

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 11-132

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Complainant: No. 1419010363A

Judge: No. 1419010363B

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**ORDER**

The complainant alleged that a superior court commissioner intentionally ignored the law, demonstrated bias by consistently ruling in favor of the opposing party, denied her client the opportunity to be heard, and issued delayed rulings. After reviewing the allegations, the commissioner's response, and the recording of the hearing, the commission found no evidence of ethical misconduct on the part of the commissioner.

The commissioner strongly denied any bias toward the complainant. The evidence showed that the commissioner did not fail to give the complainant an opportunity to be heard and did not issue improperly delayed rulings. Whether the commissioner incorrectly ruled on legal issues in the case in question is outside the jurisdiction of the commission. Therefore, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: August 3, 2011.

FOR THE COMMISSION

/s/ George Riemer

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George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on August 3, 2011.

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

May 11, 2011

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

*Re: Complaint Against Commissioner  
Maricopa County Superior Court*

Dear Arizona Commission on Judicial Conduct:

Up until a recent experience with Commissioner I had been a happy member of Arizona's legal community, and taken pride in our fine judiciary. My family members, close friends, and myself have enjoyed working as clerks and externs for several of Arizona's federal, county, and appellate judges and justices. I volunteer a great deal of time for the Arizona Bar Association, and am currently the incoming Chairperson of the Executive Council of the Bar's Real Property Section.

Unfortunately, my pride in Arizona's legal system and judiciary has been diminished by Commissioner disturbing behavior. His actions against me and my client are abusive and unlawful. He has favored a litigant based upon his, or his staffer's, personal friendship with that litigant's counsel. He habitually refuses to rule on motions that I file. His delays far exceed the sixty-day Constitutional period. The proceedings have been marred by his never-ending clerical mistakes, including repeatedly losing briefs which my runner delivered to his chambers. His rulings are a blatant violation of Arizona law and rules of procedure. He has also issued orders which are outside his jurisdiction and scope of authority. Most shockingly, the Commissioner denied my client its right to be heard according to law by repeatedly granting his friend's motions without allowing me to file a response to those motions.

**Background.**

I am a sole practitioner, and my law firm's clients include the Town of Superior, Arizona ("Town"). Throughout the past several years, I have served as this municipality's outside counsel on real-estate and collections matters. The opposing party in the litigation at issue is Glenn Wilt ("Debtor"). The Town, like most every other

municipality in Arizona, has adopted national, uniform codes for fire and building safety. The Debtor owns scores of vacant residential and commercial properties in Superior as well as other small municipalities in Pinal County. Many media outlets have detailed the dangerous and dilapidated state of Debtor's properties, including several buildings which have burned to the ground in recent years. (*Exhibit A.*) The coverage has also focused on the Debtor's proclivity for bullying small towns, and litigation against him by numerous municipalities and their residents. *Id.*

The Superior Magistrate Court issued a \$18,520.00 judgment against Debtor in December 2009. (*Exhibit B.*) This Judgment stemmed from building-code violations that went on for many years. The attorney who litigated this matter in Superior Magistrate Court was Michael Beers, the Town's prosecutor.

Eight months later, the Debtor had not paid the judgment, and accordingly the Town Manager brought me in to assist with collecting it. The Debtor lives in Maricopa County and earns wages in Maricopa County. Therefore, I domesticated the judgment in Maricopa County Superior Court in August 2010. (*Exhibit C.*) The domestication allowed the Town to submit a writ of garnishment to the Debtor's employer. (*Exhibit D.*)

**The Commissioner's personal relationships seem to influence his conduct and judgment.**

The Debtor was pro per during the first several months of these proceedings. At that time, Commissioner        actually did actually issue rulings on motions, he afforded both sides an opportunity to respond, and his decisions complied with Arizona law. That changed drastically when the Debtor hired counsel who is a friend of the Commissioner or his assistant.

Commissioner        had scheduled a hearing for December 22, 2010, to hear several motions my client had filed. I appeared on behalf of the Town, while attorneys Michael Zdancewicz and Trey Lynn appeared for the Creditor. Before the hearing began, Mr. Zdancewicz informed me that chambers had called him that morning and said the hearing would be rescheduled. This conversation took place while we were outside chambers, in the hallway. It was peculiar that chambers would have telephoned the Debtor's counsel without also telephoning the Town's counsel. It was also peculiar that Messrs. Zdancewicz and Lynn came to the Courthouse after having been told the hearing was not taking place that day. Commissioner        assistant then entered the hallway to inform us the hearing would be rescheduled. I do not know her name and therefore I cannot identify her with particularity in this letter, but she has dark brown hair, is Caucasian, middle aged, and thin. Upon entering the hallway, she approached Mr. Zdancewicz and referred to him as her "friend." They seemed happy to see one another, chatted for several minutes, and seemed to be catching up. Mr. Zdancewicz introduced her to his associate, Mr. Lynn.

