

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 07-149

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Complainant: No. 1311800433A

Judge: No. 1311800433B

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**ORDER**

The commission reviewed the complaint filed in this matter and determined that the judge did not knowingly violate the Code of Judicial Conduct. Accordingly, the commission dismissed the case with a private comment to the judge warning her to disqualify herself in proceedings in which her impartiality might reasonably be questioned.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: October 2, 2007.

FOR THE COMMISSION

g\ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on October 2, 2007.

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

## BRIEF OF POINTS AND AUTHORITIES

CASE HISTORY

1. On 03/05/07, the Plaintiff, DELIA A. BENAVIDEZ, filed a complaint, entitled SMALL CLAIMS, against the Defendant, JULIO CESAR GALINDO for \$9,999.99.

2. On 03/20/07, Service of Process of the Complaint was effectuated upon the Defendant.

3. On 04/11/07, the Plaintiff filed an Application for Entry of Default; the Application for Entry of Default, however, bore no requisite certification of having been sent to the Defendant.

4. No Notice of Default Hearing was filed with this Court; the Defendant received no Notice of Default Hearing.

5. On 04/23/07, this Court held a Default Hearing on this matter.

6. On 04/24/07, this Court entered a Default Judgment against the Defendant in the amount of \$9,999.99 plus \$45.00 costs and accruing costs.

7. On 04/25/07, this Court entered a Writ of Garnishment and Summons.

8. On 05/02/07, the Plaintiff filed an Application for Writ of Garnishment; the Plaintiff, however, failed to check the appropriate box in paragraph six (6).

9. On 05/02/07, this Court issued a Writ of Garnishment and Summons to the Garnishee, Asarco, Inc.

10. On 05/02/07, the Plaintiff filed an Affidavit of Service that she had delivered by mail the following documents to the Judgment Debtor (Defendant):

A Writ of Garnishment and Summons  
A First Notice to Judgment Debtor of Garnishment  
A First Hearing Request and Notice of Hearing on Garnishment

The attached Objection, Hearing Request and Notice of Hearing, however, bore no requisite Notice of Hearing date. The Defendant did not receive any of the above-specified documents and had no notice of any hearing date on the issue of garnishment.

11. On 05/04/07, the Garnishee signed a return receipt acknowledging receipt of the Writ

of Garnishment and Summons to the Garnishee.

12. On 05/08/07, the Garnishee executed the Garnishee's Answer.

13. On 05/15/07, the Plaintiff filed an Application and Order of Continuing Lien.

14. On 05/15/07, this Court issued an Order of Continuing Lien.

STATEMENT OF FACTS

15. The Plaintiff is an employee of the Gila Justice Court; she is employed as a Clerk of the Court.

16. The Plaintiff is the mother-in-law of the Defendant, who has a currently pending Dissolution of Marriage action against the daughter of the Plaintiff in the Pinal County Superior Court. (DO 200700635).

17. On or about 03/28/07, subsequent to being served with the Complaint and Summons in the above-captioned matter, the Defendant went to the Gila County Justice Court and spoke with the Plaintiff in her capacity as Clerk of the Court. The Defendant stated that he was there to inquire about the Complaint. The Plaintiff told the Defendant that she had always liked him, spoke to him further concerning the marital problems between her daughter and the Defendant, and then stated in specific regard to the Complaint on the above-captioned matter that "he had nothing to worry about," told him "not to worry." The Defendant actually gave the Plaintiff a ride home from her employment that day. She repeatedly told him in specific regard to the Complaint on the above-captioned matter "not to worry." The Plaintiff specifically failed to apprise the Defendant regarding the filing of a Response to the Complaint. The Defendant reasonably understood this to mean that the Complaint had been withdrawn by the Plaintiff.

18. The Defendant received no Notice of Application of Default.

19. The Defendant received no Notice of Hearing of Default.

20. The Defendant received no Writ of Garnishment and Summons.

21. The Defendant received no First Hearing Request and Notice of Hearing on Garnishment.

22. The Plaintiff has repeatedly iterated to the Defendant that "she knows everybody" and can legally effectuate whatever she wants against the Defendant.

