

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-197

Complainant: No. 1315110319A

Judge: No. 1315110319B

ORDER

The commission reviewed the complaint filed in this matter as well as the documents provided by the complainant, and found no ethical misconduct on the part of the judge. Therefore, the complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: February 11, 2008.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on February 11, 2008.

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

CJC-07-197

COMPLAINT AGAINST A JUDGE

Your name

Judge's name

Date:

7/23/07

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

Judge has, I believe,
violated certain Canons of Judicial
conduct as well as Rules of Court
and specific State Statutes, as I
will set forth

The first complaint is specific
and constitutes violations of

Code of Judicial Conduct Canon 3B, 9
ARS 17, Sup. Court Rules 91 (d)
ARS 12 - 12B.01 (a) (c)
Arizona Constitution Article 6 § 21

Judge has had a motion
for protective Order since
. She has never ruled on this
motion, but she has awarded
attorney fees based on this motion
which is as yet undecided.

A complete outline of this complaint
along with pertinent documents is
enclosed

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(Attach additional sheets as needed)

Continuation of Judicial Complaint Page two

All the violations take place in regards to a will contest in a probate matter, currently pending before Judge [redacted] Superior Court Judge [redacted]
The Probate case number is [redacted]

The first incident consists of the Judge's actions regarding discovery motions and her actions in totally disregarding the law, and willfully violating the law when it was brought to her attention.

The matter submitted for ruling which was never decided was a Motion for Protective Order filed by Attorney [redacted] for [redacted] who is the personal representative for the Estate of [redacted] Enclosed Marked Document 1 is a copy of that Motion filed on [redacted] At a status conference on [redacted] (clerk erroneously put [redacted] on the form) the Court acknowledged that a motion for protective order had been filed, gave [redacted] time to file a response, and the Court further indicated that it would rule on this motion no later than the hearing on [redacted] Enclosed Marked Document 2 is a copy of that Minute Order.

Attorney [redacted] filed a response in opposition to this motion. Enclosed Marked Document 3 is a copy

I do not have a copy of the minute order for [redacted] but [redacted] recites the history in his Motion for Reconsideration and indicates that there was no ruling on the Motion for Protective Order.

On [redacted] a status conference was held. The judge mentioned reviewing the issue of attorney fees but still made no ruling on the motion for protective order nor did she mention what attorney fees she was considering. Enclosed Marked Document 4 is a copy of the minute order.

Thereafter on [redacted] the same day as the status conference, [redacted] filed an affidavit of attorney fees and costs. Enclosed Marked Document 5 is a copy of the affidavit which clearly includes a substantial payment for attorney fees for a motion which has never been decided. I believe [redacted] filed a false affidavit and as you will see in her Response to the Motion for Reconsideration, [redacted] fails to correct her statement but rather ratifies it. However, [redacted] conduct is not the complaint here and I have send matters concerning her to the State Bar of Arizona. This complaint is for the actions of Judge [redacted]

On [redacted] Judge [redacted] awards [redacted] substantial attorney fees and includes the amount for the Motion for Protective Order. Enclosed marked Document 6 is a copy of that minute order.

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Thereafter, Attorney [] filed a Motion for Reconsideration. Enclosed marked Document 7, is a copy of the Motion. At pages 1 through 2, [] lays out the history of the motions and points out to both Judge [] that there had never been a ruling on the Motion for Protective Order.

[] filed a Response to the Motion for Reconsideration. Enclosed marked Document 8, is a copy of the Response. [] insists on getting the entire attorney fees and bases her claim that [] had not filed an objection to her affidavit. This of course does not remove the lack of truthfulness in her affidavit. Nor does [] clear up the issue of the failure to rule on the underlying motion for protective order.

[] filed a Reply to [] response. Enclosed marked Document 9, is a copy of the reply. [] makes it clear that [] had no legal right to even file a response without special leave of the court. [] ***points out on page 2 lines 11-13 of the Reply THAT NO ORDER HAS EVER BEEN ENTERED FOR THE MOTION FOR PROTECTIVE ORDER.***

On [] despite the repeated warnings that no ruling had been made on the underlying motion, the Judge still denied the motion for reconsideration and let stand the attorney fees. Enclosed marked Document 10 is a copy of the Judge's minute order

I do not have copies of the certificates signed by Judge [] in order to receive her pay. I am sure copies are kept on file with the County Treasurer. I am also certain the County treasurer can advise if Judge [] received pay for all months especially the month of []

There is no question, that more than 60 days have elapsed from [] when the Judge stated she would rule on the Motion for Protective Order. It is also true that the judge was advised on two occasions in writing that the motion had not been ruled on even though she awarded attorney fees. Judge [] cannot say she made a mistake about whether or not all of her submitted matters were completed within 60 days, as she was warned twice in writing that the work had not been completed.

I really cannot see any other circumstance where it would be clearer that a Judge violated several rules, laws and canons.

