

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-455

Judge:

Complainant:

ORDER

May 17, 2024

The Complainant alleged a justice of the peace made an improper ruling in an order of protection.

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 May 17, 2024.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2023-455

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.

See Attached.

On [redacted] I was served by the [redacted] County Sheriff's Office an Order of Protection issued out of [redacted] County Az. I was advised by the issuing deputy that it was an Order of Protection. When I examined the document, I noticed it was not signed by the issuing magistrate nor had it been signed by the plaintiff.
Exhibit 1.

It was later discovered that I had been issued a "Petition" for an Order of Protection. When I contacted the [redacted] County Justice Court by phone, I was told by [redacted] that it's not unusual for the Justice Court to enter an Order of Protection prior to getting the Judge's signature into NCIC and then to have the judge sign it at his convenience. I had not discovered at that point it was only a "Petition" and not the official order.

When I explained to [redacted] that the order had no judge's signature or official stamp, she told me she would check the file to see if there was a signed Order. She then advised me that she had located a signed Order of Protection and would email it to me. It should be noted that the order was signed [redacted] and the petition was served to me on [redacted]. She emailed the actual Order for Protection on [redacted] at [redacted]. **Exhibit 2 & 3.** It should be noted that AZ 13-3602 Order of Protection procedure, section J Paragraph (2) states: For each order of protection that is issued by a justice of the peace, the order of protection "SHALL BE SERVED BY THE SHERIFF OR CONSTABLE" of the count in which the defendant can be served or by a municipal law enforcement agency. I NOTE [redacted] DOES NOT MEET THAT CRITERIA.

I requested and was granted a hearing to dispute the Order of Protection by the Justice of the Peace Court for [redacted], in Judge [redacted] court. **(Exhibit 4)**

During the hearing the Plaintiff was present, her husband [redacted], Judge [redacted] and me. Judge [redacted] advised the hearing would be recorded. He further stated an outline of the procedures for the hearing:

1. That only the allegations in the petition would be addressed and no new allegations could be presented.
2. That he expected the opposing parties to act in a civilized manner.
3. That each party would have the opportunity to present its case and cross examine.
4. When it was the plaintiff's turn to present Judge [redacted] told the plaintiff that 2 of her allegations would not be considered because they were over a year old. When the defendant presented her case, she basically read what was on the allegation. Judge [redacted] asked the defendant if she had any police reports, photographs, phone records, witnesses, or text messages to support her accusations and she replied no.

The Judge then asked me to proceed with my case and I requested dismissal of the order based on the fact plaintiff had not established any claim of relief granted under AZ Statue 13-3602 Paragraph 6E section 1 and 2. I told the judge that she hadn't provided any evidence for continuing the Order of Protection. Judge [redacted] stated that this was not a criminal trial and there was no burden of proof, only "reasonable cause". I was confused as to what he meant and realized he gave no direction on what the weight needed to be for the plaintiff to meet. The judge clearly misled me. Rule 38 Contested Hearing Procedures; Section G Paragraph (3) Standard of Proof. States, "For a protective order to remain in effect

as originally issued or as modified at a hearing, the plaintiff must prove the case by a preponderance of the evidence." (Exhibit 5)

When the judge denied my request for dismissal. I presented my case, which included testimony and business records disputing the plaintiff's allegations, and timelines that showed there was no way I could have been where the defendant accused me of being when the allegations occurred.

During the trial, the judge allowed the defendant to make new allegations that my brother, who is in law enforcement and myself, retired, used government databases to track her. I objected to this, but the judge did not give a ruling on whether it would be struck from the record. As the trial continued the plaintiff then alleged that I continued to harass her via text messages when I was served the Order of Protection. The judge asked the Plaintiff if she had any evidence and she held up her phone and told the Judge she did.

I objected to her actions saying this was outside the scope of the contested allegations. The judge told me he wanted to see the texts, which I told the judge I objected because I didn't know if the text message even originated from me. The judge then allowed the defendant to approach his bench and hand him her phone. At that time, he wrote something down on a piece of paper and handed her phone back. When the plaintiff walked back to her seat, I asked the judge to see her phone to review what she had presented to the court. The judge told me he could not order the defendant to show her phone to me and I objected saying I had a right to confront the evidence against me. Judge became agitated and told me he wrote down what was on her phone but did not allow me to see what he wrote down.

During this point it became confusing as to whether Judge was also examining the text for a violation of the order of protection, which I stated I had not been served when the plaintiff was alleging the incident. I did not hear the full response of Judge but I thought he stated after he looked down at some files stated the order was issued on which is correct, but it was not served until . (Exhibit 2)

Based on Judge actions during the hearing, it is my contention that Judge was not familiar with the Plaintiff's petition. As stated previously, I found it odd that he would sign an order and then not allow 2 of the allegations to be presented during the hearing. It is my contention that Judge did not follow proper procedures in issuing the order or determining the truthfulness of the plaintiffs' allegations. The petition (Exhibit 1) has no signature from the defendant affirming it was from her other than her name typed or that she affirmed that the plaintiff statements were "true". It is also apparent that there was no notary signature or stamp to assert she properly filed the petition.

At the end of the trial Judge said he would take this case under advisement because " ' or something to that effect. He further stated he would get a decision out by the weekend, but he had a court trial he had to prepare for the following day. It should be noted that I filed a memorandum in support of the motion to dismiss. It was filed on . Defendant never received any reply from the court saying the document was received and delivered to Judge (Exhibit 6 and Exhibit 7)

On , I received the finding from Judge via USPS. Judge denied my motion to dismiss the Order of Protection. There was no explanation of his decision which is required under the

Rule of Order of Protection Section 38 Section G Paragraph (4) **(Exhibit 4 & 8)** Because of the Judge failure to complete this required task it caused an unfair delay in allowing me to file an appeal. As of this writing I still have not received any explanation of his decision.

