

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 08-060

Complainant: No. 1330610075A

Judge: No. 1330610075B

ORDER

The commission reviewed the complaint filed in this matter and determined that the judges did not knowingly violate the ethical canons. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: July 14, 2008.

FOR THE COMMISSION

 /s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on July 14, 2008.

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

Commission On Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

March 3, 2008

COVER LETTER

MAR 10 2008

Dear Commission,

I have enclosed Complaints on three (3) Judges with related documents attached. In my attempt to make each of my complaints brief and understandable I have enclosed a copy of my Appellants Memorandum which covers the issues raised and I will refer to that document instead of writing it all out again. The Memorandum is a DRAFT that only needs reference to the transcript. Also I have enclosed a copy of my Motion for Reconsideration.

In my endeavors to get legal help I had a free consultation from an attorney, on who called me back (leaving a message) saying he had talked with colleagues and the first thing I should do was to file Complaints on the Judges' conduct. He told me I was being Railroaded and I should file a Motion for Reconsideration and if that's not accepted then to file a Rule 60 C Motion with Memorandum, and if that doesn't work to file under Special Actions.

The first Complaint is against Justice Court. The Second is and the third is the both of who are acting on behalf of the Court.

I did not fill out the paperwork to file a Complaint against but I believe he has been prejudiced and unfair in my case the Plaintiff writes a personal letter to dismiss the case ; Lo and Behold within weeks my case was dismissed. On the Judge mails a letter with the remark about my Memorandum stating, "If one exists". And sends my case back to Justice Court. I filed a Motion for to Intervene and responded with saying the appeal had not been perfected and not their jurisdiction.

I don't know if you can or will access the court's records in regard to the pleadings I have filed. If not, and there are any pleadings you would like to see, I will gladly send you copies.

Thank you for your time and consideration.

COMPLAINT AGAINST A JUDGE

Page 1 of 2

Date : 3 - 7 - 08

I was served a Forcible Detainer to be in court constable that gave the Forcible Detainer told we could call the court and get it rescheduled. (This violates the law - no sooner then 3 days). The that was signed by Judge that if that day and time wasn't good for us that

my wife and I appeared at the Court at said day and time. At 9:45 a.m. the dismissed the case because plaintiff failed to show for the hearing.

plaintiff made false statements to the court to get another hearing, which was scheduled for

We were served on to be in court on Wednesday, Again this violates the statute of no sooner the three (3) days. This law suit is against both business obligations. was scheduled to work had called the court in regard to rescheduling and was told to put the request in writing.

wrote a letter to the Judge asking for the hearing to be on Thursday, when was off work and could arrange a time for that day. So basically we asked for a one (1) day postponement. walked up to the Clerks window at the Court and the Judge came up to asking how she could help him. After explained the contents of the letter, the Judge's demeanor was hostile, saying we don't reschedule these types of hearings. said it was only for one (1) day, to which the Judge replied, "by law these hearings have to be within six (6) days". thoughts were that the hearing was within six (6) days and the plaintiff failed to show. The Judge went on to say, "Usually in these types of matters it's because of non payment of rent". stated that the rent was paid. The Judge then responded, "I heard you didn't pay last month's rent", to which said yes we did. The question to ask is "who" did the Judge hear this information from? Any reasonable person would draw conclusion that the information must have come from the plaintiff's during Ex Parte Communications.

talked with who said the eviction was because after reading letter he was afraid of being sued.

all parties were present for the hearing. The Judge first states that she heard there had been a settlement conference. The question to ask is "who" did the Judge hear this information from? Any reasonable person would draw conclusion that the information must have come from the plaintiff's during Ex Parte Communications. Yes, on Tuesday, went and talked to was not present to hear or agree with any resolutions made at that meeting.

COMPLAINT AGAINST A JUDGE

Page 1 of 3

Date : 3 - 7 - 08

there was a hearing was in front of
I filed **Countersuits** with some very strong claims regarding ; Non Payment of Rent, Habitability, Non Compliance by landlord, Unlawful Entry (on two counts), Retaliatory Conduct, Perjury ; and I asked for my security deposits be returned in accordance with the Arizona Laws. We were told he would mail his decision that day.

On Tuesday, we did not receive the Judge's decision in the mail, so went to Court and got a copy. The Judge's decision was completely for the plaintiff and none of our counterclaims were addressed.

Following is a list regarding the Judge's decisions in the order presented by the Judge : Exhibit JR 2 .

Page 1, line 22 my name is and not
23 is the owner of the apartments and not the manager.

FIRST ISSUE : NON PAYMENT OF RENT

Please refer to Appellants Memorandum page 2, line 8, to page 3, line 25.

Page 1, line 19 "... Defendants are Guilty of Forcible Detainer".
We do not believe this is true.

Page 2, line 2 "...Defendants have failed to pay rent for
The eviction notice was for the month of and that's the month at issue, and we did pay 1st and last month rent which would have been November 2007 - so it was paid !

