

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-040

Complainant: No. 1143410692A

Judge: No. 1143410692B

ORDER

The commission reviewed the complaint filed in this matter and found no evidence of ethical misconduct on the part of the judge. A judge's decision not to quash a writ of restitution that he believes is valid does not constitute misconduct. Since the issue raised involves a legal question outside the commission's jurisdiction, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: March 24, 2009.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on March 24, 2009.

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

In _____, the Court entered judgment against the Defendant, _____, on January 13, 2009. This was a Special Detainer Action. The parties entered into an agreement to reinstate the lease and the Defendant made the agreed upon weekly payments.

On February 10, 2009, almost one month after Judgment was entered, the Plaintiff submitted a Writ of Restitution to the Court to be issued, which the Court did. The Defendant filed a "Motion to Squash" the Writ of Restitution, which was denied. She retained me to file a Motion to Quash, which I did. A copy of the Motion to Quash is attached hereto.

The Court first is to determine whether there is good cause to grant the Motion to Quash. Rule 14c, Eviction Rules. The Court, by virtue of his denial of the Motion to Quash, did not find good cause to quash the Writ of Restitution. This is in spite of documents showing that there was a series of agreements after the entry of judgment for partial lease payments. The language at the bottom states:

Landlord and Tenant agree that the Landlord's acceptance of partial payment of rent from Tenant shall not constitute a waiver of the Landlord's right to terminate the rental or lease agreement for the above-described breach(es) and that no additional notices of the Tenant's breach(es) shall be required by the Landlord prior to commencing or continuing a special/forcible detainer action.

This language indicates that there was a new lease between the parties. The old lease was terminated by the Court when it entered Judgment. On January 15, 2009, a new lease was entered into by the parties for the same premises. The Writ of Restitution should have been quashed because post-Judgment the lease was reinstated, albeit with new terms. In effect, the Writ of Restitution would cause the eviction for both the old terminated lease and the new reinstated lease. The Court had the documents and the argument. This is not a difficult issue.

The Court's failure to even find sufficient good cause to have a hearing on the Motion to Quash amounts to an abuse of discretion, is fundamentally unfair and wrong and suggests the Court is biased against tenants.