

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-149

Complainant: No. 1420310321A

Judge: No. 1420310321B

ORDER

The complainant alleged that a superior court judge demonstrated bias by making inappropriate statements and improperly handled objections during his trial. After reviewing the complaint, the supplemental information provided by the complainant, and court records, the commission found no evidence of ethical misconduct on the part of the judge. The primary allegations involve legal issues outside the jurisdiction of the commission. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: September 6, 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 September 6, 2011.

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

DOCUMENTS ARE A MATTER OF PUBLIC RECORD (I.E. TRIAL TRANSCRIPT, RECORD ON APPEAL (ROA)) AND ARE DULY REFERENCED THROUGHOUT.

ON 9 JANUARY 2008, UPON COMPLETION OF YOUR DIRE, THE COURT ISSUED TO THE FACINDERS JURY INSTRUCTIONS THAT GOVERNED ADMITTANCE OF EVIDENCE, PRELIMINARY CRIMINAL 7-RULING OF THE COURT, STATING IN PART:

"ADMISSION OF EVIDENCE IN COURT IS GOVERNED BY THE RULES OF LAW. I WILL APPLY THOSE RULES AND RESOLVE ANY ISSUES THAT ARISE DURING THE TRIAL CONCERNING THE EVIDENCE. IF AN OBJECTION TO A QUESTION IS SUSTAINED, YOU MUST DISREGARD THE QUESTION." (RT 1/9/08, 151:16-25; ROA, CR 106-111, ITEM 283)

TRIAL COMMENCED SHORTLY THEREAFTER RESULTING IN THE FOLLOWING OBJECTIONS LEADING TO SIDEBAR:

STATE'S CASE-IN-CHIEF.

1. RT 1/9/08, 206:13-208:5; DEFENSE OBJECTION:

-SIDEBAR OBJECTION: "IF YOU WANT TO DEAL WITH THIS, I WILL GO AHEAD AND JUST THAT POINT, BUT IT IS REALLY BEHOLDING ON IRRELEVANT."

-JURY INSTRUCTION: "GO AHEAD, E STATE I."

2. RT 1/10/08, 219:11-222:14; DEFENSE OBJECTION:

-SIDEBAR OBJECTION: "I WILL SUSTAIN, 4B THROUGH 5I WILL NOT BE ADMITTED."

-JURY INSTRUCTION: "IT IS ORDERED DENYING ADMISSION OF 4B THROUGH 5I..."

3. RT 1/10/08, 107:23-108:21; DEFENSE OBJECTION:

-SIDEBAR OBJECTION: "I AM AGREEING WITH PETITIONER'S THAT THAT MAY INVITE SPECULATION."

-JURY INSTRUCTION: "GO AHEAD, E STATE I."

4. RT 1/15/08, 16:11-30:5; DEFENSE OBJECTION:

-SIDEBAR OBJECTION: "E STATE I WHY DON'T YOU JACK OFF OF THE STATISTICS"

-JURY INSTRUCTION: "GO AHEAD, E STATE I."

5. RT 1/15/08, 26:11-32:19; DEFENSE OBJECTION:

- SIDEBAR OBJECTION: "I THINK YOU ARE CLOSE TO THAT ISSUE OF MY RULING, AND SO I AM GOING TO SUSTAIN THE OBJECTION."

- JURY INSTRUCTION: "GO AHEAD, I STATE."

DEFENSE'S CASE-IN-CHIEF

6. RT 1/16/08, 53:4-55:31; STATE OBJECTION:

- SIDEBAR OBJECTION: "... I WILL ANALYZE GENERAL CHARACTERISTICS AS TO PROTOCOL."

- JURY INSTRUCTION: "THE OBJECTION IS OVERRULED AS SET OUT AT SIDEBAR."

7. RT 1/16/08, 65:16-72:23; STATE OBJECTION:

- SIDEBAR OBJECTION: "... THE JURY CAN CONSIDER THIS TIME AND HOW LONG IT TOOK HIM TO GET THERE, BUT TO VIEW THE VIDEOS,

I THINK IT IS SOMEWHAT CUMULATIVE."

- JURY INSTRUCTION: "THE STATE'S OBJECTION TO P¹ P², P³ IS SUSTAINED."

8. RT 1/16/08, 98:24-101:18; STATE OBJECTION:

- SIDEBAR OBJECTION: (STATE OBJECTED TO ADMITTANCE OR REFERENCE OF PETITIONER'S DD-214, MILITARY RECORD)

- JURY INSTRUCTION: "THE OBJECTION IS SUSTAINED"

9. RT 1/16/08, 147:24-150:12; STATE OBJECTION:

- SIDEBAR OBJECTION: (STATE OBJECTED TO PETITIONER RAISING ISSUE OF PRIOR BAD ACT BY L.H.)

- JURY INSTRUCTION: "OBJECTION IS SUSTAINED."

10. RT 1/16/08, 151:9-24; STATE OBJECTION:

- SIDEBAR OBJECTION: "DID HE SAY THE WORD 'ILLEGAL', I WILL MOVE TO STRIKE AND I AM GOING TO TELL... THE JURY IS NOT TO

CONSIDER HIS LAST ANSWER."

- JURY INSTRUCTION: "THE LAST ANSWER THAT (PETITIONER) GAVE AND HE BELIEVED THAT (L.H.) DID SOMETHING ILLEGAL IS

STRICKEN FROM THE RECORD AND THE JURY IS ORDERED TO DISREGARD IT."

11. RT 1/16/09, 200:5-204:13; DEFENSE OBJECTION:

- SIDEBAR OBJECTION: "I DON'T SEE AN INCONSISTENT STATEMENT... I DON'T WANT ANY REFERENCE TO THAT, UNLESS YOU

APPROACH AND SHOW ME IT IS A PRIOR INCONSISTENT STATEMENT."

- JURY INSTRUCTION: "GO AHEAD, [STATE]."