

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-154

Complainant: No. 1269210930A

Judge: No. 1269210930B

ORDER

The complainant alleged that a civil traffic hearing officer improperly ignored his motion for change of judge. After reviewing the court record, the commission found no evidence of ethical misconduct. The motion was submitted after the complainant had already been found responsible. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: September 14, 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 14, 2011.

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

JUN 13 2011

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

Action taken in defense of a traffic citation handled by the Gilbert Municipal Court.
Case Number 2010-

STATEMENT OF THE FACTS

BACK GROUND ON CIVIL TRAFFIC ACCIDENT

This whole matter at issue, stems from a two vehicle collision that occurred on the evening of, December 8, 2010 at approximately 5:50 p. m. The location was within the city limits of Gilbert; at the intersection of Guadalupe and McQueen.

The PT Cruiser was driven by the undersigned. In the passenger seat was the Granddaughter, who is eighteen years old. The driver was preparing to execute a normal left turn. Having traveled south on McQueen, then waiting for traffic to subside and the light to turn green; enabling a left turn to be made. The traffic light turned green for strait ahead and left turning traffic. After re-checking the traffic the left turn was executed. The PT Cruiser had pretty much reached the far side of McQueen, entering the marked pedestrian walkway on the east side of McQueen. Out of no where, the PT Cruiser was struck hard by a heavy force on the most aft part of the vehicle near the tail light. It turned out to be that the terrific impact was from a pickup with a heavily loaded trailer. Also later we learned that the pickup was occupied by two Hispanic men. The trailer was loaded with implements and tools. The heavily loaded trailer had no

trailer brakes.

For the two Hispanics, It was the end of a work day;. it had turned dark and they were anxious to get home. While driving the overloaded, speeding vehicle into the on coming night, they were pushing it. The rig was not capable of making a fast stop.

The traffic light must have turned red at--or—before the fast traveling pickup and trailer entered the intersection. Whereupon, the stopping of this mass with no trailer brakes had a huge control problem. Slowing down, in a short distance or stopping was no longer a viable option,

The PT Cruiser was at the far side of McQueen and entering the marked pedestrian walkway, on the east side of Mc Queen. A resounding impact was delivered. In a second or a half second, the PT Cruiser would have been totally in the clear on the eastside of Guadalupe.

The driver of the P T Cruiser urged the Policeman to require the Hispanics to bring the heavily loaded trailer, to the location where we had assembled. This would provide a place and time to get a good look at the whole rig. The Hispanics had gone to great trouble to secrete this trailer immediately after the accident.

Also from the very beginning of the interaction with the Hispanics, following the Collision; the Hispanics did not want the police involved. It is assuredly certain-- that if that rig, with those two Hispanics, were not on that road that night--there would have been no collision. The rig it self, was an accident waiting to happen.

MISS CONDUCT OF POLICE OFFICER ON SITE:

THE CITY OF GILBERT POLICEMAN WAS DERALICT IN NOT MAKING A COMPLETE INVESTIGATION OF THE DANGEROUS RIG AND THE TWO

OCCUPANTS OF THE RIG-- WHO DID NOT WANT POLICEMEN ON THE SCENE AT ALL; AND WERE DETERMINED NOT TO HAVE THE TRAILER ACCESSABLE TO THE POLICE OFFICER: THIS MIND SET AND DISPOSITION OF THIS POLICE OFFICER RESULTED IN WRONGFUL CITATION. THIS WAS AGAINST THE PERSON DRIVING THE P T CRUSIER. WHICH WAS RAMMED JUST MINUTES BEFORE BY THE DANGEROUS RIG. THE FAILURE TO YIELD CITATION BY THE OFFICER WAS UNWARRANTED AND DIRECTLY APOSED TO THE FACTS.

See affidavit Exhibit One

This matter went to a hearing on January 6, 2011 in the Gilbert Municipal

Court. Judge _____ presiding.

_____ the defendant in this matter, was present along with his granddaughter, _____ age 18 who was a passenger in the right seat of the PT Cruiser on that fateful night.

The other persons involved in the accident were the two Hispanics who were in the other vehicle that collided with the defendant's PT Cruiser.

