

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-037

Complainant: No. 1281610397A

Judge: No. 1281610397B

ORDER

The commission reviewed the complaint filed in this matter and determined that the judge failed to comply with the requirements of Canon 3B(2) of the Code of Judicial Conduct by refusing to issue blank witness subpoenas before a trial pursuant to A.R.S. 13-4071(D). Accordingly, the commission sent a confidential letter to the judge, pursuant to Rule 16(a), reminding him of his judicial and ethical responsibilities.

The complaint also described the conduct of the judge toward an attorney in an unrelated matter. The commission also concluded that the judge's demeanor in that incident involving an attorney was unacceptable and may have violated Canon 3B(4). To resolve this issue, the commission delegated two of its members to confer confidentially with the judge, pursuant to Rule 16(c), about his conduct.

The commission dismissed the other allegations in the complaint pursuant to Rules 16(a) and 23.

Dated: December 1, 2009.

FOR THE COMMISSION

\s\ J. William Brammer

Commission Chair

Copies of this order were mailed to the complainant and the judge on December 1, 2009.

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

FEB 18 2009

February 12, 2009

Arizona Supreme Court
 Commission on Judicial Conduct
 1501 W. Washington Street, Suite 229
 Phoenix, Arizona 85007

Re:

Dear Commission Members:

I am writing to lodge a formal complaint against _____ Municipal Court Judge
 I have been a practicing criminal defense attorney for ten years, and
 have appeared numerous times in Judge _____ courtroom. Judge _____ is
 habitually intemperate (a violation of Section B, Rule 6 of the Arizona Rules on the
 Commission of Judicial Conduct), and routinely treats the lawyers and litigants in bizarre
 and unfair ways. It would be quite easy to fill many pages with examples of his
 unpredictable and outlandish behavior, but I have pared my examples down to a chosen
 few. I will start with a typical example of his unfair and erratic behavior in a case I
 recently litigated in his courtroom.

In State of Arizona v. _____ TR _____, Ms. _____ was accused of
 misdemeanor DUI, a jury trial eligible offense in Arizona. Ms. _____ was exercising her
 right to a trial by jury, and we wished to call a witness who lived out-of-state. Because of
 the out-of-state witness, I requested a "date certain" jury trial. (In municipal courts, they
 typically set four or more jury trials on the same day, as many DUI trials are continued
 [or plead] on the day of trial. A "date certain" for jury trial guarantees that the case is, in
 fact, going to trial that day. This ensures that an out-of-state witness does not
 unnecessarily fly into town just to turn around and leave due to the case being
 continued.) When I requested a date certain for jury trial, I brought a list of dates that
 worked for the out-of-state witness. Judge _____ informed me that the court could not
 accommodate any of the dates I had cleared with the witness, and instead proposed a
 different date. I informed the court that I had not cleared that date with the witness (who
 had plans to be out of the country around the proposed time), and thusly could not
 guarantee that the witness would be available on that date. Judge _____ personally
 assured me that if the date did not work for the witness, he would grant a continuance to a
 different date.

Shortly thereafter, I contacted the witness and was informed that she indeed would be out of the country on the proposed date. I then promptly filed a motion to continue. The motion was filed weeks in advance of the proposed trial date. As Judge [redacted] had personally and unequivocally told me he would grant the motion to continue, I told my client that she did not need to be present on the date in question. (I, of course, also did not believe I needed to be present, as Judge [redacted] had assured me the motion would be granted). When the date arrived, and neither my client nor I appeared, Judge [redacted] denied the motion to continue, issued a warrant for my client with a \$1500 bond, and assessed me \$500 in fines.

The story does not end here. After finding out that Judge [redacted] had denied the motion to continue despite his personal assurance to me that he would grant it (and the fact that there were no legal grounds on which to deny the motion as it clearly demonstrated a need for a continuance), my staff called the Court in order to post the bond over the phone by credit card. (Posting a bond by credit card over the phone is a routine practice in [redacted] City Court). Court staff told my paralegal that Judge [redacted] had informed them that bond on this case must be posted in person, and not by telephone.

After this peculiar development, my paralegal personally drove to the court to post the bond. Court staff told my paralegal that Judge [redacted] required my client to be personally present when the bond was posted. This "requirement" is also something that heretofore was not mandatory when posting bond. The upshot is that Judge [redacted] specifically engineered obstacles for the sole purpose of inconveniencing me and my client.

Another incident involved attorney [redacted] (By happenstance, this event occurred on the same date as the date Judge [redacted] issued a warrant on the above case). Ms. [redacted] was representing a client in [redacted] Municipal Court. She was set for a jury trial with Mr. [redacted] before Judge [redacted] but Ms. [redacted] was already in the middle of a jury trial in [redacted] Municipal Court before Judge [redacted]. Ms. [redacted] filed a motion to continue her trial in Judge [redacted] court, citing the fact that she was currently in trial elsewhere and thusly was unavailable for trial before Judge [redacted]. Judge [redacted] issued a warrant for her client with a \$1500 bond, and assessed \$500 in fines to Ms. [redacted].

Yet another example was relayed to me by attorney [redacted] Mr. [redacted] represented a Mr. [redacted]. Mr. [redacted] was set for a change of plea before Judge [redacted]. Mr. [redacted] changed his mind about taking the plea, as is his right. Judge [redacted] apparently unhappy with Mr. [redacted] "ordered" Mr. [redacted] to stay at the courthouse a few hours afterwards to "give him something to think about". On this selfsame case, Judge [redacted] did to Mr. [redacted] what he did to the unfortunate Ms. [redacted] —on a timely filed motion to continue due to Mr. [redacted] being in trial elsewhere Judge [redacted] issued a bench warrant on his client. Apparently, Judge [redacted] told Mr. [redacted].

that the Judge is under pressure to "move cases" and if he issues a bench warrant it tolls his time. Thus, the Judge denied a legitimate request for a continuance for the sake of manufacturing bogus speedy trial statistics. In other words, Judge is not interested in justice or fairness, but merely in padding his stats.

Another incident involved attorney Ms. was attempting to get some blank subpoenas signed by Judge (as explicitly authorized by A.R.S. 13-4071(D)) on a case she was handling in his court. Incredibly, the Judge was unfamiliar with this statute. Even more incredibly, after being shown the statute by Ms. the Judge informed her that he did not agree with it, and that he would not follow it. A jurist baldly stating that he will not follow the law is truly disgraceful.

Yet another incident involved attorney Mr. and his partner had a DUI jury trial before Judge According to Mr. during cross-examination of a State's expert, Judge began rolling his eyes and making other facial expressions to the jury to indicate his low opinion of defense counsel's cross-examination skills. Mr. made a record of this behavior. Somewhat obviously, a judge telegraphing his low opinion of counsel to a jury is a gross violation of a judge's duty to be impartial.

The final incident I shall document here involves attorney Mr. associate, was slated for a trial before Judge Ms. timely arrived in Judge court for trial, but she had very recently become gravely ill and was unable to go forward. This fact was undisputed by anyone present, and can be independently verified with the assigned prosecutor, Judge fined Mr. firm \$1000 due to his associate taking ill. shabby treatment of Ms. traumatized her client. It is difficult to imagine something more repugnant than a judge penalizing a lawyer for becoming ill, let alone dressing-down the lawyer in front of her client for something wholly beyond her control.

This is but a taste from the smorgasbord of improper conduct that pervades Judge courtroom. Judge has forgotten (if indeed he ever remembered) that he is a public servant. It is sincerely hoped that this Committee will put a stop to this Judge's abuse of position.

If you have any questions, please do not hesitate to contact me.

Sincerely,

