

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-218

Judge: Bruce E. Staggs

Complainant: Gerald Henry

ORDER

The Complainant alleged a justice of the peace made an improper comment about religion in a court hearing. The Commission's investigation revealed that the justice of the peace also may have engaged in ex parte communications and failed to follow the law by injecting himself as an advocate into the proceedings.

Cochise County Justice of the Peace, Benson Precinct, Judge Bruce E. Staggs, presided over a contested hearing involving four intertwined injunctions against harassment (IAH) between feuding neighbors – the Montijos and the Henrys. At the conclusion of the hearing, Judge Staggs dismissed the IAHs as to Mrs. Henry, however, he upheld the IAHs as to Mr. Henry. Judge Staggs then made a statement to the parties about potentially trying to resolve the dispute, despite the no contact order, as follows:

I know you got a solid foundation in Christ. I don't know what you guys' beliefs are, but I know you do. If you have that, we can modify this thing to where you guys can have contact through email and maybe try to work this out to where you can be good citizens.

The comment about having a solid foundation in Christ was directed to Mr. Montijo.

Following this hearing, Mr. Henry, through his counsel, Wallace Hoggatt, filed a Motion for Change of Judge for Cause in a pending criminal case before Judge Staggs stemming from an alleged violation of the IAH. The motion alleged that Judge Staggs improperly considered ex parte information about the Montijos' religious views, that Judge Staggs' comment showed impermissible bias, and that Judge Staggs appeared to rely on the parties' religious views in evaluating the IAHs. Mr. Hoggatt personally filed the motion at the counter at Judge Staggs' court. Judge Staggs spoke directly to Mr. Hoggatt at the time the motion was filed, in which he denied he had any bias. Mr. Hoggatt inferred from this comment, and the tone of voice, that Judge Staggs was displeased with the motion being filed. The motion was referred to the Cochise County Presiding Justice of the Peace, Trevor Ward, and Judge Ward assigned Judge Curfman to hear the motion. At a hearing on the motion,

Judge Curfman provided to both parties a copy of a document entitled “Response to Motion and Court Order,” in which Judge Staggs argued that Mr. Henry’s motion did not make an adequate argument to support a change of judge for cause, but nonetheless, pursuant to Rule 10.1, Ariz.R.Crim.Pro., he would refer the matter to the presiding judge for ruling. The certificate of service on the document prepared by Judge Staggs does not show that it was distributed to either party. Judge Curfman granted the motion for change of judge for cause, and Mr. Henry’s criminal case was ultimately resolved through a diversion agreement before another justice of the peace.

In his response, Judge Staggs admitted to making the comment about religion, and the court recording confirmed the statement was made. Judge Staggs acknowledged the impropriety of the comment, but stated he was merely trying to encourage communication between the neighbors. With respect to the conversation with Mr. Hoggatt at the time the motion for change of judge for cause was filed, Judge Staggs claimed no details of the case were discussed. Judge Staggs also indicated that failure to distribute the “Response to Motion and Court Order” was an issue of staff training, and that he and his court manager were rectifying this issue.

Judge Staggs was previously publicly reprimanded for, in part, an improper comment about religion in CJC Case Nos. 18-077 and 18-143.

The Commission found that Judge Staggs’ conduct violated the following provisions of 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 2.2, which states, “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.”
- Rule 2.3(B), which states, “A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge’s direction and control to do so.”

- Rule 2.4(B), which states, “A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.”
- Rule 2.9(A), which states, “A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter . . .”
- Rule 2.10(A), which states, “A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.”

Accordingly, Justice of the Peace Bruce E. Staggs is hereby publicly reprimanded for the conduct described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judicial officer’s response, and this order shall be made public as required by Commission Rule 9(a).

Commission members Roger D. Barton and Christopher P. Staring did not participate in the consideration of this matter.

Dated: May 31, 2023

FOR THE COMMISSION

/s/ Joseph C. Kreamer

Hon. Joseph C. Kreamer
Commission Vice-chair

Copies of this order were distributed to all appropriate persons on May 31, 2023.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2022-218

COMPLAINT AGAINST A JUDGE

Name: Gerald Henry Judge's Name: Bruce Staggs

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.

At the end of the hearing Judge Staggs made the remark that he knew that the Montijos had a solid foundation in Christ and I don't know about you. (Mr. Henry).

this is not the first time Judge Staggs has brought up religion.

Judges have the right to thier own religious views but it is an error when a trial judge interjects his own views into the proceedings.

