

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-024

Judge:

Complainant:

ORDER

July 21, 2022

The Complainant alleged a city court judge refused to look at his cell phone when he tried to present some saved images as evidence in his civil traffic matter.

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 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 Commission Rules 16(a) and 23(a).

Commission member J. Tyrrell Taber did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on July 21, 2022.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2022-024

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.

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ON SEPARATE OCCASIONS I TRIED TO
GET JUDGE TO VIEW SAVED
IMAGES ON MY PHONE THAT PROVIDED
EVIDENCE IN SUPPORT OF MY POSITION.

- ON THE ATTEMPT SHE REFUSED AND
SAID THAT I SHOULD HAVE PRINTED THEM.
- ON THE ATTEMPT SHE SAID THAT SHE
DID NOT WANT TO TAKE MY PHONE.
- ON THE ATTEMPT I OFFERED TO
"LET HER RETAIN MY PHONE" FOR AS LONG AS
NEEDED. SHE AGAIN DECLINED.

IT SEEMS TO ME THAT THIS WAS NOT IN
ACCORDANCE WITH ITEMS IN THE
"CIVIL TRAFFIC HEARING INFORMATION" SHEET
THAT I WAS GIVEN (INCLUDED).

CIVIL TRAFFIC HEARING INFORMATION

The following contains some basic information about the civil traffic hearing that you have requested be held in your case. Please read this **BEFORE** going to court.

1. What is a Civil Traffic Hearing?

Under Arizona law, if a person denies the allegations filed in a traffic ticket he or she received, the court must set the matter for "hearing," which is a proceeding of relative formality in which witnesses are heard; evidence is presented by both sides, and which terminates in a final order.

2. What are the issues involved in a civil traffic hearing?

The questions to be determined in any given hearing will vary depending on the specific allegation of violation contained in the complaint. It may, therefore be helpful to note the exact "section" number of the "ARS" or "Local Ordinance" that is referred to and alleged to have been committed in the complaint. This section number, together with the written description, can then be used to refer to the specific section of Title 28 of the Arizona Revised Statutes (The Arizona Revised Statutes can be found in most public libraries and online) or the Local Ordinance. Remember that a civil traffic hearing is only about whether this alleged traffic law was broken.

3. What issues will not be considered in a civil traffic hearing?

Only those issues that pertain to the specific traffic law alleged to have been violated will be considered. Examples of issues that will not be considered include:

- Who should pay who for damages stemming from an accident that took place, i.e. who was at "fault" in the accident.
- The "rudeness" of the police officer who issued the traffic ticket;
- Whether a particular violation was done intentionally or by simple oversight;
- Whether the defendant has the money to pay a potential fine that could be imposed;
- Whether anyone was injured or otherwise put at risk by the defendant's conduct.

4. Who decides the issues and outcome of a civil traffic hearing?

Arizona law provides that the judicial officer will "hear and dispose of civil traffic cases... and the judgment of the judicial officer constitutes the judgment of the court." No right to a jury trial exists in traffic court.

5. How will the judicial officer decide the issues and outcome of the case?

A civil traffic case is decided by applying the standard of proof provided by law that is commonly referred to as "preponderance of the evidence." If the state, as the plaintiff, shows that the preponderance of the evidence (in other words, the greater weight of all the evidence) demonstrates it is more likely than not that a violation was committed, the state wins. If the evidence does not demonstrate this, the defendant wins.

6. What kind of evidence can be presented to the court?

Any evidence may be offered, including witness testimony, prior witness statements or sworn testimony, diagrams, exhibits, photographs, or any other type of evidence. The only requirements are that it must be "relevant and material and have some probative value to a fact at issue." Please note that the court must retain all of the evidence which is offered. If the evidence will be displayed electronically, you must bring the appropriate equipment to display it. In addition, the evidence must be in a format which the court can retain at the end of the hearing. To determine whether these requirements are fulfilled, a defendant must ask what the "facts at issue" will be in the hearing and then decide whether a given piece of evidence is relevant and proves something important about those facts.

