

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-008

Complainant: No. 1353600311A

Judge: No. 1353600311B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The issue raised is legal or appellate in nature, and the more 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.

Dated: February 9, 2009.

FOR THE COMMISSION

 /s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on February 9, 2009.

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

First, [redacted] was not in litigation with Maricopa County for any monetary gain. [redacted] wanted the county to recognize and abide by the states laws and their own laws, that were passed by their own Board of Supervisors in 1871. The 1871 Board passed a resolution, which declared, a highway 66 feet wide on all section lines in Maricopa County. This resolution also created legal access on all section lines. For many years, time and time again, the county followed the laws by using the 66 feet provided to them by their own board in 1871. The county used this 66 feet free only to stop and change to a different policy of buying every square foot for their right of ways, that was needed to actually construct new roads/highways. The county wanted to own the right of ways fee simple. The county has had title to the 66 feet from the day their own board declared 66 feet on all section lines in 1871 and did not realize or acknowledge it.

[redacted]'s council pointed out to the judge that by changing policies, the county stopped recognizing their own resolution of 1871, declaring the 66 feet. This took away the legal access along many section lines, in turn created hardships and burdens on land owners by this change. Council also indicated to the judge that the county has wasted millions of tax payers dollars in the past and will keep on doing so if their policies are not changed.

Judge [redacted] was provided with the territorial laws of 1871 and 1901. He was also provided with the minutes of the 1871 territorial Maricopa County Board Meeting and documents showing how the county used the 66 feet many times over the years. A letter from the late [redacted] to the late [redacted] dated 1979 was also provided to the judge. [redacted]'s attorney litigated with [redacted] (Maricopa County's attorney) back and forth for months on all the documents provided to the judge.

On June 13, 2006 the judge chose to set up a jury trial rather than making a decision and ruling on the laws and the documents provided. This was set for July 12, 2007.

[redacted] was the attorney up to this point. The county appointed [redacted] to represent them a few months prior to the scheduled trial. About the same time, the judge decided to cancel the jury trial. [redacted]'s attorney pleaded with the judge not to cancel the scheduled trial. The judge told [redacted]'s counsel that he was canceling the trial because the lawsuit was more about interpreting the laws which should be judged and ruled on. The jury trial would not be suited for this type of lawsuit.

Shortly after canceling the trial, the judge decided to make [redacted] contact all the land owners along every section line that would be affected in Maricopa County, if he ruled in [redacted]'s favor and inform all of the land owners of our lawsuit. The judge said that he wanted to hear and see the reaction of land owners. [redacted]'s attorney finally persuaded the judge to let [redacted] use one section line as an example of a section line road to one of their properties. There happened to be 5 land owners along this roadway. After contacting all 5 land owners, 4 agreed with [redacted] and one did not. The one land owner who disagreed hired and attorney. This litigation went on for another year or more. Finally the judge made his ruling.

Questions

1. Did Judge _____ act within his guidelines when he cancelled the jury trial?
2. Judge _____ told _____'s attorney he was cancelling the jury trial because this lawsuit was about questions of law, which should be done by him. A jury trial would be asked to decide on questions of fact.
3. Why did Judge _____ act like it was his first day on the bench when he set a jury trial only to stop it?
4. Judge _____ came up with a brilliant idea after stopping the jury trial. He wanted _____'s attorney to contact all the people along all section lines in Maricopa County that would be affected if he were to rule in _____'s favor. What would the time lost and cost involved be if this route had to be taken?
5. Judge _____ finally conceded by allowing _____ to use a stretch of roadway along one section as an example.
6. There were five land owners involved and one chose to hire an attorney. That one attorney only cost _____ \$31,000. What if all five had hired attorneys? This lawsuit was against Maricopa County, not other land owners.
7. Did Judge _____ lie to _____'s attorney for his reason cancelling the jury trial?
8. What good was it to involve any outside parties in this lawsuit?
9. Only when County Attorney _____ was replaced by _____, did Judge _____ decide to make his drastic and uncalled for changes, why?
10. Why did Judge _____ choose several different courses for ruling on the lawsuit?
11. What excuse or reason was there for dragging this lawsuit out for so long?
12. Judge _____ cancelled the jury trial, only then to contradict his earlier reasoning of needing to interpret the law? Why involve other property owners to help him interpret the law? Could a jury not have helped him with this?
13. Why did Judge _____ actually cancel the jury trial?