I cannot know with certainty whether this personal friendship is what caused Commissioner        to so severely mistreat me and the Town from that point until the

present. Perhaps because of the friendship, or perhaps for some other reason, the Commissioner's engaged in a pattern of incidents showing that he lacks the requisite judgment to discharge the duties of his office. The remainder of this letter provides specific examples of the Commissioner's misconduct. It also cites to portions of the record which corroborate the allegations herein.

**The Commissioner violates laws and court procedures.**

The Debtor filed a "Bench Memorandum" on February 24, 2011. This briefing was clearly a motion because it raised new legal theories and factual allegations and requests for relief which the Debtor had never mentioned before. Pursuant to Ariz.R.Civ.P. 6(a) and 7.1(a), the Town had until March 15, 2011 to submit a response, yet the Court ruled on Debtor's motion on February 28, 2011 – before any response was filed. Worse yet, that ruling was a Minute Entry which quashed the writ of garnishment based on the erroneous statement that the Commissioner lacked jurisdiction over this matter because, "Plaintiff failed to file for a criminal restitution order in Superior Magistrate Court in order to obtain a civilly enforceable judgment."

Had the Town had opportunity to file a response, the Town would have cited A.R.S. §13-802, governing "Fines for misdemeanors." Section E of this statute states, "A judgment that the defendant shall pay a fine, with or without the alternative of imprisonment, shall constitute a lien in like manner as a judgment for money rendered in a civil action." There was clearly no requirement for the municipality to obtain a criminal restitution order, because the municipal judgment entered against the Debtor by the Magistrate Court was a fine for a misdemeanor governed by A.R.S. §13-802. It was not a restitution order, as demonstrated by A.R.S. §13-804 which explains that a criminal restitution order is something a Court orders a defendant to pay "a person" who suffered economic hard at the hands of a defendant. By definition, the Town was not required to obtain a criminal restitution order because its judgment was a fine for a misdemeanor governed by A.R.S. §13-802. Unfortunately, as mentioned above, the Court issued a Minute Entry on February 28, 2011 stating that this Court lacked jurisdiction over this matter because "Plaintiff failed to file for a criminal restitution order in Superior Magistrate Court in order to obtain a civilly enforceable judgment."

Furthermore, A.R.S §33-962 governs municipal judgments which are enforced in Superior Court. These are known as "transcript judgments" rather than "foreign judgments". A.R.S §33-962 is captioned, "Procedure for filing judgment of justice or municipal court..." A.R.S §33-962(A) states, "The clerk of the superior court, upon presentation of a certified transcript of a judgment for more than fifteen dollars, exclusive of costs, given by a justice or municipal court, shall forthwith file the judgment. The judgment, from the time of filing the transcript thereof, shall be deemed the judgment of the superior court, shall be in the control thereof, and shall be carried into execution in the same manner and with like effect as a judgment of the superior court."

Debtor's February 24 motion clung to the assertion that the Town had tried to domesticate a criminal restitution order. Yet the judgment which was domesticated

clearly was captioned as a "Judgment" and could possibly be interpreted as a criminal restitution order. Had the Town had opportunity to respond, it could have pointed out these filings were just plain wrong. In fact, if the document at issue was a criminal restitution order, the Clerk of Court would not have accepted it as a transcript judgment and stamped it with a "TJ" case number. Furthermore, if the document at issue was a criminal restitution order, then Debtor's own counsel would have noticed and made issue out of it immediately rather than waiting for six months.

The Commissioner's conduct has brought the judiciary into disrepute, gives the impression that a certain attorney was favored by the Court, and shows that he lacks the judgment needed to carry out his duties.

**The Commissioner refuses to afford my client its right to be heard.**

The Debtor filed a Motion for Order to Show Cause on March 1, 2011. Pursuant to Ariz.R.Civ.P. 6(a) and 7.1(a), the Town had until March 21, 2011 to submit a response to the Debtor's Motion. Nevertheless, Commissioner Vatz ruled prior to the Town's deadline to respond and prior to any response having been filed. The Motion for Order to Show Cause was granted via an Order signed on March 16, 2011.

Had the Town had an opportunity to respond, it could have also pointed out the seriously inaccurate and untrue statements in Debtor's Motion for Order to Show Cause. This Motion actually argued that I should be sanctioned for having held a judgment debtor exam!