7. How does the hearing commence?

First, the court is called to order. This means all conversation must cease, hats are removed and full attention and respect is paid to the court. The court "calls" a given case and the main state's witnesses and the defendant come forward and sit at the tables provided. The judicial officer reads aloud the complaint, identifies evidence and witnesses, and asks if the parties are ready to proceed. If so, the proceedings begin.

8. What is the order in which testimony and evidence is presented to the court?

The order of proceedings in the hearing is as follows: Testimony of state's witnesses, Testimony of defense witnesses, Testimony of state's rebuttal witness, if any, and Surrebuttal testimony by defense witnesses, if needed.

Also, the court will allow the defendant a chance to ask any questions of any witnesses regarding what they have presented in their testimony. During this opportunity, however, the defendant will not be allowed to argue with or contradict the witness, or otherwise make any affirmative statements about his or her case. The defendant will be given a chance to make such statements only during the time set aside for him or her to do so.

9. Is any other kind of evidence, other than testimony, admissible during the hearing?

In rendering a judgment, the court will consider any evidence submitted by either side, so long as it is relevant and material. Examples of other types of evidence include: diagrams, photographs, physical exhibits and written witness statements, signed and sworn to under oath.

10. How does the hearing conclude?

After each side has had an opportunity to fully present their respective cases, the judicial officer will close the evidentiary portion of the proceedings. This means that the time to present each side's case has come to an end and the judicial officer will no longer consider any further statements, argument, or any other presentation by either side. When the court closes the time for receipt of the evidence, it is time for a judgment to be rendered and the hearing to end.

11. If a defendant is found "Responsible" for the violations alleged in the complaint, and a fine is imposed for this, when must the fine be paid?

Any fine that is imposed is due and payable at the time the judgment is entered. Therefore, a defendant must pay the fine before the close of business the day that the hearing was held and the judgment was entered. The judicial officer may choose to set up a payment plan at his/her discretion.

12. If the court should rule in favor of the State by finding the defendant "Responsible", does the defendant have any right to appeal?

Should a hearing be decided in favor of the State, the defendant has a right to appeal the judgment of the court to a Superior Court judge. This right to appeal consists only of a right to review the record to determine if any error of law took place in the proceedings. The right to appeal does not give the defendant the right to another hearing, a right to reargue facts of the case, or the right to delay payment of any fine or sanction imposed. The appellate right is merely a right of review of the previous proceedings to determine whether there has been any misinterpretation or misapplication of the law of the case.

COURT

STATE OF ARIZONA Plaintiff Vs Defendant	Case No: Complaint No:	HEARING NOTICE-CIVIL TRAFFIC
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This matter has been scheduled for Civil Traffic Hearing on _____ in the
COURT.

By scheduling a civil traffic hearing, you give up your right to attend defensive driving school.

If you are found responsible all fines and fees are due on the date of sentencing unless a payment contract is established with the Court. If you fail to appear on this date and time, a default judgment will be entered against you, and your case may be referred to a collection agency. Pursuant to Rule 11, Rules of Procedure in Civil Traffic violation Cases, if an attorney is retained, the attorney's Notice of Appearance must be filed with the court at least 10 days prior to the hearing date. Failure to file a Notice of Appearance in a timely manner constitutes a waiver of defendant's right to counsel

Applies if checked:

[] If you are found or plead responsible for disobeying a red-light traffic signal, including flashing stop signals, you will be ordered by the Motor Vehicle Division to successfully complete traffic survival school.

IT IS YOUR RESPONSIBILITY TO BE AWARE OF ALL FUTURE COURT DATES, SHOULD ANY SCHEDULED MATTER BE CONTINUED, YOU MUST CONTACT THE COURT OR YOUR ATTORNEY TO GET THE NEW DATE.

Please notify the Court of any change of address in order to continue receiving court notices. Please contact the court if you need special accommodations (such as assistive devices, interpreters, etc.)

Date:

NOTICE:

Officer _____ YOU ARE HEREBY NOTIFIED of the hearing indicated above
involving Complaint No: _____ to represent the State.

THE OFFICER'S FAILURE TO APPEAR FOR THIS CIVIL TRAFFIC HEARING WILL AUTOMATICALLY RESULT IN CITATION DISMISSAL.

Copy has been sent to the citing officer as well as the Defendant on Date: _____