

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 06-263

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Complainant: No. 1296100221A

Judge: No. 1296100221B

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**ORDER**

The commission reviewed the complaint filed in this matter and found no evidence of ethical misconduct on the part of the judge.

The complainant alleged that the judge violated the Code of Judicial Conduct by denying his request to appear telephonically at his small claims hearing. When he failed to appear at the hearing, the judge dismissed his case. The complainant's allegations involve decisions that fall within the judge's discretion, and the commission is not authorized to review such decisions.

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

Amended: 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.*

On [REDACTED] at 3:55 PM, I telephoned [REDACTED] JUSTICE COURT for assistance regarding procedures for filing the instant case. I spoke with [REDACTED] Clerk, and indicated I lived in [REDACTED] which is [REDACTED] miles from the court, am the fulltime caregiver to my dad, [REDACTED] now age 83, who has chronic obstructive pulmonary disease, my appearance before a judge or hearing officer was not feasible, and inquired about appearing telephonically. Clerk [REDACTED] informed me that if I filed and served the instant action, and defendant [REDACTED] filed an answer, and a trial was scheduled, a written request for an appearance telephonically could be made and would be granted.

On [REDACTED] I sent correspondence to [REDACTED] Clerk, [REDACTED] JUSTICE COURT, by mail, for filing of the instant case.

On [REDACTED] [REDACTED] Clerk, [REDACTED] JUSTICE COURT, filed the instant case and mailed a conformed copy of the Small Claims Complaint/Summons/Answer and Receipt [REDACTED] to me.

On [REDACTED] I attempted service of defendant [REDACTED] with the Small Claims Complaint/Summons/Answer by Certified Mail - [REDACTED] Return Receipt Restricted Delivery.

On [REDACTED] at 10:52 AM, defendant [REDACTED] refused service of the Small Claims Complaint/Summons/Answer by Certified Mail - [REDACTED] Return Receipt Restricted Delivery.

On [REDACTED] I requested Arizona Quick-Serve Process Service serve defendant [REDACTED] with the Small Claims Complaint/Summons/Answer.

On [REDACTED] Arizona Quick-Serve Process Service served defendant [REDACTED] with the Small Claims Complaint/Summons/Answer.

On [REDACTED] defendant [REDACTED] filed an answer with the court and mailed a copy to me.

On [REDACTED] [REDACTED] Clerk, [REDACTED] JUSTICE COURT, scheduled a hearing in the instant case for [REDACTED] at 11:00 AM, and mailed a copy of the NOTICE of HEARING to me, which I received on [REDACTED]

On [REDACTED] I sent correspondence to Honorable [REDACTED] Justice of the Peace, [REDACTED] JUSTICE COURT, by both facsimile and mail, respectfully requesting to appear telephonically, and for reimbursement from defendant [REDACTED] for court costs.

On [ ] at 9:15 AM, I telephoned [ ] JUSTICE COURT to confirm that Arizona Quick-Serve Process Service had filed the CERTIFICATE OF PROCESS regarding service upon defendant [ ]. I again spoke with [ ], Clerk, was informed the CERTIFICATE OF PROCESS had not been filed, and informed [ ] that Arizona Quick-Serve Process Service had informed me that the original had been submitted to the court for filing on [ ]. I sent correspondence to [ ] Clerk, [ ] JUSTICE COURT, by both facsimile and mail, including a copy of the CERTIFICATE OF PROCESS.

On [ ] I sent correspondence to [ ] Clerk, [ ] JUSTICE COURT, by both facsimile and mail, requesting confirmation that Honorable [ ] Justice of the Peace, had considered and granted my request for an appearance telephonically.

On [ ] at 14:31, I received by facsimile, without a cover sheet, a copy of a RULING ON MOTION, signed by Honorable [ ] Justice of the Peace, on [ ] undated but initialed by [ ] Clerk, denying my request to appear telephonically. I telephoned [ ] JUSTICE COURT that date, again spoke with [ ] Clerk, and was informed that she had faxed the document "as a courtesy."

On [ ] I sent correspondence to Clerk, [ ] JUSTICE COURT, by USPS Delivery Confirmation [ ] for filing of [ ] MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO APPEAR TELEPHONICALLY; MEMORANDUM OF POINTS AND AUTHORITIES; AFFIDAVIT OF [ ] in the instant action.

