

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 07-180

Complainant: No. 1314010063A

Judge: No. 1314010063B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The issues raised involve legal and procedural matters outside the jurisdiction of the commission. The commission is not a court; therefore, the complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: August 28, 2007.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on August 28, 2007.

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

CJC-07-180

JUL 06 2007

Confidential:

Commission on Judicial Review
1501 W. Washington Street, Ste. #229
Phoenix, AZ. 85007

[REDACTED]

To the Judicial Review Commission of Arizona the following case is submitted for review for the following reason(s), to wit.

Plaintiff has reason to believe that his rights have been violated by the Justice Court Judge, the Honorable [REDACTED] the presiding judge in this matter for not bringing this simple case to trial in a timely and expeditious manner, for the decisions derived at after a lengthy series of unwarranted delays, and by the defense attorney, [REDACTED] in the adjudication of this matter, procedurally and with the proper and accepted interpretation and application of the corresponding Arizona State Statutes (ARS), especially as to the judges final decree of judgement arbitrarily determined against the plaintiff, after two years of foot dragging and other delays by the defense counsel.

I state that judge, the Hon. [REDACTED] in this matter.

a). Allowed this simple 'professional fees due' collection case to fester unnecessarily in the court system for an excess of two years without legal foundation and/or documented justification, and contrary to the many motions of the plaintiff filed asking the court that this case be tried expeditiously and without further delay or prejudice, as it sat there fallow and without proper judicial action.

b). Defendant did not appear in court as ordered on the 1st, 2nd, 3rd or 4th scheduled hearings without written justification (except on one date where she was hospitalized as a result of surgery very late in the game - her 3rd hearing absence). In fact, the defendant did not ever appear to any of the scheduled hearings and furthermore, the court refused to admonish or sanction the defendant and/or her counselor as requested by the plaintiff for the continuing failure to abide by the courts orders, i.e. 'failure to appear' 4 counts. (Exhibit #10)

c). The defense counsel was totally **uncooperative** throughout and failed to honor civil litigation rules and protocols between defense and plaintiff attorneys, by his failure to conform to statutory civil rules and judicial procedures, which among other things, requires notification, by copy, between defendants and plaintiffs, **all actions taken by the defense**, including, but not limited to, motions being submitted by the defense counsel to the court, particularly related to motions and stipulations submitted to the presiding judge by defense counsel and consistently failing to copy the plaintiff. (Exhibit #1) and to maintain open lines of communication between the plaintiff and the defendants counsel.

d). Sometime before the last [] hearing (whereby judge [] had denied the defense a motion for the defendant to testify telephonically (Exhibit #5) and had further ordered the defendant to appear in proper person, judge [] and the defense counsel became involved in some element of '**Ex Parte**' communications, unbeknownst to the plaintiff, (Defense counsel [] stated this to Judge [] on [] i.e. that he had worked out some sort of '**deal**' <Judge [] was not available for the hearing of [] so judge [] presided over this hearing> between himself and judge [] on the hearing date to dismiss the [] judgement adjudicated by Judge [] in favor of the plaintiff at the prior hearing of [] (Exhibit #8). Despite a **stipulation** previously filed by the defense counsel, and by then part of the official court record, that stated that 'the defendant had indeed affixed her signature on the proper legal documents authorizing the plaintiff to transfer monies from her deceased husbands annuity account over and into her own name.' Judge [] (unable to locate 'any record' of this **deal** between the defense and the court in the case file, could not confirm what this 'deal' consisted of.) and not having reviewed the in-file stipulation by the defense counsel, acknowledging the validity of the contractual relationship between the plaintiff and the defendant, (Exhibit #2) **erroneously** decreed that there was 'no contractual relationship between the defendant and the plaintiff had existed.'

