

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-027

Complainant: No. 1354610284A

Judge: No. 1354610284B

ORDER

The commission reviewed the complaint filed in this matter and found no evidence of ethical misconduct on the part of either judge. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: June 8, 2009.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on June 8, 2009.

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

Complaint from:

Plaintiff (pro-se)

FEB 06 2009

Complaint against; Judge

(pro-tempore)

Defendants Attorneys:

Attorneys:

Witnesses:

(Plaintiff to the action)(pro-se)

**I affirm, under penalty of perjury, that the foregoing information
and the allegations contained in the attached complaint are true.**

_____ Dated this 5 day of February 2009.

INTRODUCTION

The complaint derives from a trip and fall accident at a Wal-Mart store located on _____ Arizona on January 30, 2005. Wal-Mart denied any liability and an action was filed on March 21, 2006. For various reasons the action has been prolonged.

This complaint covers the period of November 2007 to the date of this writing.

JUDGES.

From the date of filing to November 09/07 the case was conducted by Presiding Judge _____ A visiting Appellate Judge _____ presided over a hearing on July 09/07 to help out the Court backlog.

On November 09, 2007 the action was re-assigned to Judge _____

. On January 14, 2008 an administrative Order was issued transferring all _____ files to Judge _____ .(Commissioner 2.)

COMPLAINT against:

JUDGE

(Pro-Tem).

On July 09/2007 Judge _____ presided over a hearing where a Trial De Novo was granted, and set for Janaury 24, 2008. In addition to the Orders, it was requested that the Plaintiffs be allowed to take depositions and submit further evidence as it became available.

On July31/2007 in a letter from the defendants council _____ it was requested that we let them know as soon as possible of any additional discovery requests or depositions. Discovery notice was issued and after several letters, changes of council, I was notified by _____ on November 14, 2007 that they would not be producing a _____ for deposition. On November 15, 2007 a Motion to Take Depositions was filed, with Judge _____.

On November 23, 2007 the defendants council filed a Motion for Summary Judgment against me. After being notified by me that the Motion was in violation of Rule 56(b), the defendants council withdrew the Motion on December 03/2007.

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In a unfiled letter by fax Dated December 02/2007 to Judge
it was stated that the plaintiff would not be filing a response to the Motion
for Summary Judgment as it was being withdrawn.

On December 14,/2007 a Motion to Take Deposition was heard by
Honorable _____, the deposition was approved and because of
the defendants delaying the taking of the deposition the Trial date for
January 24/2008 was vacated. The issue of whether or not the pleadings
need to be amended shall wait until the parties have had a chance to take
depositions. Recorded on page 6, lines 18 to20 of the hearing transcript.

The hearing of December 14, 2007 was set after the court had received
a letter by fax not filed with the Clerk of the Court.

On December 27/2007 the defendants council filed a second Motion
for Summary Judgment against me. They were rewarded for delaying the
depositions by forcing the vacating of the Trial date allowing them to file a
second motion as the 90 day clause of Rule 56(B) was no longer effective.

The depostion of _____ was completed on Janaury 11, 2008, and a
Notice of Deposition of two other Wal-Mart associates was issued. The

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defendants council refused to produce the associates for deposition. A third unfiled letter was written and faxed to Judge [redacted] on Janaury 23/2008 requesting a clarification of his Order regarding the depositions. When writing the letter I was not aware that an Administrative Order had been issued on Janaury 14, 2008 re-assigning all Judge [redacted] s files to Judge [redacted]. I waited a reasonable amount of time to let Judge [redacted] become familiar with the files.

On Febraury 06/2008, on the advice of Judge [redacted] s secretary

I faxed an unfiled letter to Judge [redacted] requesting a Status Hearing to resolve three Motions.

1. Motion to Amend Pleadings..filed Janaury 29/2008
2. Motion for Summary Judgment by the defendants.
3. Motion to Extend Time for Discovery by Plaintiff.