The City of Gilbert police officer Romney was present. Testimony was taken from all of the above named persons. The two Hispanics were semi English lingual. Their description of events was difficult to follow with any lucidity. Officer Romney testified. as a police officer for the City of Gilbert and was the officer on the site following the accident. He was also responsible for the traffic ticket citation:

Failure to Yield.

Officer Romney did not see the accident occur. There were no outside witnesses who saw the accident.

When the undersigned interrogated the police officer Romney in court, the judge was very adverse to questions and answers directed toward the role of the over loaded vehicle and the excessive speed, with no trailer brakes. The judge shut down any

further inquires related to the driver or the role of the overloaded vehicle that collided with the PT Cruiser. The judge also was restrictive of testimony that the undersigned was attempting to elucidate. The judge cut short the defendant's cross examination of the two Hispanics and the police officer.

At the end of the hearing, the judge ruled that the cause of the accident was Failure to Yield.

The judge laid out the procedure for an appeal.

Upon leaving the court building the undersigned picked up the information and paper work to be filled out and filed to affect an appeal. The appeal would have to be filed within fourteen days from the hearing date. But while considering the appeal, the undersigned knew that a better inroad had to be used to have any success at defeating this wrongful decision. From the experience in the court room, the defendant was leery of any proceedings that would include judge

There were several options. One: was to go to traffic school. Two: to pay the fine and avoid any further involvement. Three: Filing an appeal. Four: Filing a motion for a new trial. Five: Using the procedure to file a Notice of Change of Judge.

The decision was to file a Notice of Change of Judge. It would be essential to obtain the knowledge and format to file a Notice of Change of judge. The under signed called the Gilbert Court to obtain information to go forward with the filing a Notice of Change of Judge. The court employees referred the undersigned to make contact with their Court Administrator who's name was supplied: Adam Wollerson. Adam said that a Change of Judge could be achieved by filing a Motion for a Change of Judge. This was done; but as an extra procedure; while meantime a Notice of Change of Judge was filed,

with copies being mailed to the Gilbert Court but also to the Presiding Judge's office in Phoenix.

JUDGE WAS IMPROPER AND WRONG TO NOT HEAR TESTIMONY LEADING TO THE CAUSE OF THE ACCIDENT. THE DANGEROUS TRUCK, AND TRAILER—THE VEHICLE WHICH THE TWO HISPANICS WERE DRIVING WAS A ROAD HAZZARD. IN TRUTH THE RIG AND THE DRIVERS WERE AN ACCIDENT WAITING TO HAPPEN.

WHEN THE NOTICE OF CHANGE OF JUDGE WAS FILED ON JANUARY 19TH 2011 AND A MOTION FOR CHANGE OF JUDGE WAS FILED AT OR NEAR THE SAME TIME JUDGE VIRTUALLY IGNORED, THE CHANGE OF JUDGE FILINGS; OR

HE STATES THAT THERE ARE NO PROVISIONS FOR A CHANGE OF JUDGE IN CIVIL TRAFFIC CASES.

APPARENTLY JUDGE ALSO BELIEVES THAT THE ONLY REMEDY A DEFENDANT HAS IN A COURT CASE, BEYOND THE HEARING; COULD ONLY BE ACCOM PLISHED BY USING A PRESCRIBED APPEAL

All courts in Arizona whether it is a Justice Court, a County Superior Court, a Municipal court, Criminal Court or even a Court of Appeals are all subjected to the same Arizona Rules of Civil Procedures and the laws and statutes of Arizona. A municipal court has no separate special standing isolating and insulating their judges. The pathway of removal of a judge must be kept Sacrosanct; for the protection of citizens. A disqualified judge by censure and lack of probity is the right course of action. Justice for the citizens is more essential than the tenure of judges. (this paragraph is by undersigned)

In the case of a municipal court, out of necessity of continuity, qualified pro tem judges, or, judges from another satellite courts must be available in the event of death, serious illness or even a vacation, of the judge of record. From these same sources, a judge can be drawn upon, to fill the above mentioned situations. Judges who are qualified may be sequestered, and made available for back up for all eventualities, including being a replacement, even where a standing judge is removed.
(this paragraph is by the under signed)