Page 2, lines 3-4 "... payment history ... maintained by".
The payment history presented by was a self serving and fabricated document.
Our understanding of the law is that was to provide the Receipt Books to match with the receipts in our possession and what was paid by us on or about

Page 2, line 10 " rent was actually paid ..."
also stated in Open Court that was paid for ; however, the payment history provided by states the word "due" after the entry of This is marked as Exhibit JR 3 . (Appellants Memorandum it is Exhibit #)

Page 2, line 13 " The Defendants provided no receipt to support their claim".
We provided three (3) receipts that were dated

COMPLAINT AGAINST A JUDGE

Page 3 of 3

FIFTH ISSUE : SUPERSEDEAS BOND

Please refer to Appellants Memorandum page 2, line 8, to page 3, line 25.

Page 3, line 18-25, is the Judgement and Amount.

I filed the Appeal with a Supersedeas Bond in the amount of \$ 665.00 (being \$ 580.00 for rent and court costs of \$ 85.00 - which we dispute to be our money) And had 60 days to file the Memorandum which includes reference to the transcript. Monday, we received a telephone message from the Court saying that our Motion to waive the Supersedeas Bond was denied and we needed to pay \$ 520.00 for rent. went down to the Court and gave them a check for the \$ 520.00. Later that day we received another telephone message from the Court stating we needed to pay a total of \$ 2,515.00 to secure the appeal. asked why so much and was that \$ 1,300.00 was for the filing fees. called the Court and talked with a clerk named who stated that when an appeal is filed there is a Supersedeas bond that needs to be filed, a months rent, and that I do not pay the Justice Court for Superior Court filing fees and that the Superior Court filing fee is only \$ 130.00.

I don't know which judge denied my request to waive the fees due to being indigent. I'm guessing it was Judge

SIXTH ISSUE : COUNTERCLAIM

Please refer to Appellants Memorandum that lists eight (8) Counterclaims.

Page 3, line 28, "Defendant's Counterclaim is denied"

The word "Counterclaim" is in the singular. The Judge did reference some of the Counterclaims but overlooked Perjury (stated on pages 4 & 5 of Appellants Memorandum) and Malicious Prosecution (stated on page 6, line 17 to page 10 line 12).

SEVENTH ISSUE : SECURITY DEPOSIT

Please refer to Appellants Memorandum page 2, line 8, to page 3, line 25.

Page 4, lines 3-4, states, "ARS 1343C is the statute governing the disposition of security deposits if not specified in a rental agreement".

The Judge quoted ARS 33 - 1343C in support of his decision ; however, that law pertains to "access" and not about security deposits. ARS 33 - 1321 is regarding Security Deposits, and states, in subsection b, " Any fee or deposit not designated as nonrefundable shall be refunded". The rental agreement between the parties does not state "nonrefundable" security deposit.

State of Arizona
Commission on Judicial Review
1501 W. Washington Street, Suite 229
Phoenix, Arizona

CJC-08-060

COMPLAINT AGAINST A JUDGE

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Date : 3 - 7 - 08

I filed the Appeal with a Supersedeas Bond in the amount of \$ 665.00 being \$ 580.00 for rent (which we dispute to be our money) and court costs of \$ 85.00, and we had 60 days to file the Memorandum which includes reference to the transcript.

Justice Court left a telephone message saying that the court proceeding had been recorded onto a CD and we could come pick it up. picked up the CD, which was in a folder stating it was on an FTR Gold program, and we have that program on our computer ; however, could not get it to work. After many tries called the FTR Gold Technical Support who said it was no good, then Justice Court and was told to bring back the CD and they would get him one that plays.

Tuesday, we received a call from a lady named from the Superior Court stating that Justice Court would soon be giving us the CD. We didn't hear from the Justice Court, so on Monday, called Justice Court and was told it was ready. picked up the CD's and that day he put them in the mail to (who we had talked to regarding doing the transcription), and she received them on We were also told that the court proceeding was put on the CD with a Liberty program. called and verified that she was able to do the transcription with a Liberty program.

Thursday evening, called to get an estimated time of arrival of the transcripts and was told we would have them by Friday, We did not receive them by and we called who stated she had been very ill and that we would have them in a few more days.

Thursday, we were telephoned by who stated that she was still very ill and hadn't been able to do the transcription ; and suggested we ask for an extension of time and that she would get it done over the week end and drive it to to make sure we get it with enough time to file the Memorandum. did file a Motion for Extension of Time that day, and also provided the Court with a Draft of the Memorandum (to show it had been done and only needed to fill in the spaces with the reference to the page in the transcript). We also paid our rent that day, to the Justice Court for the month of February.

*

issued a letter with the following :

Paragraph 1. "Motion to Extend Time for filing Appellate Memorandum, denied. The Defendant could have chosen any transcriber on the list given to him to transcribe he record. Further, he has in fact filed a memorandum with his motion".