-----Original Message-----

From:

Sent: Tuesday, December 20, 2022 8:26 AM

To: Commission on Judicial Conduct <CommissionJudicialCo@courts.az.gov>

Subject: RE: CJC Case No. 22-218

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

----- Original Message -----

From : Commission on Judicial Conduct[<mailto:CommissionJudicialCo@courts.az.gov>]

Sent : 12/19/2022 9:39:55 AM

To :

Cc :

Subject : RE: CJC Case No. 22-218

the date of that hearing was 2-3-22

Good morning:

The Commission is investigating the allegations of your complaint against Justice of the Peace Bruce Staggs in reference to Case No. CM202200014. In your complaint, you mentioned that Judge Staggs was discussing religion at the end of a hearing, but you did not specify the date of that hearing. Was it June 14, 2022 – the same date that you submitted your complaint? Or were you referencing a prior hearing date?

Please let us know the date
of the hearing in which that interaction occurred.

We do apologize for the delay in our investigation. We had staffing shortages in 2021 and part of 2022 that have delayed our case processing times. We are working diligently to clear the backlog.

Thank you for your attention to this matter.

Arizona Commission on Judicial Conduct
1501 W. Washington, Suite 229
Phoenix, AZ 85007
602-452-3200

January 24, 2023

Commission On Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, Arizona 85007

Attention: April E. Elliott

Re: 22-218

Dear Ms. Elliott,

I'm in receipt of your January 4, 2023, notification regarding the Complaint of Mr. Gerald J. Henry.

Mr. and Mrs. Montijo are long standing residents at their current location in Pomerene, Arizona. Mr. and Mrs. Montijo have no court history of civil harassment or criminal history prior to Mr. & Mrs. Henry obtaining residence as next door neighbors. Following moving in, the Henry's began making complaints to Cochise County regarding property issues. This has escalated to where both parties have come into the court for Protective Orders.

On July 29, 2020, Mr. Henry filed petitions for Injunctions against Harassment against both Mr. and Mrs. Montijo. The allegations in the petition were as follows:

1. On July 25th 2020 I watched the defendant's 3 young children push each other in a stroller to the top of the road, then run back down, let the stroller go so it and child inside runs into my fence. This was done about 12 times.
2. The son would take a baseball bat and beat the tree, which would scare my poultry. Also the son will push off my fence with his feet.
3. The defendant will play music at very loud levels several times a week which also scared my poultry, and can be heard in my house.
4. I do not speak to the defendant or anyone in his house and I believe this all being done to instigate me into saying or doing something so they can have me arrested.

These petitions were denied as they did not meet the requirements for an Injunction Against Harassment to be issued.

On December 29, 2021, Mr. Henry was charged with ARS 13-1802 A1, Theft; ARS 13-2921 A3, Harassment and ARS 13-2904 A2, Disorderly Conduct.

On January 12, 2022, Mr. and Mrs. Montijo filed Injunctions Against Harassment against both Mr. and Mrs. Henry. The allegations in the petition were as follows:

PO 2022 000005 Eliot T. Montijo versus Gerald Henry

04/18/2021 - Coming home from the grocery store. I entered our property, shortly after I heard a loud gunshot while our children were playing in the yard. I noticed our neighbor Gerald Henry firing a high-powered rifle towards the back of the hill behind his house. I believe this is a direct threat to our family, when I entered our property. We have video verification this incident.

10/19/2021 - My son accidentally bounced a volleyball into our neighbor's yard. Our neighbors kept our volleyball, and vandalized the ball, with a face. Then, only to display the ball on their main gate. It is still currently being displayed.

12/29/2021 - Neighbors were continuously playing music at an unreasonable volume. While having the device facing our house unattended. This went on for several weeks. They upgraded to a louder device. We finally filed a complaint with the Sheriff's Department.

PO 2022 000008 Eliot T. Montijo versus Patricia Henry

3/01/2017 - We have pictures showing our neighbor Gerald Henry pouring water on their property, photographing the wet ground and submitting it to the county lying.

12/29/2021 - At 9:15 AM I pictured a loud stereo playing music continuously throughout the day. We possess physical documentation and photos of other incidents of our neighbors lying to the county about us concerning our grey water line. The information has been documented with the County. We finally filed a complaint with the Sheriff's Department.

01/08/2022 - Patricia Henry engages in the harassment of our family with husband Gerald Henry. As with the order of protection I filed against Gerald Henry.

PO 2022 000009 Tracy Lynn Montijo versus Gerald Henry

04/18/2021 - I was startled, when I heard a gunshot coming from outside. I immediately rushed outside where my children were playing and gathered them from my husband. I feel like this is threatening to our family. We have video verification this incident.

10/19/2021 - My son accidentally bounced a volleyball into our neighbor's yard. Our neighbors kept our volleyball, and vandalized the ball, with a face. Then, only to display the ball on their main gate. It is still currently being displayed.

11/24/2021 - As I went outside to run on my treadmill my neighbor Gerald Henry proceeded to start a fire. He does this intentionally when he sees me outside exercising. He has a windmill and ribbons placed on his property strategically to indicate the direction of the wind. The smoke prohibits me from working out on my property.