On [ ] I received by mail a copy of a RULING ON MOTION, signed by Honorable [ ] Justice of the Peace, on [ ] date-stamped [ ] by [ ] Clerk, certifying that on [ ] she delivered/mailed a copy of this RULING ON MOTION to myself and defendant [ ] erroneously spelled [ ] however, the postmark on the envelope was [ ]

On [ ] I sent correspondence to Honorable [ ] Justice of the Peace, [ ] JUSTICE COURT, by both facsimile and mail, confirming the Clerk received [ ] MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION TO APPEAR TELEPHONICALLY; MEMORANDUM OF POINTS AND AUTHORITIES; AFFIDAVIT OF [ ] in the instant action on [ ] at 10:34 AM, and my receipt of a RULING ON MOTION signed by Honorable [ ] Justice of the Peace, on [ ] date-stamped [ ] by [ ] Clerk, postmarked [ ]

On [redacted] at 14:15, I received by facsimile, without a cover sheet, a copy of a RULING ON MOTION, signed by Honorable [redacted] Justice of the Peace, on [redacted] date-stamped [redacted] by [redacted] Clerk, denying my motion for reconsideration of order denying motion to appear telephonically.

On [redacted] I sent correspondence to Honorable [redacted] Presiding Judge, [redacted] SUPERIOR COURT, by e-mail, facsimile and mail, indicating the instant case was set for a hearing on [redacted] at 11:00 AM, it was my candid impression that Honorable [redacted] Justice of the Peace, [redacted] JUSTICE COURT, was not in compliance with Arizona Code of Judicial Conduct Canon 3B(8), and ARS 22-516, in the manner in which the particular matter had been and continued to be handled, and I wanted to bring this to her attention prior to the hearing.

On [redacted] I received by mail a copy of a RULING ON MOTION, signed by Honorable [redacted] Justice of the Peace, on [redacted] date-stamped [redacted] by [redacted] Clerk, certifying that on [redacted] she delivered/mailed a copy of this RULING ON MOTION to myself and defendant [redacted] however, the postmark on the envelope was [redacted]

On [redacted] the instant case was heard by Honorable [redacted] Justice of the Peace. I did not appear, for the previously stated reasons. Defendant [redacted] appeared in person. Honorable [redacted] Justice of the Peace, ignored the facts and the law and ordered the instant case dismissed with prejudice.

On [redacted] I received by mail a copy of a JUDGMENT, signed by Honorable [redacted] Justice of the Peace, on [redacted] date-stamped [redacted] by [redacted] Clerk, certifying that on [redacted] she hand-delivered a copy of this JUDGMENT to me and mailed a copy of this JUDGMENT to defendant [redacted] however, I could not have been hand-delivered anything and the postmark on the envelope was [redacted]

ARS 22-507 provides in pertinent part "a designated clerk of each justice court shall provide such assistance as may be requested by any person regarding the jurisdiction, venue, pleadings or procedures of the small claims division.

Arizona Code of Judicial Conduct Canon 3B(8) provides in pertinent part "A judge shall dispose of all judicial matters promptly, efficiently and fairly. In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public."

ARS 22-516 provides in pertinent part "The justice of the peace or hearing officer shall conduct the trial in such a manner to do justice between the parties and shall not be bound by formal rules of procedure, pleading or evidence except for statutory provision

relating to privileged communication. Any evidence deemed material, relevant and competent may be admitted (Emphasis added.)

I relied on information from [ ] Clerk, [ ] JUSTICE COURT, that a written request for an appearance telephonically would be granted; had I not been so informed, I would not have incurred the subsequent costs.

My claim was for [ ] and for reimbursement of court costs of [ ] I had submitted to the court and defendant [ ] all documents in support of the claim and all receipts in support of the costs.

No substantial prejudice would have resulted to any party by allowing telephonic testimony, justice between the parties would have been accomplished in allowing an appearance telephonically and, under all the circumstances herein, Honorable [ ] [ ] Justice of the Peace, [ ] JUSTICE COURT, should have granted my motion to appear telephonically in the instant case and, thereafter, granted judgment to me in the amount of [ ] and for court costs of [ ]