

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-229

Complainant: No. 1294110210A

Judge: No. 1294110210B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge or the hearing officer. The hearing officer was advised to avoid even the appearance of unfairness when conducting hearings.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: November 28, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on November 28, 2006.

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

REASONS FOR JUDICIAL MISCONDUCT COMPLAINT

Canon 1

I feel Judge [] compromised my confidence in the judicial process because he would not allow a fair defense and judged what I feel as an illegal ruling. Where does this show his integrity? It was clear that the plaintiff was suing the wrong party. (See enclosed motions)

Canon 2

Compliance with law. How can he say he complied with the law when it was obvious and established by our witness and his, that the plaintiff was suing the wrong party? Our witness was the very person he should have been suing and he was there to testify to that effect. Judge [] manner and attitude did not reflect the impartiality of the judiciary. He constantly interrupted and would not allow my testimony. He would not acknowledge our other witnesses and allow them to say what they came to say. Instead, he raised his voice (yelled) at me when I tried to address just the complaint against me, and he interrogated my son as though he was the defendant and the judge was a prosecutor. What he questioned my son about had nothing to do with the complaint against me. In fact, his questioning actually proved that I, the defendant in the case, was not the one responsible for any damage to said vehicle.

Judge [] gave the appearance of preferential treatment to the plaintiff. An example is that from the moment we began the case, the judge asked the plaintiff who his witnesses were and for what purpose they were there. At that time it was even established then by his own witness that my son [] was the one who took delivery of the car, not me. He never gave me the same courtesy. I had two witnesses, which he never acknowledged until it became apparent that one of my witnesses was the person who negotiated with the plaintiff and the one who took possession of the car and drove the car. Then he proceeded to interrogate my witness as said before. My greatest concern is when the judge asked me a direct question, after questioning my witness, "Did you at any time offer any money to [] I stated, "Absolutely not!" At that time he directed to [] to "Play the tape." (as if he already had prior knowledge of the tape) I had no knowledge of the tape until I heard it myself and saw that it was taken out of context and out of the timeline of the whole negotiations with my son and [] (see pages 6 & 7 of my motion to vacate judgment)

Furthermore, Judge [] never asked any questions to allow me to explain that the tape was incomplete and misleading because only partial parts of the message was saved to be played. I could have established that the tape recorded message was left at an earlier time when my son had already arranged to sell his vehicle and was trying to contact [] to make arrangements to pick up the car to take it to the mechanic, not to pick up the car for the sale, if he had allowed me to speak. (see bill of sale and vehicle registration enclosed dated appropriately)

Canon 3

My complaint against Judge []

In my opinion, there was some kind of cover-up when I filed two separate motions to vacate the judgment and asked for an oral argument before the judge of the

court. I was denied both times. The whole reason for the second motion was that the clerk at the court had told me that the case had been reviewed by Judge [redacted] (see page 2, Motion assigned to [redacted]). Therefore, I submitted the second motion to be reviewed by Judge [redacted]. When that motion was denied, the clerk of the court assured me it was the decision of the court's main Judge, [redacted].

When I went to the court to ask for notes or a tape of the proceedings of the hearing, the clerk there brought out the file and told me the recording was available, but the girl responsible for the c.d.'s was sick and I would have to fill out a request and would be notified when the c.d. was ready to pick up and the charge would be \$17.00. At this time, I looked at the file which had exactly the same paperwork I had, (complaint files, answers, motions to vacate judgment, etc.) except for a note stating the "original selling price showed [redacted] sold for [redacted]. Also was a note from a [redacted] stating to Judge [redacted] that "this motion sounds like the same as the first one". When I asked another clerk standing by if I could have a copy of these notes, she ripped the file out of my hand and said I wasn't allowed to read those and took them out of the file. The judicial employee, or roving judge, [redacted] seemed to be the one communicating the judgment of the hearing officer and influencing the ruling of the motions for Judge [redacted]. Meanwhile, I received a letter stating there was no recording for that case, (after being told that there ^{was} ^{on} ^{the} ^{day} I went into the court clerk). How did Judge [redacted] review the case if there were no notes, no recordings or no transcripts? How could he review the hearing, with my complaint that Judge [redacted] was rude and unfair, yelled at me, and ruled a judgment against the wrong party, if there were no transcripts? Who determines in small claims court whether a judgment can be vacated? If Judge [redacted] is the determining factor, why would he not grant an oral argument? Especially if he had nothing to go on except my word against the other judge? Wouldn't that in itself warrant an oral argument? Not only is that suspect, but when I received my answers to the motions, there was no explanation for their decision. That is the least I could have received.

