

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-277

Complainant: No. 1375210083A

Judge: No. 1375210083B

ORDER

The complainant alleged the judge imposed a penalty for a traffic citation when there was no service of process. The commission reviewed the complaint and the judge's response and found no evidence of ethical misconduct on the part of the judge. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: March 16, 2010.

FOR THE COMMISSION

 /s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on March 16, 2010.

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

Commission on Judicial Conduct
1501 W Washington Street, Suite 229
Phoenix, Arizona 85007
RE: Attachment to complaint

October 9, 2009

All American citizens are guaranteed the right of due process by the fourteenth amendment to the US Constitution. This amendment prohibits states from "making or enforcing any law which shall abridge the privileges of citizens of the United States without due process of law", nor can states "deny to any person within its jurisdiction the equal protection of the laws."

I am writing to your body about Judge _____ a J.P. in Casa Grande. This Arizona judge proudly has a custom of violating both the civil rights of citizens and the equal protection clause cited above. I have written three letters to Judge _____ explaining my position. They are attached together with copies of his response.

I have never been served with a citation or a notice to appear before any Arizona Court. Yet Judge _____ placed my name on the National Driver Register for failure respond to a traffic citation that his court claims to have on file from 2001. This illegal action by Judge _____ has abridged my legal privilege to drive in all states.

My three requests for copies of all documents from the court's file have not been complied with. (The only reason I can think of for the court's noncompliance would be the absents of any document bearing my signature which would give Judge _____ my personal jurisdiction to sanction me.) So sadly I have nothing to show you but my pleadings, Arizona statutes and legal opinions from higher courts.

One of the oldest and most important rights that citizens of virtually all western nations have is the right to defend oneself before a neutral and independent trier of fact. If a defendant is not notified that they are named in a civil action then their right to defend themselves is unlawfully denied. Further if the trier of fact makes the decision to move forward and actually issue sanctions when there is no evidence of legal service, then clearly the trier of fact is not independent as required by law.

All legal jurisdictions in the western world require that the defendant must be notified by the plaintiff and proof of the service of this notice must be acknowledged by the court in order to legitimize any subsequent legal proceedings and any sanctions issued. The obligation of proving legal service always falls on the plaintiff in every civil case whether the plaintiff is a citizen or a government entity.

According to Arizona procedure a defendant's signature on a citation signifies the receipt of the citation, a waiver of the defendant's right to be legally served and the defendant's agreement to appear. The defendant's signature on a citation is therefore considered legal service. Conversely the lack of a signature indicates that the issuing body failed to legally serve the defendant. If the plaintiff cannot prove legal service then there is no legal basis for a hearing and no legal foundation for sanctions. (See *Ariz.R.Civ.P. 4.1(c)(3)*.)

Judge _____ court clerk has told me that the citation at issue does not bear my signature. The court clerk further related that Judge _____ as a matter of custom never follows the law requiring proof of service when a citation lack the defendant's signatures. This "custom" of routinely violating the civil rights of citizens by Judge _____ is at the root of my complaint.

The first canon of judicial conduct is "A Judge Shall Uphold the Integrity and Independence of the Judiciary".

Any judge who, as a "custom", orders civil sanctions against defendants when he knowingly lacks the defendants' personal jurisdiction is guilty of prejudicial conduct and has violated the first canon of judicial conduct, namely integrity and independence. The fact that such a judge may have a "custom" of not requiring proof of service in civil hearings in no way excuses his flagrant violation of the law.

The following case law outlines the only legal process that an independent trier of fact is obligated to enforce when a government agent files with the court a citation or civil complaint which lacks any proof of service. *Court of Appeals of Arizona, Division One, Department C 171 Ariz. 449; 831 P.2d 448; 1992 Ariz. App. May 12, 1992* "The appellant's (The city of Paradise Valley) recourse when a defendant fails to execute the acknowledgement of receipt is to continue the hearing and serve the complaint by some other authorized method. See Ariz.R.Civ.P. 4.1(c)(3). Until the magistrate's court obtains personal jurisdiction, it has no power to enter an order of civil sanction against a defendant." Judge as a matter of custom routinely violates this law by issuing civil sanctions against the defendant despite the fact that he has no legal power to do so.

This brings us to Canon 2 "A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities."

"A. A judge shall respect and **comply with the law** and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Judge conduct in following his custom instead of the law is far more than just the appearance of impropriety. It is bias to the highest order to demand proof of service from some plaintiffs and not from others. Judge elevating of his custom above the law is also a clear violation of the equal protection clause. Which brings us to the question, what is the "authorized method of serving a complaint" that would have given Judge the legal "power to enter an order of civil sanction"?

AZ Superior Court. (No. 1, ca-cv 90-429) "The requirements for service under Rule 4.1(c) are clear. A summons and complaint may be served by first-class mail along with two copies of a notice and acknowledgment of receipt of summons and complaint and a postage-paid return envelope, but **service is not complete until the acknowledgment of receipt is executed.**" See *Worrell v. B.F. Goodrich Co.*, 845 F.2d 840, 841-42 (9th Cir.1988), cert. denied, 491 U.S. 907, 109 S.Ct. 3191, 105 L.Ed.2d 699 (1989). Until service is complete, no personal jurisdiction is obtained, and any judgment entered is void." *Endischiee v. Endischiee*, 141 Ariz. 77, 79, 685 P.2d 142, 144 (App.1984); *Kadota v. Hosogai*, 125 Ariz. 131, 134, 608 P.2d 68, 71 (App.1980).

Instead of complying with the law and insisting that proof of legal service be presented to him Judge chose instead to unlawfully issue a civil sanction. The sad part is his own clerk admits that he does this routinely as a "custom".

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I recently called your state's DMV and explained this matter to a supervisor. I was inform by him that now that I clearly had been given notice or been legally "served" regarding this 2001 citation that this made the judge's civil sanction somehow legal. However, *Ariz. Statute 28-1592* gives the issuing authority a 60 day window to legally serve a defendant after which the citation if voided. In the intervening eight years enough time has passed to close this window almost 50 times. I can only assume that this supervisor had the same legal education as Judge

When I started to call various state officials about this matter a staffer for one of your senators told me that trying to get a corrupt judge sanctioned or removed was like trying to move a mountain with a feather. She warned me that the judicial system is much better at circling the wagons than cleaning house. I hope she's wrong.

Judge indecent and bias conduct of placing his customs above the law is a stain on the reputation of the great state of Arizona. His unethical conduct puts him more on par with the judges of third world oligarchies than the high standards set forth in Arizona's Code of Judicial Conduct. His violation of the law and the Arizona's Code of Judicial Conduct should disqualify him as a judge. It is sad that there is no mechanism to punitively charge such a judge to atone for all the damages he has done to your citizens, for he has caused me enormous problems. Therefore I pray that your good offices deal swiftly with this blight on your judicial system.

Respectfully submitted by.....

10-9-09