

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-120

Complainant: No. 1418310555A

Judge: No. 1418410555B

ORDER

The complainant alleged that a municipal court judge was prejudiced, inconsistently excluded potential witnesses, and ruled incorrectly. The commission reviewed the allegations along with the transcript of the two-day trial and found no evidence of ethical misconduct on the part of the judge. The complainant's primary concern is with the judge's rulings, which are outside the jurisdiction of the commission. There was insufficient evidence to justify further investigation of bias or prejudice, and the transcript revealed that the judge properly invoked the rule on exclusion of witnesses. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: August 3, 2011.

FOR THE COMMISSION

/s/ George Riemer
George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on August 3, 2011.

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

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

Dear Commission,

RE: Complaint of prejudice in Flagstaff Municipal Courts by
 and Judge Violation of Victim's Rights, Judicial Conduct, and perjury
 in court by two defendants.

I write this letter out of sadness, confusion, clarification and for hope to get justice for a Navajo Victim, who was assaulted by defendants (Case No. CR2009-) Michael Yeatts and (CR2009-) Nina Swidler.

Flagstaff City Municipal Court, Judge impartiality and impropriety sided with the defendants and claimed the assault was "theatrical" and Mrs. did not get injured. The judge's decision was based on the defendant's verbal characterizations of the victim and the "assumption" that Mrs. was "stealing" documents.

Ms. Swidler failed to mention during her testimony that her actions against the Navajo Victim have been investigated by the Office of Navajo Labor Department (ONLR) Case number: FDIC09- for violations of Navajo Employee Laws. Ms. Swidler also failed to mention in court that the Justice Department, she freely testified about, stated she **could not** harass the Navajo Victim, as it would be considered retaliation prior to October 17, 2008. Attached are evidence of these documents and statements.

The Navajo Victim experienced serious injuries from the assault. She went to the emergency room that night and saw her doctors the following week. She and her mother Mrs. Gloria Tsoie was directed to the Victim Witness Services. They were very helpful and set up an appointment with Officer Schmidt and Sergeant Jackson to press charges against Swidler and Yeatts. Mrs. turned over evidence of the actual incident. City Prosecutor, filed for criminal charges against Swidler and Yeatts, a year later. Flagstaff Municipal Court scheduled hearings starting December 2009 but month after month it was continued by the defendants and signed off by the Flagstaff Courts. Criminal hearings consisted of just 2 days; June 10, and September 10, 2010.

This letter describes many violations of judicial conduct of integrity, impartiality and the appearance of impropriety by Judge and City Attorneys and

- Judge **did not refrain** the defendant's lawyers from manifesting bias and prejudice of race in the courtroom by having **the Victim's entire Navajo family** leave the courtroom under the "exclusion of witnesses" in the civil trial . . . in which this was the CRIMINAL TRIAL; despite the fact that none of them were going to be called as witnesses in either the criminal or civil trial. However, the defendant's lawyers **did not require** the defendant's Caucasian family, friends and colleagues to leave the court room. They were allowed to remain seated and intimidate the now isolated-Navajo Victim as she was getting ready to provide testimony. In addition to this, Judge did not refrain and continued to support the defendant lawyers by manifesting bias of having the Navajo Victim's personal lawyer leave the courtroom also under the "exclusion of witness".
- Judge allowed all of the defendants' Caucasian family, friends and colleagues to remain in court even though some **were going** to be called as witnesses in the civil trial, her name is Judith Touchette.
- By allowing this, the Navajo Victim was seriously **intimidated and isolated** and was the only Native American in the courtroom. Her lawyer had to plead to Judge to have at least someone remain as a Victim Rights Advocacy. In her heart she was crying because her family was not there!
- On this very first day of the criminal hearing, Judge courtroom was seriously impaired from fairness of the proceeding and brought the judiciary into disrepute. Immediately!
- Judge commented sarcastically that the Navajo Victim's screams for "HELP" as "theatrical". She was not objective and open-minded to the fact that the victim was in complete shock, confusion and fear when she was being restrained and attempted to get to a safe place.
- Judge lacked *competence to recognize* that people express shock, confusion, and fear differently. The Navajo Victim's experienced "fight or flight" as soon as the defendant grabbed her. Her yelling of "OH WOW" was her way of expression because she does not swear. These expressions were the times the defendant was grabbing the victim's arm and pulling her back and sideways! The last yell marked the second occurrence after the defendant put her hand over her mouth and twisted her neck!
- Judge **ignored the fact** that the Navajo Victim provided truthful testimony under the penalty of perjury and was **granted a Temporary Protection Order** in October 20, 2008 against the defendants.
- Judge **ignored the fact** that the Navajo Victim provided truthful testimony under the penalty of perjury and was **granted a Harassment Injunction** in March 9, 2009 against the defendants.

