

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-216

Complainant: No. 1107310087A

Judge: No. 1107310087B

ORDER

The complainant alleged that a justice of the peace improperly handled a matter that should have been a juvenile case and suspended a driver's license for a nonappearance even though the individual appeared. After analyzing the complaint and the judge's response, the commission found no evidence of ethical misconduct on the part of the judge and dismissed the case. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: November 23, 2010.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on November 23, 2010.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY**2010-216****COMPLAINT AGAINST A JUDGE****Your name:****Judge's name:****Date:** 8-31-10

Instructions: Use this form or plain paper of the same size to file a complaint. Attach additional pages, as needed. Please describe in your own words what the judge said or did that you believe constitutes judicial misconduct. To help us understand your concern, be specific and list all of the names, dates, times and places where the conduct occurred. Include only copies of original documents or court recordings that are relevant to your allegations. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

Additionally, in the attached document you will see a series of emails between the deputy county attorney & myself. Mr. Huey says that the "judge hadn't released" my daughter from the trial. I can't find any rule or statute that says a judge has to "release" someone from a Pretrial Conference - the conference is with the prosecutor, not the judge, however.

I suppose the judge realized his problem w/ releasing someone from a pretrial & that he then had to boot strap himself into another reason under 8-323 - but what appeared - as evidenced by the judge's signature on the motion to strengthen.

(Attach additional sheets as needed)

Attachment to Complaint

On July 1, 2010, I appeared with my daughter (17-years old) who had been cited on Memorial Day for minor in consumption. Her appearance was in courtroom at 10:00 a.m. I arrived early with my daughter and checked in. The courtroom facilities were over packed (and I'm sure in violation of fire safety laws). People were sitting on the floor, blocking the hallways. At approximately 11:00 a.m., I asked one of the court staff if the judge had started his 9:00 a.m. docket, and one of the female staff said "no, the judge was late." At approximately 11:30 a.m., I again asked one of the court staff if the judge had even begun the 9:00 a.m. docket, and she laughed and said "no." I told her I didn't think it was funny and that too many people were in the office creating a hazard.

The courtroom was open and I went in and listened to several of the cases to try to determine where the judge was on the docket. I am sure the judge could see the very crowded courtroom and the crowded halls, people sitting on the floor. I observed the judge giving long monologues on the 14th amendment and his authority, not hearing cases when he did this. He had a captive audience.

At 12:30 p.m., I had to leave. I asked if the judge had begun the 10:00 a.m. docket, and the answer was "no." I asked when they thought the judge might start the 10:00 a.m. docket, and they were unsure. I told one of the female court staff that I had to leave and that I would file a Notice of Appearance and a Motion to Continue. Her reply to me (didn't catch her name, but I recognize her), was that I had to wait and that was part of my punishment. She said that if I didn't like waiting, then I shouldn't have gotten into trouble.

I asked for the forms and filed a Notice of Appearance and a Motion to Continue. I did so in the presence of my daughter and a friend (whose son was also cited was standing nearby). I gave the documents to the female staff (and stupidly didn't ask for copies because I had to rush to another appointment). She told me that I couldn't leave and that the judge would deny my Motion to Continue. I said I would have to risk that, but that I thought if he didn't grant it, his actions would be considered "arbitrary and capricious." I left with my daughter. I called later that afternoon and the judge had granted my motion, and set a pretrial conference for August 18, 2010 at 10:00 a.m.

The next day I spoke to my friend, Steve Silvernail, about his son (who was also on the 10:00 a.m. docket) and asked when he had finally gotten in to see the judge. He said around 2:30 p.m.

The week before my daughter's pretrial conference, I called the Deputy County Attorney, Cameron Huey, and asked if I could come in on a date different than the 18th or if it had to be on the 18th, could I move the conference up to 8:00 a.m. He said yes, and some emails ensued after that conversation. Although I am not filing a complaint against Cameron Huey, his actions exacerbated the issues with the judge.

On the 18th, my daughter and I arrived at 8:00 a.m. We waited, and waited, and waited. I went up to the court staff desk and asked if Mr. Huey was in. The female staff member said "yes." I asked if he followed the sign-in sheet, as we were second on the sign-in, and she said "yes." I watched Mr. Huey go up to the counter, look at the list and tell the female staff person that he was going to make the people with attorneys wait (indicated on the sign-in sheet) and take the unrepresented folks first. I then observed Mr. Huey call an African American male minor from the waiting room (not represented). The young man and his mother proceeded to follow Mr. Huey. Mr. Huey stopped the young man's mother and said she couldn't go in to the office with her son to discuss the pretrial. His mother, very embarrassed, said that her son had a learning disability and couldn't read, and that she had to go in with him. She had to announce this to every one in the waiting area (at least 20 people by then). The level of professionalism in the court office by the county attorney's office and by the court staff is abhorrent.

