

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 07-268

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Complainant: No. 1320610563A

Judge: No. 1320610563B

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**ORDER**

The commission reviewed the complaint filed in this matter as well as the transcripts of the proceedings and found no ethical misconduct on the part of the judge. There was no evidence of bias towards the complainant.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: February 12, 2008.

FOR THE COMMISSION

lg\ Keith Stott  
Executive Director

Copies of this order were mailed to the complainant and the judge on February 12, 2008.

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

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# COMPLAINT AGAINST A JUDGE CJC-07-268

[Redacted]

**Instructions:** Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

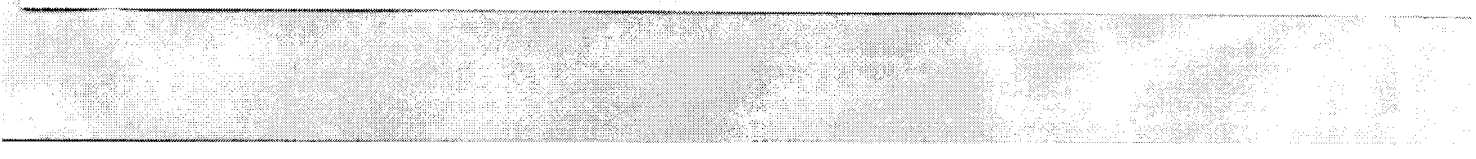
**Complaint:**

Complainant graduated from the Arizona State University College of Law in 1980, and became a member of the Arizona State Bar the same year. His major areas of practice include contract and commercial tort litigation, insurance litigation, and general corporate governance. Complainant has acted as corporate and litigation counsel for numerous privately held and publicly traded companies, including [Redacted] and others. He is licensed to practice before the Supreme Court of the State of Arizona, the United States District Court for the District of Arizona and the 9<sup>th</sup> Circuit Court of Appeals; he has appeared *pro hac vice* in other Courts. Complainant has practiced in front of a hundred or more Judges and has appeared in Court on hundreds, perhaps thousands, of occasions.

Complainant is an immigrant to the United States. He acquired full citizenship rights in the United States District Court of the District of Hawaii in 1973 while serving honorably with the United States Army in the demilitarized zone in Korea. He and his wife raised two children; one practices law in [Redacted], the other attends [Redacted]. Complainant conducts his law practice through his firm, [Redacted]

[Redacted]

Complainant has never previously filed a complaint against a judge.



Complainant first met Judge [ ] in the case of [ ]  
[ ]. During oral arguments, Complainant noted that  
Judge [ ] had a tendency to address Complainant in a demeaning and condescending manner.  
However, since this was the first time that Complainant met Judge [ ], he ascribed Judge [ ]  
conduct to his particular mannerism not significant to his ability to act as a Judge.

Complainant met Judge [ ] once again in the case of [ ]  
[ ]. In that case, Judge [ ] scheduled a number  
of pending motions for oral argument for [ ] 2007. On the morning of [ ] 2007,  
Complainant departed his office on or about 8:00 a.m., well in advance of the time scheduled for oral  
argument. However, [ ]  
Complainant became trapped in traffic, unable to make the 8:30 a.m. oral argument. Complainant  
placed a call to Judge [ ] chambers to advise of his predicament, and requested that the Court  
wait with oral argument until his arrival. Complainant arrived 9 minutes late – at 8:39. See Exhibit 1.  
However, Judge [ ] did not grant Complainant either the patience or the courtesy of (1) waiting 9  
minutes or (2) placing the oral argument at the end of the morning calendar as is common and well  
entrenched courtesy in the [ ] Court. Instead, Judge [ ] heard from the opposing party and  
entered a ruling against Complainant's client. In twenty seven years as a lawyer, this is the first time  
that the Complainant had experienced for himself or others such discourteous conduct on the part of  
any Judge. [3(B)(4)]

Upon arrival, Complainant noted that the hearing had already begun and that the opposing  
party was making a presentation to the Court. Since counsel was not present during the initial  
presentations by the opposing parties, he was unable to present a rebuttal. This denied Complainant's  
client the right to be heard. [3(B)(7)]

At oral arguments, Judge [ ] addressed Complainant in a derisive, demeaning and condescending manner. Some people harboring insidious bias and prejudice, perhaps unconsciously, conclude that those with foreign accents may be addressed disdainfully. Undersigned has experienced this subtle form of preconceived idea many times before; however, never in a contemptuous manner as displayed by judge [ ] in open court. [3(B)(5)(6)]

Following this rather unpleasant experience, Complainant felt that it was important to engage Judge [ ] in order to correct the rift that had developed. Complainant felt it important to demonstrate to Judge [ ] that non-native speakers are just as worthy of courtesy and respect as native speakers. On [ ] 2007, Complainant filed a Motion to Amend the Complaint that would resolve some of the significant issues previously raised by the Parties; in connection with the Motion to Amend, Complainant sought to schedule oral arguments pursuant to Local Rule 3.2(d)(1). Complainant personally placed a phone call to Judge [ ] chambers in order to "secure a time of hearing". Complainant introduced himself, explained that he was in the process of filing a Motion to Amend the Complaint, and that he was seeking a "time of hearing" in order to prepare and serve a Local Rule 3.2(d)(1) notice. The member of Judge [ ] chambers answering the call requested Complainant to stay on the line while she discussed the matter with Judge [ ]. Once Judge [ ] learned that the caller was Complainant, Judge [ ] declined to provide a "time of hearing". See Exhibit 2. [3(B)(2)(3)(5)(6)(7)]

Previously, on 06-08-07, Judge [ ] granted a certain motion previously filed by the opposing party. Exhibit 3. The minute entry stated in its entirety:

MINUTE ENTRY

The Court has received and considered AGRA's Emergency Motion to Quash Plaintiffs' Recorded Notice of Involuntary Trusteeship, Plaintiffs' Response, and [ ] Reply.

