

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-301

Complainant:	No. 1455310991A
Judge:	No. 1455310991B

ORDER

The complainant alleged that a justice court hearing officer improperly served as the attorney for an opposing party in a small claims matter and violated the law by presiding over a separate case involving the same party, who is a personal friend.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After review, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission approved sending the judge a private advisory letter regarding the appearance of impropriety standard in Rule 1.2. The complaint is dismissed pursuant to Rules 16(b) and 23(a).

Dated: January 14, 2013.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on January 14, 2013.

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

Complaint against Ms

I am writing to report egregious violations to the Rules of Judicial Conduct committed by Ms _____ Consolidated Justice Court. As opposing council in her own court, on November 12, 2010 (Small Claims Case: _____) she sat next to and assisted the plaintiff, Ms _____ with her case with no prior indication plaintiff would be represented by an attorney in Small Claims. Ms _____ was/is also a personal friend, neighbor, and daycare client of Ms _____

Additionally, in a completely separate and unrelated case involving another defending party, Ms _____ may have also violated the law when she ruled in Ms _____ favor in CV- _____ A against a _____ while Ms _____ personal friend, neighbor, daycare client, and small claims hearing officer (Case: CV _____). Ms _____ is currently in the process of collecting on a default judgment related to the case above in CV _____ with Judge _____

It is astonishing these breaches of law and ethics can be permitted in any court, and even more deplorable that they have been encouraged by the Pima County Consolidated Justice Court by continuing to allow Ms _____ This type of unethical and illegal behavior undermines the integrity of the justice system and this letter is a request for action. At a minimum, Ms _____ should no longer serve as a small claims hearing officer and be subject to appropriate penalties.

Facts and Background leading to Case: CV

On July 10, 2010 my tenant, Angela Hawkins, provided me electronic 30-day notice that she would move out of the home she was renting from me by August 10, 2010 (**Exhibit 1**). Ms _____ have testified that I allegedly gave her verbal notice by telephone

on June 22, 2010 to vacate immediately and that she gave notice on July 9, 2010 to vacate by July 31, 2010 (**Exhibit 2**). On July 10, 2010, Ms. [redacted] provided me electronic notice she would vacate on August 10, 2010. Additionally, On July 19, 2010, Ms. [redacted] provided me a signed written notice that she intended to vacate on August 10, 2010 (**Exhibit 3**). Upon information and belief, Ms. [redacted] moved out on July 31, 2010 and demanded her full security deposit without paying any additional rent despite failing to provide the keys to the property until August 10, 2010, and in clear violation of the Arizona Landlord-Tenant statutes and the signed lease agreement. I withheld Ms. [redacted] security deposit for August unpaid rent.

Facts of

On August 18, 2010, [redacted] sent me an e-mail indicating that she was "representing [redacted] in all matters pertaining to [redacted] and to send all further communication to her. (See the first paragraph of the e-mail from [redacted] dated August 18, 2010 and attached as **Exhibit 4**). In this e-mail, [redacted] demanded that I return the full security deposit or that [redacted] would "be filing a lawsuit against me for fraud and violation of Arizona Landlord Tenant Act, asking for double damages and all court and attorney [sic] fees." (See last paragraph of **Exhibit 4**). I have since learned [redacted] in the Pima County Justice Court and an attorney licensed to practice in Arizona.

My attorney at the time, Laurie Morris, sent a response to [redacted] offering to prorate August, 2010 rent 10 days to August 10, 2010; the date [redacted] originally gave notice. (See e-mail from Ms. Morris dated August 19, 2010 attached as **Exhibit 5**).

[redacted] responded on the same day stating, in part, that, "she can't think of any judges in the state of Arizona who would require [Defendant]...to demand a "formal" written notice."

goes on to state that "I am planning on filing court paperwork August 30...". (See the third and fourth paragraphs of the e-mail from [redacted] dated August 18, 2010 attached as **Exhibit 6**).

The case, [redacted] was filed against me on August 31, 2010 in the [redacted] County Justice Court, Small Claims. I filed an answer on September 8, 2010 and a Counterclaim on September 13, 2010. The Plaintiff's party filed a Reply to the Counterclaim on September 21, 2010.

