

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 08-159

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Complainant: No. 1336810087A

Judge: No. 1336810087B

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**ORDER**

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

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

Dated: December 10, 2008.

FOR THE COMMISSION

            
/s/ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on December 10, 2008.

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

June 26, 2008

**CJC-08-159**

State of Arizona  
Commission on Judicial Conduct  
1501 West Washington Street  
Suite 229  
Phoenix, AZ 85007

Ladies and Gentlemen:

I represent \_\_\_\_\_ in a criminal matter where she is charged with driving under the influence (TR 2008 100962) in the \_\_\_\_\_ Court.

I write to you to complain about the conduct of \_\_\_\_\_ toward my client and me.

As background for what I believe to have been improper conduct, I filed a Motion to Continue a pre-trial Conference \_\_\_\_\_ because I needed additional time to take a deposition of one of the police officers involved in the traffic stop of my client. In that Motion, I advised the Court that depending upon the result of the deposition, I was considering the filing of a Motion to Suppress and a Request for an Evidentiary Hearing. The requested continuance was up through \_\_\_\_\_. The State's attorney had no objection to the Motion to Continue. Nonetheless, the Court denied the Motion and unilaterally instructed his staff to set an evidentiary hearing

After learning of the Court's denial of the Motion to Continue and the setting of the \_\_\_\_\_ evidentiary hearing, \_\_\_\_\_ decided to have me prepare for the evidentiary hearing based on incomplete discovery, as I had only police reports and a single officer interview. I prepared the Motion to Suppress. \_\_\_\_\_ the State filed its own Motion to Continue. After a discussion with the Court's staff when the State's Motion was filed, I followed their direction and filed a hand-written response to the State's Motion to Continue.

My office then contacted the Court during the afternoon \_\_\_\_\_ to see if the State's Motion had been granted and was told that the evidentiary hearing was still set for the following morning, \_\_\_\_\_. When I arrived at the Courthouse \_\_\_\_\_ that day, the Court staff told me that the State's Motion for a Continuance had been granted. I was unable to contact my client who had been scheduled to testify during the evidentiary hearing to let her know about the continuance before she came to the Courthouse. After talking with the prosecutor, \_\_\_\_\_ in the hallway, we entered the courtroom to speak with the Judge. My client and her mother were in the courtroom which was packed with people,

\_\_\_\_\_ The Court had scheduled 84 FED matters on its 8:30 calendar, started late, and I was advised later, ran the 8:30 calendar beyond 9:30 that morning.

\_\_\_\_\_ the prosecutor and I attempted to approach the bench to discuss the case and the continuance that had been granted (apparently that same morning). The Judge, \_\_\_\_\_ would

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not discuss the matter with us (even though it was the time set for the evidentiary hearing) until he had completed calling and handling the forcible detainer docket. At that point, I left the Courthouse with my client and her mother, after telling the prosecutor and the Judge's staff that we were leaving because the Court had granted the continuance.

My criticism is this – the defense motion to continue was denied, and the Court sua sponte set an evidentiary hearing in this case for 2 weeks later. After having prepared for that hearing, and having filed the appropriate motions – and – after having checked with the Court the day before the evidentiary hearing and being told that the hearing would go forward, I arrived with my client and her mother in tow, only to be told that the hearing had been continued. Then, to add to the aggravation – and the additional expense my client incurred for having me prepare for the hearing and draft motions – the Court was unwilling to talk to us about the case at the time when the hearing had been originally scheduled. It is not reasonable for the Court to have been holding a civil calendar when there should have been nothing on the docket at that time, other than my client's hearing in this criminal matter. The Court embarrassed itself and me by having my client and her mother appear for a hearing that had been continued, and then, not having the courtesy to discuss the matter with us at the time set for the hearing.

It is my opinion that the Court was not acting impartially when it first denied the Defense's Motion to Continue, but granted the same Motion when made by the Prosecutor. I am likewise concerned that Judge            seemed to be unable to grasp his role as a neutral party in the judicial process and exhibited poor calendar management skills, and discourtesy toward counsel and parties.