

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-227

Judge: Jay Yellowhorse

Complainant: Anonymous

ORDER

An anonymous complaint alleged that a justice of the peace engaged in improper political activity.

Judge Yellowhorse allowed at least three defendants to have their charges dismissed in exchange for donations to charities of Judge Yellowhorse's choosing. In TR2017-812, the defendant donated seventy-five back packs which were provided to a local school to send food home on the weekends with the children. In TR2017-1597 and TR2017-2134, the defendants donated remote controlled cars to the Gifts for Kids program. While a judge is permitted to allow a defendant to perform community service work when a defendant cannot pay a fine, a judge is not permitted to operate his or her own diversion program that allows for charges to be dismissed in exchange for donations to or community service work for a particular charity of the judge's choosing. A prosecuting agency may operate its own diversion program and dismiss charges on the state's motion when a defendant complies with the terms of a diversion agreement. However, a judge may only operate a diversion program that has been approved by the Administrative Office of the Courts. No such authorization was granted to the Puerco Justice Court, and Judge Yellowhorse's conduct in at least these three incidents amounted to the operation of an unauthorized diversion program. Such conduct violated the following Code provisions:

Rule 1.1, which states, "A judge shall comply with the law, including the Code of Judicial Conduct."

Rule 1.2, which states, "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

Rule 1.3, which states, "A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."

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

Rule 3.7(A), which states, “A judge shall not directly solicit funds for an organization.” The commission found the backpacks and toys to be the equivalent of funds.

The Commission further found that Judge Yellowhorse’s various responses to the Commission during the course of its investigation were less than fully candid as required by Rule 2.16(A) of the Code, which states: “A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.”

The Commission found that there was insufficient evidence to support the other allegations of the complaint.

Accordingly, Justice of the Peace Jay Yellowhorse is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the Complaint, the judge’s responses, and this Order shall be made public as required by Rule 9(a).

Commission members Denise K. Aguilar and Louis Frank Dominguez did not participate in the consideration of this matter.

Dated: March 29, 2019

FOR THE COMMISSION

/s/ Diane M. Johnsen

Hon. Diane M. Johnsen
Commission Vice-Chair

Copies of this order were distributed to all appropriate persons on March 29, 2019.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2017-227

COMPLAINT AGAINST A JUDGE

Name: _____

Judge's Name: Jay Yellowhorse

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

Date of Incident: April 25, 2017

Place: Sanders Justice Court

A truck driver had a \$3,000 fine (possibly weigh station) and got off by Judge Yellowhorse asking him to buy 10 back packs at no less than \$20.00 each. Backpacks⁽⁸⁰⁾ were later distributed in July ~~at~~ an event sponsored by Judge Yellowhorse. He + family also gave bikes out at the local high school graduation (May).

In our community this is viewed as a political maneuver for reelection and misuse of authority.

If 80 backpacks were given then he has been collecting from the court on more than one occasion.
(See facebook page) Jay Yellowhorse



Jay Yellowhorse

Puerco Justice Court
Post Office Box 610
US Hwy 191 within 1 mile of I40 Exit 339
Sanders, Arizona 86512
Phone: (928) 688-2954 ♦ Fax: (928) 688-2244



The Honorable Members of the
Commission on Judicial Conduct
1501 W Washington Street, Suite 229
Phoenix, Arizona 85007

October 24, 2017

Re: Complaint (Case No. 17-227)

Dear Honorable Members,

The Complaint filed was misleading, two pictures that were taken, were from two different events at two different locations and a 3rd event was mixed in with these stories that made it misleading.

Picture Comp Attached 1

This Photo was taken on the Navajo Reservation in Manuelito NM (Not Arizona). This Event was sponsored by local business Indian Village Trading, Yellowhorse Trading Post, Walgreens, Walmart and many more. The event was for Navajo Treaty days which is a Navajo Nation Holiday. At this event gift certificates, candy, food and bag packs, etc. were given away as door prizes to everyone attending the event. I was asked to help hand out bag packs to the younger kids, during this time I did not give a speech nor was I announced as a Judge, I was just there as a spectator that just happened to be asked to help hand out bags. There was no campaigning at this event by me or any other individual that was there. This event was held in NEW MEXICO, out of my Jurisdiction.