The small claims hearing was held on November 12, 2010. At this hearing, [redacted] sat the entire time at the Plaintiff's table next to the Plaintiff, [redacted] and often spoke to [redacted] throughout the hearing. [redacted] was also called as a witness to testify regarding the telephone call on June 22, 2010 wherein I allegedly asked [redacted] to vacate the premises. Additionally, while I was trying to establish part of my counterclaim which included damage to the front door and doorknob which needed to be removed, [redacted] interrupted my Counterclaim testimony stating the following: "My name is [redacted] and I live across the street and [redacted] is my babysitter. She watches my child, I have never seen her use the front door, or have ever used the key..." (**CD Audio from this hearing [43:16.00], not included as an Exhibit but can be supplied if needed**). Aside from legal and ethical violations committed by [redacted] she has committed perjury to establish a favorable position for the Plaintiff.

The property in question was at [redacted] clearly not across the street and certainly not within line-of-sight from [redacted] house. [redacted] also assisted [redacted] in presenting fabricated notices to vacate by July 31, 2010 which I never received and clearly contradicted written notices I received at later dates from [redacted]

indicating her intent to vacate by August 10, 2010. Regardless of the facts, I was at an extreme disadvantage having never seen these fabricated documents prior to the court date, and was not represented by an attorney because it was a small claims trial. The court entered judgment in favor of _____ in the amount of \$1,900.00 and judgment on my counterclaim in the amount of \$250.00.

A.R.S. 22-512 (B) and (C) states in pertinent part: "...An attorney-at-law shall not appear or take any part in the filing or prosecution or defense of any matter designated as a small claim. C. Notwithstanding subsection B of this section, at any time prior to hearing, the parties may stipulate by written agreement to the participation of attorneys in actions designated as small claims". No party in small claims court may have an attorney appear in court on their behalf. Clusiau v. Clusiau Enterprises, Inc., 225 Ariz. 247, 236 P.3d 1194, 1198 (Ariz.App.Div 1, 2010); A.R.S. 22-512(B)(6). The purpose of this bar on attorney representation in small claims court is to ensure that parties represent themselves. See Clusiau, 236 P.3d at 1198.

_____ did not ask me to waive the attorney requirement so that she could bring an attorney to trial. _____ filed her complaint in her own name, represented that she had no attorney, and gave no indication she was receiving help from an attorney in filing the small claims case. Neither _____ nor _____ indicated prior to the trial that _____ was a witness to anything. In fact, _____ intimated that there was another witness when she spoke of such a witness in the third person in her letter. _____ email of August 18, 2010 to me states: "We are in possession of under oath statement [sic] by the witness who was present at the house at the time of the phone call on June 22, 2009, where I allegedly asked _____ to move out. (**Exhibit 4**, Page 1, paragraph 3). The sentences that

reference a witness clearly indicate to the reader that there was a third party witness that was not

further appeared at the hearing, sat at the plaintiff's table closely next to plaintiff and assisted plaintiff throughout the entire trial. role both prior to and during the hearing certainly constituted legal representation of the plaintiff. At the very least, acted in such a way that was not solely representing herself and had an educated legal professional assisting her.

Conclusion

At my expense, I hired an attorney to have the small claims ruling set aside due to the blatant attempt to contravene the statutes that protect the sanctity of Small Claims Court, abuse of process, and conflict per Rule 81 AZ Code of Judicial conduct in application D (5). The case was set aside, however nothing further. There was never compensation for having to hire an attorney to correct the court's astounding ruling despite unlawful behavior exhibited by one of its own hearing officers and there was never any disciplinary action taken. Instead, the court has continued to encourage such behavior by conducting business as usual. Therefore I am filing this complaint against for her unethical and illegal involvement in cases

Following case it is important to note that re-filed her suit against me in Small Claims which I had transferred to the Civil Division and hired an attorney due to my distrust of the Small Claims Division. On December 12, 2011 in case Judge Augur ruled in contradiction to the Arizona statutes and in favor of for the amount of \$950.00. Judge gave no explanation for his ruling and I have been told by my attorney he no longer is permitted to hear those types of cases. I did not appeal because the cost

in attorney and court fees would have been far greater than the \$950 judgment. My attorney, Katie Rogers, and I continue to be completely astonished at Judge _____ conduct and ruling.

Following Judge _____ ruling, plaintiff's attorney motioned for a reconsideration of attorney fees which was denied. Afterwards, _____ assisted _____ in filing another frivolous case in the Pima County Consolidated Justice Court on April 10, 2012 in an attempt to collect attorney fees in Small Claims Court (**Exhibit 7**). After transferring the case to civil court, and a review of my motion to dismiss _____ dismissed the case on August 18, 2012.