

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-193

Complainant: No. 1368410804A

Judge: No. 1368410804B

ORDER

The commission considered the complaint filed in this matter and after reviewing the recording of the hearing found no evidence of ethical misconduct on the part of the judge. The judge did not act unethically in denying community service and waiver of fees. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: October 21, 2009.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on October 21, 2009.

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

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JUL 23 2009

14 July 2009

ATTN: Presiding Judge

Dear Judge

RE: Complaint against Judge
in the cases of

I am writing to complain about the decisions Judge made in the above cases and the obvious bias he has against and incomprehension of poor people. In the parking ticket case, Judge flat out denied me Community Service – *on a parking ticket!* – without giving any reason for his decision to do so. Community Service is designed just so to help people like me meet their court/legal obligations without undue financial burden which indigents like me just can't meet. And then he added insult to injury by first denying me a waiver of fees – something that would in fact deny me the appeal which is not what is suppose to happen in a system of just for all -- for my appeal of his decision to deny me community service on the basis of "not providing proof" despite filling out all the regular paperwork that the clerk handed me and is all that is required by law and that other judges have accepted at face value. Then, apparently upon consideration or upon my request for reconsideration of denial of community service, he said that I could come to court on the date AFTER my appeal is due to "show proof of monthly income and expenses." As I said, I had already filled out the paperwork on monthly income and expenses so obviously Judge holds a different standard of proof for poverty than any other judges of this court or other courts I have been involved with or that friends I know of have been involved with due to his great antipathy to and disbelief of the poor.

First, a little about me and my claim of poverty. I should state up front that I receive both Food Stamps, which ARS 12-302C1(b) said is sufficient in and of itself to qualify as indigent. In addition, under ARS 12-302C3(a), while I do work, I never earn enough even to make my most basic expenses and have often gone for (and have exhausted) the

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assistance of organizations like St. Pillips de Paul, Tucson Urban League, Temple Emanuel, JFCS, Primavera Foundation, and others. At this time, I have \$3 in my bank account to keep it from bouncing. I currently owe: \$100-200 to electric; \$150 to Qwest; \$110 to Verizon; and \$400 to rent.

And of course the cats need food (\$26/15+# bag = 3-4 weeks) and litter (\$32/40# bag = 3-4 weeks). And then there is gas for the insured car (a 1998 Plymouth Breeze, btw, owned by _____ who has just put me on her insurance as a 2nd driver) I am borrowing, around \$35/tank. I also owe \$105 to _____ Veterinary Clinic (not to mention the \$250 owed to Animal Rescue Foundation) because a cat I found had an urgent need to see a vet due to an abscess. Animal Rescue League wouldn't pay any more money for me to get care and my Care Credit, which I thought I had when I made the appointment, had been canceled. (Three cats -- I own 5 plus this one -- need urgent dental care costing around \$700. In addition, I haven't had a new prescription since 2004 and my prescription has changed. While I am OK using my reading glasses, I do need a new prescription and lenses [\$400 for the lenses + \$75 for the prescription] because I am constantly getting headaches. So finding out last minute and after the service was provided that I no longer have even Care Credit to deal with medical emergencies not already covered by my AHCCCS coverage is deeply disappointing.) Then there is the \$650 I owe to USAA for insurance provided and the other \$650 they require from me after I've paid them back so I can get car insurance again. And that is depending on me getting \$280 to Geico to pay for car insurance so I can then go to USAA and get the lower rate.

And let's not forget the \$190 I need in order to take the driver's ed class. *(I understand that the true cost of the class is only around \$30 and the rest are court fees. Is there any way to do community service for the court fees and just pay the true cost? If not, can I get more time to come up with all the money I need? Maybe a couple of months? Six weeks is just not going to cut it.)*

This is not to mention the \$900 I owe at 15% interest on my Capital One Credit card (which is active but at its limit) not the \$730 at 21% I owe to Credit First Firestone for putting new tires on my vehicle and for repairing the damage I did to my friend's Plymouth Breeze which she has kindly loaned me because it is insured (and I am now on the policy) and I cannot afford even the \$280 to Geico to get insurance started again. I managed, when driving it home from her place that first day back in April, to bounce down twice on the very high speed bumps on my street. I had gone over these same speed bumps in my Toyota at the same pace, but this car is half the height of my Corolla and so poorly designed that it has an unbending aluminum oil pan right there. So, going at more than 0 speed means it bounced down and cracked the oil pan. Not being my car, of course I had to replace it -- for nearly \$450 which is now on my Firestone credit card until the some magical day in the future that I can pay it off. Meanwhile each of these cards requires around \$25/month to simply maintain in good standing. I have given up keeping my other 5 credit cards in good standing because the

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money I expected to earn in real estate never came to fruition. So now I have over \$60K in bad debt, maybe more. It seems to me that right now I need between \$3000 - \$5000 to pay my current debts and pay my bills and rent ahead so I am not soon evicted or disconnected or sweating. (This is without any court fees other than the drivers' class.)

