

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-138

Judges:

Complainant:

ORDER

August 12, 2019

The Complainant alleged two magistrate judges (one now retired) failed to properly record his civil traffic hearing and improperly found him responsible.

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 member Roger D. Barton did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on August 12, 2019.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2019 - 138

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.

2019-138

TO: Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, AZ 85007
(602) 452-3200

FROM:

RE: JUDGE'S AND @ COURTS

I received a traffic citation on [redacted] for allegedly speeding. My testimony has remained the same during this entire case. I saw the officer sitting in his patrol vehicle in a [redacted] parking lot before I ever passed him. I was turning left and not moving when I observed him. I passed him while he was sitting still and he pulled out behind me. Because he pulled out behind me I set my cruise control to the posted speed limit, 45, and continued driving. I was in a brand new rental truck, less than 1500 miles. The officer followed me for well over [redacted]. We turned left on to a different highway where the speed limit dropped to 35 mph. The officer continued to follow me. Again, I set the cruise control to 35. The officer followed me for approximately [redacted] and then pulled me over. He approached my vehicle wearing a [redacted], with no other indication that he was a police officer or on duty. No badge, gun, uniform or ID. He said that he pulled me over for speeding and that he "[redacted]". I gave him all of the required information that he was requesting and I asked him if he was on duty. His response at that time was "[redacted]" and that [redacted].

I accepted his citation knowing in my mind that I was not guilty of speeding and decided to have a trial. I could've easily have just taken driving school and had it dismissed, but felt that I should contest the citation because I did nothing wrong. I set it for trial and showed up for my hearing with Judge [redacted] and the officer. We had our hearing and during this hearing the officer testified that [redacted].

I questioned him about that and he denied it. I testified that I had used my cruise control and that the officer stated that he was [redacted]. Judge [redacted] stated that [redacted].

[redacted] I asked about a [redacted].

I told Judge [redacted] that I would be appealing this case because the officer is lying about [redacted], I was using the cruise control in a brand new truck, that the officer [redacted] (he could have at any time during the time he was following me) and that he [redacted].

was ruling against me without the officers. Judge [redacted] told me that I wasn't [redacted].

I left the court bewildered as to what had just happened. I obtained legal advice (inquiry only) and was told that I absolutely could file an appeal and that I should. I filed a notice of appeal and paid the bond and fee for the transcript. A few weeks went by and I received a notice from the court stating that all of the recordings from the court that week were not obtained because the recording equipment wasn't working. They refunded the [redacted] transcript fee and ordered a trial de novo on the case with a new judge, [redacted]. I went to the court filing counter to request that the case be dismissed and requested to file the correct paperwork. Judge [redacted] was the filing clerk at the window on this day that was helping me. At no time was I aware that she was a judge, or going to be my judge at the new trial. She didn't notify me that she was the new judge or recuse herself from helping me. I spilled my entire defense to her at the counter explaining that I thought the officer was lying and everything (in detail because she wanted to know) about my previous hearing that I didn't believe to be handled appropriately.

I filed my motion to dismiss along with the reasons and requested subpoenas for the officer's time sheets and [redacted] that was done on his patrol vehicle. I never received any indication that the subpoenas were issued or if they had been served. Judge [redacted].

I scheduled my new hearing for [redacted] and appeared before the court. When the judge came into the courtroom I noticed that it was judge [redacted] who was the filing clerk in which I had just laid my entire defense out to her personally at the filing counter. I didn't know what to do at this point. She started the hearing out by stating that this was a new trial because the recording didn't work at the last trial and that she was new to the case and knew absolutely nothing about it and that she was hearing these details and case for the first time. Absolutely inaccurate, (transcript on CD is enclosed). She was fully aware of the details of this case from all of the information I had just given her at the filing counter.

