

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-169

Judge:

Complainants:

ORDER

The complainants alleged a superior court judge failed to follow the law in a forfeiture proceeding.

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.

The commission does not have jurisdiction to review the legal sufficiency of the judicial officer's ruling. In addition, 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: July 15, 2015

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainants and the judge on July 15, 2015.

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

I understand the commission cannot reverse court orders or assign a new judge to a case.

I declare, under penalty of perjury, that the foregoing information and the facts I have provided upon which my allegations of judicial misconduct are based are true and correct.

Signature:

Date:

INSTRUCTIONS

Use the following space or plain paper of the same size to explain your complaint. Explain why you believe what the judge did constitutes judicial misconduct. Be specific and list the names, dates, times, and places relevant to your allegations. Additional pages may be used and relevant copies of documents may be sent with your complaint (please do not send original documents). Use one side of each page only and write legibly or type your complaint. Please keep a copy of your complaint for your records.

*****SEE ATTACHED*****

I. BRIEF HISTORY

On [redacted] Claimants [redacted] and [redacted] filed a Request for a Probable Cause Hearing [redacted] pursuant to A.R.S. § 13-4310(B). The Claimants in their Request asked that the Court issue an order setting the matter for a probable cause hearing or in the alternative release the Claimants property and currency that was seized. Further, the Claimants gave notice that the [redacted] constituted a judicial claim pursuant A.R.S. § 13-4311(D) and complied with the provisions of A.R.S. § 13-4311(E)(F).

On [redacted] the matter was assigned to [redacted] (hereinafter, [redacted] division for adjudication of the matter. Unfortunately, the [redacted] County Clerk of Court's designation of the Claimants [redacted] as a [redacted] resulted in the matter being delayed for approximately [redacted]

On [redacted] issued a Minute Entry Order referring the matter to the Honorable [redacted] for consideration. The Minute Entry further deemed the Claimants Request as an [redacted] to a forfeiture matter. This was due to assuming that the State filed a Notice of [redacted] in the matter.

On [redacted] Claimants filed a [redacted] the State to Release Property and Currency and Motion to Accelerate, alleging that on [redacted] the [redacted] Police Department executed a search warrant on the Claimants prior residence located at [redacted]

[redacted] Arizona [redacted] The execution of the search warrant resulted in Claimants property and currency being seized under search warrant property numbers:

Unfortunately, the State failed to initiate proceedings against Claimants property and currency within

days, in violation of A.R.S. § 13-4308(B). This is evidenced by the State's untimely filing of a Notice of Seizure for Forfeiture and Notice of Pending Forfeiture under _____ County _____ Court Case No. _____ on _____

On or about _____ Claimants contacted this Honorable Court's office and spoke to _____ regarding the status of the case. Claimants were informed that the Motion for an Order Directing the State to Release Property and Currency would be ruled on after giving the State _____ days to respond.

On _____ a Minute Entry Order was issued by Judge _____ in pertinent part as follows:

The Court is in receipt of Claimants _____ and _____ Motion for an Order Directing the State to Release Property and Currency filed _____

The Arizona _____ Court has long held that when the _____ **and**

Given these facts, Claimants have complied with the requirements of A.R.S. § 13-4308(B) and the factors mandated in _____ 198 Ariz. 504, ¶¶ 14-15, 11 P.3d 1043, 1045 (App. 2000)." Therefore, Judge _____ was legal obligated to issue an order directing the State to immediately release the property and currency referenced in the matter.

The Courts actions in the above-entitled matter, at minimum show the appearance of impropriety for the following reasons:

- The Claimants filed a Request for Probable Cause Hearing on _____ and the Court has yet to set a hearing after approximately _____ passing since the initial Request in violation of A.R.S. § 13-4310(B).;
- The appearance of the Court advocating for the State by delaying a ruling in the matter to _____

allow the State time to file a Notice of Pending Forfeiture on

- The Court's failure to rule expeditiously on Claimants Motion to Return, despite having full knowledge the [redacted] that the State failed initiate [redacted] proceedings.
- Judge [redacted] issued on [redacted] is in direct violation of A.R.S.§ 13-4308(B).
- The assigned [redacted] namely [redacted] was sanctioned by the Arizona State Bar in [redacted] for authorizing the prosecution of a racketeering/forfeiture matter without probable cause;

RULES VIOLATED

VIOLATION OF RULE 1.2. Promoting Confidence in the Judiciary
VIOLATION OF RULE 2.2. Impartiality and Fairness
VIOLATION OF RULE 2.5 Competence, Diligence, and Cooperation

ACTIONS THAT CONSTITUTE VIOLATIONS

RULE 1.2. of the Arizona Rules of Judicial Conduct states that "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

RULE 2.2. of the Arizona Rules Judicial Conduct states that "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially. Comment 1. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded. 2. Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. 3. 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. 4. It is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard."

As stated above, a pattern of legal error or an intentional disregard of the law may constitute misconduct. The record shows at a minimum that (1.) failed to timely set a Probable Cause Hearing pursuant A.R.S.§13-4311(D). Further, issued a Minute Entry Order on (2.) denying Claimants Motion based upon the State failing to initiate formal forfeiture proceedings; despite being made aware of the authority outlined in A.R.S.§ 13-4308(B) and the directive issued by the Appellant "In re 198 Ariz. 504, ¶¶ 14-15, 11 P.3d 1043, 1045 (App. 2000)." underlying authority that Claimants filed a Motion for Return of Property on pursuant to A.R.S.§ 13-4308(B). The seizure occurred on leaving the State until to timely initiate forfeiture proceedings. The State failed to initiate proceedings against Claimant's property and currency within in violation of A.R.S.§ 13-4308(B). Judge issued a Minute Entry Order on denying Claimants Motion based upon the State not filing formal forfeiture proceedings. This behavior at minimum shows the appearance of impropriety.