As mentioned above, the Superior Magistrate Court entered a judgment against the Debtor in December 2009 for numerous building-code violations which had taken place that year. Because the Debtor still refused to repair his dilapidated buildings, remove junk from his yards, and to trim overgrown shrubbery, the Town's Police Department and Fire Department issued additional citations during 2010. The Town's prosecutor, Michael Beers, was prosecuting these 2010 in Superior Magistrate Court. The Superior Magistrate Court scheduled a trial to take place during January 2011.

In the meantime, as mentioned above the Town Manager asked me to collect on the 2009 judgment which the Debtor had not paid. A.R.S. § 12-1631(A) states, "When a judgment has been entered and docketed, the judgment creditor, at any time may: 1. Have an order from the court requiring the judgment debtor to appear and answer concerning his property before the court or a referee, at a time and place specified in the order. 2. Have a subpoena issued compelling the judgment debtor to appear for deposition upon oral examination and answer concerning his property at a time and place specified in the subpoena." Long-established Arizona law allows judgment creditors to question debtors regarding their assets. Therefore, I held a judgment debtor exam in September of 2010. As reflected in the transcript of the judgment debtor exam which was filed with Commissioner at that exam I asked the Debtor, verbatim, standard questions of a judgment debtor exam, as published by Thompson West. 3 Ariz. Legal Forms, Debtor-Creditor § 18.5 (2d ed.). These questions included asking the Debtor about money in

bank accounts, investment accounts, chattels, and salary. *See Judgment Debtor Exam Transcript*. The Debtor testified that he only had approximately \$3,000 in bank accounts and that he no valuable chattels other than his mother's wedding ring. *Id.* The Debtor testified that his real estate holdings were the only type of asset of sufficient value to satisfy the creditor's judgment. *Id.* As such, the Town's only means to obtain satisfaction of the judgment was to learn about these real estate holdings. Even if Debtor's Complaint about these questions were accurate, there is simply no law holding that the Creditor was not entitled to question its Debtor regarding his real estate, or other potential means to satisfy this judgment. Debtor didn't even try to present any law holding as such, because none exists.

Yet the Debtor filed its Motion for Order to Show Cause on March 1, 2011, asking Commissioner [redacted] to order me to show cause why I should not be sanctioned for having held a debtor exam. The Debtor's Motion falsely stated that I am the Town's prosecutor and that I held the judgment debtor exam as a pretext to conduct discovery to be used in the Debtor's trial in Superior Magistrate Court which had been scheduled for January 2011. The Commissioner granted this Motion for Order to Show Cause prior to the time which the procedural rules provide for me to file a Response. Had I been able to file a Response, I could have explained that I was not even the Town's prosecutor at the time that debtor exam was held. Only when Mr. Beers resigned, was I first asked to step in as the Town's prosecutor starting in December 2010. In fact, I had already told the Commissioner at a previous hearing that the Town's long-time prosecutor had been attorney Michael Beers. Mr. Beers was the prosecutor through November 2010. When he resigned, I agreed to temporarily step in as the prosecutor through April 2011. Therefore, it is nonsensical for Commissioner [redacted] to allege that I conducted discovery for a scheduled criminal trial which I wasn't even familiar with.

Most importantly, If the Commissioner had allowed me to file a response to the Motion for Order to Show Cause, I could have explained the following: Two months after becoming the Town's prosecutor, I voluntarily dismissed all criminal charges against Debtor due to a concern that the Town's previous prosecutor may not have followed all procedural prerequisites in adoption of the Town's code. It is nothing short of ludicrous for Commissioner [redacted] to accuse me of holding a debtor exam "as a gambit to conduct criminal discovery" when (1) at the time of holding the debtor exam in September 2010, I was not the prosecutor and lacked information the upcoming criminal trial, (2) I opted to vacate that criminal trial shortly after becoming the prosecutor, (3) if I wished to conduct discovery for a criminal trial, I could have simply conducted discovery in that matter and there was absolutely zero need for "gambit," and most notably (4) the judgment debtor exam was obviously held for the sole reason that Debtor had not paid his judgment, (5) I had not even attempted to use information from the debtor exam at a trial in Superior Magistrate Court and I actually dismissed the charges related to that trial.

The Commissioner's actions are unacceptable in any civilized, democratic country, as they strip citizens and attorneys of the ability to feel confidence in the integrity of our judicial system.

