

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 16-098

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Judge:

Complainant:

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**ORDER**

The complainant alleged a superior court judge was prejudiced against him and made improper rulings in a civil matter.

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.

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

Dated: May 18, 2016

FOR THE COMMISSION

/s/ George A. Riemer

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George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on May 18, 2016.

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

ARIZONA COMMISSION ON JUDICIAL CONDUCT

REFERENCE :

Gentlemen,

The verdict in the \_\_\_\_\_ is in direct conflict with ARS 48-3613 and is replete with other illegal community related water hazard problems including flooding and fraud and therefore needs to be nullified. ARS states that, " a person shall not engage in any development which will divert, retard or obstruct the flow of waters in any watercourse without securing written authorization from the board of the district in which the watercourse is located". There should not be any time limits or constrains to rescind court decisions that have violated this existing ARS ruling. This is especially important when the issue has caused flooding and damages to adjacent properties and will cause more flooding to these properties in the future.

The defendant \_\_\_\_\_ had ample warning from the onset of the case by attorneys for the plaintiff that what he intended to do was illegal and he had no right to enter onto the private property of plaintiff \_\_\_\_\_ and make connections to a private on-farm ditch (north canal) on \_\_\_\_\_ property.

The defendant \_\_\_\_\_ applied for and was approved to receive funds from Natural Resources Conservation Services(NRCS) to improve the irrigation system on and to his land. \_\_\_\_\_ had been irrigating his land downhill from a dirt ditch that connected to the south canal that is consistent with the easements and natural water flow of all land in the south half of sections \_\_\_\_\_. NRCS proposed and was willing to install a cement lined ditch from the south canal to his land. This was the conservative downhill approach that would have left the irrigation and drainage system for the south half of section \_\_\_\_\_ intact. \_\_\_\_\_ also would not have had any easement issues with this plan as the minor land developer that subdivided his land extended the original grant easement from the south canal all the way north to the midsection line.

However, \_\_\_\_\_ insisted that the north canal was a public ditch and that he was given permission to use it. (See attached correspondence between \_\_\_\_\_ of NRCS) page # \_\_\_\_\_ this is absolute fraud when you read the statement by \_\_\_\_\_ (See attached information to \_\_\_\_\_ ) that testifies that \_\_\_\_\_ did not and could not give any such permission for \_\_\_\_\_ to use the private north canal. Further by signing the form on \_\_\_\_\_ ( page# \_\_\_\_\_ that includes paragraph \_\_\_\_\_ of page# \_\_\_\_\_ has committed additional fraud that he has approval to use the north canal.

\_\_\_\_\_ then had NRCS build up the area on the north side of his property on the south side of the midsection line that would accommodate his new elevated ditch and ditch pad road that would receive

irrigation water from the north canal via an underground pipeline from the private on-farm ditch on [redacted] property. By this time the fraud was evident to NRCS and they refused to provide funds for the underground connection on [redacted] property. The [redacted] inspired irrigation design to water his land from the north canal also revealed the flaws for the drainage problem for most of the drainage water in the south half of section [redacted]. The newly installed elevated ditch and ditch pad road to irrigate the [redacted] land is built directly on top of the historic path that the surface water for the south half of section [redacted] used to enter the east bar ditch on [redacted] and diverts this water across the midsection line road and onto [redacted] property.

The reality of the flooding of surface water from the south half of section [redacted] onto [redacted] property and adjacent lots in the south half of section [redacted] was acknowledged by both sides at the trial not from the viewpoint that it was illegal to do so but from the Judge [redacted] imited argument as to how much it was a burden to [redacted]. During the sidebars it was limited further by Judge [redacted] as to what was more of a burden to [redacted] an underground pipeline or an open faced ditch. This certainly confused the jury from what [redacted] quoted as the legal standard, "the servient estate will not be burdened more than was intended by the drafters of the original easements", and really not what the trial was about.

The original grant easements specifically state that the easements are for ditches that carry irrigation water in the downhill direction only. Every quarter section in sections [redacted] and [redacted] has specific original grant easements for this purpose. In his expert witness report [redacted] who is the foremost irrigation expert in the southwest is firm in his conviction that the underground pipeline that [redacted] has installed is not only an illegal use of the easements but is also a public safety hazard.

The final court verdict in the [redacted] versus [redacted] lawsuit violates all irrigation and water flow rules, customs, and practices to the extent that it is simply unworkable and hazardous to the surrounding community. It sets such an untenable precedent for the irrigation community that any effort by your office to nullify it will be greatly appreciated.

The information presented here is a sketchy outline of the case. Rather than inundate you with paper I will wait and see the extent of your interest and send you selected materials and the type of information that you request.

Information that I have includes the following

1. Motions from both attorneys
2. Rulings from the court on the first and second summary judgment
3. Final ruling of the court.
4. [redacted] written correspondence file.
5. Complete expert witness [redacted] report.
6. Selected letters from attorneys from both sides.

7. Statements from expert witnesses and

Information that I can probably get.

1. Pertinent side bar information on the second day of the trial where Judge changed his mind as to what the legal standard for trial was.
2. Disposition information of both
3. Other information that you may want.

Attachments:

1. Letter from and the Court response.
2. Letter from attorneys to informing him of the new