

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-220

Complainant: No. 1214010275A

Judge: No. 1214010275B

ORDER

The complainant alleged a municipal court judge may not have signed a warrant issued under his name and made a disparaging remark about his wife in an order granting a motion to transfer a case to another court.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainant and the electronic court records, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: September 7, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed
to the complainant and the judge
on September 7, 2012.

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

August 2, 2012

Commission on Judicial Conduct

1501 W. Washington Street, Suite 229
Phoenix, AZ 85007

Magistrate Court

Summary

This complaint is derived from a case involving an older couple¹ who were entertaining their son and girlfriend at their home on a Saturday evening. After several phone calls from local residents, an Police Officer obtained a search warrant for the arrest of the older couple and other "noise" materials, and forcibly removed them to the Pima County Jail. The search warrant was based on an affidavit that there were "more than 10 calls" to the police department.

The majority of the calls were placed by , the wife of a local police officer. The recordings of the calls show an irate, foul mouthed and extremely disturbed woman.

During the course of the defense of the charges, Defendants' attorney discussed the impropriety of the search warrant with the town prosecutor, Mr. properly found that there could be a "possible appearance" of impropriety and filed a "Motion to Transfer files." Defense Attorney, joined in the motion and it was granted.

In the granting of the motion, stated:

"The record of the affidavit for the search/arrest warrant stands on its own. Judges cannot be called to testify about pending cases. It is also curious how a prosecutor who did not witness any of the alleged conduct can be called to testify- While the Court suspects the Defendant is forum shopping, the Motion is Granted, and it is ordered the case be transferred to the Justice Court." (Emphasis Added)

¹ Case No. CR-

Once the case was transferred to Pima County, Defendants pleaded guilty to the charges, paid a modest fine² and are getting on with their lives. This was their first, and "chilling" episode with the jackbooted tactics of law enforcement. Their feelings that a case brought against them by the irate, foul mouthed wife of a local police officer, roused from their sleep by a local police officer through the use of perjury, acts sponsored by the local prosecutor, and finally having all parties protected and indeed, tainted by the local Judge, that a fair trial would never occur.

Charges against Judge

There are two areas of concern regarding participation in this matter. First was the issuance of a search and arrest warrant for a simple noise complaint³ and second, the irreparable tainting of the case to a new locality, where fairness was supposed to be the goal.

Search warrant

The search warrant was supposedly issued by at 0353 on March 11, 2012. The record of obtaining the warrant by the Police Department is sketchy. The Officer, made notes prior to making his telephonic request (See Exhibit A.) In those notes, he wrote "10" phone calls from "4" different residences. However, the notes are OVERWRITTEN from "3" to show a serious embellishment of the facts:

The recorded record does NOT show the "more than 10 calls" allegedly received by Indeed the record does show calling residences (after the issuance of the warrant) to convince "victims" to file a complaint.

Also the audio record of obtaining the search warrant is sans He may not have even been on the other end of the call! A police officer that embellishes a record ("more than 10 calls",) swears to such (perjury) could easily have created the one sided record.

² The Prosecutor wanted to "settle" the case for thousands of dollars in fines.

³ The Arizona Disorderly Conduct statute is the most abused statute in the state. It is a "catch-all" statute often used to harass the citizenry.

There is no evidence that _____ had any direct participation in suborning perjury in the creation of the search warrant for the arrest of the Defendants. Once he was made aware of the problems with the warrant, he should have taken an aggressive role in seeking "justice" instead of covering it up by stating:

"The record of the affidavit for the search/arrest warrant stands on its own."

Finally, _____ places in the record an opinion not based on the facts. He opined:

"...While the Court suspects the Defendant is **forum shopping**,"

The motion to transfer was filed by the **PROSECUTOR**. How _____ could blame this on the defense was inconceivable. What is factual is that such statement was designed **to taint and tamper** with the outcome of this case by placing such a despicable statement in the record. It was the "final nail in the coffin" for Defendants who knew they would never be able to get a fair hearing. The tainted evidence was stacked against them by the local "blue shield" of corruption.

As the filed motion states, the issue regarding the search warrant was not before the Court. How the Court could make a ruling regarding the search warrant when it was not before it is ludicrous, as well as, highly suspicious.

Defendant has no previous law enforcement record. In fact, Defendant was an Air Force Academy graduate and retired Air Force fighter pilot with thousands of missions under his belt. Defendant protected his fellow soldiers and harassed the enemy, all while risking his life in combat. He took an oath to protect the Constitution. He took pride in his actions and even the significant loss of his HEARING- Thousands upon thousands of hours of jet noise – the Sound of Freedom!

It is awful hard to listen to that sound when you have been rousted out of your home, with your wife, and thrown into jail because some deviant wife of a local police officer, local police shield and local Magistrate...

Conclusion

_____ no longer, if ever, upholds fairness in his Court. His overt participation in railroading an older couple and attempts to extract thousands of dollars in fines from them should be considered a criminal act. I am requesting that the Judicial Conduct Commission fully investigate these actions and recommend his removal from his perch and referral to the Bar Association for revocation of his ability to practice law.