12/5/2021 - Neighbors were continuously playing music at a reasonable volume. While having the device deliberately facing our house unattended. This went on for several weeks. They upgraded to a louder device. My husband and I finally filed a complaint to the sheriff's department.

PO 2022 000010 Tracy Lynn Montijo versus Patricia Henry

12/29/2021 - A loud speaker playing facing our property unattended continuously at a very loud volume. This is been going on for several weeks. My husband reported the incident to the Sheriff's Department. Sheriff Deputy Rick Cleveland came out observed the situation.

01/08/2022 - Patricia Henry engages in the harassment of our family with husband Gerald Henry. The dates coincide with the order of protection against Gerald Henry. I was running yesterday on my treadmill, when neighbors were near the fence with the device, observing the exercising. While I was exercising Gerald Williams proceeded to start a fire on this windy day. I videoed him attempting to ignite the fire while his wife Patricia was observing from the porch.

Mr. Henry gave the following answer for all four Injunction Against Harassment cases:

I haven't spoken to Tracy Montijo since 2017 and I don't feel that I'm harassing him. I just want to be left alone.

The charge of music playing to loud music was by accident. I was in my backyard working in my shed and cleaning my chicken coop. I had to go to Tucson for my wife's MRI and forgot to turn it off. I do not play my music any louder than Tracy Montijo does when she exercises. Her music vibrates threw my whole house.

As for the ball, it laid in my driveway for four days. Noone said it was theirs or asked for it back. I kept it for another week waiting for someone the claim it. When noone did I made a Mr. Wilson from the movie Castaway.

As for the lower power rifle shot it was made by a 410 shotgun to kill a gopher. Deputy Cleveland was that my residence to check on the shot and said I was fine. It was fired on the southside of my property approximately 250 yards from the Montijo's. No action was taken.

As for the burning I call and see if I'm allowed to burn before I do. I do not wait till Tracy Montijo is exercising. I burn when I'm allowed. I have 2 windmills which I've had for several years, and for the ribbons, they where just put up last week as corner markers for the new pig pen.

I have signs posted along my fence that say no trespassing and do not touch fence for reason the children would ride a stroller fast and run into the fence, also the son was seen pushing off the fence.
(Spelling mistakes have not been corrected)

I bring the above to the attention of the Commission to show the deep-seated hostility that the parties have against each other.

Based on testimony given by both Mr. and Mrs. Montijo, Injunctions against Harassment were issued against both Mr. and Mrs. Henry.

On January 27 2022, Mr. Wallace R. Hoggatt, filed a Notice of Appearance on the above four cases.

On February 3, 2022, a contested hearing was held on all four cases. Case #'s PO 2022 00008 and PO 2022 000010 against Mrs. Henry were dismissed. Case #'s PO 2022 00005 and PO 2022 00009 against Mr. Henry were left in force.

On February 14, 2022, Mr. Hoggatt filed a "Motion For Change Of Judge For Cause" for the upcoming criminal case # CM 2022 000014 against Mr. Henry. As stated above, Mr. Henry was cited on December 29, 2021 for ARS 13-1802 A1, Theft; ARS 13-2921 A3, Harassment and ARS 13-2904 A2, Disorderly Conduct.

The Commission Complaint stated: "*The certification of distribution on the document is blank and does not show it was distributed to the parties*". We have a policy in this Court that when a document is sent out, it has to go to both parties, as required by Rule. The clerks have been trained repeatedly that they are supposed to fill out this information and place their initials on the document. It is very apparent that the policy was not followed. On January 19, 2023, my Court Manager and myself had an audit final exit interview with the AOC. One of the initial findings of the audit revealed that the Clerks were not following this policy consistently. The exit interview revealed that while improvement has been made, this policy still is not being consistently followed. On the next day, January 20, 2023, a staff meeting was held. This policy was once again reiterated, and staff were instructed by the Court Manager that this policy had to be followed.

The Commission Complaint stated: "*Your response should address your comment regarding religion, your conversation with Mr. Hoggatt at the time the motion for Change of Judge for Cause and your Response to the Motion for Change of Judge for Cause.*"

Religion

I deny that any religious beliefs impacted my decision regarding keeping the Injunctions Against Harassment in place against Mr. Henry. Had I been bias, I would have kept the Injunctions against Harassment in place against Mrs. Henry and would not have dismissed two of the allegations against Mr. Henry. At no time did I "interject" my own religious views into the proceedings as Mr. Henry has alleged in his Complaint.

