

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-179

Judge:	No. 1102314721A
Complainant:	No. 1102314721B

ORDER

The complainant alleged a justice court hearing officer ignored the law and improperly admonished him for hiring an attorney.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the hearing officer 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 response, and the video recording of the hearing, the commission found no evidence of ethical misconduct and concluded that the hearing officer did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: October 22, 2013.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the hearing officer on October 22, 2013.

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

On Friday, June 21, 2013, I had a civil traffic hearing in the Justice Court. During March 2013, I was charged with two civil traffic violations by the County Sheriff's Department, one for speeding and a second for running a stop sign. Because I was not responsible for these two traffic violations, I decided to take my case to traffic court. My case was assigned to a hearing officer, Mr. , who was a hearing officer appointed under ARS§ 28-1553, to the Precinct, AZ. I had retained counsel to represent me at the hearing, Ms. , who specializes in DUI's and traffic ticket violations. Ms. has also served as a pro tem traffic court judge, so she is well aware of the ins and outs of traffic court.

My complaint centers around what I believe to be unprofessional conduct on the part of Hearing Officer during my civil traffic hearing. Under Rule 11 (a) of the Rules of Civil Traffic Procedure a defendant has the right to be represented by counsel at a civil traffic hearing. That right is waived, unless the State and the Court are notified in writing at least 10 days prior to the hearing. My attorney Ms. filed a Notice of Appearance on my behalf with the Justice Court on April 18, 2013. Rule 16 (c) also gives an attorney the ability to examine and cross-examine witnesses at the hearing.

My hearing began with Ms. asking the Court to sequester the witnesses for the state, by telling Mr. she wished to "Invoke the Rule" regarding sequestering the witnesses. Mr. had no idea of what she was asking and Ms. told Mr. that she wanted one of deputies to sit in the hall outside the courtroom. Mr. wanted to know why she wished to do this and Ms. politely explained that while she did not have to tell him why, she would. Ms. explained she did not want the second deputy hearing the first deputy's testimony. Mr. allowed the deputy to sit in the hall outside the courtroom; however, his body language and tone of voice suggested that he was "miffed" by her request.

The first deputy testified and presented his case. Ms. began her cross-examination of this deputy. Several minutes into Ms. cross examination of the deputy, Mr. began a pattern of repeatedly interrupting Ms. cross examination, telling her that he did not have time for all of these questions and he would rudely point at his watch. At one point in the proceedings, Mr. stopped Ms. cross examination. He demanded to know how many more questions Ms. had to ask and he questioned the relevance of her line of questioning. Mr. repeated interruptions of Ms. cross examination resulted in her being forced to conclude her questioning of the deputy before we could uncover all of the facts of the case. For Mr. this case was an issue of time, not justice.

This same pattern of behavior from Mr. occurred when Ms. began cross-examining the second deputy and she could not complete her examination of him either. Mr. continued to interrupt her, point to his watch and alternate between looking bored and being agitated on the bench. At one point, while Ms. was trying to cross-examine a witness, a court staff member came onto the bench from a back door and engaged Mr. in a conversation for several minutes about what appeared to

be an administrative matter. It was clear that Mr. [redacted] was not engaged and was not listening to the court testimony.

I realize that a judge and/or a hearing officer has discretion to stop repetitive or annoying questioning from an attorney, however, Ms. [redacted] questions were neither repetitive nor annoying. Her cross examination questions had been carefully prepared and we had gone over them prior to the hearing. Many of these questions were standard cross examination questions that were taken from the Attorney's Deposition Guide for traffic cases. These questions were designed to focus on relevant facts in the case and uncover inconsistencies in the deputy's testimony. There were also two traffic charges involved in my case that Ms. [redacted] was attempting to defend. Despite Mr. [redacted] behavior, Ms. [redacted] was polite and respectful toward Mr. [redacted] at all times.

