

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-008

Judge:	No. 1025814847A
Complainant:	No. 1025814847B

ORDER

The complainant alleged that a superior court judge allowed or caused the “manipulation” of court transcripts; was biased and failed to review his pleadings; ignored the law; and issued inconsistent rulings regarding the assessment of costs.

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 does not have the jurisdiction to review legal issues. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: February 26, 2014.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed
to the complainant and the judge
on February 26, 2014.

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

Phoenix, Arizona 85007

2014 008

(Attach additional sheets as needed)

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

Complainant is the Plaintiff in Court Case No. _____
assigned to County Superior Court Judge _____

In this complaint against Judge _____, Complainant requests that the Commission on Judicial Conduct investigate severe violations of Canon 1 and Canon 2 of Arizona Code of Judicial Conduct and take appropriate actions under Article 6.1 of Arizona Constitution.

Arizona Code of Judicial Conduct Canon 1:

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Arizona Code of Judicial Conduct Canon 2:

A judge shall perform the duties of judicial office impartially, competently, and diligently.

ISSUE #1: TRANSCRIPT MANIPULATION

- I. Intentionally and knowingly made false statements in response to issue of incorrect transcripts;
- II. Denied Complainant's multiple efforts to prove that the transcripts were incorrect and had been manipulated;
- III. Denied Complainant's motion to correct the transcripts despite having knowledge of incorrect transcripts and denying his efforts to show good cause and prove the transcripts were incorrect and manipulated;

ISSUE #2: BIAS AND PREJUDICE

- I. Issued rulings against Complainant without having read Complainant's motions, arguments and case law cited therein;
- II. Ignored the law and issued rulings based on bias and prejudice against the Complainant;
- III. Ridiculed the Complainant and issued rulings without hearing from the Complainant;
- IV. Refused to hear the Complainant on the issue of defendants filing a small claims court case against the Complainant despite the current superior court case underway;
- V. Allowed defendants to file improper motions despite her own order requiring them to file proper motions;

- VI. Refused to sanction defendants despite repeated and proven misconduct;
- VII. Ruled on Complainant's motion even before defendants had responded to the motion;
- VIII. Imposed costs on Complainant despite her own prior ruling denying the exact same costs.

ISSUE #1: TRANSCRIPT MANIPULATION

I. Intentionally and knowingly made false statements in response to issue of incorrect transcripts;

During oral arguments on _____, Judge _____ made extremely improper statements which reflected on her bias towards the Complainant. These statements are missing from the court transcript of the proceeding obtained by the Complainant.

Specifically, just before ruling against the Complainant on Defendants' motion for security for costs, Judge _____ turned to the court staff member sitting to the judge's right and said: "I have a reason to believe that he can pay

_____. After the judge made this statement, Complainant stated to the judge "based on what judge?" To that, judge replied: "I don't answer your questions, you answer my questions". Complainant replied " yes, but you just made a ruling disregarding the.... (Cut off by the judge).

Upon purchasing the transcript for this court proceeding from court reporter _____, Complainant noticed that the above statements made by Judge _____ and the Complainant were missing from the record. Complainant immediately contacted the court reporter and raised this issue. Ms. _____ denied that transcripts were incorrect (see Exhibit A).

Just a few days later, on _____, during second oral arguments, Complainant advised Judge _____ that transcripts from _____ were incorrect and missing the statements above. Rather than investigating the issue, Judge _____ accused Complainant of making accusations against her court reporter Ms. _____.

Mr. _____. It appears that you are accusing her of not providing you a full and accurate transcript, and you wanted me to reserve some time for that so I'm happy to make a record and hear what it is you have to say.

MR. _____. Plaintiff is not accusing court reporter Ms. _____ of anything, and I have stated – I have a copy of the e-mail exchange. (see Exhibit B).

Judge _____ also falsely stated that the statements were never even made by her.

THE COURT: Let me stop you. I read what you said. It didn't happen, sir. Your perception of what happened here in court is incorrect. It did not happen. (see Exhibit C)

Judge _____ then allowed the court reporter to simultaneously make a lengthy statement in the middle of proceedings all the while she was also supposed to be transcribing what is being said by the judge, the participants and herself (see Exhibit D). Judge _____ also told the court reporter to include her statements in the record which was improper since the reporter is supposed to include everything as she hears it in the court and not wait for the judge's instructions on what to include.

