

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-320

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge was prejudiced against him, was not competent, and improperly dismissed his case. The complainant also alleged another superior court judge improperly denied his request for change of judge for cause.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judges 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.

The commission does not have jurisdiction to review the legal sufficiency of the judicial officer's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judges did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety as to both judges, pursuant to Rules 16(a) and 23.

Dated: December 23, 2015

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and both of the judges on December 23, 2015.

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

I understand the commission cannot reverse court orders or assign a new judge to a case.

I declare, under penalty of perjury, that the foregoing information and the facts I have provided upon which my allegations of judicial misconduct are based are true and correct.

Signature: _____

Date: _____

INSTRUCTIONS

Use the following space or plain paper of the same size to explain your complaint. Explain why you believe what the judge did constitutes judicial misconduct. Be specific and list the names, dates, times, and places relevant to your allegations. Additional pages may be used and relevant copies of documents may be sent with your complaint (please do not send original documents). Use one side of each page only and write legibly or type your complaint. Please keep a copy of your complaint for your records.

At the very start of the case, _____ showed his bias against me by doing the work of the Defendants by requiring me, the Plaintiff, to file a memo on jurisdiction.

This complaint is also against Judge _____ since he incorrectly supported _____ by not allowing me to change judges after _____ had demonstrated his bias against me.

Not only did _____ do the work of the Defendants, but I was astonished that he did not even understand the statute under which I was appealing. That, and the rest of what I am writing now, will be explained and fleshed out in the court documents I have enclosed. Taken in order, they tell the story.

Additionally, I have looked at the other complaints against _____ and I don't know why this guy is still a judge.

I was unaware of the Local Rule that nixed my right to a one time change of judge without cause. So I tried again by filing an affidavit under A.R.S. 12-409(B)(5) that did give me the right to a change of judge if I showed cause. As you probably know, grounds for cause had to be "That the party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice, or interest of the judge he cannot obtain a fair and impartial trial."

That was exactly what I 'had cause to believe and did believe.' So I filed an affidavit to that effect on .

In the affidavit, I stated that in attempting to dismiss my case as "untimely," Judge _____ was doing the work of the Defendants and therefore showing his bias. I also mentioned that his misconstruing the thirty day time period appeared intentional since he is an experienced judge who should know better.

The next day Judge _____ to whom I presented my affidavit, ruled against me. According to him, "Bias and prejudice under A.R.S. § 12-409(B)(5) means a "hostile feeling or spirit of ill-will" or an "undue friendship or favoritism" towards a litigant." He claimed I didn't show that. I was pretty sure I had shown there was a "hostile feeling or spirit of ill-will" towards me even though I hadn't used those exact words in my affidavit. I also think it was obvious _____ showed favoritism towards the Defendants by doing their work for them.

_____ also stated, "Judicial bias or prejudice ordinarily has to come from an extrajudicial source and not what the judge has done in the case." The key word there is "ordinarily." Its inclusion means there must also be cases like mine that are not ordinary, but are in fact based on "what the judge has done in the case." So, it seems clear to me that Warner was using a bogus argument just to support _____.

After _____ denied my request, the Rules of Civil Procedure became unclear to me, and I was unsure exactly what my options were. I also wasn't sure I wanted to spend more time pursuing this particular injustice even if I could figure out the rules, so I accepted Judge _____ ruling. In other words, I felt, and I was, bamboozled. And I was certainly denied my right to a change of judge by showing cause.

I'll add that _____ (mis)ruling is not supported by State v. Ellison, 213 Ariz. 116 at ¶¶ 38 and 40 (2006).

In ¶40, we find this: "without showing "[e]ither an extrajudicial source of bias [or] any deep-seated favoritism". Obviously, the key word there is "or." There can be an extrajudicial source OR the "deep-seated favoritism" that _____ demonstrated.

In ¶38, we find this: "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." The key word there is "unless." As such, that statement totally contradicts what _____ wrote about "ordinarily."

I am a college drop-out, untrained in law and whose pro se court experience consists of contesting a few traffic tickets, yet how is it I know more about this issue than the so-called experienced professionals? It's very disheartening for me to be denied justice by people like _____ and _____ who are both schooled in law and experienced and so should know better. I am concerned not only for myself but also for the hapless others who come before them looking for and expecting justice.

There are only two explanations for the judges' behavior. 1) Despite their schooling and experience they are inept and doing sloppy work. 2) Their actions were neither inept nor sloppy but intentional. Either way, it does not look good, and they should not be judges.

Personally I suspect that what _____ did was intentional since I would bet that, had I an attorney representing me, _____ would not have dared attempt their pro-defendant actions. Unfortunately and despite quite a search, due to the specialized nature of my case and other factors, I could not find an attorney to represent me either for a fee or pro bono. Nevertheless, justice should be available to all, not just those who have an attorney. Pro se people should not be bamboozled by the likes of _____. Shame on them!