

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-153

Complainant: No. 1420610625A

Judge: No. 1420610625B

ORDER

The complainant alleged that two justices of the peace intentionally violated her procedural rights in connection with a photo radar speeding ticket.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judges engaged in conduct that violated 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 thoroughly reviewing all of the information provided by the complainant, the court record, and the response of one judge regarding an allegation of improper ex parte communication with the prosecutor, the members of the commission found no evidence of ethical misconduct and concluded that neither judge violated the Code in this case. The complainant's remaining allegations involved legal issues outside the jurisdiction of the commission to consider. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: October 7, 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 October 7, 2011.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

8011-153

COMPLAINT AGAINST A JUDGE

Your name:

Judge's name:

Date: 6/10/11

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages by not original court document. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

This matter arises out of a complaint generated by a photo enforcement. Defendant filed a Motion to Dismiss ("MTD") on 9/17/09 and although no timely response was filed, Judge issued an order "Done in Open Court" on 10/8/09, stating that pursuant to a Motion to Set ("MTS"), the trial court was setting the matter for trial on 11/13/09. On 10/15/09, defendant filed a motion for a new trial date that objected to the MTS. Defendant brought to Judge attention that no MTS was ever provided to defendant (ex parte communication).

On 10/21/09, Judge denied defendant's unopposed MTD, vacated the trial set for 11/13/09, and reset the trial for 12/11/09. In its ruling, Judge made mention of the Town's failure to provide a copy of the MTS to defendant and that the court erred in prematurely signing the 10/8 Order because it "lacked defendant's involvement." Defendant called the court prior to the 10/8 order after the docket showed the case was set for conference. When defendant asked the clerk whether her attendance was required, the clerk told defendant that the conference was only for the judge and the prosecutor (ex parte communication).

Because the Complaint resulted from a contract with Redflex and documents to be used against defendant were compiled by Redflex, defendant requested the documents under Arizona's open records law ARS § 39-121. When the Town did not produce records, defendant filed a Motion to Continue trial for 60 days to obtain the records. The court signed an order on 12/3/09, continuing the trial and compelling the Town to produce records. Judge would not enforce the Order of 2/3/10, so defendant filed a Motion to Suppress, which Judge also denied unopposed without cause or explanation on 2/22/10. The trial was then set for 2/26/10.¹

On 2/26/10, appellant was tried in Star Valley Magistrate Court before Judge for which a separate complaint is being concurrently filed herewith.

Please note that during the appeal hearing in this case on 4/5/2011 in front of the Honorable Peter Cahill of the Gila County Superior Court, Judge was mentioned as having a pattern and practice of holding photo enforcement trials where no witness is present to provide proper testimony and that she has a pattern and practice of improperly admitting evidence over defendants' objections. Portions of the transcript are being provided with the complaint against Judge

¹ The trial court set trial but **did not vacate the 12/3/09 order compelling the Town to produce the records** requested by defendant.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2011-153

COMPLAINT AGAINST A JUDGE

Your name:

Judge's name:

Date: 6/10/11

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages by not original court document. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

On February 26, 2010 Judge _____ proceeded over a photo enforcement trial where I appeared as the defendant. The attorney appearing as prosecutor on behalf of the Town of Star Valley was Timothy Grier. Attached are pertinent portions of the trial transcript ("TT") and appeal hearing transcript ("AHT"). Judge _____ swore in both parties, including attorney Timothy Grier. (TT at 2:24-25 and 3:1-5) Judge _____ allowed Mr. Grier to violate ER 3.7 and ER 3.8 of the Arizona Rules of Professional Conduct by appearing as both a witness and an advocate in the same proceeding. (TT 3:11-12, 13:3-5) Judge _____ allowed Mr. Grier to present testimony and offer exhibits without a witness to lay foundation. Judge _____ admitted all exhibits offered by Mr. Grier over defendant's objections even though Mr. Grier had not provided any foundation or proper authentication for the exhibits offered for admission. (TT 12:4-18). Judge _____ found the defendant responsible despite Mr. Grier's unethical conduct and despite the fact that there "was no evidence presented in the face of a challenge to the Complaint," there being "no testimony that the Complaint was properly certified," "[t]here was no one available to testify in support of the citation," and "according to the judge, [the prosecutor] was giving testimony; and as directed by the judge, the Defendant Power was left with having to cross-examine a prosecutor who was not a percipient witness as he acknowledged." "This was fundamentally unfair." (AHT 28:20-25, 29:1-8) This decision was overturned on appeal at a hearing on April 5, 2011 before The Honorable Peter Cahill. (See attached superior court ruling.) During the appeal hearing before Judge Cahill, it was established that the Star Valley Magistrate Court has a pattern and practice of allowing the prosecutor, Mr. Grier, to proceed in photo enforcement cases without providing a witness to testify on behalf of the State to lay foundation for any of the exhibits or to be available for cross-examination by defendant. It was also established that the Star Valley Magistrate Court has a pattern and practice of admitting unauthenticated exhibits without foundation over defendant's objections. (AHT)