COMPLAINT AGAINST A JUDGE

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I tend to believe that it is usually standard practice to allow the first motion for extension of time, and I wonder why my motion was automatically denied because there was a legitimate reason.

It seems the Judge is blaming me for the transcriber I choose. PLEASE REFER to the enclosed **Motion For Reconsideration**.

The last line states that I did file a Memorandum. To me it would have been reasonable, at that time to transfer the appeal to Superior Court. I have obtained another transcriber who will have the transcription done by _____ What were our options? _____ when we did not get the CD's to go with another transcriber who are usually booked at least two weeks ahead with work, which is still so many days past the deadline. Even though we got another transcriber, we still need an Extension of Time to get the CD's transcribed.

Paragraph 2. "The motion filed with the court does not give Plaintiff in the matter sufficient time to respond pursuant to rule".

We filed an Affidavit to waive the Supersedeas Bond due to being indigent on Friday, _____ and to my understanding the law allows five (5) days for the plaintiff to respond ; however, Monday morning on _____ my request to waive the Bond was denied and did not give time for the plaintiff to respond. If the apartment owner wanted us out of our apartment, and knowing we were indigent, it would have been to the owners benefit to let us have the money for Bond for us to be able to secure a place to live.

Paragraph 3. " Motion to strike the Plaintiff's letter is denied. This court is unaware of a letter sent to the Superior court, the Defendant has not supplied and exhibit for the court to make a proper ruling. Further it is not unusual for the parties pro se to send correspondence to the court, the only requirement is that it is copied to the opposing party. The court is unaware of whether or not this was done. Lastly rule 10 AR CivP allows the court to admit documents and pleading outside of the proper form generally incorporated "

I have only been involved in one other legal action which was litigated last year. At one time I wrote the court to update them and received a letter from _____ stating it was unethical for a judge to receive a personal letter from a party in a law suit.

Tuesday, _____ called _____ Justice Court and asked if there was a decision on our Motion for Extension of Time and was told it was denied and that we had until the 8th to file the Memorandum. That same day we called _____ and told her the situation and she said she would have it to us by Thursday,

Wednesday, _____ we received a telephone call from _____ who told us that she had driven _____ to put the CD's in our Post Office Box so we would have them right away. Tuesday evening she tried to access the CD's and wasn't able to, so she called a friend with more computer knowledge and took them to her, who also could not get the CD's to work. That night _____ typed up a Second Motion for Extension of Time and other Motions.

COMPLAINT AGAINST A JUDGE

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Thursday morning, [redacted] took the Second Motion for Extension of Time and other Motions and the CD's to the Superior Court [redacted]. The clerk filed the Motions and Affidavit regarding the filing of the Memorandum, and he told [redacted] to take the CD's to the Administrator's Office ; which [redacted] did. A clerk asked to help [redacted] and he told her the problem. She took the CD's and spent a few minutes trying to access the CD's and then gave them to another clerk, named [redacted] (I'm not sure of the spelling) and asked her to see if she could get them to work. After a few more minutes [redacted] came up to [redacted] and apologized that the CD's were not good, and said she would get new ones for us and asked how long of an extension of time we would need. [redacted] said he has filed a motion for extension of time downstairs and he has everything ready except needing the transcript.

* [redacted] issued a letter, mailed [redacted] with the following :

First paragraph, " The Defendant has file a second motion to continue after the first one was denied. The court accepts this as a motion to reconsider pursuant to Rule 7.1(e), AR CivP. The court is not compelled. The Defendant in the action has had ample opportunity have the transcription made by any number of transcriptionist. It is the Defendant responsibility to complete this process ".

PLEASE REFER to the enclosed **Motion For Reconsideration**.
The Judge blames me again because of unforeseen circumstances.

Second paragraph, " Motion to reconsider and extend the time for filing is denied ".
I believe this was an unfair and biased decision.

* [redacted] issued a letter, [redacted] with the following :
First paragraph, " The Defendants having failed to timely perfect the appeal pursuant to Rule 7 and 88, SCRAPCiv, and ARS 12-1179, the appeal is ordered dismissed pursuant to Rule 9, SCRAPCiv. ".

Second paragraph, " Any and all supersedeas bonds held by the Justice Court are ordered released to the Plaintiff. A Writ of Restitution may issue within 5 judicial days ".

Tuesday, [redacted] called the Superior Court regarding when we could pick up the new CD's to send to the transcriber and [redacted] was told that the CD's were playable and that the clerk had told [redacted] that he was to have sent them to a transcriber before today.

Thursday, [redacted] Today we received letters from [redacted] Justice Court, that were dated [redacted] and the Superior Court saying my Motion for Extension of Time was denied because I didn't use the transcriber they recommended, and that I had not perfected the appeal, my case is being dismissed.

Friday, [redacted] we filed a Motion to Stay Proceeding and a Notice of Appeal on the decision to dismiss the case. We still have not heard the outcome of that.

Friday, [redacted] we filed a Motion For Reconsideration and have not heard the outcome.