

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-031

Complainant: No. 1411300200A

Judge: No. 1411300200B

ORDER

The complainant alleged that a municipal court judge demonstrated bias in his photo radar case by taking the matter under advisement to conduct an independent investigation and by issuing incorrect rulings. After reviewing the allegations and the judge's response, the commission decided to dismiss the complaint with a private advisory letter reminding the judge of his obligation to comply with Rule 2.9(C) of the Code of Judicial Conduct, which states, in part, that a judge shall not investigate facts in a matter independently. The complaint is dismissed pursuant to Rules 16(b) and 23(a).

Dated: July 26, 2011.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on July 26, 2011.

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

STATEMENT OF FACTS

RE: Mesa Municipal Court

Docket # 2009

Judge:

Background:

I was accused of speeding violation by photo enforcement. I was not speeding and, further, saw no signs of photo enforcement equipment at the time of the alleged infraction.

I explained these facts to _____ who presided at the hearing. Prior to the hearing I questioned the representative from the photo company as to his qualifications to prosecute. He would not admit to having Arizona State BAR credentials. Therefore I question his authority to prosecute any infraction. He did indicate that there was no question that the Judge would find me guilty no matter what I presented and , therefore, I should do the driving class,. This demonstrates a bias against the defendant at the outset. If the judge is in the pocket of the photo company the principles of justice could be strained. The photo company is paid by the number of guilty verdicts adjudicated.

I made and attempted to show a DVD to the court highlighting the then current state of Photo Enforcement presented by television news casts. The judge refused to view it, but did keep it. This established in my mind his predisposed attitude to find me guilty before the hearing even began, just as predicted by the man from the photo company.

My wife drives the car daily and is very familiar with the way it feels at different speeds. She offered testimony that we were not traveling at the rate of speed that I was accused of. The judge totally discounted her sworn testimony.

During the trial I raised the question of the validity and presence of proper signage at the site of the alleged infraction. There was no proof of proper signage offered. The judge took it upon himself to assist the prosecution in their efforts to convict me by taking the matter "under advisement" until he would go out and visit the site for himself to determine signage. In my opinion, the judge should not be assisting the prosecution. I established reasonable doubt regarding proper and legal signage, as evidenced by the judge's desire to view the site. He should have found me not guilty as the burden of proof was on the prosecution only and without any assistance from the judge. Further, the judge going out and visiting the site is pure folly!!! It only showed that the signs were or were not present at the time of the visit from the judge, NOT at the time the photos of my car were taken. As this is a photo case, cameras could have or should have been installed to prove the existence of the required signage at the time of the alleged infraction! As the judge visited several days after the hearing, the company could have installed any deficient signs in the interim. In addition, the Judge does not indicate if he measured the signs for correct placement, as there are requirements that the signs be placed a specific number of feet before the camera. It should be pointed out that the photo man could NOT assure the judge that the signs were ever installed, only that a work order to install them was "probably" issued!!!

The burden is on the prosecution to prove me guilty beyond a reasonable doubt. Reasonable doubt was established as evidenced by the judge going out to see the signs for himself and in this way assist the prosecution. The judge should not have assisted the prosecution, nor would I expect him to assist the defense. It was up to him to rule as to the facts and evidence at the time of the hearing. It would have been proper and just for him to find reasonable doubt and rule in my favor.

Additionally, the judge, ON HIS OWN INSTIGATION, observed, albeit falsely, that he could determine the speed of my car on the observation of how fast it gained upon another car. That is not possible without knowing how fast the other car was moving, which was not ascertainable from the film the photo man showed. This information was not even entered into evidence by the photo man but the judge used it as a piece of evidence with out it even being entered by the photo man prosecutor as evidence. The judge assisted the photo man at every turn and opportunity. This was a definite prejudice against me and a pre-determination of guilt!! The principles of justice have been trampled!

I feel the Court, on it's own motion, should re-open the case and find me not guilty, refund my money and remove the points form my driving record.