As for work, I work on a ranch on Sundays for an hour or two except for the first two weeks of July. I work during elections (2-4 times/year). I work in sales selling software to help people pay off their homes in 1/3 the time. Selling a couple would pay me enough to pay my bills this month if I actually sold something only I haven't managed that yet (but am ever hopeful.) I have just signed up for a job online which is going to stores. Don't know the earnings on that as I have yet to start. I also have the potential to earn \$10/hr making phone calls to get people to a Home Seller Seminar for sellers who want to sell their home in this market for the price they want without paying most closing costs. Only, I have a disability which seems to get in the way of my accomplishing this effectively and so I have not earned much yet. I have applied for disability – which I was initially denied and am awaiting a review. I'm told that will take months which means it won't help with the rent now. I have received SMI status through CODAC so maybe that will help. Occasionally I do modeling, both art modeling for the – which I don't mind so much – and, in desperation, for a photographer with modeling I am not so comfortable with. But neither have much work. (I have been told by modeling agency that she might be able to get me print modeling work at \$150-200/hr with a four hour minimum, but of course the catch is that I have to come up with \$500 to pay for the photos that will get me the job so this isn't a possibility in the near future.)

I also work occasionally for the in the when they need This happens maybe 50 days in a year (and I am not hired for all of them), though I did just complete a couple of weeks and did earn \$398. Thank goodness because I only managed to pay 2/3 of my rent for the most of the month of June and owed \$200 until the third week. I have now managed to pay a portion of my rent for July on time but still owe \$400 of the \$678 due. (BTW, I moved in to where I live because there was no carpet and the rent was \$500. One year they raised the rent on me \$80. Moving is expensive and – surprise, surprise, I don't have the money to do it. Nor do I have the credit so I cannot move to any safe place because no landlord will rent to me at this point, particularly as I have been late a number of months – more than once paying an extra \$100 because of being late.) In May, paid for most of my rent. The month before that and helped with rent, electric and telephone. Not sure what I will do if I don't have some success this month as they will not accept partial payments for August and late fees are also expensive, not to mention eviction.

While I did just get paid for the ranch work and a little from the (around \$30) and another \$95 got refunded to me in my account after 10 hours of arguing with my bank

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that the charge was fraud and not legit, that money all went to paying \$280 on July's rent. I am also awaiting (could take 10 days) payment for doing a demo of _____ at the _____ and some extra money for outlays I made to do the demo (around \$95.) I might have one more demo left to do (about \$45) if Whole Foods will let me do the _____ store. No answer there yet. I will have to decide if and what part of the \$95 will go toward rent, Qwest, Verizon or TEP. Not sure what to do about that. I hope I earn some more money soon but there are no guarantees about that, especially since my disability seems to prevent me from full and continuous employment.

So that is my situation and why it is impossible for me to pay fees for a parking ticket – even at \$25, especially when the _____ Municipal Codes throughout, and particularly within Article 1. In General, Chapter 8 City Court some version of the following statement is made repeatedly: "No person who is found to be indigent by the city court shall be required to pay the ... fee."

Now back to the actions of Judge _____ In PK _____ /Citation # _____ he summarily denied me community service – maybe, because when he looked at me and saw that I had nice (hand-me-down) clothes he judged me to be lying about being poor or thought that I had no right or reason to be poor. Or maybe because it is a policy of his to use the "discretion of the judge" clause to deny any person appearing in his court from getting community service because he thinks poor people don't really exist or are lying. (I did observe him denying community service to others appearing before him so it would be interesting to see if he ever grants community service and how this compares to other judges in similar cases currently or in the past.) Maybe he believes that this economic downturn shouldn't be any kind of reason not to have extra money for the court. I don't know, but he clearly doesn't follow the intent of the _____ Municipal Codes, as stated above.

In ARTICLE VII. STOPPING, STANDING AND PARKING, DIVISION 1. GENERALLY, §20-200(g) Community service, states: "Community service work may be substituted for fines and fees in accordance with section 1-8(4) of this Code. (Ord. No. 9196, § 1, 1-25-99; Ord. No. 10418, §3, 6-12-07)" §1-8. General penalty; misdemeanors; civil infractions; continuing violations, (4) says: "In this Code, when a fine is imposed or required, it is within the discretion of the judge or hearing officer to substitute community service in lieu of any fine. . . ." However, what does it mean to be "within the discretion of the judge"? Does it mean it is up to his whim and his feelings about poverty and the indigent or should he not be guided by the rest of the code which many times but especially in article one provides the guidance: No person who is found to be indigent by the city court shall be required to pay the ... fee." I argue that it is the latter and not the former which Judge _____ practiced in this case. I clearly qualify as indigent both under _____ Municipal Code as well as under Arizona Revised Statutes which states that receiving Food Stamps, which I do, is enough to qualify me as indigent, as well as under the definition of not earning enough to meet basic needs. Therefore, the guidance in this case would clearly show that I should have been granted community service.

