

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-202

Complainant:	No. 1399100456A
Judge:	No. 1399100456B

ORDER

The complainant alleged that a justice of the peace made statements indicating bias and a misunderstanding of the law, and demonstrated an improper demeanor. After reviewing a response from the judge and the recording of the hearing, the commission decided to issue a private warning reminding the judge of her obligation to be patient and courteous and to promote public confidence in the judiciary.

The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: December 20 , 2010

FOR THE COMMISSION ,

J. William Brammer, Jr.
Commission Chair

Copies of this order were mailed to the complainant and the judge on December 20, 2010.

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

CONFIDENTIAL

State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2010-202

COMPLAINT AGAINST A JUDGE

Your name: _____ **Judge's name:** _____ **Date:** 8/7/2010

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

I was representing Tyler W. _____ in a Civil Traffic matter (Photo Enforcement), in Case # CT2009- _____ in the West McDowell Justice Court. My complaint is regarding the conduct of _____ during the hearings on December 16, 2009, starting at 9:00 am.

There were perhaps five defendants present in the hearing room at the time of the events here recounted, as well as another attorney, one court staffer, and the representative from Redflex appearing as a witness for the state. The hearing was video recorded, and I have reviewed the recording.

As is relevant to my complaint, _____ made several assertions before the start of the proceedings, including that she would not permit legal argument, or at least no argument on any constitutional issues, at the hearing.

Upon calling my case, and after I entered my appearance, _____ stated (paraphrasing): "I saw you on the news last night." I responded, "Thank you your Honor, I hope you enjoyed my few seconds." _____ then said "Aside from the fact that you were wrong about almost everything, I enjoyed it very much."

_____ was referring to an interview with CBS 5 News which aired the previous evening, December 15, 2009. I was interviewed regarding red light camera photo enforcement, and a recent opinion from the Federal Highway Administration stating that pavement markings used by various Arizona jurisdictions violate federal regulations. The video of that interview is viewable here: <http://www.kpho.com/video/21979630/>

Later, I respectfully inquired of _____ whether I had heard correctly that she would hear no constitutional argument, which she confirmed. When I then respectfully pressed the point, she asserted, to the best of my recollection, "No counsel, you are incorrect on all of those points. There has been a whole bunch of case law that I guess you have not been able to find."

I then asked, "Is it Your Honor's ruling or opinion that due process does not apply in these cases?" _____ stated "Yes, either procedural or substantive, and there's ample case law to back me up."

_____ offered to allow me a continuance, so that, according to _____ I could file motions making my legal argument, serve copies upon the County Attorney, and permit the State to respond.

It is my experience, after dozens of civil traffic matters, that the County Attorney does not file any responsive pleadings, nor does anyone from the County Attorney ever appear, even when alerted to a pending oral argument by court staff (for example, see CT2009-475101 through CT2009-475111, in the Moon Valley Justice Court). This County Attorney policy has been confirmed to me by members of that office. Staff at the County Attorney has even requested that I stop submitting copies of pleadings to that office, as the office does nothing with such, but merely discards them.

Nonetheless, I filed my motions, the State filed nothing, and this case was ultimately dismissed by a another judge at the later hearing date when the State's witness was unable to testify on this case.

I believe the conduct, as briefly outlined above, violated the Code of Judicial Conduct (and not only in the matter for which I was appearing, but also in the other matters heard by her that day immediately preceding mine, and likely in the ones following, and perhaps on other occasions when she has heard photo enforcement cases).

In particular, I believe that violated a number of the Rules, and that her conduct is such that likely brings the judiciary into disrepute. I will briefly review the violations of the relevant rules which I perceived, below.

RULE 1.2. Promoting Confidence in the Judiciary

blanket assertion that defendants have no due process rights in civil traffic hearings (or perhaps just in photo enforcement hearings), and that she there was ample case law confirming her legal holding, is one that must shake the public's confidence in the judiciary. After all, "due process" means, at its core, the right to a fair hearing by an impartial hearing officer. It also means the right to present evidence, call and cross-examine witnesses, and present legal argument. I was shocked by unconditioned and unqualified assertion that a defendant had no right to due process in the hearings before her.

RULE 2.2. Impartiality and Fairness. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

holding regarding defendants' due process rights appears a gross misstatement and misapplication of the law, as well as creating at least the appearance of unfairness and an absence of impartiality.

RULE 2.6. Ensuring the Right to Be Heard. (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.

ruling that no constitutional argument would be heard appears to violate this rule. conduct here, and in the hearings which I witnessed that day, prevented defendants from being fully heard at the time and place set for their hearings.

RULE 2.8. Decorum, Demeanor, and Communication with Jurors. (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.

comments regarding my brief TV news interview upon announcing my appearance may have violated this Rule. comment regarding my ability to find cases supporting her position on due process also appears to violate this rule.

Rule 2.10. Judicial Statement on Pending and Impending Cases. (A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

I believe that comments regarding my brief TV news interview upon announcing my appearance violated this Rule.

Please communicate with me regarding any action upon my complaint.