

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-318

Complainant: No. 1379610275A

Judge: No. 1379610275B

ORDER

The commission reviewed the complaint filed in this matter and found no evidence of ethical misconduct on the part of the judge. The commission does not have authority to resolve factual issues in an ongoing legal dispute. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: February 5, 2010.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on February 5, 2010.

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

Rev. 11-1-05

FOR OFFICE USE ONLY

State of Arizona

Commission on Judicial Conduct

1501 W. Washington Street, Suite 229

Phoenix, Arizona 85007

COMPLAINT AGAINST A JUDGE

Your name:

Judge's name:

Date: November 14, 2009

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

(Attach additional sheets as needed)

In an ex parte hearing on November 12, 2009 _____ granted an harassment injunction to _____ which forbids my wife and me from being within 300 feet of _____ or his residence. This effectively evicted us from our home of eight years and we are now homeless. In this instance _____ has violated the Code of Judicial Conduct regarding exparte communications. He has violated specifically:

RULE 2.9. Ex Parte Communication

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision to promptly notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

In the last six years we have had legal issues with over an easement that we use for access to the public street. We have appeared before three times in that period and he has always been arrogant, condescending and rude to my wife and me. His decisions are arbitrary and capricious and not based on facts in the case. A letter and documentation dated August 27, 2009, from attorney to , proved that has lied under oath in court more than once over the six years that this issue has festered.

has shown a reckless disregard for the truth and has yet to schedule a hearing for this matter and has denied my wife and me our right to be heard. The Judicial Code of Conduct states:

"(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

1. The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control. "

is biased in favor of and is not impartial in his treatment of my wife and me in this matter. In a hearing in court in May 2007, goes to great length to disparage residents of Catalina as criminals and drug addicts and by inference is referring to my wife and me. Please listen to the recording. According to the Judicial Code of Conduct:

"(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

Examples:

negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Facial expressions and body language may convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences."

Finally, _____ should have disqualified himself from this matter. The Judicial Code of Conduct says:

RULE 2.11. Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding. Further, "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

I vigorously contend that _____ conduct does not pass this test.