

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-048

Judge:

Complainant:

ORDER

June 26, 2019

The Complainant alleged a justice of the peace improperly tried him in absentia, violated his constitutional rights, and improperly exerted jurisdiction over him.

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

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

FOR OFFICE USE ONLY

2019-048

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.

PLEASE SEE ATTACHED PAPERWORK
TITLED "COMPLAINT AGAINST JUDGE
" PAGES

Phone #

COMPLAINT AGAINST JUDGE

- **This complaint is against Judge and of the for the following reasons:**
- **Denial of due process rights-** A judgment may not be rendered in violation of constitutional protections. The validity of a judgment may be affected by a failure to give the constitutionally required due process notice and an opportunity to be heard. *Earle v. McVeigh*, 91 US 503, 23 L Ed 398. See also Restatements, Judgments ' 4(b). *Prather v Loyd*, 86 Idaho 45, 382 P2d 910. The limitations inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. *Hanson v Denckla*, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228. A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficacy for any purpose or at any place. ... It is not entitled to enforcement ... All proceedings founded on the void judgment are themselves regarded as invalid. 30A Am Jur Judgments " 44, 45. It is a fundamental doctrine of law that a party to be affected by a personal judgment must have his day in court, and an opportunity to be heard. *Renaud v. Abbott*, 116 US 277, 29 L Ed 629, 6 S Ct 1194. Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. *Earle v McVeigh*, 91 US 503, 23 L Ed 398. A judgment of a court without hearing the party or giving him an opportunity to be heard is not a judicial determination of his rights. *Sabariego v Maverick*, 124 US 261, 31 L Ed 430, 8 S Ct 461, and is not entitled to respect in any other tribunal. "A void judgment does not create any binding obligation. Federal decisions addressing void state court judgments include *Kalb v. Feuerstein* (1940) 308 US 433, 60 S Ct 343, 84 L ed 370; *Ex parte Rowland* (1882) 104 U.S. 604, 26 L.Ed. 861: "A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its wants of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power to do so exists." *People v. Greene*, 71 Cal. 100 [16 Pac. 197, 5 Am. St. Rep. 448]. "If a court grants relief, which under the circumstances it hasn't any authority to grant, its judgment is to that extent void." (1Freeman on Judgments, 120c.) An illegal order is forever void.
- **MALFEASANCE-the willful commission of an unlawful or wrongful act in the**

performance of a public officials duties which is outside the scope of the authority of the public official and which infringes on the rights of any person or entity.

- **NONFEASANCE**-the will full failure to perform a specific act which is a required part of the duties of a public official.
- **MISFEASANCE**-the negligent performance of the duties of a public official or the negligent failure to perform a specific act which is a required part of the duties of the public official.
- **49. Title 18, U.S.C., Section 242 Deprivation of Rights Under Color of Law**
U.S. Code: Title 18 : Section 242 and 245. This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of ordinance, regulation, or custom to willfully subject or cause to be subjected any person to different punishments, pains, or penalties, then those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race. Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. This definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards.
- **VIOLATION OF AM JURUS PRUDENCE ARGUMENT SECTION 155 16TH VOLUME**- since the constitution is intended for the observance of the judiciary as well as other departments of government and the judges **ARE SWORN TO ITS PROVISION** the courts are not at liberty to overlook or disregard it's commands or countenance evasions thereof it is there duty in authorized proceedings to give full effect to the existing constitution and to obey all constitutional provisions irrespective of their opinions as to the wisdom or the desirability of such provisions and irrespective of the consequences thus it is said that the courts are and should be alert to enforce the provisions of the united states constitution and guard against their infringement by legislative fiat or otherwise in accordance with these basic principles the rule is fixed debbed the duty and the proper case to declare a law unconstitutional cannot be declined and must be performed in accordance with the delivered judgement of the tribunal before which the validity of the enactment is directly drawn into question if the constitution prescribes one rule and the statute another and a different rule it is the duty of the courts to declare that the constitution and not the statute governs in case before them for judgement.
- **Fraud**- the intentional use of deceit, a trick or some dishonest means to deprive another of his/her/its money, property or a legal right. A party who has lost

