

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-129

Complainant: No. 1418810855A

Judge: No. 1418810855B

ORDER

The complainant alleged that a justice of the peace demonstrated bias by not allowing him an opportunity to present his case and by engaging in an improper ex parte communication. The commission reviewed the allegations along with various legal documents from the case, including the judge's minute entries and orders, and found no evidence of ethical misconduct. The judge acted within his discretion in deciding how to conduct the hearing and in determining the appropriate amount of damages, and the alleged ex parte communication occurred after the case concluded and was disclosed to the complainant in a minute entry. 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.

01 MAY 11

COMMISSION ON JUDICIAL CONDUCT
 ADMINISTRATIVE OFFICE OF THE COURTS
 ARIZONA SUPREME COURT
 1501 W. Washington Street, Suite 229
 Phoenix, AZ 85007

RE: JUDICIAL CONDUCT COMPLAINT,

COURT JUSTICE OF THE PEACE

ENCLS: 16 court documents (listed in text)

Commissioner of Judicial Conduct,

This complaint is directed at the Honorable _____, presiding judge at the _____ Justice court. This complaint alleges both judicial bias and conduct inconsistent with the Arizona Judicial System. The latter, judicial misconduct, consists of judge _____ recorded denial for the Plaintiff to present both his case and his evidence. In the former, judicial bias, I will point out that this particular case pitted a Mormon defendant against a non-Mormon Plaintiff with judge _____ also being Mormon. This type of adjudication can be further supported with the delineation of proceedings at this time of two other cases that I was present to witness. This complaint does not intend to question Honorable _____ judicial abilities but does bring into question his propensity for bias in cases where Mormons and non Mormons have disputes. It does question whether or not he demonstrates a desire to administer justice fairly under specific situations which would then define problems for specific parties seeking proper justice.

CAUSATION FOR CASE CV2007

We had just purchased this home in Northern Arizona. It had a rented Southern Utah Propane (SUP) tank that had recently been filled for the previous owner. SUP had not yet been paid for that propane. My wife called SUP about paying for that fill. We had no contract with SUP. It was agreed between her and SUP that she would pay SUP for that propane fill. She did and SUP had received her payment. Two weeks later I had to return to California but she stayed in Arizona. The day after I had left SUP sent a SUP truck to our house which was driven by a young boy claiming that his father (the defendant) had instructed him to pick up the tank. The defendant's son claimed that she would be reimbursed for the propane that was in the tank. He tried to take our propane regulator which did not belong to SUP but my wife would not let him. He then threw the regulator into a nearby bucket of water. When the boy was unable to get the loaded tank into the SUP truck my wife said that she was going to call for help. She went into the house to do that when she heard a loud crash next to our house. The defendant's son had hooked a chain to the loaded tank and had drug it to the road. The crashing sound came from our central air conditioned which the defendant's son had knocked off its foundation. My wife called me and I called the defendant and informed him of the event. As for the damage to our central air conditioner, the defendant replied "It's just your word against ours". As for the propane that we had just paid for the defendant replied "you used all your propane". He refused to reimburse us for our propane and the damage to our central air conditioner. At this point case CV2007 _____ was filed in the _____ justice court presided over by Honorable _____

SERIES OF EVENTS Before, During, and After TRIAL

- 1) 27 Apr 07 complaint CV2007 was filed in the justice court
 - 2) 23 May 07 notice of trial set for June 23, 2007 mailed to parties
 - 3) 24 May 07 *Defendant granted trial date continuance* to June 27, 2007
 - 4) 30 May 07 Plaintiff made request for trial date continuance due to schedule conflict with new trial date. Plaintiff had 4 scheduled appointments in Northern California between June 28, 2007 and July 6, 2007, 2 with the VA, 1 in Superior Court, and 1 in Federal Court.
 - 5) 01 Jun 07 *Plaintiff's request denied* pending Plaintiff's proof of need. Facts stated on denial are incorrect.
 - 6) 06 Jun 07 Proof submitted, continuance granted, and new trial date set for July 11, 2007
- Documents referenced in text -
- 7) 11 Jul 07 Defendant ordered to pay for part of damage he rendered
 Defendant requested a 30 day opportunity to get damage costs reduced after the fact. Request granted with stipulations.
 - 8) 27 Jul 07 Plaintiff submits repair estimate per court's order
 - 9) 08 Aug 07 Defendant submits a non-applicable newspaper ad to court in lieu of an alternate estimate per Court order.
 - 10) 22 Aug 07 Court submits defendant's estimate to Plaintiff for Plaintiff's opinion.
 - 11) 27 Aug 07 Plaintiff's response to court per Court's August 22 letter.
 - 12) 20 Sep 07 Defendant ordered to pay only original damage award.
 - 13) 24 Sep 07 Defendant sends FAX to the Court requesting additional court action (FAX not made available to Plaintiff)
 - 14) 26 Sep 07 Court's letter in response to defendant/Court one party issue and subsequent decision to order Plaintiff not to comply to court's order regarding defendant's order to pay damage
 - 15) 03 Oct 07 Plaintiff's request for clarification of Court's September 20, 2007 decision being contrary to Court's second July 27, 2007 order

