

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-219

Complainant:	No. 1400110890A
Judge:	No. 1400110890B

ORDER

The complainant alleged that a pro tem justice of the peace refused to accept evidence or hear a counterclaim in a landlord/tenant dispute. 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 his obligation to comply with Rule 2.2, Comment 4 of the Code, and suggesting that he attend appropriate training on landlord/tenant law.

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

Dated: December 20, 2010

FOR THE COMMISSION

\s\ William Brammer

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.

LAW OFFICES OF

July 1, 2010

Honorable Jan E. Kearney
Pima County Superior Court
110 W. Congress
Tucson, AZ 85701

Via Hand-Delivery

Re: Pima County Justice Court Cause No. CV10- / Justice of the Peace

Dear Judge Kearney:

This letter is written after the review of a file, which came to this office too late, concerning the above-referenced case and the specific Defendant, Mindy regarding a forcible entry and detainer action which took place in the Pima County Justice Courts.

Ms. filed an answer and counterclaim in the above-referenced matter. We forward to you the disk transcript of the hearing, at which no evidence was taken under oath, wherein the Court refused to hear the counterclaim, failed to give Ms. credit for the security deposit and generally misstated the law concerning her counterclaim, which was clearly available under A.R.S. §13-1361(B).

Justice of the Peace did not allow the presentation of evidence by Ms. who attended that hearing with photos, written notices to the landlord of the defects and the condition of the residence and her own testimony, which would have established a gas oven turning off and on continuously, 24 hours a day, emitting carbon monoxide to the point that the tenants had vacated this residence in April and, even during that month, Ms. who has two children, was moving in and out of the house because of the condition of the residence.

Another situation in the residence was that one-half of the house did not have electrical outlets that worked. Ms. and her roommate were required to use extension cords to supply electricity to the other half of the house.

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The audio transcript of this hearing reflects an abuse of Ms. [redacted] and an outright dismissal of her counterclaims without a hearing. Treatment of defendants who appear before Justices of the Peace, such as Ms. [redacted] received, cause extreme damage to the judiciary or, as Thomas Zlacket stated in dissent:

“[A] judiciary composed of arrogant, sanctimonious elitists - - - people with little humility or compassion, free of emotion in both their personal and professional lives, and well out of touch with the world. I can think of little that would be more dangerous to our society, and I dare say most citizens who encounter the justice system would agree.” *In Re Jett*, 180 Ariz. 103, 112, 882 P.2d 414, 423 (1994).

Judge [redacted] doing forcible entry and detainer actions in a summary basis is one thing, but refusing to allow a counterclaimant, appearing *pro se*, to present evidence by oral testimony, written evidence and/or photos is a denial of due process and an example of an extremely inappropriate, bullying behavior. This Justice of the Peace should be censured and removed from the bench. It is important to note the number of citizens that a Justice of the Peace, who does forcible entry and detainers, encounters is tremendous.

Sincerely,

JHW/ko
Enclosures

cc: Judicial Conduct Commission