- Judge displayed and allowed the **appearance of impropriety** between herself and the defendant's lawyers inside the courtroom by allowing laughter and small conversations to occur during the first day's testimony and playing of evidence. Confidence for impartiality and fairness with Judge continued to erode as the Navajo Victim witnessed this.
- It is known that both defendants have been involved with the City of Flagstaff government for a while; with the Open-Spaces Committee and do have favorable relationships with various people in the city government.
- Judge stated she already **made her judgment** before the 2nd day the hearing started despite **countless factual timing of events** pointed out by and
- Judge ignored the fact that the **defendant admitted** to that she did grab and put her hand over the Navajo Victim's mouth to silence her.
- Judge **ignored the fact that the defendants lied** to Officer that night. She told him twice she asked for the document and the Victim ignored her. This was not true!
- Judge **ignored the testimony of the Navajo Victim**, Officer and ending arguments by when she stated she already made her decision before court began on the last day.
- Judge **intentionally disregarded the fact** that the defendant sprained the Navajo Victim's neck, herniated and tore discs in her back. Emergency Room notes and the EMG scan from Dr. Bennett states the areas that were injured. The Navajo Victim's entire family testifies to this.
- Judge confirmed her displayed prejudice and bias conduct when stated the Navajo victim was "**not injured**" in the assault. How can a Judge declare this to a Victim? It's like stating to a lady who was just raped that "it never happened" by a Judge. Try to understanding this is unfathomable!
- Judge **stated and justified** that the defendant "accommodated" the victim on two occasions. The defendant lied during her testimony and left out pieces of the real situation. Judge did not give the Victim a right to be heard to testify against what she stated.
- The Navajo Victim's **mother assisted her** in going to the Little Colorado Medical Center hospital after the assault. She witnessed and accompanied the Victim to doctor appointments and afterward but, *never* called her as a witness.
- The Navajo Victim is **currently seeing a back surgeon** in October 11, 2010 for the herniated discs that are affecting the nerves in her left leg.
- The Navajo Victim is **still taking prescription medications** for back pain, nerve pain for her left leg, anxiety, sleeplessness, herniated discs, muscle

