

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-344

Complainant: No. 1408410352A

Judge: No. 1408410352B

ORDER

The complainant alleged that a superior court judge demonstrated bias against her by making inappropriate rulings. The commission reviewed the matter along with the related exhibits and found no evidence of ethical misconduct on the part of the judge. The allegations involve legal matters outside the jurisdiction of the commission. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: March 16, 2011.

FOR THE COMMISSION

/s/ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on March 16, 2011.

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

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

NO. CV 2007-

ISSUES OF COMPLAINTS

RE: THE HONORABLE

Failure to monitor and recommend for complex case
Ignored pleading from defense for court supervision
Failed to consider Probate cost analysis
Negligent in supervising reasonable offers
Failed to consider malicious intent from plaintiffs
Failed to investigate broader ramifications and advise about a
Pyrrhic victory
Failed to consider validity of new trial based on
attorney conflict
Made erroneous rulings (ARKANSAS)
Failure to monitor and keep costs reasonable
NO TRIAL WAS NECESSARY
Allowed Ms McDole to undermine AZ RULES OF
Showed bias and great latitude PROFESSIONAL
CONDUCT
Failed to report Ms McDole to the State Bar
Changed rulings, even though not pleaded (LIMINE)
Did not question prior history of spousal support beyond
McDoles presentation
Failed to consider evidence of what I KNEW prior to
Permitted defamation of character of defendants and attorney
In Trial proceedings
Awarded judgment based on socioeconomic opinion
Defense restriction due to Jury question "why so mean?"
Unreasonable consequences of judgment

Judge [redacted] acting in his position and obligations under the Federal Guidelines of Judicial conduct failed to monitor and supervise this case. He did not actively encourage and seek to facilitate settlement. Nor did he refer by his own motion, that this civil case is a COMPLEX CASE. (a complex case is one that requires continuous management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case and keep costs reasonable, and promote an effective decision making process, by the court parties and counsel).

Defense counsel states for the need of court supervision in a motion filed February 16th. 2010.

See EXHIBIT SUPERVISION NECESSARY pg 1-3

In a March 29th hearing, Judge [redacted] stated he "was not going to BABYSIT that procedure."

See Page 36 Line 1

Judge [redacted] SUGGESTS that Ms McDole SHOULD work with opposing counsel. He acknowledges that attorney fees are being mounted up as they have been for 3-4 years. (This was after a motion was filed against Ms McDole for contempt and violation of Judge [redacted] orders.

In reading the transcript it confirms Judge [redacted] is unwilling to take a decisive stance, and order what would be an effective a beneficial resolution to BOTH parties. A conventional sale would maximize the value of the property to be sold as opposed to the sheriff sale to the highest bidder. This has been an issue of contention even with prior counsel Stephen Rich, in 2009

Judge [redacted] ignored the pleading of defense counsel, for supervision and a reasonable and effective solution.

The 14th amendment to the UNITED STATES
CONSTITUTION guarantees the right to a fair trial.

was in fact denied an important part of this
essential right of due process.

- 1) could not be heard in defense examination
due to a health episode during trial. Doctor
Orders prevented him from testifying the next day.
(had carotid surgery within the month)
- 2) A) The lack of defense questioning, left the plaintiffs
false and misleading testimony to be unchallenged
and undisputed
B) It was never presented to jury that Mr is
and was a resident of Arkansas since 2002.
C) was never asked by defense counsel to
prepare a declaration in defense of his actions or
intent.
- 3) Roger Cohen filed for new trial and Motion for Relief
April 23, 2010. Judge denied these
considerations, yet this is what prompted Judge
to forward to the State Bar the ETHICAL question of
CONFLICT of INTEREST on the part of defense
Attorney Stephen Rich.
- 4) was never part of the original judgment
from California.
- 5) relieved Mr Rich of liability by his
Declaration of representing us frivolously. This
opportunity of declaration was never presented to

Judge had the obligation and capacity to monitor and supervise this case. He also had the ownness to make CORRECT rulings based on evidence and law, and to keep costs reasonable. Because this case is so complex there are many aspects that needed to be defined.

Judge lacked JURISDICTION

Judge ruled in error regarding Arkansas law when He ordered a title to be written, giving plaintiffs ½ interest in property protected by homestead exemption filed in 2002.

There have been many objections to the ruling of Judge that was unlawful and out of his authority. The erroneous rulings were based on the inaccurate pleadings of Ms. McDole.