Please see page 2 (Also the banner from Photo Comp Attach 2 was not present at this event)

(NO bags or Supplies were donated by me or the Court)

Event 2

There was another event that was held at the Sanders Elementary School by AACo (Arizona Association of Counties). The event was headed by AACo executive Director Jen Morsan and Apache County Superintendent of Schools Berry Williams. At this event 80 bag packs filled with school supplies were handed out to students at the Sanders Elementary School. A lot of Apache County elected officials and employees were present including myself, because this was a huge deal for Apache County and Sanders. There were no Campaigning or speech's at this event , except by Berry Williams Apache County Superintendent. (NO bags or Supplies were donated by me or the Court)

Picture Comp Attached 2

This Photo was taken at a 4th of July Parade in Lupton AZ. Before the parade a group of local veterans had asked for donations to help finish their float for the upcoming parade, which I was happy to provide. I had donated personal funds to this Veterans group. At the parade on the 4th of July I noticed a banner that stated Sponsored by Judge Yellowhorse and Constable Anderson, due to the fact that I donated funds to this float. Before the parade could begin I asked the Veterans group to remove the banner, which was done immediately. (As soon as I noticed the banner it was taken down. I did not permit this group of veterans or any other group to use my name)

High School Graduation Bikes

Yes, my parents and ex-wife had donated bicycles to the Valley high school graduates last year. the Court and I had nothing to do with those donations. This was not part of an election campaign nor was there any reference to me or the Court.

Conclusion

The 80 bags full of School supplies came from AACo and Apache County Superintendent, not from bribes or favors by any defendant from the Puerco Justice Court.

I have not campaigned nor gave any speeches to suggest otherwise.

FYI

Copies of this hand-written complaint was handed out at the last town hall meeting, by an individual that announced their candidacy to run against me in the 2018 election.

Thank you for your attention in this matter

Judge Jay Yellowhorse

Puerco Justice Court

Sanders, Arizona

RESP SUPP 1
FEB 21 2018
2017-227



Jay Yellowhorse

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The Honorable Members of the
Commission on Judicial Conduct
1501 W Washington Street, Suite 229
Phoenix, Arizona 85007

February 19, 2018

Re: Complaint (Case No. 17-227)

Dear Honorable Members,

Thank you for giving me the opportunity to explain my decision I made in court. To start off, the short answer is yes. On April 25, 2017 I allowed a CDL holder to donate bag packs to kids for school. I do want to point out that I was not the one to hand out those bags, it was given to the school and the school handled that. Also, the bags I mentioned in the previous letter was not part of this ordeal and what I had stated in the previous letter was the truth, I did not handle the bags that was given by Mr. Maamuujav which was the CDL holder in question.

On April 25, 2017

Lkhamaa Maamuujav who is a CDL holder, had plead guilty to the charge of tandem axle overweight on his vehicle. Before he was sentence he had state the he had lost his job 3 months prior and that his company still owed him 3 months back pay, the Defendant had stated that he has not received any income for the past 6 months and he was losing everything. What the Defendants company had done was let the defendant work, promising him the pay which went on for 3 months. The company then filed for bankruptcy and fired the driver. The Defendant had proof of what his company had done and that he was in court trying to fight the company (Court in CA).

Why this was important

In 2013 the Apache County Attorney office was doing Diversion program for all Trucker cases and dismissing 95% of all trucker cases that came into the Puerco Justice Court. May of 2013 Silvia Gerdts from Motor Vehicle Division, title: Record Services Program Manager. Had contacted the Puerco Court regarding why the court was dismissing almost all trucker cases in the year 2012 & 2013. After explaining what was happening with the diversion program through the County Attorneys office, Silvia Gerdts made a trip to the Puerco Justice Court and got proof of her own of what was happening. A few

weeks later a second meeting had taken place, Silvia Gerdts had stated that this needed to stop due to diversion program was not supposed to be offered to truckers, however this was not so simple because what the County Attorney's office was doing was dismissing cases right after the arraignment was done or sometimes before the defendant had even stepped foot in the Court, with that Ms. Gerdts did not have an answer. So I had reached out to Paul Julien from AOC, title: Judicial Education Officer. When Paul Julien was given all the information he had stated that the diversion program was wrong for CDL holders, but there was not much the court could do due to the fact that the prosecutor could dismiss any case they like. I was told by Silvia Gerdts that I was responsible for what happens in my court and that I would need to fix the issue. I was left with the impression that I was in trouble for not fixing the situation with the County Attorneys diversion program and when I had reached out for help I was not given any options except that I was stuck between a rock and a hard place. (See attached email addressed to Paul Julien)