CONDUCT OF JULY 11, 2007 TRIAL PROCEEDINGS

Court recorder present

I had a particularly detailed presentation prepared so that I would be able to present the details of my case clearly and without confusion. My presentation consisted of six pages which included a page listing all (12) of my exhibits. At trial I had expected to be entitled to present my case as I have in many past cases in other courts. All my exhibits are stamped by the court clerk for their submission.

The Honorable _____ would not allow me to either present my case or my exhibits. Right out of the gate he stated (on record) that he would ask all the questions and would only accept evidence relative to his questions. This was not proper conduct for a trial and probably not even for a hearing, but this is where my contentions began and only became worse as the Honorable _____ continued his proceedings. For every one of his questions he asked me I had to provide proof for my answers. He even demanded to see my escrow closing papers, which, to his great surprise, I just happened to have with me.

On the other hand, the defendant basically only had to make statements which the Honorable _____ accepted as proof. I guess the Mormon theory here is that Mormons don't lie (they just don't tell the truth); and the defendant was not telling the truth. He told the court that his 27 year old employee had picked up the tank, yet the actual boy who did had said that it was his father that had sent him to pick up the tank. It was the boy's inexperience that prevented the boy from being unable to properly load the tank. The defendant didn't have nor did he need to have that employee present with him and the judge didn't even ask him why he wasn't there which is unusual especially since he would have been a percipient witness. He stated to the court that my wife had used all the gas that she had paid for yet he did not have nor did he need to have any means to have acquired such knowledge. Despite the fact that the probability that one woman could have used all that gas in such a short time, common sense would have dictated that his position was entirely irrational but the Honorable _____ accepted his statement as plausible.

The defendant requested a counter suite (which had not been filed) for damage to the tank resulting from its removal by chain. (Now we had admission that the defendant was aware that he was hauling a damaged propane tank over half full of highly flammable fluid on Arizona highways and across the border into Utah.) I only mention this so as to establish the nature of the character of a defendant that the Honorable _____ was supporting.

We were unable to provide the court with a known volume of propane remaining in the tank because SUP had shown up unannounced to remove their tank without any advanced notice. When my wife had told him to wait until she could get some help and went into the house to do just that, against her orders, SUP enter our property with their truck and pulled the tank out to the road. My wife was left completely disconnected from her propane. Although the tank was theirs, the propane was ours and that act constituted theft, or you would think so anyhow. It was this act of theft that prevented her from getting any defined reading from the tank. That act of theft benefitted the defendant in this court.

The defendant had no documentation that would support the quantity of fuel that might have been used. One thing that the court did know but refused to acknowledge was that whatever fuel that was in the tank had been paid for and certainly didn't belong to the defendant in the first place. On the other hand I had numerous pieces of documentation showing that the gas belong to me. **The Honorable _____ then ruled that he was unable to determine who owned the propane.** I have highlighted and underlined this ruling because it's about to become very important in the next issue, damages.