I am absolutely confounded that a judgment can be made against a party that has no responsibility to the complaint. It seems to be an illegal judgment, when it is clear that the plaintiff was suing the wrong party and it was even established at the hearing.

If Judge [redacted] did see an inconsistency, and still refused to hear my oral argument, why? I have even had another judge review the case and it is clear to him that there needed to be an oral argument heard. Is Judge [redacted] simply backing up his hearing officer [redacted].

If I were responsible for this judgment, I have the integrity to uphold my debt, (you can check my background) but when it is obvious to everyone I've consulted with that this complaint was made against the wrong party, how does that make me responsible for a wrong judgment? I was merely a mediator between two negotiating parties, and not responsible in any way for a penalty.

JUDICIAL MISCONDUCT COMPLAINT

I, [redacted] hereby file this judicial misconduct complaint against said judge,

[redacted] and hearing officer, [redacted] of the [redacted]

[redacted] Justice Court for the following reasons:

Case #

[redacted]

This case was heard on [redacted] by hearing officer, [redacted] I would like to interject first that the reason for the delay in filing this complaint is due to circumstances beyond our control being health issues, family deaths and emergencies.

First and foremost, the complaint was named against me, [redacted] having said that I bought a car from the plaintiff [redacted] that I took delivery of the car while he was out of town and that I drove the car without water and caused damage estimated at [redacted] which was not true. He was not out of town when the car was picked up. In reality, as my witness tried to tell the judge, it was my son [redacted] a married adult, not living at home, who had a verbal agreement with [redacted] to possibly purchase a car I told him about. [redacted] is a co-worker who sells cars for extra income outside of his [redacted] job. It was [redacted] that took possession of the car and drove the car. Their verbal agreement was that he would buy the car if it checked out with his mechanic. Before even reaching the mechanic, [redacted] had to replace a leaking radiator hose. The mechanic told him he would have at least [redacted] or more to put into the car. The car needed new hoses, clutch, struts, breaks and shocks. [redacted] chose not to buy the car and [redacted] came and picked up the car from [redacted] residence. [redacted] then came to me three days later and told me [redacted] would have to pay for half the damages to the car. He said he drove it home from [redacted] house and it overheated while he drove it and then quit on him and he had to tow it home. [redacted] said his mechanic said the car had been driven without water and the engine was damaged. He offered to pay for half the damage which led me to believe he had knowledge of the poor quality of the vehicle. I told him he would have to talk to my son about it, because the negotiations and agreement was between the two of them. He said if [redacted] didn't pay he would take him to court. I told him then, [redacted] had very little money and probably couldn't afford to pay for it, and it would only force him into possible bankruptcy. (Which [redacted] misrepresented in court by saying I threatened to file bankruptcy, which would be absurd with my salary, and lack of debt).

As it is perfectly obvious, I did not buy the car, never had intentions of buying the car and never drove the car. It is obvious that [redacted] was suing the wrong party. I acted as a go-between to contact [redacted] and leave messages for him.

At the hearing, Judge [redacted] would not allow me to show to the court through my witnesses that I was not the one buying the car. He interrogated my witness, [redacted] as if he were the defendant, and established that [redacted] and his wife [redacted] had indeed driven the car. However, he constantly interrupted him and treated him as though he were the one on the complaint. He never asked [redacted] any questions that would help clarify that the car negotiations were with [redacted] and not me. He never let us establish through our other witness, [redacted] wife [redacted] that I was not buying the car. The hearing officer was intimidating and was undisputedly rude in his way of speaking to me

whenever I tried to defend myself. It even appeared to us that he had prior knowledge of what was on a message machine tape played in the court mentioning that we were going to the bank to get money for the car. He asked me if I had ever offered any money to [redacted] and I said absolutely not. Then he had [redacted] play the tape. When I tried to explain that the money my wife was picking up was for the purchase of [redacted] truck, he would not allow it. I have proof of that transaction as well, made on the very day in question. We almost felt that by the demeanor in the courtroom, there was something biased or illegal going on; as if the judge had pre-determined his ruling or that there was some prior knowledge or familiarity between the judge and the plaintiff.

