

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 11-150

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Complainant: No. 1366610932A

Judge: No. 1366610932B

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**ORDER**

The complainant alleged that a special magistrate was rude, biased, and engaged in ex parte communications.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the magistrate engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the complaint, the judge's response, and the recording of the hearing in question, the commission decided to dismiss this matter with a private advisory comment reminding the magistrate of her obligation to avoid the appearance of bias. The complaint is dismissed pursuant to Rules 16(b) and 23(a).

Dated: March 15, 2012.

FOR THE COMMISSION

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Louis Frank Dominguez  
Commission Chair

Copies of this order were mailed to the complainant and the judge on March 15, 2012.

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

## Arizona Commission on Judicial Conduct

Complainant: \_\_\_\_\_ Judge: \_\_\_\_\_  
Date of Complaint: 6/5/11

This concerns an attorney \_\_\_\_\_ who serves as a City of Tucson Special Magistrate. She conducts what are purported to be hearings on disputes between Tucson Water (TW) and its customers. The hearings convene in downtown Tucson at Tucson City Court.

I am a TW customer whose monthly residential water bill usually runs \$45-\$65. In November, 2010, I received a Tucson Water bill for over \$1000. The bill concerned usage in a month during which TW was doing extensive repairs on the water line adjacent to my water meter. Bills for the preceding month and the following months were normal. A Tucson Water investigator ("auditor") visited my property within days of the bill's issuance. That person, Eddie Lopez, issued a written report on which he indicated he found no device leaking. I have engaged plumbers and they, too, have been unable to discover a leak and have been able to propose no explanation. TW took the position that nothing they did in connection with the line repairs could have caused meter overregistration (inaccurately high readings).

I have spoken by phone with a district official of the Neptune Company, which manufactures the residential water meters used by TW. The official told me there are two sources of potential overregistration in connection with line repair: faulty depressurization of the line at the start of the repair (to evacuate water so the pipe can be repaired); and faulty repressurization of the line at the end of the repair (to refill the pipe with water). Either step done improperly can not only send water and/or debris through the meter but more significantly, can introduce large air masses into the line. A water meter reads the volume of any fluid, including air, as water passing through the meter, hence will overregister if air passes through.

My case did not receive a case number assignment but I believe it was classed under the rubric \_\_\_\_\_ Account No. \_\_\_\_\_ " The hearing took place at 9:45am on May 3, 2011.

I believe the conduct of Ms. \_\_\_\_\_ during the hearing was substandard in that it implicated Arizona Rules of the Supreme Court, Code of Judicial Conduct, Canon 3 (B)(4), 3 (B)(7), and 3(B)(9) all of which pertain to impartiality; and Canon 2(A) which pertains to integrity and impartiality.

May I explain that before the hearing, I received the papers from TW attached hereto as Exhibit A. These documents include a two-page report headed "Administrative Hearing Response." To that point, I had not been directed to make any written statement prior to the hearing and did not know to whom I would present such a statement. It seemed unfair to me that TW alone, and not I, should be allowed to outline its case to the Special Magistrate before the hearing. In an email, I brought this up to TW Customer Service

and received a response from employee Monica Gallegos attached hereto as Exhibit B. As you can see, the response merely stated the name of the Special Magistrate.

I received no other information from TW about the procedural conduct of a TW administrative hearing. However, seeing no harm, I looked up office address on the website of the State Bar of Arizona and mailed her the document "Before City of Tucson Special Magistrate", attached hereto as Exhibit C.

The following are improprieties I observed in conduct before and during the hearing.

1. **screams unfounded accusations at customer-parties.** I entered the hearing room well before the scheduled hearing time. I observed a lone person, a woman, seated behind a large judge's bench. The woman asked my name. On learning it, she began yelling. She criticized my having sent Exhibit C to what I had taken for her office address (which she called her "home"). She said, "You're lucky I didn't shred it!" I stated that TW had furnished me her name for the purpose of my making a statement before the hearing. She screamed, "I don't believe you!" She asked had I mailed a copy to TW, and I said I had. She screamed again, "You better have! You better be able to prove what you said in that document! Your credibility is on the line!" She then stated that I had assuredly received a brochure from TW about the procedural customs, and that I undoubtedly had been instructed to address anything I wanted to convey to the Special Magistrate by sending it to TW. I started to say I had not received any such instructions, but before I completed my sentence, she interrupted me again, screaming, "I don't believe you!" I then said, "Well, thank you, now I will know what to do for next time," which finally stopped her screaming.

had control of what appeared to be a recording mechanism, but to the best of my knowledge it was not engaged during the interchange described above.