We had the trial and my testimony was exactly the same as the first trial. However, the officer continued with more lies. This time he testified that he was [redacted] and provided time sheet's as his evidence showing that he was working. The officer also testified that he [redacted], which is totally incorrect. The subpoena for his [redacted] was never issued by the court. Judge [redacted] ruled that I was responsible for the citation and ruled against me. Judge [redacted] stated that because the officer stated that he [redacted], that she believes that the officer is correct. You can't take a [redacted] it in another car randomly. [redacted] don't work like that and it would take an [redacted]. We're not talking about a radar unit, we're talking about [redacted]. He paced me, no speed measuring device was used. I thought I was fully prepared from details from the last hearing, but they changed the entire direction of the case because Judge [redacted] knew in advance

what my testimony was going to be. Judge [redacted] said I wasn't being truthful about my use of the cruise control.

I filed the required notice of appeal and a motion to have the [redacted] transcript fee waived as I am a [redacted] and this is my off season so funds are very limited. Judge [redacted]. I filed for the motion to waive the transcript fee on [redacted] and Judge [redacted] didn't review the motion and deny it until [redacted]. I filled out a financial disclosure form there was no valid reason to deny my request.

I thought about this case for a few weeks and checked into the appeal process and discovered that the additional appeal filing fee, travel and time off work would end up costing me several hundred dollars more (which I don't have at the moment) and could possibly end up losing. I don't feel that I should've lost to begin with as the evidence by the State was not beyond a reasonable doubt (and mine was) and I certainly shouldn't have to pay thousands of dollars on legal fees to prove my case.

I'm asking for the court and for these two judge's ([redacted]) to be held accountable for failing to know that proceedings for [redacted] were not being recorded (I believe this was done on purpose because of the officers statements and judge [redacted] statements and my pending appeal statement), their statements to me [redacted]), for being allowed to hear defense positions on a case at the filing counter and then turn around to be the judge at my hearing (compromising my defense) and stating that she ([redacted]) knew nothing about the case and that she is hearing it for the first time (totally false statement), [redacted] ruling against me because she said the [redacted]), denying me the right to waive the [redacted] fee since I have a valid reason.

It has taken [redacted] for them to fabricate their position, lie and cover up their actions and delete the transcript of the hearing that both of us know I would have easily won in an appeal process. This was in no way a financial benefit to the court or tax payers. I believe it was a waste of financial resources on their part just so they didn't lose. I do not believe that any of this was handled by the appropriate actions of a court of law, or in accordance with Arizona law and proper procedures.

Respectfully Submitted,

* NOTE:

I was traveling westbound on _____ and made a _____. I immediately saw this officer in an unmarked _____ and recognized it as a _____ vehicle. This _____ pulled out onto the highway directly behind me. I immediately set my cruise control to _____. He continued to follow me for _____. We made a left hand turn onto the _____. I immediately set my cruise control to _____, he continued to follow me. He activated his lights and pulled me over at _____. He approached my vehicle in a _____, no ID, duty belt, etc. He asked me if I knew why he pulled me over? I said, no. He then said, because you ran a red light. I then asked if he was on duty _____. He stated that he wasn't going to argue with me and that I could take it up in court. He then asked for my paperwork and returned to his car. After a few minutes he returned with a citation for speeding, which I was not speeding and after he said that he stopped me for running a red light. I knew full well that this officer was behind me, I immediately started using my cruise control because of this. He said he pulled me over for a red light and then gave me a speeding ticket. My truck was a _____, my speedometer just left the factory from being calibrated. I was not speeding. I was operating at all times within the posted speed limit especially since I was fully aware that this officer was directly behind me for several miles. On _____, I motioned for the court to issue _____ subpoenas to support and help prove my case. One was for Officer _____ payroll time sheet for this specific day and the other for the calibration test for the speedometer in the specific _____ in which Officer _____ was driving on the day of citation. This court refused to issue both subpoenas that would have helped prove my case.

I am a _____; I currently have an _____ and will be required to _____. I'm praying that the scale of justice is balanced today.

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**