After a year of stressing on this matter and finding no answers Paul Julien had reached out to let me know that there would be a CDL class held in the Phoenix. This class was held in conjunction with the Governor's office of Highway Safety conference, where I met with the head of the Federal Motor Carrier Association. When I explained my situation and the issues with the diversion program, I was told I should reach out to the Motor Vehicle Division, in which I stated "I did" and it just so happened that Silvia Gerdts was in the room, which she conformed and stated she recommend that I reach out to AOC, which was also done through Paul Julien and others. I was given the same answer as before, this was my issue to fix and there is really nothing anyone can do to help. In the class there was a lot of arguing among everyone of who was responsible to help with this issue. However there was a lot of ideas from other Judges, one of the ideas were reducing the fine and letting the truckers complete a community restitution, which a couple of Judges agreed would be a good way to get some of the cases back from the County Attorneys office which in the long run would start to change the way the County Attorney handled trucker cases. After the class was over the head of FMCSA advised me to sign up for the CDL class through the National Judicial Collage in Reno NV and he would also write me a recommendation to help get in.

March 2016

I attend a CDL class held by the National Judicial College that lasted 2 days. At this class, I was with Judges from all over the Country. On the first day, I explained my situation with the diversion program with the professors (Peter Odom, David Morris & Darrell Ruban) and class and to my surprise I was not the only Judge dealing with this situation, there was numerous Judges dealing with the same issue around the Country and some of them had come up with solutions that worked for them. The Professor decided to make this one of the topics in the session due to so many Judges dealing with this issue. During that particular session, the Judges that had solutions were able to explain to the class what they had done. Three of the four solutions that were given had to deal with community service in the way of community restitution.

At the CDL class on day 2 we had learned that the FMCSA wanted to change the way violation points and citations were distributed, they wanted to include the company not just the driver and the truck. The reason was that a lot of trucking companies were accumulating overweight tickets throughout the country by over loading the trucks for more profit. When the driver got the overweight citation, the companies would tell the driver to keep driving and they would take care of the citations. However, a lot

of companies would let the driver keep driving until their CDL was suspended through the Courts from defaults, at that time the company would fire the driver. When the companies would accumulate too much debt through driver back pay and court fines for over weights, the Companies would file for bankruptcy and close down the business, which what it looked like on paper. But the reality was after they filed for bankruptcy the company would change the company's name and reopen their doors as a brand-new company and when the drivers approached the company about back pay or court fees, they were told that that company they were driving for was no longer in business and that there was nothing they could do, even though it was the same owner, same building, just a different name. What the FMC wants to do is starting issuing points or citations to companies and owners, so even though they change the business name, the problems they create would stay with them instead of starting over with a clean slate.

When I had returned from the National Judicial College. I had addressed what I had learned at the National Judicial College and the idea of Community Service or Community Restitution for truckers in lieu of the diversion program with a couple of Judges from around the state, including the Apache County Superior Court Judge and Paul Julien. Most of the Judges that understood thought it was a good idea for a starting point. Paul Julien asked me to present the idea at the next Governor's office of Highway Safety conference, which I did.

At the Governor's office of Highway Safety conference, I presented the ideas from the National Judicial Conference and I was given positive feedback from Judges.

Connecting all the points

When Mr. Maamuujav had told me the story of him losing his job and the manner he had lost it. It had reminded me of the stories presented at the CDL class at the National Judicial College. At that time in the Court room I figured it was a good time to implement the ideas that had been discussed for the past year in offering Mr. Maamuujav the opportunity to take care of his fines through community restitution. Mr Maamuujav was given the opportunity to give 75 back packs to school kids in lieu of his fine.

