

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-272

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge failed to read his pleadings, induced him to produce evidence the judge subsequently sanctioned him for providing, ignored new evidence, was biased, and made erroneous 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.

The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: October 8, 2014

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on October 8, 2014.

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

Judge _____ regard for his professional duties is arbitrary. The Judge's courtroom demeanor is paternal, even amiable, but that demeanor only disarms and misleads defendants whose interests he has already decided do not rate consideration.

This complainant was the self-represented defendant in a case before Judge _____ that ran from _____ to _____ of _____ and that preoccupied Defendant's every free moment for most of that year. Defendant was compelled to appear in Judge _____ courtroom on _____ to answer allegations of libel and harassment brought by spouses _____ and _____

It is Defendant's affidavit to this Commission that Judge _____ **neglected to read** Defendant's pleadings to the Court pre-trial; that Judge _____ **induced** Defendant to provide post-trial evidence and testimony to the Court that he then **sanctioned** Defendant for submitting; that Judge _____ **ignored** new evidence, as well as perjury; and that Judge _____ in all other respects **exhibited bias** for Plaintiffs, who were represented by counsel.

Preliminary to his appearance to respond to Plaintiffs' Complaint (and per basic civil procedure), **Defendant timely submitted an Answer Memorandum to the Court of which the Judge did not bother to read even the first two pages. His Honor prejudged Defendant guilty and expected to conclude the case summarily.**

Defendant's Answer Memorandum (captioned "**Defendant's Answer and Counterclaim**") represented not only an investment of over _____ hours of his time, including long stints in the law library, but the culmination of Defendant's resistance to _____ **years** of false, perjured, and defamatory public statements broadly circulated by a married woman, Plaintiff _____ who had targeted Defendant at his residence in _____ as a candidate for an extramarital affair and then sought to conceal her misconduct by defrauding the _____ Department and multiple courts of the _____ County justice system (Plaintiff and her husband have since taken up residence in _____

The basis of Plaintiffs' _____ libel and harassment suit against Defendant was Defendant's publication of these circumstances. Exposure of Plaintiff _____ false allegations was the only means left Defendant to counteract their effects, which have been exceedingly damaging.

Defendant had previously sought relief from Plaintiff's allegations through court process, including a Court appeal a letter from an attorney , and a lawsuit which was dismissed because Defendant filed it too belatedly.

The case brought before Judge had its basis in events of years prior, events the Judge ignored because he could.

Plaintiff had sought and was awarded an **Injunction against Harassment** by a judge of the County Court on that was based on **fraud** and whose intent was to prohibit Defendant from speaking to Plaintiff's husband. Plaintiff had withheld that she was married and represented herself as single while habitually hanging around outside of Defendant's home up to and past midnight months earlier

In his Answer Memorandum to the Court, Defendant introduced to Judge attention that Plaintiff Injunction against Harassment lacked jurisdiction, because Plaintiff included her husband on the order as a **"co-plaintiff."** Plaintiff's husband had also partially filled out the form. An Injunction against Harassment may only have a single adult plaintiff. Plaintiff's husband, to whom Defendant was alleged to be "a danger," was besides a complete stranger to Defendant. Defendant had neither known nor spoken to or of the man.

Defendant moved Judge pre-trial to vacate Plaintiff's injunction, the source of the conflict, on the grounds that it was, on its face, **"void"** (and was furthermore based on **fraud**). No time limit restricts a motion to vacate a "void" judgment. The Judge denied Defendant's motion upon beginning the hearing without addressing the matter of the order's legality (or fraudulence).

Because Defendant was self-represented, Judge clearly presumed to dispose of the matter swiftly, placing his full faith in the accuracy of Plaintiffs' Counsel's portrayal of it.

Accordingly the Judge said he was prepared to rule on Plaintiffs' libel and harassment allegations mere minutes into the procedure, having neither heard from Defendant in person nor read his pleadings to the Court. Defendant declined an instant verdict, anticipating what that verdict would be.

Defendant's suspicions were confirmed by a grin from the Judge.

“Pretend I don’t know anything,” Judge told Defendant during the proceedings that followed. Defendant failed to appreciate that the Judge meant he literally knew nothing about the case.

The Judge covered his unfamiliarity with the details of Defendant’s Answer Memorandum confidently, only slipping in court when he joined Plaintiffs’ Counsel in asking Defendant where he lived. Defendant’s pre-trial exhibits to the Court included both ground-level and aerial photographs of his residence (where Plaintiff had nightly “hung out” sans wedding band years prior). **Not only had the Judge not read Defendant’s Answer Memorandum; he had not looked at the pictures.**

Judge scoffed in court when Defendant applied the word **perjury** to Plaintiff past testimony, with which Defendant assumed the Judge had acquainted himself pre-trial by reading Defendant’s Answer Memorandum, and which was self-evidently contradictory.