Note: Judge [] **did not advise** the plaintiff by minute entry or by direct notice by the defense counsel to the plaintiff, of this ex parte 'deal' that had been cooked up by the defense counsel and judge [] doing this '**illegal**' and **unacceptable** act and plaintiff still has no idea why this action was taken by the court and/or why all the mystery surrounding the defendants 4th failure to appear in court on [] as ordered by minute entry from judge [] (Exhibit #9).

e). With the hearing in judge [] court in deep confusion on [] and because no documented record of the 'Ex Parte' communication between counselor [] and judge [] could be located in the case file by judge [] review of the file, and because efforts to reach judge [] by judge [] during the hearing were unsuccessful, the plaintiff and defense then agreed that a new trial was in order since the defendant had not (again) appeared and because under ARS: Rule 59(b), "no court decision having been arrived at, at this point," this was a legal and viable option (Exhibit 11). This was requested by filed motion by the plaintiff to judge [] who denied the request without comment as per minute entry dated [] (Exhibit #6).

f). Judge [] having denied the request for a retrial under Rule 59(b) then gave the plaintiff the opportunity to file an (extended filing period) appeal to the decision of judge [] decreed judgement in favor of the defendant. (Exhibit #3)

g). Having given the plaintiff the opportunity to appeal judge [] decision and the plaintiff having filed such appeal on the courts recommendation (Exhibit #3) - judge [] then promptly rejected the appeal (Exhibit #4) and simultaneously (and arbitrarily) awarded the defendants counselor [] in attorney fees and court costs, while commenting something about 'the plaintiff having 'driven up the costs by his many unnecessary filings(?)'. Note: Over a period of approximately two years the plaintiff has never filed a single motion to continue or has delayed this case in any manner through the use of any other type of 'delaying' action - he merely made a consistent petition that the court take action on this case after so many unwarranted delays.

Talking points by the plaintiff:

- 1). This case involved a lengthy series of tactical and other delays by the defendant/defense not commensurate or justified by the actual and/or documented facts in this case.
- 2). The court did little to take control of the time constraints involved and let the defense take control of the time factors without documented justification which was an inconvenience to the court and the waiting plaintiff and allowed this case to linger without any legal basis.
- 3). Court allowed the defendant to arbitrarily refuse (by her defiant actions and lack of cooperation) to show up for the various scheduled hearings without sanction/ admonishment or documented justification by the defendant despite the courts ordering the defendant to show up to her hearings by minute entry to the plaintiffs chagrin.

4). Now the court decides to arbitrarily, despite the outstanding documented facts, to censure the plaintiff and by that; I mean, legislating from the bench, award a judgement, and with that, a direct slap in the face to the plaintiff, arbitrarily and without justification and unjustified by the ARS's and apparently based merely on the judges' prima facie impressions of this convoluted matter.

5). The court willingly violated the civil rules of procedure by 'ex parte' communications with the defendants counsel and then fails to explain to the plaintiff by minute entry, or direct communication of the defense counsel with the plaintiff, why this cardinal rule was violated. I believe that ex parte communications 'voids' any decisions that may occur as a result of this 'illegal' act(s).

6). The court's decision to in fact indirectly 'censure' the plaintiff and take exception to the plaintiffs 'sense of urgency' with his filing of motions trying to prompt the court to 'take the bull by the horns' appears to be an act of abject discrimination and the actual 'shooting of the messenger' instead of the culprit who created the complexities of this case by non compliance to all of the courts orders.

7). 4). The court willingly violated the civil rules of procedure by 'ex parte' communicating with the defendants counsel in violation of these rules and failed to explain to the plaintiff by minute entry or direct communication why this rule was broken. I believe that ex parte communications 'voids' any court decision that may evolve as a result of this 'illegal' act.

8). I have devoted some 55+ hours (\$150.00 x hr) over the past two years, plus countless hours in the law library, including making many trips to file motions, pay filing and appeal fees and to check the courts record for the current 'filed and existing' documentation between the defense counsel and the court (I haven't always been copied on the defense counsel's actions being taken) and I feel that compensating the defendant on this basis of this consistent noncompliance of the courts orders is out of order and a travesty of justice.

9). The courts actions (inactions) thus far have left me with the impression that a certain amount of prejudice exists between the court and the plaintiff. Certainly he has committed no violations of the ARS. In view of all that have happened, I reject the validity for such prejudice to be allowed to manifest itself in the awarding of money damages to the defendant and counselor - who were the true source of all the delays and problems.

CJC-07-180

I have since had [redacted] and have not worked for the past year and do not expect to be able to go to work anytime soon and because of this I am asking the review board (or the presiding judge) to modify the award in favor of the plaintiff to the original [redacted] judgement in favor of the plaintiff that was originally adjudicated - in full settlement, thereof - for cause.

Respectfully submitted this July 5th, 2007 in [redacted]

