

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-326

Judge:

Complainant:

ORDER

February 17, 2021

The Complainant alleged a pro tem municipal court commissioner made an erroneous ruling and was biased against him.

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

Copies of this order were distributed to all appropriate persons on February 17, 2021.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2020-326

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.

Please see the attached documents which outline my complaint.

Arizona Commission on Judicial Conduct Complaint

Introduction: In _____, The Honorable _____ failed to accurately apply Arizona law to the facts of my case, which was subsequently overturned on appeal in _____ of _____ by the _____ Court. Despite the fact I was fully refunded the \$ _____ I had been ordered by Judge _____ to pay the _____ I was charged, *by default*, over \$ _____ for the cost of the Superior Court appeal. I wasn't informed of this balance until the following year, _____ and immediately petitioned the Superior Court to have it waived. Subsequently, \$ _____ was intercepted by the _____ from my Federal Tax Return in _____ before the Superior Court could rule on my motion.

Complaint: Judge _____ failure to adjudicate my case properly resulted in a time-consuming financial penalty, what amounts to a harm against me, *without* basis in fact. Even though Judge _____ conducted herself professionally and politely, even though she afforded me ample opportunity to present my case and seemed to understand my argument, she knowingly upheld a citation in error, despite clear and convincing evidence of faulty _____ records. Any reasonable person could infer a **significant judicial bias against me individually, or in favor of the state**, in specific violation of A.Z. Code of Judicial Conduct rules 1.2, 2.2., and 2.2.3.

Evidence: " _____ " Judge _____ said toward the conclusion of the _____ hearing. " _____ " This single statement, which defies all reason, encapsulated Her Honor's decision to forego her duty as an official to evaluate a civil allegation based upon digital evidence. Arizona law does not allow judges to defer their authority to electronic computer records, thus **Her Honor's reasoning was in error.**

The State submitted absolutely no evidence - no records or witnesses - to corroborate Officer _____ statement that my license plate was listed " _____ " in his computer. Conversely, I submitted over _____ exhibits that directly or indirectly contradicted the validity of any such suspension that may exist. These included numerous insurance records, _____ executive records, and audio recordings with _____ personnel. I also submitted a notarized affidavit of a witness, who was available to testify to the veracity of my own testimony. Judge _____ chose not to hear my witness, and by the end of the hearing, *no reasonable person could deny that if any suspension existed in the Officer's computer, it was in error.*

Argument for the Complaint: *Legal errors happen*, but what concerns me is the length Judge _____ traveled to reverse the burden of proof against me in face of obvious error. She cited my failure to provide a specific _____ " _____ " (what amounts to a judicial decision by the _____) as a reason for upholding the citation, ignoring the numerous documents I did submit from the _____ that provided essentially the same information. Commissioner _____ elaborated on this reversal of the state's burden in his ruling on appeal, "... _____ "

In point of fact, the only valid logical deduction from the evidence submitted at the hearing, *the only fair and appropriate judicial ruling*, was that the citation should be dropped. However, Judge _____ acted with extreme partiality in favor of the _____ and

ignoring the truth that despite best intentions and practices, government agents *do* make mistakes, and digital record keeping systems *do* have flaws. Furthermore, as a matter of law, government records are *not* self-fulfilling in their accuracy when directly contradicted by numerous other government and private business records, *as well as* a witness, as was in *this* case.

What's more disturbing, *nothing* about my specific case was of an especially unique nature. Given Arizona's increasing reliance on digital record keeping, even prior to the Covid19 era, it is more than foreseeable that similar errors, be they human or otherwise, occur frequently and threaten the public with hundreds of dollars in unjust fines if not corrected by the courts.

Please believe that I have the utmost respect for the court system in this, my home state.

It is because of this deep respect and concern that I file this complaint. Even _____ after which I am ready to elaborate on the details, or my logic. I simply cannot rest without emphasizing to the Commission that *I committed no infraction whatsoever*, but was nonetheless punished financially for a cascading government error that stemmed from a single flaw in digital record keeping.