IT IS ORDERED granting [ ] Emergency Motion to Quash Plaintiffs' Recorded Notice of Involuntary Trusteeship.

Notably, the minute entry does not require any action on the party of Complainant. However, on [ ] 2007, Judge [ ] initiated contempt proceeding against Complainant *personally* (Exhibit 4):

## MINUTE ENTRY

The Court has received and considered Plaintiffs' Motion to Amend Complaint and to Substitute "Notice of Involuntary Trusteeship" with Notice of Pending Litigation, [ ] Opposition to Plaintiffs' Motion, and Plaintiffs' Reply.

IT IS ORDERED granting in part Plaintiffs' Motion to Amend Complaint and to Substitute "Notice of Involuntary Trusteeship" with Notice of Pending Litigation. Plaintiff may amend the Complaint to seek the statutory remedies created by A.R.S. § 13- 2314.01(D) after a finding of liability, if any. Nothing in this order in any way alters the effect of the Court's [ ] 2007 minute entry.

***IT IS FURTHER ORDERED that Plaintiffs' counsel shall show cause why he should not be sanctioned for noncompliance with the Courts orders regarding the notice of involuntary trusteeship on or before [ ], 2007. (Emphasis supplied)***<sup>1</sup>

An order to show cause for contempt is a serious matter. Complainant, as any other attorney practicing in [ ] County, has the right to assume that a judge issuing such an order is familiar with the law relating to contempt, particularly that "[a] party may not be held in contempt unless the order violated by the contemnor is clear and unambiguous, the proof of non — compliance is clear and convincing, and the contemnor was not reasonably diligent in attempting to comply." *Equal Employment Opportunity Comm'n, et al. v. Local 638*, 81 F.3d 1162, 1171 (2d Cir. 1996) (internal quotations and citations omitted); *Peterson v. Vallenzano*, 858 F. Supp. 40, 41 (S.D.N.Y. 1994). A "clear and unambiguous order" is one "specific and definite enough to apprise those within its scope of the conduct that is being proscribed." *New York State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1352

<sup>1</sup> The rules of procedure do not contemplate a "minute entry" in connection with remedies provided pursuant to A.R.S. §33-420 in issue in the case. A.R.S. § 33-420 contemplates a "separate special action" and a Special Action Rule 6 Judgment. Alternatively, Rule 70 contemplates a *Judgment For Specific Acts*. Judge [ ] inexplicable refusal to consider either, and instead to threaten contempt based on an unsigned minute, entry is palpably biased and hostile. It should also be noted that Judge [ ] refused to recognize that A.R.S. § 12-1191 specifically authorizes the filing of a *lis pendens* and that A.R.S. § 13-2304(D)(6) *legislates* a remedy of a constructive trust. This again demonstrates to the undersigned Judge [ ] demonstrable hostility and prejudice.

(2d Cir. 1989), quoting *In re Baldwin — United Corp.*, 770 F.2d 328, 339 (2d Cir. 1985). Yet, the order to show cause was issued without any record of ordering counsel to perform or not perform any act, either clearly, unambiguously, or at all. It was clear to Complainant then as it is clear to him now that Judge [ ] issued the order to show threat against Complainant as a tool of insidious discrimination and bias. On [ ], 2007, Complainant requested that the Court clarify the [ ] minute entry, Exhibit 5. The Court declined to do so. Therefore, on [ ], 2007, Complainant filed the Memorandum . Exhibit 6.

On [ ], 2007, Complainant's clients filed for the protection of the United States Bankruptcy Code. On [ ], Judge [ ] issued a minute entry, Exhibit 7, which stated in relevant part:

The Court has received and reviewed [ ] Motion for Attorneys' Fees Relating to its Emergency Motion to Quash Plaintiffs' Recorded Notice of Involuntary Trusteeship and Request for Sanctions for Plaintiffs' Failure to Remove Improper Recording and related documents.

Though the application for fees would have been granted in its entirety, Plaintiffs have filed for bankruptcy protection, and the automatic stay prohibits the Court from taking that action at this juncture.

The effect of filing a bankruptcy petition is well known<sup>2</sup>. By operation of law, the automatic stay of the Bankruptcy Code went into effect the moment Complainant's client filed for the protection of the Code. *Miller v. National Franchise Services*, 167 Ariz. 403, 406, 807 P.2d 1139, 1142 (App. 1991). Once Judge [ ] was advised of the bankruptcy and the automatic stay, he no longer maintained

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<sup>2</sup> Section 362 of the Bankruptcy Code provides for an automatic of all proceedings against bankruptcy petitioners and their property. This statute provides in pertinent part:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title ... operates as a stay, applicable to all entities, of (1) the commencement ... including the issuance or employment of process, of a judicial, ... or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title ... , or to recover a claim against the debtor that arose before the commencement of the case under this title ... ; 11 U.S.C. § 362(a)(1).

jurisdiction over the controversy. The statement that "Though the application for fees would have been granted in its entirety, Plaintiffs have filed for bankruptcy protection, and the automatic stay prohibits the Court from taking that action at this juncture" is simply an additional expression of this Judge's bias and prejudice and the quantum of hostility through which he intended to prejudice the Bankruptcy Judge should the same issue arise in the Bankruptcy Court.

Because of Judge [ ] intolerable hostility, bias and prejudice, it is impossible for the Complainant to appear and effectively represent members of the public before this Judge. As this Committee is aware, clients have the right to choose the attorney of their liking. Unfortunately, those clients whose cases fall in front of Judge [ ] will no longer have this right.

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