1. Arizona Constitution Article 6 Section 21 requires judicial matters that have been submitted be ruled on within 60 days;
2. Code of Judicial Conduct Canon, 3B8 requires prompt completion of submitted matters;
3. ARS 12-128.01 (a) requires that a Judge complete within 60 days matters that have been submitted in order to receive pay;
4. ARS 12-128.01(c) makes it a class 3 misdemeanor to cause a paycheck to be issued when all submitted matters have not been completed.

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The actions of Judge [] in violating all of the above rules and statutes are clear and simply without any defense. It is most distressing to see a Judge totally disregard the law and by her word and deed indicate to litigants, and the public at large that she will only apply the law when she wishes. I must point out the disregard of procedural rules are pretty much black or white, they ARE NOT DISCRETIONARY ACTS, but rather they are mandatory.

What is also very distressing is that she insisted on violating the law to allow an improper fee award and do terrible harm to my Wife and Daughter and Niece. A Judge who shows her unwillingness to follow the law, or stubbornly disregard it, are and should be disqualified from being a Judge. Her actions are by no means limited to this instance but I will point out further glaring incidents in this one case where Judge [] disregarded the law. To disregard the law is a violation of Canon 2.A of Code of Judicial Conduct. Which states: "Judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Another instance where Judge [] disregarded the law, is her resolution of a Motion for Summary Judgment. A motion to Dismiss or in the Alternative Motion for Summary Judgment was filed by Attorney [] Enclosed Marked Document 11 is a copy of the motion. Attorney [] filed a Response to the Motion. Enclosed Marked Document 12 is a copy of [] responsive documents. He points out very clearly that Motion must be treated as one for summary judgment; he points out that a Statement of Facts must be filed with the original motion (which was not done); he points out that [] had filed no affidavits but rather attached copies of letters which are not acceptable evidence, and he also pointed out that the discovery issues and mandatory disclosures have not been completed, so the motion was premature. [] filed a Reply which now included a statement of facts and submitted an affidavit. Enclosed marked Document 13, is a copy of the Reply. Obviously the Respondents had no benefit of discovery or disclosure, that were denied an opportunity to see the Statement of Facts upon which the motion for summary judgment was based, something the Rules of Procedure demand and require. Judge [] ruling was to grant the Summary Judgment. Enclosed marked Document 14 is a copy of the Minute Order. Judge [] had only three choices, 1. Deny the motion as it did not meet even the minimum requirements of the Rules of Procedure; 2. Dismiss the motion without prejudice and allow [] to refile the Motion for Summary Judgment properly; or 3. Grant the Motion for Summary Judgment in favor of [] clients based on his filings which were properly before the Court.

I do not believe Judge [] is ignorant of the Law, and never so when it is being properly pointed out to her in pleadings she is assumed to have read. This is just a major example of her decision to refuse to apply the law. This is so clear that it is actually embarrassing and shows a wanton and disregard the law in Violation of Canon 2A.

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Before filing this complaint I conversed with a number of attorneys about Judge [] to include a former superior court judge, (now practicing attorney), other counsel to include the [] County Attorney. What I heard and learned let me know that it is not just in this case, that Judge [] stubbornly and consistently disregards the law. I believe that not only my Wife, Daughter and Niece are being harmed by Judge [] but the citizens of [] County should not be subjected to a Judge who will not follow the law. Without consistency and adherence to obvious law, the credibility of this Court and the Judicial system is harmed.

It should be noted that every decision, including those obviously improper, have been made in favor of Attorney [] and her client. The appearance of bias and prejudice is so clear that it is again, embarrassing. I would like to point out that the relationship between Judge and one party and counsel, may be more sinister. I would ask you review the Affidavit for Attorney Fees filed by Attorney [] Document 5.

On [] a status conference was held at Superior Court in [] in the afternoon. Document 4. Attorney [] whose office is in [] and less than an hour away, appeared by telephone. [] whose office is in [] appeared personally. If you look at the affidavit and view the notarization, you will see that [] signed the affidavit before a notary in [] County, obviously long before she came to Court. The issue of attorney fees was not even before the court, or scheduled for hearing. Out of the blue Judge [] announces she is going to consider attorney fees. There was no motion for fees filed, no notices of hearing for fees, and the underlying motions upon which the fees would be granted have not even been decided or ruled on. Even to the least sophisticated layman, the whole thing appears "rigged." To those with any legal experience or training, the whole thing looks suspicious. I will provide additional materials in this regard as it suggests even more serious conduct. For now, at the very least the Judge is in violation of Canon 2 A as her consistent actions appear biased and prejudice.

Obviously I am upset, because this Judge has harmed my Family. However, this upset is justified as it comes at the hands of a Judge who is violating and continues to violate the Canons of Judicial Ethics and other laws. It should be very apparent that by Judge [] actions, my Family has been repeatedly and consistently denied "due process" as is guaranteed by the 14th Amendment of the U.S. Constitution. The denial of due process is so fundamental to the integrity of the judiciary, that a Judge who consistently violates due process, should not be allowed to remain on the bench.

I expect to send additional material soon, as other agencies are involved with these same matters. Of course it is your Commissions responsibility and authority to decide if a Judge has violated canons or other laws, deserving of some action by your Commission and the Arizona Supreme Court.