

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-285

Judge:

Complainant:

ORDER

The complainants alleged a superior court commissioner violated their due process rights and was biased against them.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the commissioner 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.

The commission does not have jurisdiction to review the legal sufficiency of the judicial officer's ruling. In addition, the commission found no evidence of ethical misconduct and concluded that the commissioner did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: October 15, 2014

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the commissioner on October 15, 2014.

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

**CONFIDENTIAL
USE ONLY**

FOR OFFICE

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

2014-285

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.

We, _____ and _____, are filing the following complaints against _____ who engaged in judicial misconduct, established a time restricted hearing that violated section _____ and denied the _____ due process of law. The _____ appeared before the _____ on _____ for what was suppose to be a consolidated evidentiary hearing on four Injunctions Against Harassment orders _____, after _____ and _____ sought an injunction prohibiting harassment.

Background: _____ and _____, MD _____ filed these injunctions against _____, a previous patient, and his wife, _____ after _____ released, the attached flyers _____. The flyers are based on medical occurrences and records that were created after the Plaintiffs did a right shoulder replacement on _____. The implant was too large, impinged on _____ rotator cuff and was causing excruciating pain. It had to be extracted and redone.

Over a _____ period, _____ reported the pain to the Plaintiffs and they failed to diagnosis or treat the problem even though x-rays clearly revealed abnormal positioning of the implant. They then left the treating Clinic, without notification. _____ conducted an Internet search, located Dr. _____ (at _____ Clinic. They met with Dr. _____ (did not present at the appointment, his whereabouts remained unknown) with the hope of having him explain the error and

correct the surgery. This was to no avail. Dr. [redacted] failed to properly diagnosis and prescribe the correct surgery until informed of another surgeon's assessment.

After another surgeon corrected the implant [redacted] the proposed a private settlement [redacted] to at least cover the second surgery. Mr. [redacted] failed to respond and Dr. [redacted] turned it over to his insurance co. After several months of corresponding back and forth [redacted] with Dr. [redacted] insurance co. it became apparent that Dr. [redacted] was using his insurance company to create a delay until the statute of limitation had run out and a lawsuit could not be filed. Upon assessing their responses to the medical error, it became apparent that these professionals had every intention of possibly continuing and hiding their medical error. The [redacted] commenced with legal action, filing with regulatory boards, alerting media and [redacted] released the flyers. She sent one copy to each Plaintiff. Mr. [redacted] in the mail, which included a copy of the board complaint, and Dr. [redacted] in a fax. The fax included a letter responding to Dr. [redacted] insurance, revealing recognition of the delays," a copy of medical board complaint, an article on how doctors can reduce medical errors and confirmation that legal action will commence on

In an effort to cover up, and suppress the truth from the public, Mr. [redacted] and Dr. [redacted] responded by having their Attorney, [redacted] seek four Injunctions Against Harassment, based on allegations that "she" mailed a flyer to [redacted] home, work, neighbors, and his parents' home in [redacted], and alleged the [redacted] faxed a flyer to his work. The flyer was titled " [redacted] and started out Beware, listing the name of each Plaintiff. It lists a page-full, according to [redacted] of derogatory, defamatory, and negative statements about me in my professional capacity, while [redacted] claimed defamatory and negative statements. Both alleged that a colleague notified each that they others had received an e-mail of the flyer and that at least on three occasions flyers were left on cars outside of the Plaintiffs' office and security observed [redacted] and a third party placing flyers on [redacted] petition on [redacted] does not include leaving the flyers on cars. [redacted] granted these injunctions.

Scheduling: On [redacted] after failed attempts to reach an agreement, we, the [redacted] requested a hearing to dispute and defend against the injunctions.

When her clerk (name unknown,) scheduled the hearing she scheduled it for 12 business days instead of the 10 business days per A.R.S. This same clerk presented at the hearing.

Hearing: On , we presented at what was suppose to be an entitled hearing, only to be treated unfairly and denied the right to defend give testimony or present evidence. While we waited for the attorneys and judge to enter, the scheduling clerk walked into the courtroom and rudely stated to who had her iPad out, "you need to put it in airplane mode." responded, "It is in airplane mode." As the clerk abruptly walked away, she harshly stated "well put it away."

entered the courtroom, looked disapprovingly at the sat down and proceeded to state with her head down "Oh I remember this case." This gave rise to question, had she already prejudged and determined the outcome based on her initial granting of the petition?