In addition to Mr. [redacted] shutting down my attorney's cross examination, he would not allow my attorney to directly examine me; rather, he told me to tell him "my side of the story." While telling Mr. [redacted] "my side of the story" and before hearing all the evidence, he told me I may have made a "mistake" in reference to the traffic violations. It was understood that Ms. [redacted] would not ask me any questions, while I told "my side of the story" to Mr. [redacted].

I was a police officer and a federal agent for many years and I have participated in hundreds of trials and hearings. However, I had never seen one conducted in this manner. The hearing was disorganized, did not flow well and courtroom procedure was not followed. Mr. [redacted] either did not have an understanding of the Civil Rules of Traffic Procedure, or he made a conscious choice not to abide by them. The one deputy who was a witness at times acted as a prosecutor, interrupting the proceedings once to object to an exhibit and there was no admonishment from the court. This same deputy protested to Mr. [redacted] that we had not "talked" enough about the speeding violation.

In the back of the courtroom there were eight to ten DPS officers and Sheriff's deputies presumably waiting testify as witnesses in other hearings. Mr. [redacted] toxic attitude toward my attorney and me affected the law enforcement officers in the back of the courtroom. While Ms. [redacted] was attempting to cross examine the witnesses, these law enforcement officers were snickering, smirking, and giggling at Mr. [redacted] interruptions and negative comments toward my attorney. Mr. [redacted] had to have seen this behavior from the bench and did nothing to stop it. These police officers should have been removed from the courtroom for engaging in this behavior.

However, for me the most egregious moment of the hearing was while Ms. [redacted] was attempting to cross-examine one of the deputies. Mr. [redacted] looked me straight in the eye and told me, "It is audacious that you brought an attorney to this hearing!" It was at this point in the hearing I knew I had no chance of prevailing in my case and that I would be found responsible for these traffic violations, which is ultimately what happened.

I have lived in Arizona for over 27 years and this was my first visit to Justice Court Traffic Court. The Arrowhead Traffic Court is no more than a "Kangaroo Court" where the principals of law and justice are disregarded and perverted for brevity and assemble line justice. In my case, wide deference was given to the Sheriff's Deputies who testified for the state and I was presumed guilty, unless I could prove myself innocent in 10-15 minutes. My attorney was given little opportunity to cross-examine witnesses, or present a defense on my behalf. Mr. [redacted] clearly demonstrated his animus toward me and my attorney, with his comment to me, "It is audacious that you brought an attorney to this hearing." This comment is telling that a pervasive climate of partiality and unfairness existed in Mr. [redacted] Court.

It is my contention that I was found responsible for these two traffic violations, not on evidence or facts of the case, but rather as punishment for bringing an attorney to court. I also believe Mr. [redacted] was sending me a message, not to ever bring an attorney to his traffic court again. These traffic courts are often a citizen's first and only contact with the judicial system in Arizona. It is a widely held view that these traffic courts are predisposed to generally take the word of the law enforcement officers over that of the average citizen. This is a view which I would not disagree with.

I would like to see Mr. [redacted] removed from his position as a hearing officer. Mr. [redacted] was poorly prepared for his position as a hearing officer and I do not believe he should be in a position of judging others. He showed no regard for the Civil Rules of Traffic Procedure and did not allow for a fair hearing of all the evidence in my case. He also did not maintain courtroom discipline. Worse yet, he demonstrated that he was prejudiced against me and my case because I chose to hire an attorney to represent me at my civil traffic hearing. My complaint has nothing to do with "sour grapes" because I was found responsible for two civil traffic violations. What I am angry about is I was not given a fair hearing and the attorney who I paid a lot of money to represent me was not allowed to do her job. If I was found responsible at a fair hearing, I would accept the results and pay the fines and take the points against my driver's license. What I got did not come close to a fair hearing. It was frontier justice. It is important that Arizona clean up these traffic courts and ensure these cases are handled in a fair and even-handed manner.