We had sustained damages both to our central air conditioner and by SUP's vandalism to our regulator, having been thrown into a bucket of water. Without any advanced notice my wife was left with emergency service calls, that related to the propane regulator, and that related to the air conditioner. The emergency call related to the regulator and propane disconnect was to B&L propane, SUP's main competitor. The Honorable _____ did not allow that to be presented or admitted and he therefore did not grant us recovery from that. As for the emergency call related to the air conditioner, the Honorable _____ demanded to see photos and dated and timed documents that needed to show without any doubt that the incident occurred at the Propane tank and at the time it was removed. We had all of that. It would have been part of our presentation had we been given an opportunity to present one. He also demanded to see our escrow closing papers. Although they were not a part of our exhibits or presentation, I had a subtle feeling that we would need them so we had them.

On July 11, 2007 The Honorable _____ did briefly rule that the defendant pay for the damage to the air conditioner, briefly! (See the first of his two July 11, 2007 rulings at this trial hearing.) The defendant then blurted out that we had not given him an opportunity to have repairs made. Here I refer back to the defendant's quote to me the night I had called him - "It's just your word against ours". Nevertheless The Honorable _____ then overruled his first ruling when he ruled "OK, you go out and get your estimate and I'll average the two." How real was this? Knowing that the bill that we had submitted was well below market I then said to the judge that if he could get another estimate I should be entitled to do the same. He told me to get another estimate and he would average the three and we would have 30 days to submit our estimated.

On July 27, 2007 Plaintiff submitted his alternate repair estimate for \$225 from a certified Carrier Air Condition service representative, Southwest Air Conditioning per court's order. On August 8, 2007 the defendant submitted his Court ordered alternate estimate which was nothing more than a non-applicable out dated newspaper ad to the court in lieu of an an authentic estimate.

On August 22, 2007 the Court submitted the defendant's estimate to Plaintiff for Plaintiff's opinion and on August 27, 2007 in a letter to the Court Plaintiff refuted the legitimacy of the defendant's submittal.

According to the Honorable _____ second bench order on July 11, 2007 he was to average the costs of all three submittals. That is what he said he would do. That average would eventually calculate to be \$80 + \$225 +\$0 (for defendant's lack of an appropriate estimate), an average which should have equaled \$152.50. This was all at the request of the defendant. However, since such an average would have and should have gone against the defendant and not against the Plaintiff, on September 20, 2007 the Honorable _____ made its final (averaged) order to favor the defendant by not averaging anything at all and simply reinstated his first order which he

had already set aside in lieu of his second order. The defendant defendant ordered to pay only the original damage award. This is not conduct representative of the Arizona judicial system.

October 3, 2007 the Plaintiff sent a letter to the court requesting clarification of the Court's September 20, 2007 decision being contrary to the Court's second July 11, 2007 order. The court did not respond.

AFTER TRIAL COURT CONDUCT BETWEEN JUDGE AND DEFENDANT ONLY

I would have thought that it was all over at this point but was not. The Court's judicial conduct was to become more injudicious. Since the Honorable had stated for the record that he was unable to determine ownership of the propane in question and there fore did not rule on the point of ownership, I set out to find someone of competence who could determine proper ownership of this propane. I brought the matter to my credit card company since I had used my card to purchase the propane that SUP had taken back. My credit card company backed the charge out. The reason that they were able to back out the charge stems from the fact that I was allowed to provide them with my overwhelming evidence, something that the Honorable would not permit in his court room. What then followed was just outright wrong.

The defendant engaged in a one party communication on this case with the Honorable a case matter which the Plaintiff was not made a party to. This is not conduct representative of any judicial system. I have NEVER known of any case matter where both Plaintiff and Defendant were not both a party to an issue that is subject to a ruling, until now. On September 24, 2007 the defendant sent a fax to the court, and to the court only (leaving the Plaintiff out of the proceeding), complaining to the court that the Plaintiff had recovered the propane payment - ***an issue that the Honorable had admitted he could not and did not include in his decision!*** This was no longer a definable issue in the case. Nevertheless, on September 26, 2007 the Honorable went ahead and made an out of court decision without the Plaintiff's participation and subsequently ordered that the Plaintiff not take any collective action on the award that he had granted on real and defined damages - the only part of the case that was actually ruled on. How the Honorable thought that this issue that was his only definable ruling had anything to do with a separate issue that was not ruled on I cannot imagine but somehow he did and that brings up the big question of his ability to administer justice in cases between Mormon and non Mormon parties and that is an issue of judicial bias! The non Mormon minority in this area deserve an impartial adjudicator.