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As for the denial and then request for proof on my request for waiver of fees based on indigency as provide for in Rule 5. ◀Appeals▶ by Indigents:

A party may seek a ◀waiver▶ of ◀fees▶ or costs on the basis of indigency. A request to proceed as an indigent shall be filed in the trial court on a form provided by the court containing a sworn statement of financial resources and such further information as required by the court.

The Congress would not have provided for such a rule unless they meant the fees and penalties shall not be onerous to the indigent. As I did already , when I filed the waiver, provide the proof mentioned above, by the law of 12-302.C(1)b & C(3)a, (*see Addendum 3 below*) Judge should have granted me the waiver on the basis of the documents I filled out that the court gave me to fill out and I gave an affidavit to. (Yes, I receive both Food Stamps and AHCCCS.) Yet, for Judge the law seems to be insufficient and he seems to feel free to flout it and demand greater proof and a higher standard than the law or the reasonableness of other judges in the past have required.

As for TR /Citation # , I was stopped April 7th because I made too wide a right turn across too many lanes. While I had a printout of my insurance with my USAA info, it turned out to be from the policy which ended in February. The policy did continue but USAA required that I print out the proof of insurance myself and I had no money for ink in my printer, so, as I explained to the officer, I had no way to print it until I could get enough money together to buy ink. (Freecycle was not forthcoming.) That took some time. I went to the windows downstairs and arranged for a court date for both charges (after my hearing was postponed due to being out of state) because I did not know when I would have the money to do the printing. Hence, when I later brought in the proof of insurance on the date in question 7 April 2009, to the windows, she told me that I just had to bring it with me when I went to court in June. So I stuck it in the car I was now driving – as explained above, the Plymouth Breeze – and mixed it in with the papers I was bringing to court. Unfortunately for me, while that paper was in there, I could not find it while in court. Instead, I found the notice from USAA showing that they cancelled my policy as of 20 April 2009 due to non-payment – for reasons stated above. (I just didn't have it and didn't look like I was getting it. Anyway, rent had to be paid for first.) I figured that any logical person would conclude that if USAA was cancelling service for non-payment, that meant I had insurance before then. However, Judge was not satisfied with that proof and so gave me until 20 July 2009 to provide the proof of insurance card.

I provided proof that meets A.R.S § 28-4131. Definition of evidence within a day or two after my 4 June 2009 court date (after finding it within the same papers I had searched while in court), clearly showing that I had proof of insurance on the date of the incident, which is all that is required by A.R.S § 28-4135D. Motor vehicle financial responsibility requirement; civil penalties:

D. A citation issued for violating subsection B [B. A person operating a motor vehicle on a highway in this state shall have evidence within the motor vehicle of current financial responsibility applicable to

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the motor vehicle.] or C of this section shall be dismissed if the person to whom the citation was issued produces evidence to the appropriate court officer on or before the date and time specified on the citation for court appearance and in a manner specified by the court, including the certification of evidence by mail, of either of the following:

1. The financial responsibility requirements prescribed in this section were met for the motor vehicle at the date and time the citation was issued.

As I clearly did provide the correct proof in the correct time frame, it is unfathomable to me as to how it is Judge _____ can claim to be "mitigated to \$212" as pursuant to A.R.S § 28-4131B. Clearly, the law provides that the case be dismissed and Judge _____ is not following the law but personal preference to punish to poor with more fines not even found in the law. And clearly it is because of my poverty that I have not been able to continue paying for my car insurance and have therefore parked my car and complied under:

28-4152. Nonoperation of vehicle on highways of this state; exception; certification

- A. A vehicle owner or lessee who does not operate a vehicle on a highway of this state is not required to meet the requirements of section 28-4135 during the period in which the vehicle is not in use if the requirements of subsections B through F of this section are met.
- B. Within fifteen days after receipt of a notice from the department pursuant to section 28-4148, the vehicle owner or lessee shall do one of the following:
 2. Certify to the department in a manner prescribed by the department all of the following:
 - (c) That the vehicle will not be operated on a highway of this state unless the financial responsibility requirements of section 28-4135 are met and unless proof of compliance is provided to the department pursuant to this section.

Sincerely,

Defendant

CC: Mayor and Council
c/o City Clerks Office

Arizona Supreme Court
(Complaint Division)
1501 W. Washington
Phoenix, AZ 85007
602-452-3300
www.supreme.state.az.us
Email to: info@supreme.state.az.us