

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 13-130

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Judge:	No. 0445013991A
Complainant:	No. 0445013991B

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**ORDER**

The complainant alleged a municipal court judge failed to comply with the law and failed to promote public confidence in the independence, integrity, and impartiality of the judiciary as a result.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge 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 and the judge's response, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The issues involved legal matters outside the jurisdiction of the commission. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: August 20, 2013.

FOR THE COMMISSION

/s/ George Riemer  

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George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on August 20, 2013.

*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**

**2013-130**

**COMPLAINT AGAINST A JUDGE**

Your name: \_\_\_\_\_ Judge's name: \_\_\_\_\_ Date: 5/23/2013

I regularly represent defendants in Civil Traffic matters (Photo Enforcement) before the Municipal Court. My complaint is regarding the conduct of the court in general, and to the extent that she exercises supervisory responsibility over the conduct or the operations of that court, and permits her name to be subscribed to a summons that misstates the law, and permits the court to issue "Reminder Notices" which also misstate the law.

As a matter of routine, in photo enforcement cases, the Municipal Court issues (or allows to be issued), a Summons subscribed by the \_\_\_\_\_ which summons misstates the law. See the attached exhibits.

A.R.S. § 28-1593(A) provides that a "complaint may be served by delivering a copy of the uniform traffic ticket and complaint to the person charged with the violation or by any means authorized by the rules of civil procedure." As a matter of routine, such complaints, including the one attached as an exhibit here, are merely mailed. A.R.S. § 28-1593(C) provides that a mailed citation must "inform the person that there is no obligation to identify the driver or respond to the citation." A.R.S. § 28-1602(B) requires that the notice must state that it "is not a court issued document and the recipient is under no obligation to identify the person or respond", and that it must warn of possible consequences for not responding to the notice, i.e. that the defendant may be personally served and be assessed the costs of service.

The requirements now found in A.R.S. § 28-2593(C) and § 28-1602(B) were added by the First Regular Session of the Senate Fiftieth Legislature, under SB 1398<sup>1</sup>. Specifically, SB 1398, Chapter 308 § 4 removed the prior version of A.R.S. § 28-2593(C) and replaced it with the current version, Chapter 308 § 5 repealed the prior version of A.R.S. § 28-1602, and Chapter 308 § 6 created the current version of A.R.S. § 28-1602(B). SB 1393, as part of the Senate Fiftieth Legislature, First Regular Session 2011, was approved by the Governor April 28, 2011, and became effective July 20, 2011<sup>2</sup>

On information and belief, and based on a review of the summons attached as an example of those routinely issued by the court, it failed to include the statutorily required information that a defendant need not identify the driver or respond to the citation, and the related warnings.

Not only did the summons fail to provide the explicit warnings and limitations required by A.R.S. §§ 28-1593(C) and 28-1602(B), the language subscribed by the \_\_\_\_\_ on the summons, that failure to appear or respond to this unserved complaint will subject Defendant to entry of a default judgment and license suspension, is a plain misstatement of the law and thus a likely violation of the Code of Judicial Conduct, Rule 1.1 and Rule 1.2. Compounding this shocking violation of Judicial Ethics, the Court's purported reminder notice again asserts that a failure to appear upon an unserved

complaint will subject Defendant to entry of a default judgment and license suspension.

I believe the court's conduct, and by extension conduct in subscribing the summons and as the judge with supervisory responsibility over the conduct of her court, as briefly outlined above, violated the Code of Judicial Conduct. In particular, I believe that a number of the Rules were violated, and that his conduct is such that likely brings the judiciary into disrepute. I will briefly review the violations of the relevant rules which I perceived, below.

**Rule 1.1. Compliance with the Law.** A judge shall comply with the law, including the Code of Judicial Conduct.

The summons subscribed by misstates the law, at least by omission, and misleads or attempts to mislead defendants. The reminder notice issued by court also misstates the applicable law, at least by omission, and misleads or attempts to mislead defendants.

**RULE 1.2. Promoting Confidence in the Judiciary**

conduct, or supervisory responsibility for her court's conduct, is conduct that may shake the public's confidence in the judiciary, by issuing summons which misstate the law, and sending "reminder notices" which further misstate the law.

The summons and reminder notices speak for themselves.

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Please communicate with me regarding any action upon my complaint.