

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-017

Complainant: No. 1383910846A

Judge: No. 1383910846B

ORDER

The complainant alleged a municipal court judge improperly limited his ability to defend himself and pre-determined his case. After reviewing the complaint and listening to the recording of the hearing, the commission found no evidence of ethical misconduct on the part of the judge and dismissed the matter pursuant to Rules 16(a) and 23.

Dated: April 19, 2010.

FOR THE COMMISSION

Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on April 19, 2010.

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

The case is currently under appeal. Given the irregularities in the Wickenburg Town Court, I can only hope that my appeal is forwarded unaltered to Superior Court for review.

Because the instructions say that I may not attach official court documents, I have not included a recording of the hearing. However, I quote from the recording, which I assume the person who reviews this complaint can obtain.

The complaint involves rule 2.4, "External Influences on Judicial Conduct." Although it is difficult to prove a general accusation from a specific case, I believe Justice _____ of the Wickenburg Town Court views her job in part as aiding the Wickenburg Police Department in maximizing fines from alleged traffic violations. The Wickenburg Police Department issues as many traffic violations as possible to motorists passing through town, at least some of which have no validity, and I believe that Justice _____ views her job as finding those who challenge their traffic tickets in court without the representation of an attorney as responsible, even in cases, such as this one, where the alleged violation could not possibly have occurred at the location where the ticket was issued. I am unable to access the statistical information from the Wickenburg Town Court to substantiate or refute this suspicion.

I was judged responsible of violating ARS 28-771A, even though no evidence and no testimony were introduced during the hearing to support the alleged offense. I believe this is normal procedure in Justice _____ court.

On November 7, 2009, I was passing through the town of Wickenburg headed toward Phoenix in my automobile. I cautiously entered a traffic circle or roundabout on highway 93 west of downtown Wickenburg, attempting to properly merge with traffic in the roundabout,

-- Complaint Against Wickenburg Town Justice

when an unmarked police car accelerated and rapidly approached my vehicle. The officer stopped me and cited me for violating ARS 28-117a, captioning the citation "FAIL TO YIELD TO VEH IN UNCONTROLLED INTERSECTION."

As the officer correctly noted, ARS 28-771A governs access to intersections that are uncontrolled: that is where there are no traffic control devices such as stop signs, yield signs or traffic lights. However, because the intersection is controlled by a yield sign, if I had actually failed to yield, I should have been cited under ARS 28-855C. However, I believe that I properly merged according to ARS 28-855C and that the police officer created the appearance of a failure to merge on purpose by both accelerating and changing lanes. I believe I would have been acquitted before an impartial judge had I been charged under the proper statute. As to ARS 28-771A, it is impossible to violate that statute at the intersection where the alleged offence occurred, and the charge against me should have been dismissed when I demonstrated that fact in a pretrial motion. This case should have never reached the stage of a hearing.

On November 9, 2009, I included a letter with my plea of not guilty/responsible pointing out that the citation was invalid, because the alleged offense could not be committed at the alleged location. I believe the letter should have been considered a pretrial motion for dismissal. However, the letter was ignored.

On November 20, I filed a formal pretrial motion for dismissal and included a photograph showing that the intersection is not uncontrolled and that ARS 28-771A did not apply. This motion was also ignored. At the subsequent hearing on December 14, when I

mentioned the pretrial motion Justice responded: "We don't have pretrial motions in civil."

At 4 minutes and 20 seconds into the hearing, the justice interrupted my cross examination of the officer to inform me that I was only permitted to ask questions that could be answered "yes" or "no." I was not permitted to ask the officer questions that could elicit a more complete response, limiting my right of defense.

Lines of questions designed to show that the officer's only motive for changing lanes was to create the appearance of a traffic violation and to show that the officer during the same day repeatedly drove up to automobiles entering the roundabout to create the appearance of a failure to yield and to cite the drivers were not permitted later in the cross examination.

