

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-050

Complainant: No. 1303810439A

Judge: No. 1303810439B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. If the judge made an incorrect ruling, the appropriate remedy would have been to appeal the judge's decision to a court with proper jurisdiction.

The commission is not a court and cannot change a judge's decisions; therefore, the complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: March 19, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on March 19, 2007.

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

CJC-07-050

COMPLAINT AGAINST A JUDGE

Your name:

Judge's name:

Date: 02/14/07

I want to preface this exposition by stating categorically that Judge is forthright, efficient to a fault, and staunchly decorous. His Honor is a person who places a premium on propriety and procedural principle, and one whom I would trust with a confidence or a wallet without reservation. That said, however, I must report that he is also a man whose partial and summary judgment against me has ravaged a year of my life, and promises to endure as an oppressive blight on my record indefinitely.

I have been told by a sitting judge and a university law professor that my story is not an uncommon one. Trustingly and in good faith, I entered into a relationship with a woman who made the horse stable beside my residence her home away from home, and who bent over backwards to attract and secure my interest and affection while there (literally: she is a former cheerleader). I met with her alone by night three or four evenings a week—often for hours—throughout the fall of 2005. I gave her gifts, did chores for her, and otherwise behaved honorably and compassionately toward her, for which I was rewarded with tender smiles, sly glances, coquettish touches, and dozens of hours of inspiringly provocative and endearingly confessional conversation in the intimacy of darkness. She then abruptly disappeared without a word. I discovered sometime later that she was married, which led me first to sympathetically ask to understand her motives and situation in a letter, then to insistently appeal for an honest explanation from her in three emails sent in reply to two from her. My record, which for 36 years had remained a blank, now reads: *Injunction Against Harassment* (which translates, let us not be coy, to *predatory creep*).

What Judge began the appeals hearing I requested by pronouncing was that the burden of proof rested with the plaintiff; what he should have said was that the burden of suspicion lay on me. It was naïve of me to expect, as I did, that the judge would engage me in a conversational Q & A. I do not believe that my other expectation was unreasonable, though, namely that my testimony and evidence would be treated with equal gravity and dignity to that of the plaintiff's. Whereas my behaviors were sharply interrogated, hers—to which all of mine had been *responses*—were unexamined, this in spite of my beginning my oral presentation by giving the judge documentary proof of perjury.

His Honor was particularly keen to know why I had queried a search engine to learn more about the plaintiff. "To understand," I told him. When I tried to explain that I had had a dating relationship with her, Judge Peyton asked dubiously, "You had dating relationship?" "Yes," I repeated, "nightly meetings, hours in duration." Whether these answers satisfied His Honor was unclear—their unhesitating candor seemed to disagree with his presuppositions—and no follow-up was pursued. Instead the judge proclaimed what he perceived the point of the hearing to be, and implied that my testimony was a distraction from it. I felt like I was being taken to task, and that I was talking down a well.

Judge had interrupted the plaintiff's testimony once to ascertain that she had never agreed to meet with me as I had invited her to do (to clear the air and amend the nature of our relationship), and once to inquire of her whether he should address her as I had myself devoted an equivalent number of years to graduate studies toward a to that which the plaintiff had. I was not asked whether I was due any honorific title.

A telling point that I tried to raise—the plaintiff's naming her husband "plaintiff" on her injunction application—was overridden, with the judge simply striking him from the injunction, and goading me to move on. "He's off," Judge [] interposed each time I attempted to speak. Only on my fourth try did His Honor allow me to say that I believed the plaintiff had endeavored to legally forbid any temptation she feared I might have to explain myself to her spouse. That I had never met the man, or expressed any interest in meeting him, as I made plain to the judge, did not appear to raise any red flags in His Honor's mind.

Judge [] did not notice the logical incongruities in the plaintiff's testimony, which constituted perjury by inconsistent statements, because he had not bothered to read and digest the emails that comprised the material evidence against me. The emails' the plaintiff had submitted for His Honor's review being virtually unintelligible and out of chronological order (intentionally, I believe, to thwart detection of their self-contradictory contents) was not remarked. They were a soup of arrows and amputated lines, and so disorderly that Judge [] said he believed that he had not received one of the plaintiff's e-mails to me. Had His Honor even rifled through the sheaf, he would have discovered the plaintiff's "missing" email (see Appendix) buried between those of mine.

Instead His Honor based his ruling on an eyeball comparison of the lengths of my emails (using clear copies that I had provided) to those of the plaintiff's, pausing only to confirm that she had requested that I cease contact. The legitimacy of my reasons for wordily ignoring that request was unexplored. In other words, the gauge of my guilt was not a calibrated scale but an elementary school ruler; not a probative vetting of the evidence and informed assessment, but a perfunctory I-guesstimate.

I responded respectfully to each of Judge [] several diatribes, but they only confirmed my perception that I was flailing against a block wall. The attempt that I made to challenge the plaintiff's claim that she felt bodily at risk from attack by me, namely my pointing out that I had been a vegetarian for over 20 years on moral principle—a fact that the plaintiff knew very well, for she and I had more than once discussed animal experimentation (she is a []—did not move the judge, and His Honor seemed to regard the assertion as one arising from intellectual vanity. What scant rhetorical resource I was able to muster seemed similarly to affront His Honor's sensibilities. It felt to me as if Judge [] were looking for reasons to find fault with my character. When His Honor made his ruling against me, his eyes searched mine for sparks of frustration or other satisfying signs that I merited the Court's restraint and rebuke.

I cannot impress enough upon the auditors of this plaint how vulnerable a man is to accusations from a woman of unsolicited interest and sexual aggression, irrespective of the truth of those accusations. The target of Judge [] stern suspicion should have been the plaintiff, gender and appearance notwithstanding. I believe it is the duty of magistrates in these cases particularly—that is, where guilt is determined without the Constitutionally afforded privilege to a jury trial—to judge not from reflex but from impartial and exhaustive skeptical inquiry. Accusations of this nature, validated by the Court, have a singularly dire effect on a man, especially a man such as I, who had only ever behaved decently and generously toward his "victim," and whose sense of violation was warranted. No charge is more isolating or self-alienating than a fraudulent allegation of sexual predation. Since Judge [] deciding against me, I have endured one Superior Court clerk taking me for a wife-beater and another reprovingly asking me, "She wants you to stay away from her, right?" And the phrase that guided these clerks to their surmises—*Injunction Against Harassment*—threatens to dog me for the rest of my days.

I will be the first to admit that my defense was inept. Compensating for defendants' legal disorientation is what attorneys are for—and in their absence, judges. Judge [] concluded his statements to me by asseverating that he did not negotiate his decisions. I can appreciate that. I would only that he had made a greater effort to fairly negotiate the facts.