DISCUSSION

Under the Arizona Rules of Civil Procedure, for good cause shown, a court may set aside a Default Judgment. RULES OF CIV. PROC. § 55(c). A Default Judgment may be set aside for misconduct of an adverse party or for any other reason justifying relief from the operation of the judgment. RULES OF CIV. PROC. § 60(c).

A matter having been brought to the Small Claims Court may be set before the Civil Division pursuant to proper motion. *Cf.* A.R.S. §Section 22-504(A).

Under the Code of Judicial Conduct, a court shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. 17A A.R.S. SUP. CT. RULES, RULE 81, CODE OF JUD. CONDUCT, Canon 2(A). Moreover, a court must not permit any relationship, whether social, political or other to influence a judgment; nor shall a court permit others to convey the impression that they are in a special position to influence the judge. 17A A.R.S. SUP. CT. RULES, RULE 81, CODE OF JUD. CONDUCT, Canon 2(B); see *Matter of Gumaer*, 177 Ariz. 280 (Ariz.1994) (concluding that a court's actions were prejudicial to the administration of justice and tended to bring his judicial office into disrepute when, *inter alia*, he involved himself in the police investigation of a domestic complaint brought against a court clerk by her husband). A clerk of the court is subject to the supervision of the judiciary as an officer of the court. *Roylston v. Pima County*, 106 Ariz. 249 (Ariz. 1970) (holding that the Clerk's office is subject to the control of the judicial branch of government), citing *United States Fidelity & Guaranty Co. v. State*, 65 Ariz. 212, 215 (1947) (holding that 'The clerk's duties are not purely ministerial, but are rather an integral part of the whole judicial process. The clerk of the court from time immemorial has been considered an officer of the court and as such endowed with certain judicial authority to aid and promote the judicial process.').

A judicial officer may be noticed if the Defendant has not previously waived his right to Notice of Judge and has not previously been granted a change of judge as a matter of right in the case ARIZ. RULES CIV. PROC. § 42(f)(1)(D).

The court may stay the execution of any proceeding to enforce a judgment pending the disposition of a motion for a motion pursuant to Rule 60(c). ARIZ. RULES CIV. PROC. § 62(b).

1 Here, the Entry of Default must be set aside because the Plaintiff failed to provide Notice  
2 of the Application for Entry of Default to the Defendant; in fact, the Application for Default  
3 bears no requisite certification of having been sent to the Defendant at all, and the Defendant did  
4 not receive any Application for Entry of Default. RULES OF CIV. PROC. § 55(a) ("a copy of the  
5 application for entry of default shall be mailed to the party claimed to be in default").

6 The Default Judgment must be set aside due to the failure of the Plaintiff to provide  
7 Notice of Default Hearing to the Defendant, who remained entirely unaware of the scheduling of  
8 any Default Hearing.

9 More significantly, the Default Hearing must be set aside due not only to the misconduct  
10 of the Plaintiff but also the overt appearance of impropriety by virtue of the Plaintiff's position as  
11 Clerk of the Court that issued the Default Judgment.

12 The Plaintiff, in her capacity as Clerk of the Court, actively mislead the Defendant when,  
13 having been served the Complaint, he went to the Clerk of the Gila County Justice Court to  
14 inquire about the Complaint and what he procedurally needed to do. In her capacity as Clerk of  
15 the Court, the Plaintiff failed to apprise the Defendant regarding the filing of a Response to the  
16 Complaint; rather, she told the Defendant that she had always liked him, spoke to him further  
17 concerning the marital problems between her daughter and the Defendant, and then stated in  
18 specific regard to the Complaint on the above-captioned matter that "he had nothing to worry  
19 about." The Clerk of the Court told the Defendant "not to worry" about the Complaint. The  
20 Defendant actually gave the Plaintiff a ride home from her employment that day. She repeatedly  
21 told him in specific regard to the Complaint "not to worry." The Defendant reasonably  
22 understood this to mean that the Complaint had been withdrawn by the Plaintiff.

