox that show excessive and redundant activity, as well as the inclusion of billing entries wholly unrelated to the proceeding.

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law of this state. Again, Judge Parker ignored the law and facts that were clearly before her and simply rubber-stamped Mr. Fox's submission.¹²

The law in this state only allows a party to recover the actual value of the attorneys' fees, as supported by the billing records. *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 673 P.2d 927 (App. 1983). "Just as the agreed upon billing rate between the parties may be considered unreasonable, likewise, the amount of hours claimed may also be unreasonable. *If a particular task takes an attorney an inordinate amount of time, the losing party ought not be required to pay for that time.*" *China Doll*, 138 Ariz. at 188 (emphasis added). And finally, the United States Supreme Court has stated the ethical requirements where attorneys' fees are sought, in *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983):

Counsel for the prevailing party should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private practice ethically is obligated to exclude such hours from his fees submission.

The application failed to meet these fundamental requirements. Judge Parker was - at best - indifferent to this. A more likely explanation - supported by her conduct during the hearing - is that she was so prejudiced and biased and eager to "make you pay" that she rushed to judgement without any consideration of the flaws in the application. This is an affront to every Arizonan, and a travesty of justice. Judge Parker's conduct cannot be condoned and must be sanctioned. To deliberately ignore compelling law and relevant facts is simply irresponsible and judicially irresponsible.

b. Deliberately Misstated Facts to the Court About Discovery Responses Went Without Any Appropriate Response

Judge Parker was given clear and unambiguous evidence of counsel's lying to the court in response to a motion to compel. Judge Parker was asked to refer counsel's conduct to the State Bar of Arizona. Judge Parker refused, stated alternatively that it was my obligation to do so¹³, or that because she had denied the portion of the motion to compel requesting sanctions, there was no need to address the specific concerns about counsel's lying to the court. At best, Judge Parker's response was indifferent to serious concerns that impair the administration of justice and Judge Parker's abdication of responsibility is little more than judicial corruption. Judge Parker's conduct perverts justice and invites scorn upon the court, the judicial system and ultimately, a disrespect for the government in general.

¹² The fact the justice court ignored the law and the facts means that on appeal, the justice court's ruling cannot survive, since to ignore both the law and the facts makes the court's ruling an abuse of discretion. This plain fact either escaped Judge Parker, or she simply did not care that her ruling was so askew of the Arizona requirements.

¹³ The State Bar seems to believe otherwise.

On August 2, 2010, a motion to compel discovery responses was filed with the court, where Mr. Fox had failed to offer any response to the discovery.¹⁴ In response to the motion to compel, on August 12, 2010, in response to a motion to compel discovery responses, Mr. Fox alleged that all responses had been provided, despite the fact that he knew and should have known the statement to be false, since responses to the uniform interrogatories had never been provided. Mr. Fox knew his representation to the court was deficient because on August 9, 2010, Mr. Fox was given a *hand-delivered letter* that expressly noted among other concerns that he had failed to provide any response to the uniform interrogatories. This fact was clearly stated to the court in the reply to the motion to compel. See Exhibit 2, attached hereto. In reality, a response to the uniform interrogatories would not be provided until August 23, 2010. Despite clear and unambiguous evidence of Mr. Fox's deceit, the Court ignored the concerns and the serious ethical violations the represented. Ignoring significant unethical conduct is an abdication of judicial responsibility and irresponsible by someone whose obligation is to ensure that justice is the result of the process before the court. The Commission needs to give serious consideration to this misconduct and sanction it.

c. Presenting the Court with Created Case Citation

In response to my motion to strike the motion for summary judgment¹⁵, Mr. Fox presented a response that cited a case that is non-existent, claiming that a case that captioned "*Northern Ariz. Gas Service v. Petrolane Tran.*, 147 Ariz. 467, 476, 702 P.2d 696, 705 (App. 1984)" supported the proposition that one waives a an argument of untimeliness when one does not respond to correspondence.¹⁶ Indeed, the only case citation that even comes close is a U.S. Ninth Circuit Court of Appeals' case captioned, *Northern Arizona Gas Service, Inc. v. Petrolane Transport, Inc.*, 676 F.2d 711 (9th Cir. 1982), and even that case does nothing to support Mr. Fox's argument.¹⁷ Standing alone, this may not be a significant issue¹⁸, but aside from violating ethical rules and Rule 11, the fact this conduct is exhibited in conjunction with so much other conduct that is, at best, questionable, simply reinforces the belief that Judge Parker was prejudiced and acted in a manner designed to "make me pay", not administer justice. The Commission must act in light of Judge Parker's deliberate disregard of her responsibilities and obligations.