- spasms, and high blood pressure due to the assault.
 - **did not submitted recent medical records** into evidence.
- Judge **did not allow** the defendants' Personnel matter already investigated by the Navajo Nation be discussed at the trial.
- Judge **did allow** the Navajo Victim's Personnel matter already investigated by the Navajo Nation be discussed at the trial.
- **did not allow** the Navajo Victim to provide Personnel evidence to refute what the defendant said and what her lawyers question her about.
- The Navajo Victim was **never charged or accused** of trespassing, theft, providing false information to police, filing false police reports, falsifying hospital records, perjury testimony on the Harassment Injunction or the Protection Order by the City of Flagstaff or the Navajo Nation.
- However, Judge **convicted** the Navajo victim of theft based on insinuations by the defendant alone.
- Judge **allowed** the Navajo Victim's character to be on trial with the **only person** to provide bias opinion was the defendant. Please see attached Character statements for the Navajo Victim. The Victim was not allowed to submit these by
- Judge **allowed** the defendants insinuations that the incident was "staged" by the clever, yet stupid Navajo Victim. The Victim did not have a right to be heard to speak against this. She did not "run out the door with the document". The defendant grabbed the Victim when she simply picked up the paper. She never gave her a chance.
- Judge **did not uphold and apply** the law fairly and impartially as she continued to display conduct of bias and prejudice against the Navajo Victim.
- The Navajo Victim **has evidence**: that the defendant requested to have her to return to the office; that the defendant told a different version to the Personnel Department; that the Justice Department stated to Swidler that she cannot reprimand **for any reason** prior to October 17, 2008; a Manager advising the Navajo Victim to "document everything" of what the defendant is doing to her; of meetings with the defendant on the morning of October 17, 2008 that contradicts statements by the defendant. She was told by **and** they did not need to hear any of this because this case was about the actions of the defendant.
- The Navajo Victim **has evidence** that the defendants committed perjury in court. The defendant told at least 3-4 different versions to various people. Attached is the Harassment Injunction hearing from December 9, 2009 (CV2008-). The defendant submitted altered documents to the court.

The copy of the letter she submitted was more crinkled up and has the signature of the defendant. This is not on the original. The Victim pointed these out to _____ but he withheld this information.

- Victim Witness Services stated to the Navajo Victim that this was a case of an assault. "It didn't matter what the defendant assumed; even if she touched someone's knee without permission it was considered an assault. **No one has the right to touch another person without their permission! No one!**" The defendant assumed she was stealing; this was never ever her intention. The Victim did not have a right to be heard about this.
- Victim Witness Services and her lawyer stated to the Navajo Victim that they have NEVER seen a case be treated like this before.
- The Victim Witness Services had to set up an appointment with _____ for the Navajo Victim to even meet face to face after 19 months of non-communications.
- The Flagstaff Police Department stated to the Navajo Victim that this was a case of an assault but they didn't arrest the defendant. Victim Witness Services asked them this question, and they brought up the subject of jurisdiction and Navajo Nation property.
- _____ waited literally till the last day of the statutes of limitations to press the charges.
- _____ **did not allow** the Navajo Victim to view dispositions submitted to the court by the defendants.
- _____ had the defendant draw a diagram of the office. He **did not allow** the Navajo Victim to correct this diagram. Neither did Judge _____ give the Navajo Victim a right to be heard on this illustration.
- Flagstaff City Municipal Court Judges allowed **9 consistent continuations** requested by the defendants, prolonging the case for another year. The Navajo's Victim Rights to a speedy trial was violated.

I submit this letter and evidence as case of discrimination, racism and prejudice against a Navajo Victim and her family by the Flagstaff City Prosecutors, and Judges, especially Judge _____. They have torn apart this Navajo Victim's confidence in the Justice system. Her perseverance and injuries were fictitious and laughable to Judge _____. Her confidence was torn apart by the bias, prejudice and impartial Flagstaff court system; all based on a prominent white couple words.

Mrs. _____ right to be heard with the submittal of the Navajo Nation's Labor

Department's case or about the defendants Personnel issues was not permitted by _____ or _____ and Judge _____ did not enforce this. Her Victim's Rights to a speedy trial was violated. The defendant's dispositions were never viewed by her.

Please . . . please. Stand for Justice, at least **just once** for a Navajo Native American Victim who was assaulted in the City of Flagstaff. I hope and pray you understand I write this letter with serious intentions. I am not a stupid Indian. I recognized this impartiality and bias by _____ and Judge _____ immediately. This is my first time going through this ordeal and am slowly learning what my rights are little by little. To this date and over 3-4 months, I have not heard from Court Administrator Mr Don Jacobson or Honorable Mark Chotan of Flagstaff Municipal Court.

I end this letter humbly,

cc. Presiding Flagstaff Superior Court Judge, Honorable Mark Moran