THE COURT: Okay. I want to -- can you make a record of what you just stated? Okay. And I'd like you to include that in the transcript of today. (see Exhibit D)

Judge then shouted at the Complainant **"it's in your head"**. This statement by the judge **"it's in your head"** is also missing from the transcript of proceeding and the audio/video recording obtained by the Complainant.

II. Denied Complainant's multiple efforts to prove that the transcripts were incorrect and had been manipulated;

Upon purchasing the transcript for the oral arguments on and once gain noticing that Judge statement to the Complainant **"it's in your head"** was missing from the record, Complainant purchased the CDs containing audio/video recordings of the proceedings on as well as

The Complainant noticed that the CDs had been manipulated and did not contain the parts where Judge made the two statements in question on and . Complainant again contacted the court reporter and asked her directly whether she remembered Judge making the statements in question or not (see Exhibit E). Court reporter did not answer Complainant's direct question and instead Judge issued a ruling

barring any contact between Complainant and the reporters in his efforts to get to the truth (see Exhibit F).

In a continued effort to prove that the court record was incorrect, Complainant also contacted the two defense attorneys present during both proceedings and asked them to either admit or deny that they heard Judge

make the statements in question (see Exhibit G). The defense attorneys did not respond to Complainant. Complainant then filed a motion to compel the two attorneys to either admit or deny that they heard the judge make the statements in question. Judge denied the Complainant's motion (see Exhibit H).

Judge also denied Complainant the opportunity to record the proceedings on his own due to continued missing statements in the transcripts and asked the Complainant no less than three times if he was recording the proceedings.

THE COURT: Have you ever recorded any proceeding in my courtroom before?

MR. : Not in your courtroom, no.

THE COURT: Okay. Normally let me tell you that that's something you need permission from the Court to do.

MR. : I couldn't find any statutes speaking to that.

THE COURT: Well, the Court has discretion to tell you not to do that, and that's why we have a court reporter here. This is the official court reporter. She keeps track of what happens.

MR. : That's fine.

THE COURT: So I'm asking you not to record anything in my courtroom ever.
(see Exhibit I).

THE COURT: You can do whatever is comfortable for you, sir. And before we start, I assume you're not recording today; correct?

MR. : I am not, but I do need to, if it pleases the Court, discuss that issue because there has been an issue with the transcript of the court.

THE COURT: We will talk about the transcript at the end. Answer my question, please, are you recording these proceedings?

MR. : No, Your Honor.

THE COURT: Okay. You know what, forgive me for doing this, but I am going to put you under oath to answer that, so please stand up and raise your right hand to be sworn. being first duly sworn, was examined and testified as follows:

MR. : I do. I do.

THE COURT: Okay. Mr. , are you recording today's proceedings with any device?

MR. : No, I'm not.

(see Exhibit J).

Why was Judge so concerned about Complainant recording the proceedings despite the fact that the Arizona Supreme Court Rules allow such recordings and a judge has to give a specific reason other than the mere presence of a court reporter in order to deny the recording? Because Complainant's recordings would have proven that Judge was lying and had indeed made the statements in question and the record was in fact manipulated and edited by the judge and her staff and Judge obviously did not want that.

ISSUE #2: BIAS AND PREJUDICE

I. Issued rulings against Complainant without having read Complainant's motions, arguments and case law cited therein:

On _____, Judge _____ ruled against the Complainant on the issue of defendants' tax returns when she had not even read the Complainant's motion and did not even have it with her. Complainant had to provide a copy to the judge. She briefly glanced over the lengthy and detailed motion for a few seconds and without checking the arguments and supporting cases cited in the motion by the Complainant, ruled against him.

MR. _____ : Do you have my -- what you just asked me I have provided you my prima facie case, but apparently you're not able to find it. That's what is a little --
THE COURT: I have ruled. I disagree with you. I am not going to revisit that.
(see Exhibit L)

II. Ignored the law and issued rulings based on bias and prejudice against the Complainant:

On _____, Judge _____ stated that she had formed a belief on how she was going to rule against the Complainant on the motion regarding security for costs in the amount of _____ even before hearing any testimony or evidence whatsoever on the issue and the issue had not been discussed previously.

BY THE COURT:

I did hear information throughout these hearings as to your past income, and based on that I would tend to believe that you're able to pay the security cost.