On Febraury 20, 2008 I received a notice from the defendants council that the Motion for Summary Judgement was set for oral arguments on February 28/2008. No Notice was issued to me by the Court.

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I phoned Judge _____'s secretary to inquire about the hearing date and was told that the defendants council had phoned for a hearing date and that a date was set for February 27/08 not the 28th, and she would phone them and have it corrected. She checked her file and confirmed that no notice of the hearing date had been sent to me. The defendants council issued a Notice of Errata on February 21/2008.

TRANSCRIPTS.

On July 09/2007 in a hearing presided over by Honorable Judge _____ the defendants attorney Mr. _____ III, lied to to the Judge. I was unable to provide evidence of the false statements due to the fact that the court did not record the hearing and that all the records had been destroyed.

Since that date the Plaintiffs have requested that all hearings be recorded and that the transcript would become the official record of the hearing. Transcripts of all hearings have been ordered and copies are on file with the Clerk of the Court.

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HEARING FEBRUARY 27/2008.

The defendants were heard telephonically and represented by

. I appeared personally, My wife

witnessed the hearing.

Judge opened by stating that she had recived some faxed letters from me and that they don,t mean anything because even though you are not a lawyer you are held to the same standards as a lawyer. You have to request a hearing in the formal manner. But again, I just found them in the file this morning. And apprently they were some requests, but this is not the way you make the request. And since they were never filed, they just don,t count. So when you want a hearing, you have to do like Wal-Mart did and request a hearing. On page 23 of the transcript Judge states " if you want to have some kind of a hearing your going to have to request it properly... your going to have to file a request for hearing, a request for status hearing, request for somthing just like Wal-mart does. You can,t be faxing stuff to me. they don,t--they don,t count if they,ve never been filed".

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Page 8, lines 4 to 7, Judge _____ states " you have to do like Wal-Mart did''''Now, I notice that there was kind of a notice of hearing but it wasn,t an order regarding the hearing"

The hearing continued with the defendants council arguing that I had not provided evidence showing that there was genuine issues of material fact that preclude Summary Judgment.

The Motion for Summary judgment was granted.

The Motion to Amend was hand delivered and filed on Janaury 29/2008. It was filed after the completion of the deposition of _____ . Additional information learned from the deposition showed the Defendants guilty of "gross negligence" being the reason to Amend the Pleadings. Rule 37(a) states; " Leave to Amend shall be freely given when justice requires". The reason Judge _____ waited to rule on the motion until the depositions were complete.

The Amended Complaint requested damages for genuine issues of material fact that precluded Summary Judgment. One of the issues is referred to in " _____ v _____ " which states

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"Whether the marital relationship has been harmed enough to warrant damages in any given case is a matter for a jury to decide"

Judge approved the defendants request for a hearing that was made by a phone call, and denied my motion because it was made by facsimile. Neither the requests by the defendants or the plaintiff were filed with the Clerk of the Court.

Two written letters faxed to Judge were not rejected. The issue of faxed letters was brought up when the Judge stated that she had just found them this morning. In a cover up to evade slipshod management of the files she had inherited, she raised this issue that they just don,t count because they had not been filed.

Sufficient time had elapsed prior to the hearing of February 27/ 2008 to hear the motion to Amend, or it could have been heard during the hearing of Febraury 27/2008 before hearing the Motion for Summary Judgment.

The Double Standard used by Judge in approving motions to be heard showed extreme prejudice towards the plaintiff and was in Contradiction of Canon 3(B)(5) " a judge shall perform judicial duties without bias or prejudice"

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The February 27, 2008 hearing also records the violation of Rule 81(2)
(2)

A judge shall be faithful to the law and maintain professional competence in it. On page 21, line 25 Judge _____ refers to "Okay, Here,s the summary judgment 11/23." That Summary judgment was withdrawn on December 03, 2007 by the defendants. Judge _____ ruled on a Motion which was not valid. Judge _____ failed to review the file properly before trial and erred in her rush to judgment.