2. **engages in ex parte communications.** Shortly before the hearing time, I asked for leave to visit the restroom, and while initially objected ("Couldn't you have gone before?"), she then agreed, and I left the room. By this time, the other occupants of the room were Christopher Avery, Esq., representing TW on behalf of the Tucson City Attorney's Office; and TW employees Monica Gallegos and Eddie Lopez. When I returned, put the hearing on the record, I presume, inasmuch as she engaged some kind of control that I supposed to be connected to a tape recorder.

A few minutes into the hearing, I asked TW if they had received a document I had mailed to TW headed "Before City of Tucson Special Magistrate." interrupted stating, "We already established that while you were in the bathroom." I can only wonder what else agreed or established with party-opponents and their counsel, off the record, while I was in the bathroom.

3. **fails to admonish parties to answer questions put to them by opposing parties.** Repeatedly during the hearing, I addressed questions to the opposing party

using the phrasing, "Tucson Water, how is this?", or "Tucson Water, what is that?", only to be met by a stony silence and no answer from anyone. In particular, I twice asked a question about the hinged cover or cap that protects the face of a water meter: such a cap bears the meter number whereby a meter is identified. I twice asked the question, "Can the cap of a water meter be changed and a new cap installed on a water meter without replacing the entire water meter?" Both times TW maintained a stony silence and both times, did not admonish the opponent to answer, but allowed them to remain unresponsive.

4. **belittles customer-parties on the record.** In connection with my question about the cap of a water meter, commented acidly, "I see, you have a conspiracy theory."

It is possible that made that and other belittling remarks in an effort to provoke me, but I remained stoic. I stated in reply that there are many potential sources of error. (This was, after all, a matter wherein on a one-time-only basis, a residential water meter registered enough usage in one month to fill one-eighth of an Olympic sized swimming pool.)

5. **offers testimony in favor of TW.** On the record, made a witness out of herself by responding to a number of exhibits I presented during the hearing. The exhibits were intended to illustrate various sources of potential error in water meter readings. As I was nearing the end of presenting the exhibits, stated, "But I know that a water meter only slows down when it is defective or has debris in it, it doesn't speed up."

I am sure that is what TW wants the public to believe, but according to my investigations, it is not true. But whether it is a true fact or not, the point is that did not conduct herself impartially when she offered her uninformed opinion, which it appears to me she did without any expert credentials to provide a foundation.

6. **Burden of Proof.** To me, this topic reflects the greatest concern I have about this particular judge. It seems to me there is a fundamental form of ethical misconduct on the part of any judge who presides over proceedings that are devised to come off like a basketball game between the Harlem Globetrotters and the Washington Generals—one side is always the predictable winner.

In my matter--and evidently in all matters wherein a customer seeks a hearing to contest a one-time extremely high water bill-- instructed me that TW does not have to prove any statement or assertion it makes; that the burden of proof is entirely on me, the customer; and that I can only meet the burden of proof by showing that nothing on my property was leaking during the month at issue.

To me, this is demanding that the customer prove a negative. Of course, to be able to do so is, logically, an impossibility; and thus, the customer bears an insuperable burden, in that he can *never* prove his case to that standard.

A procedural setup wherein there is no ontological possibility of one of the parties meeting his burden of proof strikes me as the essential definition of the term "kangaroo court." I am sure that TW never, ever loses a hearing in a matter like mine, because the customer can never prevail who claims that TW's fault, not the customer's, is responsible for a one-time extraordinary bill.

Now, this is all very bad of the City of Tucson and we citizens should vote out the politicians, etc.—all this could be said. But here, my concern is the conduct of        She has a choice to take or not take TW's dime.        knows what she is doing and what it entails. As such, she should decline the lucre and not participate in a sham proceeding.

I think        has an ethical obligation to refuse to participate in kangaroo proceedings as occurred in my case on May 3, 2011.