

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-041

Judge:

Complainant:

ORDER

June 26, 2019

The Complainant alleged a pro tem municipal court judge was biased against him, prejudged his case, engaged in improper demeanor, and improperly failed to grant his motion to dismiss.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Rules 16(a) and 23(a).

Commission members Roger D. Barton and J. Tyrrell Taber did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on June 26, 2019.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2019-041

COMPLAINT AGAINST A JUDGE

Name: _____

Judge's Name: _____

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.

See Attached:

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[Area with multiple horizontal lines for writing a complaint]

To Whom it Concerns,

My name is . I am a defendant in a case no: . This case is being tried through the is the prosecutor and Judge was the presiding judge. I say " " because I asked him to remove himself from the case. I did not believe I could get a fair and impartial trial with him. His abusive actions, tone, demeanor and verbal belligerence clearly communicated to me that my guilt was a firmly established foregone conclusion in the mind of Judge . Taking Judge place is judge

On , the scheduled pre-trial conference, I met with a prosecutor She wanted to set a trial date. I said , how about a 'Motion to Dismiss'. She said , fill this form out and go see the judge. I met with judge : (sitting in for judge) without attorney representation. I said : He said , but I would have to put the 'Motion to Dismiss' in writing in the accepted legal format and be held to the same standards as any other attorney. . He asked how much time I'll need . I responded about . He gave me extending the next conference date to . He explained once the court receives it and reviews the Motion to Dismiss, the court will set an evidentiary - oral hearing to explain further. I never received such hearings. After leaving the courtroom, I went directly to the clerk of the court to ask for subpoenas to get documents for my defense. The clerk got approval by the court and gave me a few signed by the clerk.

On handed in my 'Motion to dismiss' to Judge . He looked baffled . I explained that judge allowed me to provide one. Judge said the court has

to respond, to review and for mailing. Before leaving, I asked the judge if I could get a few more subpoenas to secure more document (Duces Tecum) and he approved.

On , I went to the courthouse to request a few more subpoenas approved by judge and had a question for the court clerk about procedural correctness on serving them. I handed the clerk one I was working on signed by the clerk, showing that it was approved. The clerk questioned the subpoena, took it back to be viewed. The clerk came back and said

. I proceeded to ask a simple question about the correct procedure in serving subpoenas. The clerk . I asked judge since is part of county, does procedure follow that of ? : allows the party in question to be served the subpoena on the day of the hearing in court. That's in case the party refuses to open their door to anyone, as an example. Judge looked confused and said he can't give any legal advice. I said I wasn't looking for legal advice just if procedurally works the same as the . Judge got a little irate and said loudly, I think to embarrass me in front of everyone,"

".

I see this as violation of rule: 2.3(Comments 1&2) "A judge who manifests bias or prejudice in proceedings impairs fairness...and brings the judiciary into disrepute" (2)...hostile act: facial expressions and body language may convey to parties...and others an appearance of bias or prejudice" Violation of rule: 2.10(d) '...may explain court procedures...) violation of rule: 1.2(A) "A judge shall act at all times in a manner that promotes public confidence...and shall avoid impropriety and the appearance of impropriety" Judge ; "Subpoenas can be used to obtain documents and objects before trial or before offered as evidence". And violation of rule: 2.5(A) of judicial code, " a judge shall perform judicial administrative duties competently, diligently and promptly."

Getting back to my 'Motion to Dismiss'. it was already into the and heard nothing from the court concerning dismissal of my case. I checked my mail frequently up to this time and nothing. I was living in . at the time. My 'Motion to Dismiss' had my new address on : No reason for it not to come back. I decided to drive the court and ask the clerk of the court what happened to the court's reply to my motion? The

clerks looked on the computer quite a long time. They found nothing regarding it. The clerk gave the order of '

' to the clerk. The clerk came back down, handed me the order with an excuse that the prosecutor was about to send it but slipped his mind. The court order was dated , well over the time limit of . It was signed by Judge . Violation of rule: 2.5, *Competence, Diligence and cooperation....*

On was another pre-trial conference, the only recorded one up to this date. I addressed this issue in court telling the court that the prosecutor was not right. I never received the states reply. The prosecutor said he personally mailed it to my address in How could the Prosecutor, mail the courts reply when the order was sitting on his desk, dated ? Judge said nothing.

Judge , at the beginning of this conference, and recorded, showed his true character. The were scheduled to be present at the conference. They did not show. I asked judge if we should have a continuance. I said it might be better if they were here. Judge after telling me they did not have to be here, said in an abrupt unprofessional like manner; "

." This evinces to me that he thinks I have no rights . I believe this falls under violation of rule: 2.3 (Comment 1&2). Rule: 1.2 (A) and rule: 2.4(A).

The last issue on this recording of was about obtaining personnel records from the . I subpoenaed them for the but they were sent to the court. Judge thought that was inappropriate. He asked the prosecutor if he was aware of them. The prosecutor said he wasn't. The judge said he would send them back. I asked for a copy of them first. He said he would not release them UNTIL he addressed them. I took that as a promise I would get a copy later. Judge gave the state in writing what to do with them. The state responded on . More than later. The motion said I had by to reply to the states motion before returning the documents to the . My next schedule conference was . Therefore, I could reply in court. I asked for a copy then and Judge said he no longer had them. He lied about getting me a copy but more importantly he dishonored their own motion giving me the said time to respond.

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**