something due to fraud is entitled to file a lawsuit for damages against the party acting fraudulently, and the damages may include punitive damages as a punishment or public example due to the malicious nature of the fraud. Quite often there are several persons involved in a scheme to commit fraud and each and all may be liable for the total damages. Inherent in fraud is an unjust advantage over another which injures that person or entity. It includes failing to point out a known mistake in a contract or other writing (such as a deed), or not revealing a fact which he/she has a duty to communicate, such as a survey which shows there are only 10 acres of land being purchased and not 20 as originally understood. Constructive fraud can be proved by a showing of breach of legal duty (like using the trust funds held for another in an investment in one's own business) without direct proof of fraud or fraudulent intent. Extrinsic fraud occurs when deceit is employed to keep someone from exercising a right, such as a fair trial, by hiding evidence or misleading the opposing party in a lawsuit. Since fraud is intended to employ dishonesty to deprive another of money, property or a right, it can also be a crime for which the fraudulent person(s) can be charged, tried and convicted. Borderline overreaching or taking advantage of another's naiveté involving smaller amounts is often overlooked by law enforcement, which suggests the victim seek a "civil remedy" (i.e., sue). However, increasingly fraud, which has victimized a large segment of the public (even in individually small amounts), has become the target of consumer fraud divisions in the offices of district attorneys and attorneys general.

- **Extrinsic Fraud-** occurs when deceit is employed to keep someone from exercising a right, such as a fair trial, by hiding evidence or misleading the opposing party in a lawsuit. Since fraud is intended to employ dishonesty to deprive another of money, property or a right, it can also be a crime for which the fraudulent person(s) can be charged, tried and convicted.
- **Exclusionary Rule-** In the United States, the exclusionary rule is a legal rule, based on constitutional law. The rule prevents evidence collected or analyzed in violation of the defendant's constitutional rights from being used in a court of law. This may be considered an example of a prophylactic rule formulated by the judiciary in order to protect a constitutional right. The exclusionary rule may also, in some circumstances at least, be considered to follow directly from the constitutional language, such as the Fifth Amendment's command that no person "shall be compelled in any criminal case to be a witness against himself" and that no person "shall be deprived of life, liberty or property without due process of law."

" Judge _____ has violated the exclusionary rule by depriving me of my right to a fair trial by my peers. Judge _____ was very unreasonable and exceeded his judicial powers to find me guilty without being able to be present at my trial for _____"
" _____ " (I am _____ through the _____
_____) for a head injury that occurred while I was _____ . I have had migraine headaches since I was _____ years old and can provide medical

documentation to prove this. Since I have _____ and _____ this increases the chances of having migraine headaches. I don't get to decide when and where I start getting a migraine head. Migraine headaches can be extremely debilitating. There is absolutely no way to be able to predict when I'm going to get a migraine headache, therefore there is no way to be able to provide the courts with twenty four hour advanced notice. I called the Courthouse on the day of my trial at approximately _____ to inform the court that I would not be able to make it to the court to make a special appearance for trial because I was experiencing a severe migraine headache. My court appearance was scheduled for _____ I spoke with _____ at the _____ explained to me that I needed to write an email explaining to the courts why I could not appear. I wrote _____ emails to the court and I was still found guilty without being present at my trial because of _____
" Judge _____ violated my 5th, 6th and 14th amendment rights.

United States

Trial in absentia is a criminal proceeding in a court of law in which the person who is subject to it is not physically present at those proceedings. *in absentia* is Latin for "in the absence". Its meaning varies by jurisdiction and legal system.

In common law legal systems, the phrase is more than a spatial description. In these systems it suggests a recognition of a violation to a defendant's right to be present in court proceedings in a criminal trial.^[citation needed] Conviction in a trial in which a defendant is not present to answer the charges is held to be a violation of natural justice.^[1] Specifically, it violates the second principle of natural justice, *audi alteram partem* (hear the other party). A

For more than 100 years, courts in the United States have held that, according to the United States Constitution, a criminal defendant's right to appear in person at their trial, as a matter of due process, is protected under the Fifth, Sixth, and Fourteenth Amendments.

- **5th Amendment-** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
- **6th Amendment-** The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism, but much more often figures in cases that involve (for example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been

**THE COMMISSION'S POLICY IS
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COMPLAINT ON ITS WEBSITE.**

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REMAINDER OF THE
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PLEASE MAKE YOUR REQUEST
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NUMBER IN YOUR REQUEST.**