

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-272

Judge:

Complainant:

ORDER

October 11, 2024

The Complainant alleged a superior court judge improperly denied a motion for change of the trial judge in a civil case.

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).

Commission members Denise K. Aguilar and Joseph C. Kreamer did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on October 11, 2024.

Comp

Attachments: [Minute Entry Driggs Change of Judge.pdf](#)
[MotionNoticeofChangeofJudgeDriggsforCause.pdf](#)
[DefendantsResponsetoPlaintiffsObjectionsChangeofJudge.pdf](#)

24-272

From:

Sent:

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

Subject: Complaint against Judge

Caution! This message was sent from outside your organization.

Hello Commission,

Here is my formal complaint on Judge . She was ruling on my Notice of Change of Judge with cause and in her minute entry citation remarks stated that all my facts and AZ laws citations were all speculation and my imagination.

Thank you for your time

1 This bias exists in direct contradiction to the Court's ruling in Faretta v.
2 California. that everyone has the constitutional right to proceed without counsel. The reasoning
3 behind that decision means that the Constitution requires our justice system to be neutral towards
4 the self-represented litigant. That in turn means that the courts must offer a level playing field for
5 the represented and unrepresented alike, consistent with basic principles of fairness.
6

7 **Impartiality of the Judge - Judicial Bias**

9 The right to an impartial judge is based on the Due Process Clause of the United States
10 Constitution and is expressly set forth in many state constitutions. In addition, state codes of
11 judicial conduct require that judges be impartial. The ABA Model Code of Judicial Conduct,
12 state code analogs, and the common law of many states use a two-part test for disqualification or
13 recusal – a subjective and objective test. The subjective test is met when the judge believes that
14 he/she is, in fact, biased; the objective test is met if a disinterested person might reasonably
15 question the judge’s impartiality. If either test is satisfied, the judge must recuse themselves.
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18 Defendant may question a judge’s impartiality based on his/her treatment of, and
19 comments made to or about, counsel or counsel’s client. According to Liteky v. United States,
20 judicial remarks and actions require recusal when “they reveal an opinion that derives from an
21 extrajudicial source” – that is, the judge has relied on evidence from outside the case – or where
22 they “reveal such a high degree of favoritism or antagonism as to make fair judgment
23 impossible.” As to the first part, judges may be exposed to extrajudicial information, but they
24 cannot rely on it. For example, the judge may overhear court staff discussing a parent’s bad
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1 behavior in the courthouse lobby, but the judge cannot issue an order based on that information
2 unless it is introduced in evidence.
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5 **Rule 42.2 - Change of Judge for Cause**

6 (a) Definitions. The term "judge" as used in this rule refers to any judge, judge pro tem,
7 or court commissioner. The term "presiding judge" as used in this rule refers to the
8 presiding superior court judge in the county where the action is pending, or that judge's
9 designee.
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11 (b) Grounds. A party seeking a change of judge for cause must establish grounds by
12 affidavit as required by **A.R.S. § 12-409**.
13

14 (c) Filing and Service. The affidavit must be filed, and copies served on the parties, the
15 presiding judge, the noticed judge, and the court administrator, if any, by any method
16 provided in Rule 5(c).
17

18 (d) Timeliness and Waiver. A party must file an affidavit seeking a change of judge for
19 cause within 20 days after discovering that grounds exist for a change of judge. Case
20 events or actions taken before that discovery do not waive a party's right to a change of
21 judge for cause.
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23 (e) Hearing and Assignment. If a party timely files and serves an affidavit complying
24 with **A.R.S. § 12-409**:
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1 (1) Within 5 days after the affidavit is served, any other party may file an opposing
2 affidavit or a responsive memorandum of no more than two pages in length. No reply to
3 memorandum or affidavits is permitted unless authorized by the presiding judge.
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5 (2) The presiding judge may hold a hearing to determine the issues raised in the affidavit
6 or may decide the issues based on any affidavits and memoranda filed by the parties.
7

8 (3) On filing of the affidavit for cause, the named judge should proceed no further in the
9 action except to make such temporary orders as are necessary to prevent immediate and
10 irreparable harm from occurring before the request is decided and the action transferred.
11 However, if the named judge is the only judge in the county, that judge may also perform
12 the functions of the presiding judge.
13

14 (4) The presiding judge must decide the issues by the preponderance of the evidence.
15

16 Under A.R.S. § 12-409(B)(5), the sufficiency of any "cause to believe" must be
17 determined by an objective standard, not by reference to the affiant's subjective belief. If
18 grounds for disqualification are found, the presiding judge must promptly reassign the
19 action. Any new assignment must comply with A.R.S. § 12-411.
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21 (5) If the court determines that the party who filed the affidavit is not entitled to a change
22 of judge, the named judge may proceed with the action.
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24

25 **12-409. Change of judge; grounds; affidavit**

26 A. If either party to a civil action in a superior court file an affidavit alleging any of the grounds
27 specified in subsection B, the judge shall at once transfer the action to another division of the
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**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.**