I waited until the young African American male left and went down the hallway. Mr. Huey was standing outside his office, and I announced my name. He said he forgot but that I should go right in with my daughter. Mr. Huey presented the terms of the plea agreement, and I asked a few questions. I asked Mr. Huey about my daughter's record and if it is confidential because she's a juvenile. Mr. Huey told me that she was being charged as an adult. I was stunned as my limited knowledge and memory from law school was that the juvenile court has jurisdiction and has to be transferred to adult court to be treated as an adult. I asked what the statutory basis for that was – did he have a statutory cite? I told him I was a regulatory law person, so the first place I would look is to the statutes. He said he didn't know, but the judge did. I asked if the juveniles were normally charged in the justice of the peace court as adults, and he said "all the time." I again asked for a cite, and told him that I was still very surprised. He

told me the judge regularly states why the court has jurisdiction over juveniles and charges them as adults, and I asked him if would ask the judge. He said I could ask the judge after signing the plea agreement. I told him I would not willingly give the court jurisdiction if I thought the court might not have jurisdiction. I didn't have access to a computer to do legal research and the county attorney did not have any statutes available.

He told me to file a motion to transfer the case to juvenile court, but that the judge would deny my motion. He said my only remedy after the judge denied my motion was to special action the jurisdiction issue. I said that was fine.

I went to the front desk and asked for a form (from the court) in order to file a Motion to Transfer the case to juvenile court. The judge was standing in the clerical area, not more than 20 feet from me. As stated by the county attorney, the judge denied the transfer. The deputy county attorney wasn't standing far from me and I said I would special action the case, and that I would be in contact. The judge was very close, and I am certain he heard the exchange (not heated – just, ok, next steps). I left.

I emailed the county attorney later after I went back to my office. I discovered the statute that the county attorney had not known, and obviously learned from the judge later that day. I was very surprised to learn that the judge suspended my daughter's driver license because she had not "appeared" that day. Trouble is, the judge stood there, and denied my motion to transfer that I signed as her attorney. I also learned from the county attorney that the judge said he suspended her license because I had not filed a Notice of Appearance. I called the court, and spoke to the same female court staff who has been very rude in the past, and when I asked where the Notice of Appearance was in the file, she screamed at me. I asked why she thought it necessary to scream at me and that she is responsible to treat the public with courteousness and respect. She did quiet down a bit, but her tone of voice was very mocking.

As advised by the county attorney, I asked if I could fax over a motion to quash the driver licenses and to reset the matter for another pretrial. She told me I had to send a messenger or personally file the motions.

I went to the court house the next day and filed a motion to quash and a motion to reset along with the second Notice of Appearance. I asked to look at the file, and the got copies of the Motion to Continue and the suspension of license. I also looked in the judge's notes, and he said the juvenile had not appeared. I

asked for dated and time-stamped copies of the motions. My first Notice of Appearance was not in the file. I did ask for and get a blank copy of the form, and it is in fact the form I filled out the first time I appeared.

I asked for any paperwork that indicated that the juvenile court had given the JP court jurisdiction to hear the case, and they gave me a copy of paper that not only has my daughter's name, but two other juveniles, and their offenses (not formal charges). I told the court staff person that I probably shouldn't have been given the paper containing information regarding other juveniles. I attach that for the court's review.

From the outset on July 1, court staff (and therefore the court) treated the public in an inappropriate manner. I would like to believe that the court staff was merely negligent in filing my Notice of Appearance in the file, but am concerned that is not the case. After I told the county attorney and the court staff (within hearing of the judge) that I intended to file a special action on the jurisdictional issue, my daughter's driving privileges are suspended on the pretense that a Notice of Appearance was not filed. The judge, however, forgot that I signed the motion to transfer the case to juvenile court as my daughter's attorney and that he denied the motion – so an appearance was made. Now I have to go through all of this because the judge abused his discretion.

I have practiced law in Arizona for about 30 years. I've appeared in JP court, city court, superior court, the Court of Appeals, and District Court (I haven't had the chance to argue anything in the Supreme Court). I have never observed such a rude, unprofessional staff that intimidates the public into staying when the judge is late, running over on dockets (not because of what the litigants have done – what the judge is doing), tells members of the public that waiting on the judge is "punishment" and "they shouldn't have gotten into trouble" and that they can't file motions to continue. I am shocked that a court is being run like this and told my friend Steve Silvernail on July 1 how shocked I was and that I was going to call this to the attention of the Supreme Court after my daughter's case had been resolved. Now, in the middle of my daughter's case, documents disappear from her file and the judge suspends her license on the pretense that I had not appeared? I cannot wait until this matter is over before I call these inappropriate actions to the attention of the Supreme Court.

What I find even more frightening is the number of people this has happened to and the court continues to abuse its authority – by the judge and by his staff for

whom he is ultimately responsible. The court is responsible for treating all those who may have to appear before it with dignity and respect.