After talking with another judge in the justice court, I took the necessary steps and attained an attorney to ask for a motion to vacate the judgment and I was denied without explanation. My attorney then asked that the honorable Judge [redacted] himself look at the case and grant us an oral argument which was again denied, and again without explanation. I then asked for a copy of the transcript of the hearing, and I was told there was one but that the woman who makes the copies was off sick. I filled out the request for the c.d. and was told I would be notified when it was ready. (see paper attached) I was told it would be 10-14 days. At that time, I reviewed the court file. The only papers in the file that I did not already have, was a note stating, "asking [redacted] new engine [redacted] sold for [redacted] and a question mark." Also, I saw a note on the 2nd motion we filed by a judge [redacted] stating that "the 2nd motion was just like the first". Later, approximately two weeks, we got a notice that there was no c.d. or transcript of the hearing available. If that is the case, how could Judge [redacted] review the case and make a judgment without hearing my argument? My case seems obvious to everyone but this court. I would like some kind of investigation as to how the complaint against me could have any validity. At the same time, I would request that there be a stay of judgment until the investigation is completed and I would not be liable at this time to pay the judgment.

I have consulted other judges, who have told me this case should have never been ruled on, and should have been thrown out of the court. It was a verbal agreement between [redacted] and another party; there was no contract, there was no money exchanged, and the ruling is illegal. It is not a just ruling when I am not the party [redacted] should be suing. My thoughts are that [redacted] knew my son was a young married man who was not yet established financially and he decided to sue me because he knew I would be able to pay him. He lied in court and I can prove it. The mechanic who looked at the car is willing to testify that when the car left him, the necessary fluids, were fine and the car was running fine. [redacted] did not prove in court that [redacted] was the one who did any damage to the car. He admitted in court the car broke down while HE, himself was driving it, and that it had been in the hands of his witnesses prior to [redacted] taking possession of the vehicle. It was three days before he told me of any damages to the car. All I asked for was an oral argument to be heard by the Judge in the court, and I was continually denied.

Attached is all the paperwork I have submitted to the court on the case and the testimony of those who were in the courtroom at the same time of the hearing. I beg the indulgence of the court for at least a chance to defend my position to another judge or to a higher court if necessary. My reasons for judicial misconduct are as follows:

1. Judge [] did not rule according to Law! There is no way I should be held responsible for what my adult son did or did not do. His name was not on any of the complaints against me. It was clear that I did not have any intentions of purchasing the vehicle.
2. The judge would not grant me a fair defense either in the original hearing or my subsequent motions to hear oral argument.
3. The judge was verbally abusive to me and to my witness, constantly raising his voice and interrupting us in an attempt to confuse our testimony. He seemed to have already predetermined his verdict. He allowed a tape recording that was incomplete and did not prove that I was buying the vehicle from []. In fact if the whole tape had been played it would have been obvious that the money referred to was money we were paying our son for the purchase of his truck for my younger [] son. (See attached bill of sale and title transfer)
4. Judge [] in my opinion, never read the motion to vacate the judgment and hear my oral argument, which causes me to believe he was simply backing up the judgment of the hearing officer. Notes to the affect were written by [] telling the judge the paperwork was the same as what was denied by the hearing officer. I believe he ruled without reviewing the case personally.
5. When seeking a transcript of the hearing, I was first told there was a recording for the case, then later told there was not one available, nor was there any transcript. What happened to it?
6. We would appreciate a stay of payment of the judgment pending all the rightful investigation we can do and can be satisfied by the judicial system. This judgment is unjust and we intend to do all that is legally possible to vindicate ourselves and let [] bring suit against the rightful party.