

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-054

Judge:	No. 1087914633A
Complainant:	No. 1087914633B

ORDER

The complainant alleged a superior court judge prejudged his clients' case, made an inappropriate statement, and made incorrect evidentiary rulings.

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 reviewing the complaint, several recordings, various transcripts, minute entries and other pleadings, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of court rulings. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: August 28, 2013.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed
to the complainant and the judge
on August 28, 2013.

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

MAR 14 2013

March 13, 2013

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

To Whom it May Concern,

The purpose of this letter is to lodge a formal judicial complaint against _____ Superior Court with respect to his alleged misconduct in _____, a case involving the terrible mistreatment of elderly individuals battling multiple serious disabilities who were the Defendants in a wrongful eviction action.

In the latter part of 2008, _____ had leased a house located at _____ Arizona for the benefit of both her forty (40) year nationally acclaimed _____ and family. She had requested a three (3) year lease due to the fact that her husband, _____ retired mechanical engineer by profession, was battling terminal blood cancer. As the result of _____ extended terminal illness, and _____ own medical battles which included blindness, the _____ daughter, _____ has continually lived with her parents as a caregiver.

Regrettably, the owner of the property and his representatives failed to keep promises made regarding the property, including promises regarding properly painting the inside of the residence before the _____ moved in (ie. when the owner stated he was unable to paint the house due to financial difficulties, the Eichers offered to paint the house with the help of family and friends, and to deduct the cost of the paint from the rent), and properly fixing an empty swimming

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pool in the back yard for exercise/family use during the lease. Subsequently, the property owner and/or his agents egregiously retaliated against the family for merely holding them to their promises by purposely turning off the water to the residence on two (2) separate occasions. On one of the occasions, the daughter, _____ was actually at the _____ with her father who was receiving treatment for the cancer. When she contacted the owner about why the water was no longer working at the residence, innocently believing that there was a logical explanation for the water not working, she was told:

It is noteworthy that all that _____ and her family wanted to do was to live in peace during the three (3) year lease, and enjoy the remaining time they had with _____

Ultimately, in 2010 the owner and his representatives refused to receive the agreed upon rent, and totally abandoned their responsibility to maintain the property. Due to this abandonment, the _____ were forced to repair and maintain the house at their own quite substantial expense.

In December, 2010, notably shortly before Christmas, the owner brought an eviction action in _____ against the _____ claiming _____ in unpaid rent.

_____ contacted my office and retained me to represent her and her family in the case. Thereafter, the _____ answered the civil complaint, requested a jury trial, and filed appropriate counterclaims against the owner under the Arizona Landlord Tenant Act, respectfully submitting that they had *never* refused to pay the agreed upon rent, yet that the owner and his representatives were outrageously refusing to receive same in an obvious effort to illegally evict them from the property at a time when _____ health and life were waning. As the result, the eviction action was even more terribly stressful for the _____ family, as it not only threatened the good name of a 40 year _____ and family, yet threatened the remaining life of _____ as there was a grave concern that should the family have to move from the leased home, that the move would kill him. While _____ and her daughter tried to shield _____ from what was transpiring, he suffered substantial emotional distress himself, which definitely shortened his life and limited the enjoyment of his remaining days. Moreover,

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rather than being home with _____ enjoying spending additional time with him, both _____ and her daughter were now compelled to defend the reputation of the _____ and their right to complete the three (3) year lease, in a lengthy jury trial, which would also allow _____ to live out his remaining life in peace.

When the case was then assigned to _____ it is noteworthy that at the initial Pretrial Hearing he surprisingly and improperly stated upon learning of alleged unpaid rent:

“What?!! They owe how much?!!!”

This statement allegedly reflected not only _____ ignorance of the both the operative facts and applicable law, yet his alleged prejudice against my clients in favor of the property owner. This alleged prejudice was later confirmed during the trial when it is alleged that _____ allowed witnesses to perjure themselves and would not allow it to be brought out that they were illegal aliens which would have impeached their specific testimony. This alleged improper prejudice was also further confirmed by _____ post-verdict rulings.