I believe my Order dated February 15, 2022, clearly expresses why I wanted to modify the conditions of the Injunction Against Harassment, specifically to make it possible for the parties to communicate through written documentation, to perhaps heal their relationship and prevent future escalations of harassment. As can be seen by the allegations from the Petitions, there are major challenges in their relationships. I believe these challenges began when the Henry's first moved in and made multiple complaints to Cochise County authorities alleging that gray water from the Montijo's property was spilling onto the Henry's property. The Montijo's have photo documentation of Mr. Henry pouring buckets of water on both the Henry property and the Montijo's property, and then alleging that Mr. Montijo was contaminating his property with graywater.

My concerns regarding escalations were well-founded, as escalations are occurring at this time. Case # CM 2022 000014 has been dismissed. Mr. Hoggatt requested a jury trial for ARS 13-1802 A1, Theft. The Prosecutor did not want to expend the limited resources of Cochise County, for a jury trial, for the alleged theft of a volleyball. On July 21, 2022, the Prosecutor filed a Motion to Suspend Prosecution that stated if Mr. Henry would remain a law-abiding for three months, the State would dismiss the case with prejudice. On October 21, 2022, the case was dismissed, with prejudice. Following dismissal of the case, Mr. Henry has again filed graywater complaints with Cochise County. Mr. Henry has also mounted a rifle on his golf cart and parked the golf cart with the rifle pointed at the Montijo's residence and has also filed another Injunction Against Harassment against Mr. Montijo in another court.

Notwithstanding my intentions to allow communication due to concerns of escalation, by using the example of Mr. Montijo's known beliefs, in hopes of Mr. Montijo changing his mind to allow communication to occur, it was incorrect, unprofessional, and was improper. It was not intentional nor planned, but it did occur. It was articulated in the "spur of the moment", without proper thought or consideration. It was not deliberate or premeditated. In retrospect, a totally different example should have been used.

Mr. Hoggatt

On February 14, 2022, I happened to be walking by the front desk window and I saw Mr. Hoggatt. I stopped to be cordial and say "Hi". I asked Mr. Hoggatt the question what brought him to the court on that day. The front desk clerk stated that Mr. Hoggatt was filing for a change of Judge and handed me the Motion. I scanned it quickly and stated that bias did not enter into my ruling of keeping the Injunctions against Harassment in place against Mr. Henry, or they would have been kept in place against Mrs. Henry also. Mr. Hoggatt agreed that bias did not occur and stated that he didn't want to file the motion, however his client was demanding it. That was the total of the short conversation. Nothing specific was discussed about the previous Injunction Against Harassment case and nothing whatsoever was discussed about the upcoming criminal case against Mr. Henry. Mr. Hoggatt was one of my previous Presiding Superior Court Judge of Cochise County. After Mr. Hoggatt retired, I addressed him one time as "Judge Hoggatt". Mr.

Hoggatt made it very clear to me not to refer to him as "Judge" as it could be perceived that he was being given preferential treatment. I can assure the Commission that had ex parte communication regarding the case taken place, Mr. Hoggatt, being the professional person he is, would have immediately terminated the conversation. I am confident that Mr. Hoggatt would have reported it to the Commission, had he perceived that ex parte communication had occurred.

Change of Judge for Cause

As I had never had a Change of Judge for Cause Motion filed against me before, I immediately contacted my Presiding Justice of the Peace for direction. I advised my Presiding Justice of the Peace of the Change of Judge for Cause Motion that was filed. He advised me that a Change of Judge Hearing had to be held. I was instructed to transfer the case to him. On February 14, 2022, I sent the draft of my Order to him for review. I was advised to remove a paragraph that stated that should a Change of Judge for Cause Motion be denied, that in the interest of justice, I would be recusing myself following the hearing. I followed his instructions and on February 15, 2022, I signed the Order and referred the case to him for reassignment. I instructed staff to send the Order to the Presiding Justice of the Peace and to the parties. The Commission is in possession of my Order.

I hope that the Commissions understands my reasoning for wanting to modify the contact restrictions in Mr. Henry's Injunctions Against Harassment, so that the next door neighboring parties could communicate with each other, in writing, and avoid future hostility. I further hope that the Commission perceives that by me dismissing the Injunctions Against Harassment against Mrs. Henry and ruling that two of the allegations in the Montijo's petition against Mr. Henry did not stand, is proof that I held no bias against the Henrys. I further hope that the Commission recognizes that I am remorseful for making the comment about Mr. Montijo's religious beliefs, it was in error and that it was not made out of any bias or ill intent on my part. I further hope that the Commission accepts that the conversation that was initiated with Mr. Hoggatt was solely as a friendly greeting and that no details/facts of the Injunction Against Harassment hearing were discussed and that nothing was discussed regarding the impending criminal case # CM 2022 000014, against Mr. Henry. Finally, I hope that the Commission understands that this was the first time I had a Change of Judge for Cause Motion filed and I followed the directions that I was given.

I hope that I have answered the Commissions questions adequately.

Respectfully,

Bruce Staggs
Justice of the Peace, JP-3