

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-260

Complainant: No. 1412300421A

Judge: No. 1412300421B

ORDER

The complainants alleged a superior court judge violated the due process rights of several individuals, in part, by staying a subpoena without notice and by denying them an opportunity to be heard.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After thoroughly reviewing all of the information provided by the complainants and the judge's response, the commission concluded that the allegations of judicial misconduct lacked sufficient evidence to support their further investigation. The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: February 19, 2013.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on February 19, 2013.

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

Attachment to Judicial Complaint

Judge _____ has repeatedly violated the Arizona Code of Judicial Conduct Rules by disregarding due process and the right of every person who has a legal interest in a proceeding the opportunity to be heard.

_____ is the petitioner in a case currently pending in California, entitled *in re the* _____ and bearing California case number BP _____ (consolidated for all purposes with BP _____). _____ petition alleges that the trustees of the _____ Residuary Trust fbo _____ (the "Trust"), _____ and First Republic Trust Company ("FRTC") [collectively, the "Trustees"], have committed numerous and egregious breaches of their fiduciary duties. These breaches have included, that the Trustees have repeatedly disclosed _____ private and confidential information to the petitioners in the Arizona proceeding (the "Arizona Petitioners") and the Arizona press, as well as using trust monies to fund the Arizona litigation. Such disclosures of confidential information to the Arizona Petitioners and press, as well as financial support of litigation in direct conflict with _____ best interests constitute major breaches of their fiduciary duties and constitute sufficient justification for their removal.

To determine whether the Trustees breached their fiduciary duties, _____ sought to take the deposition of Dr. _____ may have had communications with the Trustees regarding _____ and his deposition could possibly reveal that the Trustees did indeed breach their fiduciary duties owed to _____. On May 30, 2012, the clerk of Superior Court of Los Angeles issued a commission to take the deposition of Dr. _____ outside California. On August 7, 2012, through Arizona counsel _____ filed his Application for Subpoena for Taking Deposition in Arizona for Matter Pending in Foreign Jurisdiction. The matter, however, was not assigned to Judge _____

Even though the matter was not before Judge Myers, on August 13, 2012, without giving or his counsel notice and an opportunity to be heard, Judge _____ stayed the subpoena based on an ex parte communication with the witness, until Mr. _____ moves the court for permission to subpoena Dr. _____ records and until the court has heard from the parties in the litigation as to whether there is some basis to permit _____ records in Dr. _____ files to be subpoenaed.

This is not the first time that Judge _____ has refused _____ or his counsel, the right to be heard in issuing rulings. In the case, *In the Matter of: _____ an Adult*, bearing Maricopa County Superior Court Case No. _____ (hereinafter, "Arizona Petition"),

(collectively, the "Arizona Petitioners") filed a motion, which was grounded on false allegations, to revoke the *Pro Hac Vice* admission of counsel, _____ on November 10, 2011. Despite Mr. _____ subsequently being relieved as counsel for _____ filing a withdrawal of attorney of record, and voluntarily revoking his *Pro Hac Vice* admission, the Arizona Petitioner's counsel insisted that the revocation hearing not be taken off calendar. On February 7, 2012, the revocation hearing took place. During the revocation hearing, the court asked the Arizona Petitioner's counsel whether any other relief was sought other than the revocation of Mr. _____

Pro Hac Vice admission, and counsel responded that there was not. Nevertheless, on February 7, 2012, the trial court issued a Minute Entry, stating that it accepted Mr. _____ voluntary withdrawal of his *Pro Hac Vice* admission, and then went on to sanction Mr. _____ by issuing a lifetime mandatory injunction without notice, without an opportunity to be heard, and without a finding of misconduct.

Again, on February 22, 2011, in response to subpoenas issued by Mr. _____ to take discovery from certain Arizona witnesses for use in the California proceedings, the law firm of

P.A., filed a Motion for Protective Order and a Motion to Transfer Related Cases on behalf of all the Arizona witnesses. The Motion to Transfer requested the transfer of the Motion for Protective Order to the Arizona Petition, even though it was completely unrelated to the California proceeding, and even though witnesses in the California proceeding were acting as attorneys in the Arizona petition. The trial court transferred and consolidated the California proceeding with the Arizona Petition on March 4,

2011 without giving notice to without giving an opportunity to be heard, and well before
opposition to the motion for consolidation was even due.

Judge conduct violates the Arizona Code of Judicial Conduct Rules discussed below:

Rule 1.2

Rule 1.2 states that “A judge shall...avoid impropriety and the appearance of impropriety.” Comment 5 to this rule explains that “actual improprieties include...any conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.” Judge has shown that he has already prejudged issues, conduct that clearly reflects adversely on his honesty and impartiality.

Rule 2.2

Rule 2.2 states that “A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Comment 1 to this rule states “To ensure impartiality and fairness to all parties, a judge must be objective and open-minded. Judge has failed to perform all duties of judicial office fairly by failing to give or his counsel, notice and an opportunity to be heard, in complete violation of the due process rights that are inherent in our legal system.

Rule 2.3

Rule 2.3 states that “A judge shall perform the duties of judicial office...without bias or prejudice.” As discussed above, Judge has clearly shown bias through his prejudgment of the subpoena issue regarding Dr. by issuing a sanction without notice and opportunity to be heard when the opposing counsel did not even seek that relief, and by consolidating cases without giving notice and opportunity to be heard.

Rule 2.5

Rule 2.5 states that “A judge shall perform all judicial and administrative duties competently, diligently, and promptly.” Comment 4 to this Rule explains that “a judge must demonstrate due regard for the rights of parties to be heard.” Judge [REDACTED] has not demonstrated due regard for the rights of the parties to be heard by completely disregarded all due process considerations and not providing [REDACTED] or his counsel, notice and an opportunity to be heard.

Rule 2.6

Rule 2.6 states that “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.” Comment 1 to this Rule further explains that the “right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.” Judge [REDACTED] did not accord [REDACTED] the right to be heard according to law, nor did he accord [REDACTED] counsel the right to be heard. Judge [REDACTED] simply ignored the due process rights of [REDACTED] and [REDACTED] counsel, when it came to the subpoena to Dr. [REDACTED] deposition, the sanction issued against [REDACTED] counsel, and the consolidation of the cases. Through these actions, Judge [REDACTED] has ignored “an essential component of a fair and impartial system of justice” and failed to protect the rights of [REDACTED] and his counsel Mr. [REDACTED].

Rule 2.9

Rule 2.9 states that “A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter[.]” Comment 1 to this Rule further explains that “[t]o the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.” Nevertheless, Judge [REDACTED] permitted, considered, and ruled based on an ex parte communication with the witness, Dr. [REDACTED]. Judge [REDACTED] concluded that the subpoena is stayed based on this ex parte communication, without providing [REDACTED] or his counsel, an opportunity to be heard.