

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 07-196

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Complainant: No. 1315010390A

Judge: No. 1315010390B

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**ORDER**

The commission reviewed the complaint filed in this matter and contacted the court about procedures that it has since corrected and clarified. The other issues were legal in nature and outside the jurisdiction of the commission. The commission found no ethical misconduct on the part of the judge and dismissed the complaint pursuant to Rules 16(a) and 23(a).

Dated: December 4, 2007.

FOR THE COMMISSION

\g\ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on December 4, 2007.

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

Complaint Against A Judge

CJC-07-196

Filed by: [ ] Judge's Name: [ ] Date: 6/26/07

I would like to file a complaint against Judge [ ] of the [ ] Justice Court. I would also strongly suggest that an "Operational Review" take place focusing on the knowledge of the Civil Procedures.

On [ ] I filed a Small Claims Suite with the [ ] Justice Court against [ ] for work completed that was never paid. [ ] requested that the case be transferred to the Civil Division, Change of Judge and eventually Change of Venue. See attachments #1, 2, 3 & 4 all of which were granted.

The [ ] Justice Court faxed the information to the [ ] Justice Court and Judge [ ] set a hearing date of [ ] @ 1:30 p.m. See attachment #5, which also indicates on the top of the Civil Minute Entry and Order that this was indeed faxed.

The hearing was held and on [ ] Judge [ ] made her ruling in favor of the Defendant, "*Plaintiff failed to prove case by a preponderance of the evidence*". This decision was made **THIRTY-THREE DAYS** after the hearing took place. Attachment #6.

On [ ] I sent my "Notice of Intent to Appeal & Designation of Record". I faxed a copy of this to the Court (attachment #7) notice the date stamp of [ ] as "RECEIVED). I then followed up by mailing the original along with (2) money orders, one to pay for the filing for the appeal and the other to pay for a copy of the Court Proceedings for transcription, along with a Motion to Waive/Reduce cost bond pending appeal of civil case and order. This was indicated "*mailed under separate cover*". The Original was sent by mail the same date. [ ] Attachments #8, 9 and 10 are copies from the [ ] Justice Court file. Notice that they are all stamped as "FILED" but the date is hand written [ ] Also in reviewing the [ ] Justice Court file, the envelope in which the originals were sent could not be located in the file.

The [ ] Justice Court is approximately [ ] miles from [ ] I had indicated on the Notice of Intent To Appeal that I would come from [ ] on [ ] to pick up the appeal packet and the CD for transcription. Upon my arrival on [ ] I was told that my appeal was not filed in a timely matter that I had only 10 days to appeal and I could not appeal this case. My mother [ ] was with me and advised the Clerk that the filing time is 14 days. The Clerk agreed and verbally verified that they had received my original appeal paperwork on [ ] This was a direct indication to me that I was within my time frame.

I requested the copy of the CD as paid for and was denied. I was told by the Clerk that I could not have a copy of the CD that I had to use the Court Transcriber.

I requested an Appeal packet and was told that they didn't have any.

I asked to speak with Judge [ ] and was told that she was not in yet. I was given a "Notice of Appeal" and requested to fill this out. I also filled out a request for the release of the CD along with all fee's to be waived, see attachments #11. I included a self addressed stamped envelope for the clerk to send the CD. In leaving the [ ] Justice Court I felt that my appeal just was not going to happen. I was hitting a block wall not matter which way I turned.

[ ] Judge [ ] did grant my motion and sent me the CD for transcription along with waiving the fee's associated with the appeal. I then forwarded the CD so that the proceedings from [ ] hearing could be transcribe in accordance with filing my appeal. Approximately (2) weeks later the CD was returned to me as "unable to transcribe". The reason being was that the clerk at the [ ] Justice Court who made a copy of the proceedings failed to load the proper program needed to complete the transcription. The proper program had to be loaded in order for the transcription to take place. Another set back in the appeal process, bringing me into the middle of [ ] and less than 3 weeks to finish my appeal.

On [ ] the Plaintiff, [ ] wrote a letter to the [ ] Justice Court requesting the case be dismissed because the "Notice of Appeal" was filed after the appeal time, see attachment #12. I as the Plaintiff never received this request and I was within (2) days of filing my appeal when I received a Minute Entry from Judge [ ] that my appeal was hereby dismissed, see attachment #13.

I immediately sent a Motion to reconsider and stated my case with Judge [ ] see attachment #14, only to have my motion denied, attachment #15. Incidentally, my request to reconsider were faxed and ruled upon by Judge [ ]

### My Complaints with Judge [ ] are as follows:

(1). If the "Notice of Intent to Appeal and Designation of Record were not acceptable as a "fax", which they received on [ ] why didn't this information get passed on to me. Why did Judge [ ] allow the release of the CD along with granting my motion to waive fees? Why did the Court accept a fax from the [ ] Justice Court, changing the Venue from [ ] to [ ] and why did Judge [ ] rule on my motion to reconsider from my fax as well. If faxed motion, notices etc are generally ineffective to start or stop time limits from running, then why are they accepted sometimes but not all times? Is it the [ ] Justice Courts procedure to not accept faxes from any persons, including County Attorney's, or private counsel?

(2) The Clerk admitted that the Court had received my originals in the mail on Monday, [ ] Why did the Clerk write in the date received instead of?

using the hand stamp, as with the faxes received on [redacted] What happened to the envelope in which the paperwork was sent? Is this thrown away by the Clerk?

(3) What about an appeal packet? How does a Plaintiff or Defendant know what the procedure is without an appeal packet?

(4) Appeals are governed by ARS 13-4032/33. Within 14 calendar days, must file Notice of Appeal, and also file designation of record on appeal. This was done. The only discrepancy is whether a fax notice is acceptable. If not then when did the Court actually receive the originals in the mail? Did they come in on [redacted] and sit on someone's desk and then stamped "FILED" and the date hand written in? The Court should have given me the benefit of the doubt. Allow my appeal to be filed and let the Superior Court resolve the case, whether it would have been reverse, modify, or remand as necessary.

(5) Attached is a copy of the Register of Actions, attachments #16.

*\*\*There are not docket entries of any correspondence prior to [redacted]*  
*\*\* [redacted] - docket entry states "filed faxed notice of intent to appeal and designation of record from the plaintiff."*

*\*\* [redacted] the money sent was entered into the system, why did it take the clerk 7 days to receipt in money received.*

(6) If the Court granted the motion to waive fees, why haven't I received the money back from the Court?

Finally,

Thank you for reviewing my complaint and will look forward to your opinion. I have also sent to you my perfected Appellants Memorandum. This was never forwarded to [redacted] as my case was dismissed prior to filing