STATUTE LAW AND PRESIDENT LAW CITATIONS

From Judges Key 49

Right to a fair and impartial trial before a fair and impartial judges is a valuable substance right originating in the common law and recognized by statute in both criminal and civil cases. 17 A. R. S. Rules of criminal civil cases. 17 A.R.S. Rules of criminal procedure. Rule 199, A.R.S. Rules ACA 1939 44-1204

Ariz 1985

Stict compliance with the rule on filing for peremptory Change of Judge can be waived when peremptory challenge is made diligently and as soon as practicable. 17 A.R.S. Rules Criminal Procedure. Rule 13, 102 10.2 Subds a (2)
Stale v. Poland 698 P. 2d 183 144 Ariz.

Ariz. 1967 Key 51 (1)

The rules of law pertaining to change of judge are essentially the same in civil and in criminal cases State v, Neil 425 P 2.d 842, 102 Ariz 110

The granting of a peremptory challenge to attain a change of judge as a matter of right (grace) under the Rules of Civil Procedure and is to be distinguished from a disqualification of a judge based upon cause. ARS § 409; 16 ARS Rules of Civil Procedure Rule 42 (1) Hickox. Superior Court in and for Maricopa Court, 505 P 2d 108 6, 19 Ariz. App 195

Ariz 1977

Challenged judge had no jurisdiction to rule on Motion for Change of Judge for cause and should have been transferred case to presiding judge 17 ARS Rules of Criminal Procedure. 17 ARS Rules of Criminal Procedure

Ariz 1986

A judge who is challenged under Rule 17 ARS Rules of Criminal Procedures may not proceed any further in the action and may only make such temporary orders as may be necessary in the interest of justice before the action can be transferred to the presiding judge. State v. Schoruck 719 P 2d 1049 Ariz.

In addition to all of the foregoing; an Order to Show Cause was filed with the court of record on or about March 29, 2010. A copy of the Order to Show Cause was mailed to the presiding Judges office on the same date. In both cases there was

no response.

Exhibit two
Order To Show Cause

CONCLUSIONS

This whole proceeding, including the officer who wrote the citation had been handled badly. He never saw the accident, nor did anyone else outside the two vehicles involved, see the accident. The officer should have taken a strong interest to scrutinize the pickup and the trailer to determine the safety of the rig. Or the possibility of contraband. He did not take the time, nor did he require that the detached trailer that had been hidden-- by the two Hispanics; be pulled to the location. Where all cogent matters would be dealt with. The officer did not do this, even where the driver of the PT Cruiser urged that he do so.

At the hearing judge manipulated and controlled a very limited scope of the totality of the cause of the accident. The Hispanics were driving far too fast into the intersection, wherein the traffic light had turned red before reaching the intersection, or, as it entered it. This twenty foot trailer was heavily over loaded, where three foot rails were used for containment of the stacked equipment. Either way, the truck and trailer were out of control: Where such conditions were prevalent, it is no surprise that the truck and trailer, were out of control, which resulted in a crash into the PT Cruiser.

Officer Romney should have cited the two Hispanics for unsafe speeds and an extremely over loaded trailer, with no trailer brakes. The truck and trailer could have been carrying contraband. Officer Romney took no interest whatsoever in the equipment or the danger that was inherent in the mass at high speed.

Judge made his decision against the driver of the P T Cruiser: Failure to

Yield. A motion for appeal was considered by the defendant. But an appeal would not change the playing field. A Notice of Change of Judge was filed, and almost simultaneously A Motion for Change of Judge was filed. Both were duly ignored by Judge By custom and by Law, Judge should have instantly recused himself. He could have aided in the search and appointment of a new judge. He did not do this. Judge had lost any and all jurisdiction as to this case. With a replacement judge the case would again be viable. Without a replacement judge the case was barred against any and all activity as to the prosecution of the case. Furthermore, actions or decisions made by judge were terminated and moot. The case is dead-foreclosed. A retraction of any punishment whether monetary or operators license or any other imposed activity is quashed with finality. Failure to so act by this court is unlawful.

WHEREFORE, the Commision On Judicial Conduct should perform their responsibilities but with an eye toward protecting this citizen against transgression of the acts of this court.

Signed this 11 day of June, 2011.