The basis of the complaints of libel and harassment against Defendant was his public report of that testimony and the circumstances from which it arose, which meant that its truth or falsity was key. Public statements may only constitute libel if they are false.

Defendant’s statements were not false: Plaintiff’s past testimony was perjured (and she knew it).

The **statute of limitation for perjury**, a felony crime in Arizona, is years. Had Judge had the least familiarity with the case over which he presided, its timing should have alerted his suspicion.

Plaintiff’s lawsuit was filed just over years to the day after her giving perjured testimony to procure an Injunction against Harassment in Exercising (unnecessary) caution, Plaintiff delayed her prosecution, which she could have initiated months or years previous, until the felony statute of limitation had flown, and she was **immune to prosecution**.

Defendant brought this fact to Judge notice in court. It was waved away dismissively.

The **expiration of the statutes of limitation** for the torts Defendant alleged in his lawsuit against Plaintiff years earlier (among them **fraud** and **intentional infliction of emotional distress**) was the reason Defendant’s suit was rejected by the Court. The case was

“time-barred.” Upon cross-examination in Judge _____ court, **Plaintiff** **(who holds a Ph.D. in science) denied knowing what a statute of limitation is.**

Instead of suspecting Plaintiff’s veracity, the Judge showed concern for Plaintiff’s reputation throughout the _____ hearing (as well as over the months that ensued), and showed no regard whatever for Defendant’s reputation.

Judge _____ all but pronounced in court that Defendant obviously was not a violent threat to Plaintiff. **“He’s not—,”** the Judge began, but censored himself and then listened without comment or interruption as Plaintiff’s first witness, _____, her supervisor at the _____ explained a series of security protocols that his agency had put in place to protect Plaintiff _____ physical safety (evidently in response to claims of danger).

Defendant has never seen Plaintiff anywhere but at his own home, nor has Defendant communicated with Plaintiff or left Arizona since _____

In contrast to the polite deference Judge _____ paid this line of inquiry from Plaintiff’s Counsel, the Judge terminated Defendant’s cross-examination of _____ when Defendant asked about the importance of honesty in the field of public health policy in which _____ and Plaintiff are employed.

Both _____ and Plaintiff _____ are **public officials** who draw paychecks from the _____ state government.

Defendant emphasizes the phrase “public officials,” because Judge _____ complete ignorance of Defendant’s Answer Memorandum is most obviously demonstrated to this Commission by the Judge’s confusing the term “public official” with the term “public figure.” This confusion is preserved on the record in the Judge’s ruling dated _____ (see **Exhibit 1, bottom of page 2).**

A “public official” is a distinctly different entity from a “public figure,” such as a politician or movie star.

Plaintiff _____ is a government employee who liaises with the public, gives presentations on public health (including by video on the Internet), and reports directly to regional administrators in the _____ a _____ state agency. **In Defendant’s Answer Memorandum to the Court, in its fourth paragraph, Defendant alleged Plaintiff _____ was a “public official” (see Exhibit 2, page 2).** This allegation was also substantiated with multiple exhibits to the Court that were included in the same brief (and additional evidence was provided by Defendant during the _____ trial).

The **fourth paragraph** of Defendant’s Answer Memorandum further directed the Court’s attention to later paragraphs in the brief that detailed and defined what a “public official” is under the law (see Exhibit 2, page 3). **Defendant’s explanation of the phrase “public official” was lengthy, detailed, and precise. Had the Judge read Defendant’s explanation, no confusion with the phrase “public figure” would have been possible.**

The phrase “public official,” which Defendant had very deliberately articulated to the Court, was one Judge _____ did not recognize. Plainly the Judge had not read even the opening paragraphs of Defendant’s Answer Memorandum. The Judge noted in his ruling that Plaintiffs (plural) were “**not public figures**” but “**only employees of the state**” (see Exhibit 1, bottom of page 2). **A “public official” is an employee of the state, as Defendant had explained with great specificity pre-trial.**

The detail was a significant one.

A libel suit brought by a public official must prove “**actual malice.**” It is not enough, that is, for a judge to presume an allegation of libel introduced by a public official is true; **a libel plaintiff who is a public official must conclusively prove that public statements made about him or her are false.**

The Judge’s failure to read Defendant’s Answer Memorandum authorized him to accept Plaintiffs’ allegation of libel on faith and endeavor to fast-track the case to conclusion (to the extent that he was prepared to rule on it seconds into the _____ hearing).

Judge _____ predisposition toward the case further urged him to characterize Defendant’s published statements as “**false**” (and therefore actionable) in his _____ ruling.

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**