The cascading government errors in this case included, at least:

- An incorrect computer code overlooked by an _____ agent
- A police officer issuing a citation despite evidence his computer was wrong
- A court upholding the citation in error of fact, despite copious contradicting evidence
- A higher court failing to waive the cost of legal process that should never have occurred
- A State department (_____) withholding moneys to which I'm legally entitled, in error

Conclusion: As implied in the preamble, and throughout the text of the *Arizona Code of Judicial Conduct*, the power and the authority of the judiciary to effect justice rests in the ability of each individual judge to reconcile law with facts in **each individual case**. This is especially true given the government's unprecedented reliance on digital operations in _____. While both the _____ and the Officer's mistakes can be written off as inexperience or lapses in judgement, Judge _____ was in a position to correct, and thereby protect me from unjust consequences of both.

No law, code, or proscribed ethic exists in Arizona which prevented Judge _____ from rectifying the obvious error - she had more than enough evidence to justify dismissing the citation - yet she chose instead to protect an obvious *flaw* in the system. This decision contradicted the very purpose of her courtroom. **I am certain Judge _____ is a well-meaning jurist, she made it easy to communicate in her courtroom**, but I ask that the Commission review this matter with her so she may better navigate and execute her authority in these situations in a more just way in the future.

Most Ever Sincerely,

SUPERIOR COURT OF ARIZONA
COUNTY

COMMISSIONER

CLERK OF THE COURT

v.

REMAND DESK.

RECORD APPEAL RULING—REVERSAL/REMAND

Lower Court Case No.

Defendant/Appellant, _____ appeals from a judgment of the _____ Court. That court found him responsible for violating A.R.S. § 28-4139(A), a civil traffic offense. This Court has jurisdiction pursuant to Article VI, Section 16 of the Arizona Constitution and A.R.S. §§ 12-124(A), 22-425(B). After reviewing and considering the record on appeal (including the audio recording of the proceedings) and Defendant's appellate memorandum,¹ the trial court's judgment is reversed.

¹ The state did not participate in this appeal.

SUPERIOR COURT OF ARIZONA
COUNTY

FACTS AND PROCEDURAL BACKGROUND

The trial court held a civil traffic violation hearing on . Defendant represented himself, and the state was not represented by a prosecutor. The state's only witness was the citing officer. Defendant testified and offered various exhibits, including sound recordings of certain conversations. It developed from the hearing that the basic facts were not in dispute.

Defendant and left the for employment purposes on . Prior to leaving, he made arrangements with his automobile insurer to cancel his insurance effective on his date of departure. Prior to doing so, however, it does not appear that he notified the Motor Vehicle Division ("MVD") that he was " " his car because it would not be operated in Arizona during his absence. *See* A.R.S. § 28-4152. As required by statute, Defendant's insurer notified MVD that he cancelled his insurance policy. *See* A.R.S. § 28-4148(B).²

Defendant returned to the in . He purchased insurance for his vehicle and went to MVD to update his address and get a new driver's license. He testified that when he went to MVD in to update his information, the MVD agent said there was a suspension on his plate. The agent could not explain why the suspension was in place and that he would " " it. Audio Recording at (hereafter Rec. at ____).").

Subsequently, a police officer stopped Defendant while he was driving his vehicle during the late evening of . The officer's onboard computer showed Defendant was displaying license plates that had been suspended due to a lack of insurance. *See* A.R.S. § 28-4139(A). Defendant told the officer he did not know his plates had been suspended because he had been . He further explained that he went to MVD in and was under the impression that he had taken care of everything that required his attention. Defendant provided proof of current insurance and registration, and there were no allegations of other violations, so the only citation was for the suspended plates. The officer did not testify as to whether and when MVD mailed any notice of intent to suspend or a notice of the actual suspension of Defendant's plates.

² Among Defendant's exhibits was a letter from his insurer indicating that it was notifying MVD of the cancellation and advising that he should contact MVD to " " his vehicle otherwise MVD may suspend his registration. That letter is dated which is after Defendant . Defendant's Trial Exhibit 2.

**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.**