**The Commissioner violates the rights of litigants before him.**

The Debtor filed a Motion for Status Conference on April 13, 2011. On Friday, April 15, 2011, Chambers telephoned me to announce that this Motion was granted and a status conference was scheduled for Tuesday April 19, 2011. I explained to the Commissioner's judicial assistant that I had not even received a copy of the Motion for Status Conference and didn't know what it was about. More importantly, I explained to the Commissioner's judicial assistant that I am a sole practitioner, that she was only giving me two business days' notice, and I would not be able to attend on such short notice. In contrast, there were five attorneys from two large law firms who are on the record representing the Debtor in this action. There was simply no reason to schedule a hearing on such short notice, knowing that I could not attend. Nevertheless, the Commissioner advised me that the Commissioner will not change the hearing to any other time. (*Exhibit E*) This is clearly a game by Commissioner to inconvenience me, harass me, strip my client of its right to be heard, and do his friend a favor.

When I finally received the Debtor's Motion for Status Conference, I realized the Debtor was asking Commissioner to strip the Town of its attorney-client privilege by ordering me and Mr. Beers and Town officials to divulge conversations that we had with our client.

I shuffled my schedule and attended the hearing telephonically. I also worked through the weekend to submit a "Request to Vacate April 22 Hearing". I attached a copy of the "Motion for Dismissal Without Prejudice" which I filed in Superior Magistrate Court on February 14, 2011. This proved, unequivocally, that the Commissioner had no grounds to sanction me – and more importantly no reason to strip the Town of its attorney-client privilege.

At the April 19, 2011 status conference, Commissioner admitted that he did not read my Request to Vacate April 22 Hearing, but that he would deny it anyhow. He provided no reason for his denial other than a vague and inaccurate statement whereby the Commissioner said that he thought he might remember hearing that the Debtor had tried to pay his judgment and that I wouldn't accept payment. I don't know where the Commissioner heard such a thing, but it certainly wasn't from the record. In fact, the entire record before Commissioner shows the opposite to be true (*e.g., Exhibit F*).

Once again, the Commissioner failed to perform his judicial responsibilities. He is unwilling to read the briefs filed by my client. He summarily grants motions filed by his friend, without allowing me to respond. He makes statements on the record which are blatantly false and which seem to reflect something he heard *ex parte* rather than anything he could have gleaned from the record.

**The Commissioner has exceeded his authority.**

It is not clear that the Commissioner's threats to sanction me and my client are within the purview of a commissioner's authority. Rule 96(b)(2) of the Rules of the

Supreme Court of Arizona prohibits a commissioner from adjudicating a person in contempt of court or imposing any fine or punishment therefor, unless that person violated the commissioner's order. In this case, nobody has alleged that the Town or I violated any order. As such, it is entirely unclear why Commissioner is so insistent on threatening to sanction me or my client. If he really thinks sanctions are appropriate, he should move this matter to a Judge who has authority to issue a fine or punishment.

What is clear is that the Commissioner's orders pertaining to the Superior Magistrate Court are, without a doubt, outside of his authority. Even if I had tried to use information from the debtor exam on the 2009 judgment in a 2011 trial in Superior Magistrate Court, then the Debtor could have submitted an objection or a motion in limine to Judge Bravo of the Superior Magistrate Court. However, rather than allowing the Superior Magistrate Court to determine what evidence it would or wouldn't allow, Commissioner has ordered me to show cause why I should not be sanctioned based on the Debtor's or Commissioner's pure speculation that perhaps I might have tried to use information from the judgment debtor exam at the trial before Judge Bravo. It is simply inconceivable that Commissioner thinks he has jurisdiction over what my client and I do in a different court in a different jurisdiction. Of course, this is all a moot point because I voluntarily dismissed the charges in Superior Magistrate court and therefore the Commissioner's accusations against me are even more nonsensical.

Yet another disturbing abuse of discretion took place during the hearing of April 19, 2011, when the Debtor admitted that it was using its requested Order to Show Cause proceedings to gather information for a federal lawsuit the Debtor wishes to file against the Town. It is hypocritical for the Commissioner to sanction me or my client for allegedly using information from a judgment debtor exam in magistrate court (which we didn't even do) and simultaneously allow the Debtor to use the Commissioner's courtroom to gather evidence for a lawsuit in a different court. I did not even try to use information learned at a judgment debtor exam in a different venue, and I had no need to do so because I could have easily asked the Debtor questions in the Magistrate Court proceedings if I hadn't voluntarily dismissed those proceedings. What is shocking about Commissioner behavior is that he is expressly ordering my client to be stripped of its attorney-client privilege so that the Commissioner's friend can gather information to use in a federal lawsuit. It could not be more obvious that the Debtor should file his federal lawsuit and ask the federal judge overseeing those proceedings whether the Town and its counsel should have to answer questions about privileged communications.