23 This failure properly to apprise the Defendant of the proceeding comports with the  
24 Plaintiff's consistent pattern of failing to provide the Plaintiff proper notice: the Defendant  
25 received no Notice of Application of Default, no Notice of Hearing of Default, no Writ of  
26 Garnishment and Summons, and no First Hearing Request and Notice of Hearing on  
27 Garnishment. The Plaintiff blatantly abused her position as clerk of this court to thwart the  
28 judicial process and to unduly disadvantage the Defendant—a young man who was about to

1 initiate divorce proceedings against the Plaintiff's daughter.

2 The Plaintiff, as Clerk of the Court, is an officer of this Court. Her misconduct in  
3 misleading and deceiving the Defendant regarding this matter, compounded by her failure to  
4 properly notice the Defendant of proceedings, and egregiously exacerbated by her repeated  
5 iteration to the Defendant that "she knows everybody" and can legally effectuate whatever she  
6 wants against the Defendant, impugns the integrity and impartiality of this Court. This Court  
7 must not permit others, especially its own clerks, to convey the impression that they are in a  
8 special position to influence or control its judgment. Even in the best of circumstances, this  
9 Court should have recused itself from a matter involving its own Clerk, a person over whom this  
10 Court has direct supervisory power. This is not the best of circumstances given the outrageous  
11 misconduct of the Plaintiff as an officer of this Court.

12 The Plaintiff's overt misconduct and the Code of Judicial Conduct demand that the  
13 Defendant be relieved from the operation of the Default Judgment on the matter.

14 Although this matter was ostensibly brought as a Small Claims matter, the relief  
15 requested by the Plaintiff (\$9,999.99) clearly exceeds the jurisdictional limits for a Small Claims  
16 matter; it therefore should be removed to the Civil Division of this Court.

17 Given the overt conflict of interest between the Plaintiff, as an officer of this Court, and  
18 this Court, this Respondent should acknowledge a Notice of Change of Judge. The Defendant  
19 has not previously waived his right to Notice of Judge nor has the Defendant previously been  
20 granted a change of judge as a matter of right in this case.

21 Lastly, in the interest of justice in this matter, this Court should set aside the execution of  
22 any the Writ of Garnishment enforcing the Default Judgment pending the disposition of this  
23 motion made pursuant to Rule 60(c).

24 **WHEREFORE** the Defendant prays for the following relief:

- 25 1. That the Entry of Default against the Defendant be set aside.
- 26 2. That the Default Judgment be set aside.
- 27 3. That this matter be transferred to the Civil Division.
- 28 4. That this Court recuse itself as Noticed.



- 1 5. That the Writ of Garnishment be stayed.
- 2 6. That the Defendant be awarded costs and reasonable attorney's fees.
- 3 7. Other relief as this Court deems fair and equitable.

4 **RESPECTFULLY SUBMITTED** this 29<sup>th</sup> day of May, 2007.

5 By: 

6 Matthew A. Ritter  
7 Attorney for Defendant

8 **VERIFICATION**

9 STATE OF ARIZONA )  
10 ) ss:  
11 COUNTY OF PINAL )

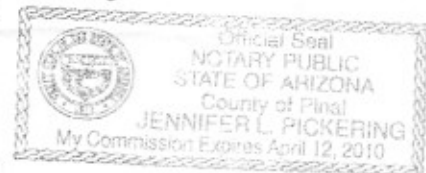
12 I, JULIO CESAR GALINDO, being first duly sworn, upon my oath depose and state: that  
13 I am the Defendant in the above-captioned matter; that I have read the accompanying Motion and  
14 know the contents thereof to be true and correct to the best of my knowledge and information.

15   
16 JULIO CESAR GALINDO

17 **SUBSCRIBED AND SWORN** to me this 29<sup>th</sup> day of May, 2007,  
18 by JULIO CESAR GALINDO.

19   
20 Notary Public

21 My Commission Expires: 4.12.2010



22 Original of the foregoing delivered  
23 this 29<sup>th</sup> day of May, 2007, to:

24 Clerk of the Globe Justice Court  
25 1400 E. Ash St.  
26 Globe, Arizona 85501

27 Copies of the foregoing mailed,  
28 this 29<sup>th</sup> day of May, 2007, to

DELIA A. BENAVIDEZ  
211 W. 4<sup>th</sup> St.  
Winkleman, AZ 85292

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