

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-319

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge delayed a ruling and incorrectly applied the law in a family law matter.

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.

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

Commission members Louis Frank Dominguez, Margaret H. Downie, and Art Hinshaw did not participate in the consideration of this matter.

Dated: March 25, 2016

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on March 25, 2016.

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

I understand the commission cannot reverse court orders or assign a new judge to a case.

I declare, under penalty of perjury, that the foregoing information and the facts I have provided upon which my allegations of judicial misconduct are based are true and correct.

Signature: _____

Date: _____

INSTRUCTIONS

Use the following space or plain paper of the same size to explain your complaint. Explain why you believe what the judge did constitutes judicial misconduct. Be specific and list the names, dates, times, and places relevant to your allegations. Additional pages may be used and relevant copies of documents may be sent with your complaint (please do not send original documents). Use one side of each page only and write legibly or type your complaint. Please keep a copy of your complaint for your records.

hired me to file a motion to set aside orders that Judge	had made regarding	federal veteran's benefits. Judge
orders were contrary to and preempted by federal law. Exhibit 1.		
Mr. hired me in . On , Judge held a telephonic return hearing during which I informed him that his orders regarding certain federal veteran's benefits exceeded his authority and were preempted by federal law. Judge said that he understands what I told him, but he did not see another way to give the opposing party what he felt she deserved from the divorce. Judge had also stated in his order that was the subject of my motion to set aside judgment that this was the purpose of his orders. Exhibit 2 (Page 7, fifth and sixth paragraphs). Therefore, Judge expressly disregarded the law in favor of his personal belief regarding what he felt the opposing party should receive in her divorce. Furthermore, Judge issued an order directing Mr. to sign all necessary documents to make his former spouse the sole beneficiary on his veteran's benefits by the following or he would order the clerk of the court to do so on his behalf. Exhibit 3. Judge also set mediation before his court for Exhibit 3.		
I filed the motion for relief from judgment on conservator and I filed out replies on	Exhibit 1. The opposing party filed her response on Exhibits 5 and 6. Therefore, the motion was at issue before Judge	Exhibit 4. Mr. on :
Judge held a telephonic conference on mediation set for Exhibit 7. Judge also ordered the conservator's attorney and I to file briefs regarding whether Mr. mental capacity has any effect on the state court's authority regarding the federal veteran's benefits. Exhibit 7. The conservator's attorney and I filed our briefs on Exhibits 8 and 9. The opposing party filed her response on Exhibit 10. Therefore, the motion to set aside judgment was again at issue before Judge		
However, on I after having declared the previous month that mediation would be "fruitless," decided that mediation was essential and issued a minute entry staying the case and directing the parties to mediation. Exhibit 11. On the conservator filed a notice of completion of mediation. Exhibit 12. Although Judge subsequently ruled on other issues, he never specifically lifted the stay or ruled on the motion to set aside judgment until he rotated in. Even though he continued to rule on some issues as late as (Exhibit 13), Judge never ruled on the motion to set aside judgment.		
Therefore, Judge entered orders in order to avoid or delay having to rule on the motion to set aside judgment. While the motion was at issue the first time in he ordered the parties to submit additional briefs and vacated mediation. When the motion was at issue before him again in he realized that he would have to rule on the motion and, having only the month before declared that mediation would be "fruitless," declared that mediation was then essential and ordered the parties to mediation and stayed the action. When he received notice that mediation was complete in and the motion was for the third time at issue before him, he simply never acted. While he ruled on other issues, he never issued a formal order lifting the stay and never ruled on the motion.		
Judge actions do not promote confidence in the integrity of the judiciary and do not avoid impropriety or the appearance of impropriety in violation of Rule 1.2, Arizona Rules of Judicial Conduct.		
Judge did not uphold the law or perform his duties fairly and impartially in violation of Rule 2.2 by failing to be objective and open-minded regarding the motion to set aside judgment, and by failing to interpret and apply the law without regard to whether he approves or disapproves of the law in question. He made this clear when he stated that he was aware of what I was telling him regarding the limits to his authority regarding federal veteran's benefits, but he saw no other way to give the opposing party what he personally believed she should get from the divorce.		
Judge also violated Rule 2.5 by not only delaying the procedural necessity to rule on the motion by imposing additional burdens on counsel, entering a stay, ordering the parties to mediation a second time, and ignoring the fact that the parties had completed mediation, but also by failing to rule on the motion when such delays ended. Even by the most generous standards, Judge should have ruled on the motion no later than long before he rotated, pursuant to Article 6, Section 21 of the Arizona Constitution. Judge purposeful delay also violated Article 2, Section 11 of the Arizona Constitution, which requires that justice be administered openly and without unnecessary delay.		
Finally, if Judge certified that he had no issues pending for longer than 60 days during this time, he committed further violations of the RULES of Judicial Conduct.		