It was thru the diligent and repeated objections by Roger Cohen that Judge finally acknowledged and undid an order that would have been tragic and seriously damage the rights of

Judge was lack in his diligence to research the law, and not accept at face value the erroneous pleadings and motions of Ms McDole. Because of this we all incurred great cost.

See COMPLAINT STATE BAR
RE: ARKANSAS

No evidence was presented to show the transfer to Trust was fraudulent. Defense counsel Stephen Rich did not present that the Arkansas property was never in my trust as the Mercer and Bronco Trail property had been. It was never explained by evidence why the plaintiffs had a claim to the property. If John and I had married a year later, before Irene

Gertig died, this would not be an issue today. never had the opportunity to defend the life estate, nor the post nuptial.

The plaintiffs never presented evidence of why they were entitled to the property. A point that was not addressed was my third son had no claim either. Our decisions regarding that property were simply ensuring that after my death, John's children would receive the property; due to the fact John's trust funded the repairs, upkeep, taxes, and expenses. Plaintiffs never presented evidence that I had contributed funds to it. They would have enjoyed the same benefits as I. is in the sad position of losing his home because of Judge assumption the plaintiffs had a claim. Judge left the decision of title to be ruled on by COMPETENT jurisdiction in the Courts of Arkansas.

ARKANSAS law is proportional liability. is a resident of Arkansas. Based on % of fault, John should have no judgment. According to Judge John is jointly and severally responsible for Ms. MCDole's attorney fees. Judge stated in his ruling that defendants have more money than the plaintiffs.

SEE RULING
PAGE 5
PARA 2

I would like for Judge to present the EVIDENCE of this.

While purported assets and mine were presented in trial, there was no disclosure of plaintiff's assets.

SEE COURT TRANSCRIPT
PAGE 173
PARA 23

This is the testimony of Bingo Bada Bing. (John Rogone). He states he is a tattoo artist, and declares he OWNS a tattoo shop. His income level was not questioned.

Plaintiff Jason Rogone is married to Diane Rogone Weiland. See the cursory look up of his wife's business income. It would be safe to say, since Jason is employed by his wife, he has an income and enjoys the benefits of the estimated revenues the business presents.

Judge made this ruling purely on opinion and not fact.

On June 5, 2009 Jo Ann McDole made an oral motion to preclude the use of the true legal name of Bingo Bada Bing. (birth name John Alfredo Rogone). Judge denied the motion reasoning the jury would not be prejudiced by the use of his current name. (motion in limine).

During the telephonic hearing on June 16th 2009 Judge REVERSED his ruling even though neither counsel had raised the issue before the commencement of the trial. Stephen Rich raised the issue of how Bingo was to swear in. It was determined that it could be brought out that he changed his name, but not disclose his true new legal name.

SEE page 165 of TRIAL TESTIMONY

This protected Bingo from jury impressions, yet Judge allowed Ms McDole to continually and interchangeably use thru out the trial my current and previous married names.

On the same page, and at other times in the trial, see that Judge failed to disallow the defamations by plaintiffs Bingo Bada Bing and Jason Rogone, not only in regard to me but also my attorney.

Judge failed to monitor and discipline the contemptuous and defiant nature of Jo Ann McDole. There has been no mention of Labertha Umbriet's failure to also follow Judge Ruling to sign all subsequent pleadings (motions) by Jo Ann McDole. There has been no discipline of Ms Umbriet. Eleven (11) motions were filed without her signature.

In the March 29th hearing Judge declined to revoke Ms. McDole's PRO HAC VICE. He passed that decision to Judge Gama. The disrespect and disregard of the Rules of Conduct have been evident all along, but defense had to incur the expense for her to be disciplined. (The sanction of \$8,500 barely covers ½ of the cost to us. Would Ms McDole mislead the Judge or judicial officer by artiface or false statement of fact or law? Could this apply to improper trial tactics?). The subsequent actions of Ms McDole speak very loudly of her Lack Of Ethics and Dishonesty.

See COMPLAINT
Submitted to STATE BAR

Judge did not notify The State Bar of Ms McDole or Ms Umbreits violations.

Had Judge not been so tolerable of Ms McDole's disregard for the Rules Of Conduct, and again monitored this case more diligently, we would not have this added issue.

Judge has in fact rewarded Ms McDoles very bad conduct by awarding her attorney fees.

This case is RIFE for review by the Probate Commission. Judge failed to evaluate the ongoing litigation and cost effectiveness. He did not at any time address the pursuit of PYRRHIC VICTORIES. It is evident from the very nature of this case that there is no voluntary negotiation from the side of the plaintiffs. In light of the initial and continuous reasonable offers THIS case needed competent, unbiased oversight by Judge and the Probate Courts.

