

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-269

Complainant: No. 1304010009A

Judge: No. 1304010009B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The issues raised involve legal and procedural matters outside the jurisdiction of the commission. The commission is not a court and cannot review evidence to determine whether or not a judge's decision is correct. Therefore, the complaint is dismissed pursuant to Rule 16(a).

Dated: December 3, 2007.

FOR THE COMMISSION

 \g\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on December 3, 2007.

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

State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

CJC-07-269

COMPLAINT AGAINST A JUDGE

Your name: BLODGETT, ROBERT L. Judge's name: WILLIAM T. KIGER Date: _____

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

RE: COMPLAINTANT JURY TRIAL CASE No. 2005-1060
IN DIV. 5 YAVAPAI COUNTY - FEB. 15-16/06.

COMPLAINTANT'S RIGHT TO A FAIR AND IMPARTIAL JURY WAS DENIED UNDER THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND PURSUANT TO ART. 2, § 23, AS WELL AS ARTICLE 6 AND § 17 OF THE ARIZONA CONSTITUTION.

The right to a trial by a fair and impartial jury is the fundamental cornerstone of our judicial system. "The right to a trial by jury shall remain inviolate." ARIZ. CONST. Art. 2, § 23; Art. 6, § 17. That right is guaranteed in both criminal and civil trials by the United States and Arizona Constitutions. See U.S. CONST. Amend. VI, VII and XIV; ARIZ. CONST. Art. 2, § 23. The Arizona Constitution specifically provides in pertinent part:

For the determination of civil causes and matters in which a jury demand has been entered, and for the trial of criminal causes, a **trial jury shall be drawn** and summoned from the body of the county, as provided by law. The right of jury trial as provided by this constitution shall remain inviolate, but trial by jury may be waived by the parties in any civil cause or by the parties with the consent of the court in any criminal cause.

(Attach additional sheets as needed)

A series of Arizona statutes implement this constitutional provision. For example, A.R.S. § 21-301(A) states, "Names of prospective jurors to serve on trial and grand juries shall be selected at random from the master jury list of the county." A.R.S. § 21-312 provides that the jury commissioner or his agent shall draw names for jury panels "by randomly selecting names of prospective jurors from the master jury list." A.R.S. § 21-313 states, "In any county where data processing equipment is used the jury commissioner or the jury commissioner's agent shall cause the device to be programmed to ensure the random selection of names on the master jury list." A.R.S. § 21-324 further provides, "In any county where there is more than one division of the superior court, trial jury panels drawn shall constitute a pool to be used by all the superior court divisions in the county."

In Thiel v. Southern Pacific Co., 328 U.S. 217 (1946), the Supreme Court held that reversal is warranted, and prejudice need not be shown, when a jury is not legally constituted according to law. In Thiel, the jury commissioner and clerk admitted intentionally excluding persons who made a daily wage from the jury list based on past experience that such persons were often excused due to hardship. Fifty percent of the list was actually comprised of businessmen and their wives, albeit unintentionally.

The Arizona Supreme Court reached a similar conclusion in Coca Cola Bottling Co. of Flagstaff v. Jones, 74 Ariz. 393, 250 P.2d 586 (1952). The court considered Art. 6, § 6 of the Arizona Constitution, which reads in part: "... For the determination of civil causes and matters in which a jury demand has been entered, and for the trial of criminal causes, a trial jury shall be drawn and summoned from the body of the county at least three times a year." The court held that "if jurors have served, or been upon call for service, for a period of four months from the date they first report for duty, and thereafter a case in which a jury has been demanded is called for trial, the superior court must order the drawing of a new venire." 74 Ariz. at 396, 250 P.2d at 588. It reversed the judgment, finding prejudicial error in denial of a challenge to the jury panels whose service extended to a trial beyond the four month limitation since "the jury was not lawfully constituted." 74 Ariz. at 397, 250 P.2d at 588. See also Valencia v. Royston, 45 Ariz. App. 268, 488 P.2d 473 (App. 1971).

Together, these constitutional and statutory provisions require that parties are entitled to a jury panel chosen from a county-wide random population based on a single master jury list. The case law provides that violations require reversal.

Upon information and belief, despite the previously stated constitutional and statutory requirements, the jury commissioner does not in fact draw jury pools by randomly selecting names from a county-wide master list. The court used an algorithm designed to load the jury pool at any particular center with a high percentage of persons residing in the zip code areas closest to that center. (*Id.*) Thus, the jury pool at any given court center on any given day is not one drawn randomly from the county as a whole. Instead, it is drawn heavily from the area immediately surrounding that center.

Defendant respectfully submits he is entitled to a trial based on a random selection of prospective jurors from a master jury list from the body of the county as required by the Arizona Constitution and pursuant to the applicable statutes.

FACT: THE JURY COMMISSIONER "DRAWS" THE

JURY, HOWEVER, THE "JUDGE" IS COURTROOM RESPONSIBLE