There was a mistake on my part, when Mr. Maamuujav sent in proof of completion, the defendant was supposed to be found guilty, but I was on my way to the Arizona Judicial Conference and I told my clerk to dismiss, not catching my error. This case should have not been dismissed but since the damage was done the case was closed out and put away.

I'm Sorry for the long drawn out letter, I just wanted to explain why I had come to the decision to offer community restitution in lieu of the fine. I also want to make clear that I did not mention individuals to get anyone in trouble, this was my decision and no one else.

Also, I wanted to let you know that after I allowed Mr. Maamuujav to complete community restitution, the County Attorney's office has changed the way they do diversions. Now more cases are starting to be heard in the court. The number of cases that are being dismissed through the County Attorney's office has reduced. Also, the Communication between the Court and the County Attorney's office has

improved and it is no longer a one-sided ordeal, the County Attorney office is no longer dismissing cases before the Defendants arraignment.

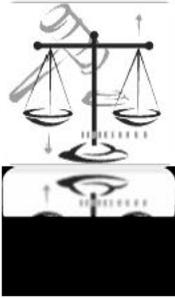
In conclusion I just want you to understand that this was not something I just come up with out of the blue nor was it a bribe, This decision I made, was years in the making and discussed through numerus Judicial Officers throughout the state of Arizona and throughout this Country, it also involved the FMCSA, AOC and MVD.

Thank you for the opportunity to let me explain

Judge Jay Yellowhorse

Puerco Justice Court

Sanders, Arizona



Jay Yellowhorse

Puerco Justice Court
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The Honorable Members of the
Commission on Judicial Conduct
1501 W Washington Street, Suite 229
Phoenix, Arizona 85007

October 24, 2017

Re: Complaint (Case No. 17-227)

Dear Honorable Members,

1) Mr. Maamuujav brought the bags to the Court house then dropped it off next door at the Sanders Elementary School with 4th grade teacher Mr. McCraw. Mr. McCraw filled the bags with can food and gave it to kids for the after-school food program. These are kids that don't get enough food at home, some of these kids don't eat unless they're at school and so Mr. McCraw donated extra food and school supplies and that was given with the bags. Mr. Maamuujav just donated just the bags nothing else.

2) Yes there was Hardev Nagra TR2017-2134. The violation was fail to obey traffic control device which was the sign that stated he needed to pull on to the Port of entry, which he by passed but got off at the next exit turned around and went back to the port which the officer still gave him a citation at the port for failure to obey traffic control device, even though he turned around and went back himself. 25 bag packs were donated to the same program as Mr. Maamuujav.

The third was Gerald Dobbins TR2017-1597. The violation was fail to obey traffic control device which occurred when Mr. Dobbins crossed double white lines on Interstate 40 to avoid a collision with another vehicle. Mr. Dobbins Donated to the same Program.

3) No

4) Elliott Yazzie TR2017-713 did community service in the way of trash cleanup with the Tse Si Ani Chapter on April 21, 2018 during an Earth day event in lieu of his \$35 fine, that was the agreement he made with the prosecutor. Attached is a letter from Tse Si Ani Chapter dated April 25, 2017 stating that Mr. Yazzie had completed his community service. Mr. Yazzie did not participate in donating bags

5) No, but there was talk with doing something of the sort with Apache County Superior Court back in 2013, but it was just talk nothing was ever put in place and we never offered diversion through the court.

Thank you for your attention in this matter

Judge Jay Yellowhorse

Puerco Justice Court

Sanders, Arizona

From: [Yellowhorse, Jay](#)
To: [Elliott, April](#)
Subject: RE: CJC Case No. 17-227
Date: Tuesday, May 29, 2018 2:19:04 PM

April Elliott,

The info in the email is correct and the number of bags donated by the two defendants were 10 bags each.

the dollar figure listed was the amount of the original fine.

For the school info the school is out at this time and I was told that staff will be back for summer school which starts next week

Sorry for the delay on the school but I will have more info next week when school staff returns

Thank you
Jay Yellowhorse