SEE PROBATE Cause No. PB2010-

There is an appendage of this case right now in Probate Court. It was filed by beneficiary James Shaw. He has asked for an independent trustee. Since Jo Ann McDole has lost her Pro Hac Vice, the plaintiffs have incurred more costs. James Shaw was not listed as a witness in the trial. He would have testified to the malicious and unreasonable intent of his brothers. This was a decision by ineffective defense counsel, and lack of critical discernment from Judge

Since this has and continues to be a case based largely on vendetta, the economics are hurting whatever benefit to the trust there might have been.

The very property going to be sold at a sheriff sale on January 6, 2011 was offered to the plaintiffs in October of 2008. (before the trial). At that time property values were up, and the judgment was less than \$400,000. Plaintiffs contend that it was not presented in writing by counsel Stephen Rich. Yet they emphatically denied in mediation they would consider it. That would have been an appropriate time for Judge to fulfill his judicial conduct. This case would have been over. But, it was the 10% interest, (\$100 a day) and the possibility of deep pockets that keeps the plaintiffs, from being reasonable.

In June of 2009, Judge _____ after reconsideration reversed plaintiff's summary judgment. Stephen Rich presented to Judge _____ a copy of the judgment from California and a letter from John Rogone expressing love and appreciation for all of my help to him. And that he would pay back the \$7,000 he owes. This ruling from California was never presented to the jury. What they continually heard from Ms McDole was that I took my children's money.

As a "GATEKEEPER" of evidence, Judge _____ permitted Ms McDole to continually present this claim to the jury. The jury never heard the circumstances from the original transactions, and it appears Judge _____ "forgot" Hon. Kronberger's ruling.

From the very beginning of the trial, Stephen Rich was limited in the scope of questioning the plaintiffs. A question from the juror was "why was he being so mean to the plaintiff?" I believe it caused emotional and negative bias.

The issue of the post nuptial being fraudulent was not presented until the end of the trial. Ms McDole aggressively pursued the fact I would receive no spousal support should John and I divorce. It would have been prudent for Judge _____ to ascertain if I had ever received spousal support from my previous marriages. (no) Also had I ever given up property rights? (Yes) Would I have been insolvent? (The answer is no, my home was paid for and I would have the rental income from the Bronco Trail property.

It was Judge _____ duty to know all evidence, before he could effectively and justly rule. It does not appear enough evidence was presented to satisfy beyond doubt.

An astute judge interested in fulfilling his duty would have encouraged and facilitated a settlement. The scales of justice would have been balanced, and this litigation would have been remedied promptly with less devastating results to all parties.

Instead, the litigation now moves to the Courts in Probate, Arkansas and Bankruptcy. It is not enough that I have lost a homestead, equity in my property and become indigent. The plaintiffs are contesting my relief by claiming I have filed with the INTENT (there is that all encompassing word again.) to hinder and delay. This is simply not true. I have no more assets for them to claim; all I would like is to be free from them.

One must question the INTENT of the plaintiffs. The original demand from them was \$900,000. The California judge awarded in the end \$383,000. By not settling this litigation the interest is \$100.00 a day. The judgment now stands at close to \$700,000. In a couple of more years it very well might be the \$900,000 they wanted.

The question that must be asked is what benefit did the trust the plaintiffs represent, gain from the 3 years of litigation and trial. Yes, the judge ordered the transfers set aside; The Bronco property is to be sold, at a sheriff sale to the highest bidder. Being there is no mortgage, this property will go way below market value. The very same property that I offered to them in mediation in October of 2008, when it was rented and property values were higher. (would have satisfied the judgment). The only other monetary reward was to McDole and this was not a benefit to the trust itself. It was only awarded because Judge thought we defended this case frivolously. We actually had no choice but to defend, particularly in regards to

The attorneys were absolved, from any liability. (Let's not forget the conflict and ethic issue that Judge noticed to the State Bar).

THERE NEVER NEEDED TO BE A TRIAL.

Had Judge looked at the full scope and underlying issues, and sought to resolve matters in his capacity, you would not be reading this today.

I understand this committee will review the evidence in the light that is most favorable to the decisions of Judge Judge exhibited polite decorum at all times. However, I do not see how this committee can ignore the very serious consequences of his rulings based on the reasons that have been set forth.

Judge from the beginning had the authority to direct a reasonable and positive outcome for all, instead of 3 years later ""SUGGESTING"" working together.

Respectfully,