

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-304

Complainant: No. 1094610678A

Judge: No. 1094610678B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The issues raised are legal or administrative in nature.

The commission is not an appellate court and cannot change a judge's decisions; therefore, the complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: January 26, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on January 26, 2007.

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

Complaint: [redacted]
Complainant: [redacted]

CJC-06-304

In [redacted] a status conference was conducted on [redacted] at 8:30 a.m. The undersigned represents the Defendants.

The purpose of the status conference was to set a date for trial. I had notice of the status conference, but through a scheduling error, did not appear at the hearing. I have ordered the audio/video proceedings, but have not yet received them and have not yet listened to the recording of the proceedings.

Nevertheless, the Court's subsequent Minute Entry reveals *some* of the content of the proceedings. (See Minute Entry, filed [redacted] Plaintiffs' attorney, [redacted] made an oral request to extend the discovery cutoff to [redacted] Months earlier, Plaintiff had previously made a motion to extend the various deadlines, which Defendants opposed, but the Court granted Plaintiff's motion.¹ (See Minute Entry, filed [redacted] Plaintiff's prior motion, however, *did not* request an extension of the discovery deadline, which was scheduled for [redacted] *At no time prior to the [redacted] discovery deadline did Plaintiff request that Defendants extend the [redacted] discovery deadline.* Nevertheless, on [redacted] when Defendants were not present, Plaintiffs made an oral motion to the Court requesting relief that had not been previously requested from Defendants to extend the discovery deadline (which at the time of the hearing was only two

¹ On or about [redacted] Plaintiffs' counsel and Defendants' counsel signed a "Joint Comprehensive Rule 16(b) Pretrial Conference Memorandum" (hereinafter "JPCM"). The JPCM expressly provided that all experts' opinions would be disclosed sixty days after the joint pretrial conference. Plaintiffs' counsel agreed to this provision. At the [redacted] joint pretrial conference, the Court adopted the times agreed to by the parties and discussed [redacted] as the date for disclosing all experts' opinions. Both parties agreed (again). Thereafter, the Court issued a minute entry that established [redacted] as the date to disclose all experts' opinions. (See Minute Entry, filed [redacted] Notwithstanding the foregoing, Plaintiff subsequently filed a motion to extend these deadlines because of a trip that he had planned. Plaintiffs' motion failed to set forth "good cause" for extending the established deadlines. (See Defendants' "Defendants' Response to Plaintiffs' Motion to Modify Scheduling Order). Defendants' counsel had previously granted Plaintiffs extensions on deadlines on at least *two other occasions* and had been otherwise very cooperative with Plaintiffs' counsel in this action, but the undersigned would not agree to Plaintiff's latest extension. Judge [redacted] granted the motion. Significantly, the motion did not seek to extend, and the Court's ruling did not extend, the [redacted] discovery deadline. Plaintiffs' case has already been dismissed once for failure to prosecute, only to be reinstated over Defendants' objection and the prejudice to Defendants. (See Minute Entry, filed [redacted] At a very minimum, Defendants' vigorous opposition to Plaintiffs' motion to extend deadlines should have put both the Court and Plaintiffs on notice that Defendants would oppose any further delays in this litigation and that Defendants would want to be heard on any such requests to extend established deadlines.

days away) to [redacted] This motion was made orally and was not supported by affidavit.²

Judge [redacted] did not require Plaintiff to submit the motion in writing. More importantly, Judge [redacted] did not give Defendants an opportunity to know about the motion and/or respond thereto. Judge [redacted] granted the ex-parte motion summarily and without affording Defendants due process of law.

Plaintiffs' attorney then made another oral request: [redacted] requested that Plaintiffs be permitted to view and take pictures of some personal property prior to the scheduled settlement conference. Again, Plaintiffs' motion was made orally and Judge [redacted] did not require Plaintiffs to submit the motion in writing.³ Again, Judge [redacted] did not give Defendants an opportunity to know about the oral motion and/or respond thereto. And again, Judge [redacted] granted the ex-parte motion summarily and without affording Defendants due process of law.

Significantly, a trial date, which was the purpose of the [redacted] status hearing, was not set and could not be set because Judge [redacted] does not set cases for trial until after a settlement conference has been conducted; as of [redacted] a settlement conference had not been conducted.

In another case, the undersigned was present in Judge [redacted] courtroom when opposing counsel failed to appear. No action was taken and Judge [redacted] merely rescheduled the hearing for another date. (See Minute Entry in [redacted] copy attached). The treatment of Defendants and/or their legal counsel in this case was noticeably different.

When the undersigned discovered the foregoing facts, the undersigned filed "Defendants' Objection to Plaintiff's Ex-parte Requests." Judge [redacted] referred to Defendants' motion as a motion for reconsideration and denied the motion. (See Minute Entry, filed [redacted] In the same decision, Judge [redacted] then extended the discovery deadline to [redacted]

Judge [redacted] conduct of allowing and then granting ex-parte motions without affording opposing counsel an opportunity to know and respond to the motions, denied Defendants due process of law. This conduct gives more than just the appearance of impropriety. It also brings the judiciary into disrepute and violates the Code of Judicial Conduct.

² The conduct of Plaintiffs' counsel is the subject of a Bar complaint that has been filed concurrently herewith.

³ Plaintiffs' attorney had not previously made any such request of Defendants, although [redacted] did send an e-mail (attached) to the undersigned *later than same morning* (after the hearing and after the Court had already granted his oral request) that requested that Plaintiffs be allowed to photograph the personal property, but never mentioned that he had already made such a motion that morning to the Court and that it had already been granted.