**The Commissioner's delay in the rendering decisions violates Arizona's Constitution.**

The Court's quick rulings on the Debtor's Motions stand in sharp contrast to the Motions which the Town filed on October 12, 2010; October 26, 2010; November 5, 2010; and December 22, 2010. The Town's Motions were either never ruled upon at all, or were ruled upon far, longer than the 60-day day requirement of Article IV, Section 6, of Arizona's Constitution.



One of these filings was the Town's Rule 37 Motion to Compel of October 2010. The Commissioner granted this Motion – it was filed and ruled upon prior to the Debtor having retained counsel. However, Rule 37 expressly states that the Court “shall” order the non-movant to repay the movant's attorney fees upon granting the motion. However, once the Debtor hired the Commissioner's friend as counsel, the Commissioner repeatedly refuses to honor the law of Rule 37 which mandates that the Debtor pay the Town's attorney fees.

The Commissioner's rulings are hypocritical is that he has not ordered the Debtor or Debtor's counsel to show cause even though the record is overwhelmingly clear that Debtor and his counsel have made patently false statements on numerous occasions. The Commissioner's friend sent me threatening correspondence and took other unjustified actions described below, for the sole purpose of causing my client to expend time, energy, and money in collecting a year-old judgment against Debtor. The Commissioner's friend expanded the proceedings by filing many groundless and duplicitous briefs, yet the Commissioner seems intent on allowing this persecution to continue in perpetuity. For example, the Debtor submitted a motion to quash a subpoena approximately two months after that subpoena had been served. However, as a matter of law, Debtor was only entitled to object within 14 days after service of the subpoena. Ariz.R.Civ.P. 45(c)(2)(B). The Debtor submitted a motion to stay collection proceedings, claiming that the municipal judgment was “on appeal” in Pinal County, when in fact the Pinal County Superior Court had denied Debtor's appeal and rejected Debtor's motion for reconsideration of that decision. The Debtor's counsel filed numerous motions during November and December 2010 asking the Commissioner to reconsider his previous rulings because Debtor had been *pro per* when those rulings were issued. However, it is axiomatic that parties who choose to represent themselves “are entitled to no more consideration than if they had been represented by counsel” and are held to the same standards as attorneys with respect to “familiarity with required procedures and . . . notice of statutes and local rules.” *Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963); *see also Higgins v. Higgins*, 194 Ariz. 266, P 12, 981 P.2d 134, 138 (App. 1999). These are only three of the scores of examples of the Commissioner's friend being constantly permitted to run up a small town's bill to harass a party who can only afford one lawyer – whereas the Debtor has five lawyers working on this matter which pertains to collecting a \$18,520.00 judgment.

**The Commissioner administers his court improperly.**

The Town has also struggled with a steady stream of clerical problems which, collectively, have marred these proceedings. These include motions which the Town hand-delivered to chambers being lost on numerous occasions. (*Exhibit G.*) For a judge or commissioner to repeatedly lose one litigant's filings shows a complete lack of dignity and courtesy to those with whom the commissioner is supposed to deal in his official capacity.

Another procedural irregularity stems from the fact that the certificate of service on many of the Debtor's motions state they were “e-filed” with the Court. However, the

Clerk of Court does not allow e-filing on transcript-judgment cases such as this one, and it is unclear how the Commissioner received Debtor's filings because they could not have been transmitted as stated on the Debtor's certificates of service.

Another mistake took place when the parties went to Court for a scheduled hearing, but were turned away and told that the Commissioner was not present. The Commissioner subsequently issued a Minute Entry of January 6, 2011 stating the hearing was the result of a "clerical error".

Yet another mystery is the docket in this case, which lists many items of "returned mail." I asked the Commissioner's assistant what these documents are, who they were mailed to, and why they were returned. The assistant tried to explain that the Clerk of Court was attempting to mail out minute entries to the Debtor at an incorrect address, but her explanation does not make sense because the Debtor has received all minutes through his counsel. (*Exhibit H.*)

**The Commissioner's conduct manifests contempt for  
a party's right to appear before an impartial tribunal.**

The Commissioner's persistent failure to perform judicial duties is prejudicial to the administration of justice. The Commissioner gave special treatment to a litigant, which creates the appearance of impropriety. Collectively, his actions constituted abuse or corruption of the judicial office, and I hope the Commission on Judicial Conduct will take these allegations seriously. I would be happy to provide you with any additional documentation that might aid your investigation.

Sincerely,

cc: Town of Superior, Arizona  
c/o Lou Digirolamo, Acting Town Manager  
199 North Lobb Ave  
Superior, AZ 85173

cc: Commissioner