Regrettably, the alleged exclusion of important evidence and allowance of perjured testimony, as well as _____ alleged obvious prejudice, affected the outcome of the trial. Although the _____ were rightfully found **not guilty** of wrongful detainer and given possession of the house in issue for the lease term, they were awarded only \$5,000 in damages despite both the fact that the emotional distress and hardship they had endured at the owner's hand was overwhelming, and that their compensatory damages were four (4) to five (5) times greater than the \$5,000 award. In actuality, given what they were forced to endure, the damage award should have been three (3) times more than the rent owed for the lease term, or \$160,000, and should have included all compensatory damages. Moreover, contrary to Arizona law, the jury awarded the owner his claimed rent, even though the _____ had *never* refused to pay the rent, and they had been found *not guilty* of wrongful detainer, precluding any award whatsoever under the plain language of the relevant Arizona wrongful/special detainer statutes.

Following the erroneous verdict, counsel orally argued the error and subsequently filed a motion with the trial court asking _____ to vacate the

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award to the property owner as such an award was illegal under Arizona law. Regrettably, rather than vacate the award, the Judge was allegedly more concerned with protecting his record as he alternatively found that counsel should have raised the issue prior to excusing the jury, or that it had been waived. Additionally, at the same post-trial oral argument on the motion at which he made these rulings,

(allegedly gravely mistreated merely because she showed great dismay on her personage (without making a sound) when he announced his rulings, causing her such emotional distress that she had to leave the courtroom due to the injustice. It should be noted that previously, at the very outset of the jury trial, the Court had actually promised it would correct anything in the trial to assure that she was treated fairly. Now the Judge, whose duty was to be a neutral arbiter of the law, definitely appeared to be acting as an agent for the property owner to assure he received what the Court itself had prejudicially believed was "owed" prior to the trial: *"What?! They owe how much?!!!"*

At the end of the post-trial hearing, the Court entered an erroneous property judgment against and her family, allegedly endangering their ability to have living quarters for the rest of their lives, as property owners routinely review prospective tenants' lease records and any Court judgments against them, especially eviction related judgments.

As the result, an appeal was taken to the Arizona Court of Appeals which reversed the lower Court's ruling, finding that no judgment, whatsoever, should have been entered on behalf of the property owner given the *not guilty* verdict. A few months before the Appellate Court's August, 2012 decision, passed away.

When the mandate was issued by the Court of Appeals, it is alleged that would not enter the judgment without first holding a hearing with the parties, even though counsel properly requested that he merely enter the corrected judgment without hearing, as he was bound by law to follow the mandate of the Court of Appeals reversing the judgment in favor of the property owner. This alleged additional misconduct delayed the entry of the corrected judgment until and allegedly evidenced that was reluctant to correct plain legal error due to his own prejudiced views, even when required to do so.

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It is respectfully submitted that these cumulative actions reflected .

s alleged prejudice throughout the proceedings, that this alleged 'prejudice was obvious and improperly affected the trial outcome, and subsequently affected the course of and outcome of later proceedings. Obviously jurors are very perceptive to a judge's views in a particular case, and a trial outcome may also be affected by improper rulings reflecting a judge's personal prejudices. In this case, it is further respectfully alleged that was not only going to make sure that my elderly and disabled clients "paid" what he personally believed they owed, yet that this prejudice greatly affected the damages the received. By this alleged prejudicial conduct, violated the rights as American citizens, whereby the Arizona Judicial Commission should properly correct him. His alleged prejudice and careless attitude with respect to the law and alleged mistreatment of those vulnerable individuals which the law is supposed to protect should not be allowed, because they not only gravely affect the lives of good citizens, yet may affect countless other elderly and disabled individuals in the future if uncorrected. Judges must rule according to the law, and not according to their own personal prejudices and views.

Thank you very much for your time and assistance in this important matter. I respectfully request leave to supplement this formal complaint in the future, if necessary. Should you have any questions, please feel free to contact me at the above referenced address or phone number.