BY THE COURT:

Q. You may have a seat sir. What would you like to tell me, sir, about your ability to pay tax -- sorry -- security costs?

A. Before I do that, Court mentioned that you had some reason to believe that I do have an ability, would you like to tell me what, how --

Q. No, I don't have you ask -- I ask the questions. You make the statement.

A. I just asked because you had already --

Q. I don't need to go there. You tell me why you can't.
(see Exhibit M)

At the same proceeding, Judge also declared the tax summaries provided by the Complainant as untrue.

THE COURT: This is not a tax return. In fact, it says it right here, _ _ _ _ Tax Return Summary. It says it's prepared for you, but it doesn't even say it's for you. Okay. All it says is it's prepared for you. So I can't see the validity of this.
(see Exhibit N)

Even after Complainant filed a motion for reconsideration, and furnished full tax returns for the last five years that proved that the summaries were indeed true, Judge disregarded all evidence and denied the motion due to her extreme bias and prejudice against the Complainant.

III. Ridiculed the Complainant and issued rulings without hearing from the Complainant:

During oral arguments in _____, Judge _____ refused to hear Complainant's argument proving that the defense attorneys were falsely claiming some insurance companies to be their clients in order to keep the Complainant from contacting them. Judge _____ laughingly ridiculed the Complainant when he requested to be heard:

MR. _____ : May I respond at all?

THE COURT: What is -- sure. What is your response, sir? How could you -- what kind of possible response could you give to contacting someone who is represented by counsel?

MR. _____ : Well, if I tell you maybe you'll understand.
(see Exhibit O)

Judge _____ then refused to hear Complainant's argument proving that the defense attorneys were indeed lying and insurance companies in question were in fact, not clients of theirs (see Exhibit P).

Throughout the case, Judge _____ litigated from the bench on behalf of defendants and made disrespectful and biased remarks to the Complainant:

MR. _____ : He can't just invoice me, Judge? I have to go to the carrier and they are going to want a tax I.D. number from Mr. _____, he is not going to give me one, we are going to be right back here.

THE COURT: Of course you are, but you know how this works.
(see Exhibit Q)

THE COURT: If he plays games with you, if he gives you the summaries, if he doesn't give you the entire return, then you can come back to me and say I want them directly from the IRS.

(see Exhibit R)

IV. Refused to hear the Complainant on the issue of defendants filing a small claims court case against the Complainant despite the current superior court case underway:

During oral arguments on _____, Judge _____ refused to hear

Complainant on this issue or schedule a future time to hear it as she had done for the defendants.

MR. _____: The last issue is, Judge, they have, even though this action is before you in this court, they have filed the same action in small claims court.

THE COURT: This is a brand-new issue that wasn't set for today, okay. The only issues -- last time we were here, they asked, so that they wouldn't have to come back, to address the Motion to Compel and tape-recordings, and you said, "I am not prepared," which was fair. You cannot bring up new issues of something that's not scheduled to be heard today.

MR. _____: Even though they have filed this in small claims?

THE COURT: We are adjourned. You are free to leave. I will remain on the bench until you have gone.

(see Exhibit S)

Judge _____ had no problem hearing any and all issues brought up the defendants whether on the calendar or not. She also scheduled another oral argument proceeding just to accommodate the defendants because they wanted to raise an issue not scheduled for the earlier hearing:

THE COURT: Are you prepared, Mr. _____, to discuss the motion for the tape-recordings?

MR. _____: No, ma'am, because it wasn't on the calendar I am not.

THE COURT: I will give you a date for that today, so before we leave I will give you another date for that.

(see Exhibit T)

V. Allowed defendants to file improper motions despite her own order requiring them to file proper motions:

During oral arguments on _____, Judge _____ ordered defendants to file a proper motion along with an order:

MR. _____: I will do that. Doesn't need to be a motion, just an order.

THE COURT: Well, attach a motion or some type pursuant to what happened in court and my argument. I am providing the Court with an order. (see Exhibit U)

However, defendants failed to file a proper motion but Judge _____ accepted it anyway and granted the defendants' motion regardless of its impropriety.

MR. _____: The Court specifically said, and I am reading the transcript, will attach a motion or some type pursuant to what happened in court and my argument, my is Mr. _____, and I am providing the Court with an order. What he's provided, what he's filed, there is to motion here, there are no arguments what he's basing this Court, proposed Court order.

