

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-130

Complainant: No. 0192210022A

Judge: No. 0192210022B

ORDER

The commission received information that a justice of the peace improperly assigned a case and then issued an order related to the case after disqualifying himself, and the order issued appeared to have no basis in law.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After review, the commission decided to dismiss this matter with a private warning urging the judge to be more cautious when dealing with matters that could be considered related to cases in which he has disqualified himself; the judge was also encouraged to maintain better contact with the presiding judge regarding court policies on the use of particular orders. The case is dismissed pursuant to Rules 16(b) and 23(a).

Dated: August 20, 2012.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed
to the complainant and the judge
on August 20, 2012.

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

MAY 21 2012

May 17, 2012

Dear Judge

I am in receipt of two complaints from parties in the case of _____ v. _____ and _____. The case is currently up on appeal. There are three problems with the case and I will outline each of them. They are not issues of the law of the case, but problems that have arisen after the case was given to Judge _____.

1. The plaintiff's filed notice of change of judge for cause, you recused yourself, and assigned it "to be heard by a visiting judge" (civil minute entry and order of March 2, 2012). Your staff then contacted Judge _____ to hear the case. Recusing yourself is not a problem, however, your staff should have contacted myself as presiding or Judge _____ as associate to assign a judge. There is always the **appearance** of impropriety when you recuse and your court is involved in assigning the next judge, especially knowing that one party for some reason wants you removed for cause. Although this may seem like a hyper-technical issue, the parties don't see it that way.

2. On April 10, 2012 you signed an ex parte civil standby order for the defendants in the very same case which you recused yourself. Although there is no case number on the order, nor is there a new case number in the AZTEC computer system, I can only assume it directly involves the same case. And according to the parties who I have been in contact with, it does involve the same case. It is clearly improper to take any action in the case as you have recused yourself, and in fact a notice of change of judge for cause was filed (it was not ruled upon as you recused yourself making the motion moot).

3. The civil standby order which you signed has no basis in law. There is no statute, rule or case law which allows for any such order. It is clearly a violation of due process of law to allow a person to enter upon the property of another and take personal property without the authority of statutory law. The closest that I can find is a Writ of Replevin which can be found in two places.

If a party asks for a "Judgment in Replevin" in his prayer for relief, the court can grant the return of property (see ARS § 22-243). This is a remedy attached to the judgment in a lawsuit, not something ordered ex parte.

The following is a Provisional Remedy, generally filed after a complaint is filed, but prior to judgment.

Replevin is found in ARS § 12-1301 which states:

"If a plaintiff claims in his complaint the possession of specific personal property, he may at any time after complying with the provisions of chapter 14 of this title and before rendition of judgment file an affidavit showing:

1. That he is the owner of the property claimed, sufficiently describing it, or is lawfully entitled to its possession.
2. That the property is wrongfully detained by the defendant.
3. The actual value of the property and that it has not been seized under any process, execution, or attachment against the property of the plaintiff, or, if so seized, that it is by statute exempt from such seizure."

What is most important here is that the replevin follow chapter 14 of title 12 which requires the requesting party to post a bond; double the amount of the value of the property with the constable, the opposing party has the right to request a hearing in court to tell his or her side of the story. All this is done before any writ is issued or property ever removed.

The are very upset about how their case was handled and in their opinion by a judge who was removed from the case. They have complained that they can find no equitable relief to get their personal property back if it has not already been destroyed by the family who they believe shouldn't have the property in the first place.

I have told them I cannot give them legal advice, however would forward there concerns on.

Please do not issue any more civil standby orders unless they follow one of the aforementioned statutes. It not only puts in a potential liability situation, but the trespassing party and law enforcement as well.

Sincerely,

Presiding