The following is a chronological order of requests to the Justice of the Peace Court for appeal and preservation of evidence:

: I emailed the court requesting copies of all transcripts, notes, recordings and court file be preserved and sent to me immediately. The court did not respond to my request. **(Exhibit 9)**

I mailed a registered letter to the court advising the court for all notes, recordings, transcripts, and court file to be preserved and sent to me immediately. It was delivered to the court on . at . **(Exhibit 10 & 10A)**

. at I called the County Court. A female answered and acknowledged the letter did arrive. I informed her that I needed it to be delivered to the Justice of the Peace Judge as I was planning on appealing his decision. She informed me that the Judge may get it today or next as the court is closed on .

On ; I received a letter from Judge concerning my request for court records for my appeal. Judge claimed that I requested " " records per Arizona statue. He then demands to state the Arizona Statue. I find this response disingenuous as I specifically told him the records I was requesting in an email and a letter from and . **(Exhibit 11)**

: I emailed and mailed the Court Clerk for Justice Court a notice of appeal and asked them to respond back to me that they had received the appeal. It should be noted I received no confirmation from the court that they had received the email. The Notice of Appeal was taken directly from the County Court website. **(Exhibit 12 & 12A)**

: I emailed the Court Clerk for Justice of the Peace Court a revised Notice of Appeal. I did get a response from that my revised motion to appeal was received and was advised it does not go to the Court but to the Justice Court. **(Exhibit 13 & 13A)** It should be noted that the email notice to appeal was appealed to the Justice of the Peace Court. **(Exhibit 12 & 12A)** However, I was advised by , an appellate attorney that it should be addressed to the because I was appealing to the Justice of the Peace Court. This is the correct procedure as outlined Rule 42 Appeals Section (b) paragraph (1) which states the court will address all appeals from "limited jurisdiction court". **(Exhibit 14)** I find it disturbing that would give false information and I doubt being a trained court clerk, she does not know the appeal process for the state of Arizona.

On , I received a letter from County Justice Court. The letter showed it was mailed on . It was a response from Judge **(See exhibit15 and 16)** In the letter he states that there was a court hearing on , which is factually correct. However, he states that on , he rendered his decision concerning the Order of Protection hearing, which is false. He further stated that the letter was " " but gives no date. I have a

signed decision by Judge [redacted] that shows he signed the decisions on [redacted] and mailed by [redacted] on [redacted] (Exhibit 8)

On [redacted] I emailed [redacted] who is listed as the Court Clerk for the [redacted] Court for [redacted] County, to see if she ever received my appeal notification. (Exhibit 17) She called me that day at approximately [redacted] stated she did not receive any notification reference my Notice of Appeal. She told me the Notice of Appeal would come to her for an appeal to the [redacted] Court. She had no explanation as to why Judge [redacted] would address why I could not appeal his decision. In fact, during the conversation [redacted] couldn't answer any questions as to why a lower court would receive a notice of appeal that was addressed to the [redacted] court. [redacted] advised that she was going to be off work the following day [redacted] but would have Judge [redacted] Judicial Assistant call me so I could discuss the issue with her. I was never contacted by anyone from Judge [redacted] court.

[redacted] I emailed [redacted] to advise her that I had not been contacted by the Judicial Assistant. (Exhibit 18) [redacted] asked if I wanted to talk to the office manager concerning getting the requested information from the Justice of Peace Court. [redacted] put me on hold and said she would check to see if the office manager was in. A minute later she came back on and said she had talked to the office manager, and she would assist me and asked if I would like to be transferred to the office manager and I replied yes. When [redacted] transferred me no one answered the phone and there was a recording telling the caller to call back. It appears [redacted] County Court does not have a phone message in place. I tried several times to reach the office manager, and no one ever picked up the number that was given to me by [redacted].

[redacted] I contacted [redacted] the office manager for the [redacted] County Court. I explained to her why I needed the previously requested items. She asked me if I had emailed the court and I explained that I had and had and had gotten no response. She told me she would check the file. She made NO mention of previous emails or letters to the court. All she said was the judge denied my appeal. She then asked me to email the judge and " [redacted] ' All [redacted] could do was tell me my appeal was denied. She then told me to send another request to him and " [redacted]

" IT SHOULD BE NOTED I RECORDED THIS CONVERSATION AND CAN MAKE IT AVAILABLE TO THE COMMISSION. After concluding my conversation with [redacted] I emailed Judge [redacted] per the instructions of [redacted] (Exhibit 19)

[redacted] at [redacted] hours I received a call from [redacted] told me he was a clerk with Judge [redacted] His conversation centered around why I was inquiring about court records in the case I was a part of? He proceeded to tell me that Judge [redacted] had denied my appeal. I explained to [redacted] that I was planning to appeal Judge [redacted] decision and that I needed the requested documents to file an appeal. During my conversation I felt [redacted] was trying to dissuade me from appealing Judge [redacted] decision and was not initially forthcoming in assisting me. In fact, his attitude changed when I told him that I had been a police officer for [redacted] years and understood court proceedings. I told him I found it odd that Judge [redacted] issued no explanation of his decision, and the court was inhibiting my right as the defendant to receive the requested items.

**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.**