¹⁴ I had served a set of uniform interrogatories, a set of non-uniform interrogatories and a set of request for production.

¹⁵ Again, for a variety of good, sound legal reasons related to "law of the case", untimeliness and the fact that the record already revealed there were genuine issues of material fact that precluded the motion being granted.

¹⁶ Counsel's citation is actually for the case *State v. Holland*, 147 Ariz. 463, 711 P.2d 602 (App.1985). However, even if the case citation was accurate and the stated proposition presented by the case, the argument still suffered from the fact that no letter was ever presented to me.

¹⁷ Again, the justice court responded to the concerns I raised about a fictional case with a yawn.

¹⁸ This concession is simply meant to head off a likely response, "so what" that seems to attend most concerns expressed about attorney conduct.

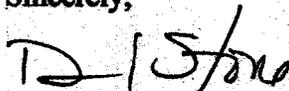
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Judge Parker's conduct is troubling for this final reason. When Arizona's founding fathers - people who for the most part were truly progressive individuals - created the Arizona judicial system, it left it to the sound discretion of the people to select the State's judges. Over time, for reasons unclear, for the most part, the people have been removed from the process of selecting the judges who preside over cases. Justices of the peace are a notable exception, at least in Maricopa County. However, it is because the people have been removed from the selection process that the work of the Commission is so important. The actions of judges are no longer policed by the people, through regular, two year elections. This has been reserved to the Commission. And in the instant case, because Judge Parker is not the designated justice of the peace for any precinct, and is not even subject to that little element of public involvement in judicial selection that is reserved for justice of the peace, it is incumbent upon the Commission to perform the judicial oversight responsibility in this instance.

The Commission has a responsibility to review this matter and act to affirmatively address the concerns expressed herein. I hope the Commission will do so. It should not be incumbent upon people like me to appeal a matter, in order to get a reasoned, fair and impartial hearing. It should not be the responsibility of individuals to police the conduct of a judicial employee. These people get paid with my tax dollars to do their job in a timely and professional way. It is important the Commission fulfill the work to oversee and "police" judicial employees, particularly since the people have been removed from the meaningful decisions in Maricopa County about what judges should sit to hear matters requiring justice. I hope the Commission's work in this matter will merit the confidence that has to be placed in it.

I appreciate the opportunity to present my concerns for your consideration.

Sincerely,



DAVID STONE

8886 S. Grandview Dr.
Tempe, Arizona 85284

NOV 07 2011

November 2, 2011

Jennifer Perkins, Staff Attorney
Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007

Re: Complaint No. 11-225

Dear Ms. Perkins:

Reference is made to the above complaint. First, there exists no statutory authority to award punitive damages in Justice Courts. They are Courts of Limited Jurisdiction. Unless specific authority is spelled out in statute, it is not available. Other JPs when questioned, agreed with my position. Additionally, I found no evidence of actions by Defendant which may have warranted such additional damages, had they been available.

Second, when Mr. Stone wanted to introduce 26 photographs of the same thing, the three most representative and focused were selected and admitted into evidence. These photos provided sufficient illustration of his complaint against Direct TV. Cumulative or repetitive exhibits are not relevant.

Further, Mr. Stone was awarded his requested damages. However, I based my Judgment on a statute of which Mr. Stone was apparently unaware, prior to trial. Defendant had previously made an offer of settlement, consisting of the same amount awarded at trial. The statute, presented by Defense Counsel, provides that in such circumstances, the opposing party is awarded its attorneys fees. This statute exists to limit trials which could have been avoided. I understand that this came as a surprise to Mr. Stone, but, as he appeared pro per, there was nothing else I could do but explain the statute to him.

Also, I was never rude to either party. I am doing my best to avoid the appearance of such behavior. I believe that Mr. Stone thought I was being rude when I had to continually admonish him for interrupting when others were speaking on the record. One of the Courts' primary responsibilities is to keep a

clear and concise record of the proceedings and this cannot be done if the litigants are attempting to speak over each other. In my opinion, interrupting is rude.

There is no bias. In Justice Courts pro per litigants are numerous and are never discriminated against by me. I spend additional time explaining things of which they are not aware and am certainly not biased against or for anyone. Ever. Finally, as to Mr. Stone's assertion of my incompetence, I find that extremely insulting. If that is what he thinks, he has an adequate remedy at appeal.

Thank you for the opportunity to respond.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caryl Parker', with a long, sweeping horizontal line extending to the right across the page.

Caryl Parker