

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-025

Complainant: No. 1301800364A

Judge: No. 1301800364B

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 solely legal and factual in nature. The more appropriate remedy would have been to appeal the judge's decision to a court with proper jurisdiction.

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

Dated: February 20, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on February 20, 2007.

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

My complaint and claim is that Judge [] did not perform her duties in an impartial and diligent manner in my case.

A judge shall perform the duties of judicial office impartially and diligently.

A forcible/special detainer claim was made against me on a commercial lease by [] [] A hearing was scheduled for [] at which time I received a claim for one months rent owing and unpaid for October, 2006 plus certain penalties and costs. I appeared to answer the claim and offered to settle the matter for that amount. The lawyer representing [] at that time said he was not authorized to settle the matter at that time. A trial was scheduled for [] [] after I filed an initial response and paid the \$26.00 filing fee.

On [] I appeared again to answer the claim unrepresented by legal counsel. [] appeared on behalf of [] Judge [] suggested there was time for a pre-hearing conference to see if the matter could be resolved. During that discussion [] discussed what he believed to be my obligation and liability under Arizona law.

I appeared with a witness, [] who was familiar with my business and who had assisted me in the past with normal business matters such as the lease, bookkeeping, and he had direct knowledge of the business operations including when and how I gave up possession of the warehouse that was the subject of the forcible detainer claim. In response to questions about the representations [] made to me about my obligations in law and under the lease, [] appeared to become upset and stated that my witness had no right "to be in the courtroom". The matter was not resolved in the pre-hearing discussion.

Judge [] proceeded with the hearing. At the outset [] requested that my witness be excluded, as a witness, making the following request and representation to Judge [] (from the hearing transcript attached)

.... [] Thank you judge, we'd like to invoke the rule to exclude the witnesses, the defendants have a witness that is present in the courtroom, he is an accountant and is actively trying to offer advice to his client though he is not an attorney

Judge [] granted [] motion, excluding my witness, as a witness, while indicating my witness would be given an opportunity to testify after I had finished my testimony:

.....Judge: Okay. Um, gentleman, what I'm going to ask you to do, are both of these gentleman going to testify on your behalf, []

[] Um, they could be.

Judge: Well I need to know, sir, because otherwise they won't be able--what he's asking is that they simply leave the courtroom while prior testimony is given, that's all, and then when it's his turn, this gentleman's turn to testify, he can come back in the courtroom, but he just can't be present while there's earlier testimony. After he's given his testimony he's welcome to stay but the request is that he be excluded simply until it's his turn to testify. So you will calling this gentleman as a witness?

Yes.

Judge: Okay, sir I'm going to ask you to step outside for just a few minutes and then we'll call you back, okay? Alright, did plaintiff wish to make opening statements?....

Judge represented my witness would be given an opportunity to testify. In fact, she never gave my witness an opportunity to be heard, and did not give me an opportunity to properly respond to motion my witness be excluded since she clearly states he will be given an opportunity to testify on my behalf. I agreed to my witness being temporarily excluded, as a witness, on that basis.

having excluded my sole witness, then made a motion for judgment on the pleadings. Possession of the property was never in issue at the hearing but it is apparent from the answer I gave to the claim dated I had wished to make certain representations on the amount of rent owing. The statutory procedure of forcible detainer makes rent owing an issue and my response of made certain admissions but did not make any admissions regarding rent owing and unpaid for November, 2006.

Despite that, I responded to the motion for judgment on the pleadings as best I could. I am a small businessman without legal training and have relied in the past on others, including my witness, to give me business advice related to normal business matters from day to day. I do not believe I am required to retain legal counsel in all matters that are in any way related to legal matters but that also arise in the normal course of business, such as a commercial lease.

Having responded as best I could, the witness I was relying on having been excluded from the court by Judge based on a false representation to me, Judge then proceeded to grant legal counsel's motion for a judgment on the pleadings, citing unspecified Arizona law.

.....Judge: Alright, so what happened was if you you'll take a look at the summons and complaint and I don't know if it shows up on your copy or not but on the right hand side kind of sideways is the court's date stamp showing that the summons and the complaint were actually filed on So those were actually filed before you returned possession of the premises. So, that's number one, they filed, then possession of the premises was returned subsequent to or after the filing of the document. Now, insofar as the rent for the month of November--that's a matter of

law. Once it has, uh, been set, and even with our original court date which was [redacted] the law used to allow us to pro-rate up until the date of judgment. Some years ago the legislature changed that so that no matter how far you are into the new month then we have to give that full month's rent. If the plaintiff wants to negotiate on that with you on that later that's okay but as a matter of law I have to grant that to them. So, in looking at the answer and in listening to plaintiff's motion I'm not really seeing anything that we can take to trial at this point in time. Um, I'm going to grant the motion for judgment on the pleadings. I appreciate your candor on this, [redacted] and I appreciate your eagerness and willingness to try and get this situation resolved, however, by law they are entitled to those two months rent as well as court costs and attorney fees. Do you have a proposed form of judgment, counsel?

In fact, the [redacted] claim for one months rent, for October, is the only claim I had ever responded to, in which I admitted [redacted] right to possession of the premises, and admitted I owed rent for one month, not two months as legal counsel for [redacted] was now claiming at the [redacted] hearing. Despite counsel making no representations as to the law involved, Judge [redacted] granted the motion for judgment on the pleadings despite acknowledging I had certain issues I wished to raise briefly. Judge [redacted] says this:

.....Judge: Okay, real good. I'm sorry [redacted] I know you had things you wanted to talk about today but I'm bound by statute on this matter and indeed by virtue of your answer and by virtue of the motion there is nowhere else to take this case.

Judge [redacted] was clearly aware there were "things [I] wanted to talk about today", but proceeds to grant judgment in the form of the order counsel for [redacted] had drawn up. There was a further discussion of keys and possession that my witness could testify to from direct knowledge but Judge [redacted] had excluded him from the courtroom and he was never given an opportunity to testify on that matter or anything else, despite the representation Judge [redacted] made to me in excluding my sole witness.

The entire hearing took less than ten minutes. I understand the forcible detainer procedure provided for by Arizona statute is intended to provide a swift resolution of the matter. I only wished to have my witness testify on my behalf and believe that would have taken at most five additional minutes. I had made the required response on [redacted] to the claim then being made by counsel for [redacted] and I had paid the required filing fee. I do not believe that it would have been an excessive demand of the Judge's and court's time to allow my witness to be heard and for me to be given a full and fair opportunity to make my case, in response to the new claim legal counsel for [redacted] [redacted] was now making at the [redacted] hearing.

At the very least I might have been given an opportunity to find out what Arizona law Judge [redacted] believed forced her to grant judgment on the pleadings, that were different

CJC-07-025

from the pleadings and claim I responded to on [redacted] As it is now more time and expense is being incurred by all parties to resolve the matter.

I claim I was deprived of "my day in court" in a real sense by the actions of Judge [redacted] and the judge in this case did not perform the duties of judicial office impartially and diligently, as required. Therefore, I respectfully request a review of the Judge's actions in disposing of my case. A transcript of the hearing is attached.