

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-157

Complainant: No. 1288410650A

Judge: No. 1288410650B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The question of when complainant's motion was filed is a legal or discretionary issue outside the commission's jurisdiction.

The complaint is dismissed pursuant to Rule 16(a).

Dated: September 19, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on September 19, 2006.

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

COMPLAINT AGAINST A JUDGE

Your name: [] Judge's name: Honorable [] Date: June 7, 2006

On [], the Honorable [] granted an Injunction Against Harassment to Plaintiff [] I represent the Defendant, []

On [], Defendant requested a hearing pursuant to A.R.S. § 12-1809 and had a copy of the request hand-delivered to the Commissioner []. According to A.R.S. § 12-1809(H), a hearing must be set within ten days from the date of the request.

On [] my assistant, [] contacted Commissioner [] judicial assistant, [] via telephone regarding the hearing date. [] informed [] that the Commissioner's office had not received or lost the request and asked for a copy to be faxed. The fax number provided was busy for a couple hours and thus was not sent until the morning of [].

On [], due to the urgency of the matter, [] contacted [] regarding the request and a hearing date. [] informed [] that since the Court did not receive the request until [] the Court had ten days from that date to set the hearing. That is contrary to the statute requirements. And, [] was provided confirmation and evidence that the Court was hand-delivered a copy of the request on []. [] agreed to call [] when the hearing was set.

On [] at approximately 3:00 p.m., [] called [] to discuss a hearing date. The hearing was set for [] at 1:30 p.m. [] stated that Defendant or someone from our office was required to pick up the order that day, have it certified by the clerk of the court and serve the Plaintiff with the order through the sheriff's office. At that point, [] requested I speak with [].

I then got on the phone with []. [] told me that Defendant or someone from my office was required to pick up the order that day because the Court does not send out notices of hearing. She told me she could not fax or mail the order to me and it could not be picked up the following day by the firm's messenger service). In addition, she told me we were required to take the order to the sheriff's office and have them serve it upon Plaintiff. [] then told me that the hearing would not likely be held on [] because the sheriff's office "needs at least five days for service" and if service was not completed the hearing would not be held.

I informed [] that I found all of these requirements to be extremely burdensome, in violation with the Arizona Revised Statutes and Rules of Civil Procedure and that it seemed to me that the Court was denying my client access to have her day in Court. [] stated, "that is what our Court requires". I asked if there was a rule that the Court was relying upon because forcing Defendant to pick up a minute entry within two hours is unreasonable and forcing Defendant to serve the Plaintiff with a Court order creates undue expense. [] put me on hold. When she returned to the phone she stated that

she had talked with the Honorable [redacted] and these were the requirements and we need to follow them. I then asked if another process server, other than the sheriff's office, was allowed to serve Plaintiff in order to expedite the process so the hearing could be held on [redacted]. [redacted] informed me that any process server could serve Plaintiff with the Court's order.

On [redacted], pursuant to the Court's requirements, [redacted] picked up the Court order regarding the hearing date and personally delivered it to a private process server. The Order specifically stated that personal service is required upon Plaintiff.

I believe the Honorable [redacted]'s requirements violate the Arizona Constitution, Arizona Rules of Civil Procedure, Rule 5, and A.R.S. § 12-1809. Plaintiff chose to bring this case, not Defendant. In order for Defendant to defend herself regarding Plaintiff's false claims, she has been forced to incur unnecessary fees and expenses and has not been provided a timely hearing. The Court has the parties' addresses for a reason and that reason is so that the Court may send things to the parties, such as notices of hearing.

I am very disappointed in how this case was handled by both Honorable [redacted] and her judicial assistant. When a Defendant tries to defend herself against a frivolous Injunction Against Harassment, she should not be denied access to the system. The hurdles required by Honorable [redacted] would have denied a pro per defendant access to the system and discourages people from invoking their right to defend themselves.

First, demanding that a Defendant pick up a minute entry within a couple hours is unreasonable. Second, the Court could have and should have mailed out the Notice of Hearing to all parties as all courts do when they issue minute entries. Third, Requiring Defendant to serve Plaintiff with a Court order is unreasonable and created unnecessary expense to a Defendant who is simply trying to defend herself. Fourth, based upon the service requirements of the Court, if Plaintiff evaded service, my client may have never been provided a hearing and opportunity to defend herself. Fifth, these requirements are costly and are not in line with the legislative intent of the statute regarding fees for injunctions. The statute provides the parties a remedy without paying filing costs to bring or defend the claim because an Injunction Against Harassment is very serious. Lastly, the Honorable [redacted] violated A.R.S. § 12-1809(H) when she did not set the hearing within ten days from the date of the request and did not make any findings as to the delay.

If Defendant had not been represented in this matter, she would not have been able to comply with these unreasonable requirements. Specifically, she would not have been able to leave work immediately upon the demand of the Court to pick up an order and take it to the sheriff's office for service. In addition, she would not have known that she had an alternative method of service, a private process server. Thus, she would have been again denied her [redacted] hearing because, according to [redacted], the sheriff's office requires at least five days for service of process.