THE COURT: Remember that there is no motion because I heard argument on this the last time we were here and I asked him just to submit an order, but I agree that there may be specific names that should be included that you should not contact. Defense counsel's law firm, that's pretty clear; insurance carriers, what are the names of those insurances, counsel? (see Exhibit V)

Judge falsely stated that she had “asked him just to submit an order” despite specifically having ordered Mr. to “attach a motion” in the transcript:

MR. : I will do that. Doesn't need to be a motion, just an order.
THE COURT: Well, attach a motion or some type pursuant to what happened in court and my argument. I am providing the Court with an order.
(see Exhibit U).

VI. Refused to sanction defendants despite repeated and proven

misconduct:

Judge refused to sanction defendants despite repeated proven misconduct or even question them whatsoever regarding multiple and repeated lies and misconduct (see Ex. W). Additional examples of defendants’ proven lies include lying in their motions as Complainant proved below:

MR. : Now, in their Motion to Compel the tape-recordings they make an argument in the second paragraph of their motion that plaintiff has been refusing to produce this recording since last year. That is a lie. As they themselves just testified, I did provide those. So that statement is a lie right there. No less than five letters and e-mails have been requested their production -- it's grammatical error, but I am quoting as it is -- from who finally produced some but not all of the recordings. That's another lie. I sent them a letter, certified letter, on that specifically answers their question. They asked me, is there -- are there any other recordings, and I specifically state there are no other recordings of witnesses that you inquire. So when they allege that I refused to produce all the necessary recordings, that is another lie.
(see Exhibit X)

Defendants further claimed in open court that they could not obtain a discovery related recording from the State of Arizona because "it's gone. They don't have it anymore".

MR. : All right. As I was stating that they've had a year and a half. Now, they are bringing up the issue that maybe they don't have it. Have they even attempted in the last year and a half to get this recording on their own after I -- I've already provided it to them once. We don't know the answer to that.

MR. : It's gone. They don't have it anymore.
(see Exhibit Y)

However, this was an absolute lie because Complainant was able to obtain the recording in question from the State and proved it to Judge
(see Exhibit Z).

VII. Ruled on Complainant's motion even before defendants had responded to the motion:

Due to Judge extreme bias and prejudice towards him throughout the case, Complainant filed a motion for a new trial on . However, on , before the defendants had even responded to the motion, Judge issued a ruling asking defendants to submit a Judgment Order:

The Court requests that the Defendant submit and lodge a modified Judgment Order form consistent with the Court's latest ruling no later

than

(see Exhibit AA)

The defendants did not file a response till after . This demonstrates that Judge already knew how she was going to rule on Complainant's motion for new trial regardless of defendants' response etc.

VIII. Imposed costs on Complainant despite her own prior ruling denying the exact same costs:

On over objection filed by the Complainant, Judge granted defendants costs in the amount of (see Exhibit AB).

This amount included for a first deposition on that Judge herself previously denied on .

THE COURT: Well, I am not going to deal with the first one. I am going to deal with the second one.

(see Exhibit AC)

Also on , Judge sanctioned the Complainant for defendants' claimed costs for a second scheduled deposition despite Complainant's argument that defendant did not incur any such costs.

THE COURT: You didn't appear. I understand what you're telling me. I am going to sanction you costs.

What was the cost of the videographer?

MR. : And the court reporter. I don't know. It may be
 , Judge.

(see Exhibit AD)

In fact, defendants had not incurred any such costs and lied to the judge when stating that the cost “may be ”. Complainant had notified the defendants two weeks in advance of the scheduled deposition that he had just started a new job and will not be able to attend the deposition at the time scheduled (see Exhibit AE). Judge also denied Complainant’s motion for sanctions against defendants for lying in court and claiming “may be ” costs regarding deposition.

Defendants’ own statement of costs proves their lie since it does not include any costs incurred for deposition (see Exhibit AF).

CONCLUSION:

In light of the above, Complainant requests that the Commission on Judicial Conduct investigate severe violations of Canon 1 and Canon 2 of Arizona Code of Judicial Conduct and take appropriate actions under Article 6.1 of Arizona Constitution.

Complainant greatly appreciates the Commission’s time and efforts in this Complaint and welcomes any questions the Commission may have. Thank you.

Sincerely,