

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-201

Complainant:	No. 1399110664A
Judge:	No. 1399110664B

ORDER

The complainant alleged that a municipal court judge intentionally ignored legal precedent in multiple cases and engaged in a pattern of legal error regarding personal service requirements to establish personal jurisdiction. After analyzing the allegations and a supplement noting the judge corrected his error in one case, the recording of the hearing, and the judge's response, the commission decided to issue a private advisory as guidance regarding personal service for future reference. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: December 20, 2010

FOR THE COMMISSION

J. William Brammer, Jr.
Commission Chair

Copies of this order were mailed to the complainant and the judge on December 20, 2010.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY**2010-201****COMPLAINT AGAINST A JUDGE****Your name:****Judge's name:****Date:** 8/7/2010

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

This complaint relates to _____ of the Paradise Valley Municipal Court, and involves four separate cases where _____ has consistently issued rulings and ruled from the bench in direct conflict with well established law, so as to create a pattern of ignoring existing law.

I was representing three defendants in four separate Civil Traffic matters (Photo Enforcement), Charles _____ in Case # _____ Christopher _____ in Case # _____ and Case # _____ and Glen _____ in Case # _____ all in the Paradise Valley Municipal Court.

In each of these cases, _____ made rulings in direct conflict with existing laws, rules, and prior decisions. Specifically, _____ held that the filing by counsel of pleadings, though specifically denying personal jurisdiction, along with legal argument as to why personal jurisdiction had not been conferred on the Court, would suffice as a substitute for service or a waiver of service.

This issue giving rise to this complaint was identical in each matter. _____ held that counsel's pleadings established that service had been accomplished, despite argument that there had been no service, despite noting that no proof of service was in the record, and despite the pleadings setting forth the applicable law.

On about 1/27/2010, in State v. _____ Case # _____ I filed a pleading explicitly challenging personal jurisdiction for lack of service supported by ample argument citing statutes, rules, and case law. On about 3/4/2010, _____ entered a minute entry and order (copy attached), holding that the Court has personal jurisdiction. At the hearing on 3/24/2010, before (I believe) Presiding Judge Taber, I again raised the issue of lack of service and lack of personal jurisdiction, and the case was dismissed on those grounds.

On about 4/27/2010, in State v. _____ Case # _____ I filed a pleading explicitly challenging personal jurisdiction for lack of service supported by ample argument citing statutes, rules, and case law. On about 5/18/2010 (though erroneously dated 1/18/2010), _____ entered a minute entry and order (copy attached), acknowledging the challenge to personal jurisdiction, and holding that the pleading challenging personal jurisdiction is an acknowledgement of personal jurisdiction.

On about 5/5/2010, in State v. _____ Case # _____ I filed a pleading explicitly challenging personal jurisdiction for lack of service supported by ample argument citing statutes, rules, and case law. On about 5/18/2010 (though erroneously dated 1/18/2010), _____ entered a minute entry and order (copy attached), acknowledging the challenge to personal jurisdiction, and holding that the pleading challenging personal jurisdiction is an acknowledgement of personal jurisdiction.

On about 5/21/2010, in State v. _____ Case # _____ I filed a pleading arguing that finding a challenge to personal jurisdiction as an admission of personal jurisdiction is manifestly unjust, irreconcilable with the applicable rules and procedures, and effectively makes challenging personal impossible. On about 5/26/2010, _____ entered a minute entry and order (copy attached), denying the request for reconsideration, and apparently explaining that my failure to caption the original pleading as a "Limited Notice of Appearance" permitted the Court to consider it an acknowledgment of personal jurisdiction.

On about 7/1/2010, in State v. Case # I filed a pleading, captioned "Limited Notice of Appearance", (copy attached, also to show the argument on personal jurisdiction presented in each of these matters) explicitly challenging personal jurisdiction for lack of service supported by a brief argument citing statutes, rules, and case law. On about 7/6/2010, entered a minute entry and order (copy attached), acknowledging my Limited Notice of Appearance, but denying my Motion to Dismiss as premature.

On 7/21/2010, at a hearing before in State v. Case # and State v. Case # set on the issue of personal jurisdiction and service of process, I again raised the issue of a lack of personal jurisdiction, and that, absent personal service or an proper acknowledgment of service, the Court has obtained no personal jurisdiction. grew visibly agitated, cut off my argument, and insisted the matter had already been decided, and that my pleadings challenging personal jurisdiction waived the argument. When I attempted to cite the applicable law, and that much of it originated out of this very court, again cut me off and stated, "if I'm wrong, take me up on appeal", and terminated the hearing.

On about 7/29/2010, in State v. Case # the Paradise Valley Municipal Court entered a default, despite the acknowledged Limited Notice of Appearance, and despite a lack of service. I filed a Notice of Appeal on about 8/4/2010.

I believe that conduct, as briefly outlined above, violated the Code of Judicial Conduct (and not only in the matters for which I was appearing, but also in other matters on other occasions when he has held that personal jurisdiction may be established by pleadings challenging jurisdiction).

In particular, I believe that violated a number of the Rules, and that his conduct is such that likely brings the judiciary into disrepute, and that his conduct here shows a pattern of ignoring well established law. I will briefly review the violations of the relevant rules which I perceived, below.

RULE 1.2. Promoting Confidence in the Judiciary

assertion that defendants filing pleadings challenging personal jurisdiction thereby establish or waive personal jurisdiction is plainly mistaken, absurd, and one that must shake the public's confidence in the judiciary. I was shocked by unconditioned and unqualified assertion that my pleadings challenging personal jurisdiction were the evidence supporting his finding of personal jurisdiction.

RULE 2.2. Impartiality and Fairness. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

holding that defendants filing pleadings challenging personal jurisdiction thereby establish personal jurisdiction appears a gross misstatement and misapplication of the law, as well as creating at least the appearance of unfairness and an absence of impartiality.

RULE 2.6. Ensuring the Right to Be Heard. (A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

conduct during the 7/21/2010 hearings, in not permitting my legal argument on personal jurisdiction and in terminating the hearing early appears to violate this rule. conduct here prevented the defendants I represented from being fully heard at the time and place set for their hearings.

RULE 2.8. Decorum, Demeanor, and Communication with Jurors. (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

conduct during the 7/21/2010 hearings, in not permitting my legal argument on personal jurisdiction, in growing visibly agitated at one point, and in terminating the hearing early appears to violate this rule.

Please communicate with me regarding any action upon my complaint.