On March 28, 2008 the Summary judgment was filed with the Clerk of Court. On April 08, 2008 I filed a Motion to Vacate.

AUGUST 05/2008 HEARING.

A request for oral arguments regarding all motions currently pending was issued by the defendants on May 07/2008. I filed a request on May 21/2008 that each plaintiffs motions be heard seperately, as the decision on the Motion for Sanction by the Plaintiff _____ would have an impact on my oral arguments on my Motion to Vacate. The request was filed with the Clerk of the Court on June 02/2008.

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A Notice of Hearing was issued by the court setting oral arguments on August 05/2008. The notice was copied to the Plaintiff only, no copy was sent to me.

The hearing was conducted telephonically by all parties. The defendants who initiated the hearing were responsible for telephone connections.

The hearing started by Judge asking the plaintiff " what motion she beleived to be pending. Response "the motion for sanctions and replys". " has your Honor read the motion and replys, if not..."

The Judge bluntly replied " Okay, Of course Iv,e read all the pleadings ".

The Judge then asked the defendants what they thought was pending, the reply was " we have a Motion to Set ".

The Court " Okay, And wasn,t there some kind of a motion for reconsideration by Mr. , about something ?"

Defendants reply "Yes, motion to vacate the summary judgment".

After just making a statement that "of course Iv,e read all the pleadings" the Judge is informed by the defendants of what motions are pending.

In the next five pages of the transcript the Judge argues with me about hearing the Motion to Vacate, the following facts were established.

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- That the Court failed to Notice me of the hearing.
- The Judge could not find my filed request that the Motion for Sanctions be heard first.
- the Judge " So we will not be hearing anything on your motion to vacate Judgment to-day or the response".

Arguments were presented on the Motion for Sanctions. Telephone connections were lost and the defendants failed in there supposed attempt to re-connect. Upon receipt of a Minute Entry (Order) on September 20/ 2008, (copy attached) I became aware that the hearing had continued in the absence of the plaintiffs.

Judge continued with the hearing in the absence of the plaintiffs and heard ex-parte evidence which influenced her decision to deny the Motion for Sanctions. The procedures taken by Judge was in Violation of Rule 81(B)(7).

The Order of 8/18/08 by Judge , clearly states on the last line " The Court finds that Mr. may file a motion to set for hearing on his motion"

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A Motion to Set for Hearing was filed on January 07/2009.

An ORDER was filed on January 27, 2009 by Judge

the attached copy refers to the following:

1. I refused to argue the motion on August 05/2008. the reasons have been clearly stated in this complaint.

2. The order refers to a Motion to Amend Pleadings, Judge

refused to hear the motion during the February 27/2008 hearing.

in Violation of Article VI, Section 21, the law requires Superior

Court Judges to rule on any matter within 60 days.

Has Rule A.R.S.12-128-01 also been violated ?

3. Allowing the defendants \$250.00 attorney fees for the need to

respond to a groundless motion.

The Order is a complete contradiction of the Order filed August 20/

2008 by the same Judge. The Motion to Amend has never been heard.

The noted Violations by Judge shows a fundamental

misunderstanding of the Rules of Judicial Conduct. It is not possible

to have a fair Justice system if a Judge can act in violation of the

Rules of Conduct.

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CONCLUSION.

Several letters were issued to the Presiding Judge
who nominated Judge . Was the Order filed on January 27/09
in retaliation to the letters to Judge ?

A sperate complaint is being filed by the Plaintiff
which includes in detail, correspondence and notices of violations of
Judge .

In final I would leave you with a quote from the well respected
United States Supreme Court Justice..Sandra Day O,Connor.

" A good judge applies the law as it is, not as she wants it to be"

I affirm, under penalty of perjury, that the foregoing information and
the alleaations contained in this complaint are true.

_____ February 5 2009.