At five minutes 30 seconds into the hearing, I began my arguments leading to a motion for a directed verdict of acquittal, based on the claim that the officer's testimony had not included any evidence that there was any violation of ARS 28-771A, given that that statute applies to uncontrolled intersections and that the officer had not given any testimony nor introduced any evidence to indicate that the intersection is uncontrolled. I further pointed out that ARS28-771A begins "When two vehicles enter or approach an intersection from different streets or highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right" and added that if the statute had applied, my vehicle would have had the right-of-way, as the officer had testified that his vehicle was on the left and mine was on the right. At eight minutes and forty seconds into the hearing, the justice denied my motion without stating her reasons. One minute later, when I attempted to obtain a

clarification, the justice stated, "I'm sorry, you can't ask me questions," thereby denying me the right to understand and contest her ruling. The audio recording of the hearing cannot portray the look of self-satisfaction on Justice _____ face when she succeeded in keeping what she apparently believed to be the basis of her ruling to herself to spring on me at the conclusion of the hearing.

At the conclusion of the hearing, I was found responsible, even though it no evidence and no testimony had been presented during the hearing to support that verdict. I believe that the justice's explanation for the ruling demonstrates that she was determined to find me responsible and support the police officer, regardless of the facts of the case and with no regard for the law. Here are excerpts from the justice's explanation for her ruling:

"Mr. _____ you were cited under 28-771 point A, vehicle at intersection with the exception of entering a freeway, which is C. OK. When two vehicles enter or approach an intersection from different streets or highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. This subsection does not apply to vehicles approaching or entering an uncontrolled 'T' intersection if the vehicle on the left is on a continuing street or highway and the vehicle on the right is on the terminating street or highway. The vehicle on the terminating street or highway shall yield to the vehicle on the continuing street or highway."

[After I unsuccessfully attempted to object that the intersection is not an uncontrolled 'T' intersection, she continued:]

"OK. Now, when the officer was on the roundabout, as portrayed in the a [unintelligible covered by cough] in the testimony, that the officer was coming toward you, you were you were at a yield sign, is that correct? [I answered yes. Then after some more attempts on my part to interrupt to point out that the presence of a yield sign meant that 28-771 was the wrong statute:]

"But Officer _____ did not have a yield sign. So... the rule that you're talking about governing yielding to the person on the right is when both of you have a yield sign or a stop sign. [I interject the word "no".] He was not.... He did not have a yield sign, the the traffic

that is going through the roundabout with no traffic control absolutely do not have to yield to the people who want to get on the roundabout. The people with [unintelligible] the yield signs, the control signs, even if there were no control signs on there, the continuing traffic is already on the roundabout. The terminating traffic is entering the roundabout. The terminating traffic must yield to all traffic on the continuing highway. The people on the continuing highway do not have to stop to yield for anyone trying to get on to the roundabout. [I was on highway 83, which continues through the roundabout.]

“That being said, I am going to find you responsible on 27-771A, and your fine is \$168.”

During the hearing, I had submitted five photographs showing that the roundabout was not an uncontrolled T intersection but rather a merge lane controlled by a yield sign. After the hearing terminated, the justice can be heard deciding which evidence to retain and which evidence to reject. I believe she should have retained all of the evidence.

From Justice explanation of her verdict, I believe that she is either incapable of reading and understanding a law, or more likely, that she views her role in court as an arm of the prosecution whose job it is to find the accused guilty or responsible, regardless of the evidence and regardless of the law. It would be interesting to know what percentage of defendants who have appeared before her without counsel have been acquitted. I wish to emphasize that in my case, no evidence and no testimony introduced during the hearing support the alleged violation of ARZ 28-771A.

Because of Justice refusal to follow proper court procedures and her extreme partiality, I have invested considerable time and an not inconsiderable amount of money for someone surviving on Social Security in defending myself. I will never be compensated for the loss of time and money, but I hope that this complaint results in disciplinary action that prevents others from undergoing the same experience.