Concern grew, when following a brief recess, returned to the court room and not only proceeded to set extremely restrictive time limits of per attorney, but then placed the burden on the attorneys to watch the clock. She readily stated that she would be ending testimony when the time was up. This narrow time limit was to include examination and cross-examination for four injunctions, plaintiffs, defendants and witnesses.

Court proceeded with the restrictive time limit, which resulted in allowing time for of the Plaintiffs' witnesses and the Plaintiffs to testify and be cross-examined with one re-direct. We noted at the end of Mr. testimony the Plaintiffs' had used their minutes. However, the Judge never interceded and allowed for Mr. to give his testimony and be crossed examined. She sat through, the proceedings, appearing uninterested, head down and writing. She looked up only when objections were raised. At the end of both Plaintiffs testimony with no substantial evidence submitted (even though they had turned in exhibits prior to the hearing), glanced in the direction of the and stated time to present closing arguments. Our Attorney returned to the table, and stated, "She is not going to allow you to testify."

It is contended that the restrictive time limited hearing not

only violated A.R.S. but denied us, the our constitutional right to due process and a fair hearing, Ariz. Const. Art. 2, § 4; U.S. Const. Amends. 5 and 14. While Section allows a person who has suffered harassment to seek expedited injunctive relief against a person who has caused it; it also contains important due process safeguards for the person charged with harassment. Further, it clearly state that a person charged with harassment, upon request is to be allotted an evidentiary hearing within with the judge required to hear testimony and evident from all parties to decide the issue applicable to law. The failure to allow the to testify and offer admissible evidence deprived them of their right to a hearing and to have their day in court. To offer relevant and competent evidence on a material issue is one of the elements of a fair trial and is the fundamental right of every person to present evidence at trial in a civil case. This fair trial and fundamental right were denied. These denials prevented the from defending against the allegations of harassment and rebutting testimony with evidence:

Evidence of fax transmittals, mailings and e-mails revealing that the Plaintiffs claim of harassment was not established as required for injunctive relief under A.R.S. § Accepting evidence and testimony from the defendants would have revealed that the petition and Plaintiff and witnesses testimonies were not based off of a series of acts that was "directed at" them, but a series of acts directed at the public, and Dr. insurance co. All information sent "served a legitimate purpose."

The fax transmittals would have also revealed that claim of receiving a fax at work was actually sent to in response to correspondence received from his insurance. And it would have explained why witness failed to present material evidence to substantiate her claim of receiving numerous of faxes and testifying that he had not brought these faxes to court, but had left them at the clinic. As such the misapplied the law by not requiring substantive evidence and failing to permitting the to offer counter evidence. Thus there was no substantial evidence to support issuance of an injunction to prevent harassment under

Refusing evidence of medical records also prevented the [redacted] from revealing that Mr. [redacted] was dishonest when he claimed he had met [redacted] at numerous of medical appointments, when in fact he had never met her until the day of the hearing. Since he had not presented at the appointment, failed to respond to the settlement and his whereabouts were unconfirmed, [redacted] conducted an Internet search, not to harass, but to notify of malpractice, thus sending to any address that listed a

Lastly, allowing evidence would have further revealed that witness [redacted] was dishonest and operating off of stereotypic recognition, when she testified that Mr. [redacted] pulled up in a yellow truck, with a flyer in his hand. Mr. [redacted] has never own a yellow truck. The [redacted] gentleman seen had just left the clinic with his wheelchair bond wife and was pulling up to retrieve her. A female friend who was passing out the flyers, assisted this couple into the car, and it is this friend's description listed in the petition, not [redacted]. It was also this friend that [redacted] took a picture of, and failed to present in court because she knew it did not support what was written in the petition and would reveal that she did not know the [redacted] nor had she witnessed [redacted] at the clinic. The failure to allow time to accept all evidence reflect that [redacted] clearly had decided the outcome of the hearing and had chosen one side over the other.

This resonated in her fabricated rulings "The court finds by a preponderance of the evidence that the Defendants committed acts of harassment" that had not been substantiated with evidence by way of the Plaintiffs or Defendants. Her disregards of evidence and counter testimony made it impossible for her to impartially and fairly resolve the issue of harassment before achieving a credible determination. Thus the [redacted] were subjected to court-ordered restrictions of their conduct without opportunity to present evidence in their defense or rebut adverse testimony. Denial of their fundamental right to present evidence constitutes grounds for reversible error.

Without explanation, [redacted] dismissed and ignored an Arizona ruling; [redacted], which states that harassing act, *must be "directed at" the specific person complaining of harassment. Contact and*

**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.**