

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-047

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge improperly found her in contempt, failed to give her proper notice of an evidentiary hearing, and delayed her ability to file an appeal.

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: May 13, 2015

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 May 13, 2015.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2015-047

COMPLAINT AGAINST A JUDGE

Your name: _____ Judge's name: _____ Date: _____

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

*****See Attached Sheet*****

Lined area for writing the complaint.

BRIEF HISTORY

On _____ Respondent filed a _____ (hereinafter, _____). On _____, the Court issued _____ setting the matter for a hearing on _____ at _____ p.m. Petitioner was subsequently served _____ with the _____ and _____ by certified mail on _____.

The same day, Petitioner contacted the Honorable _____ (hereinafter, _____) division by telephone and informed _____ (_____) that she was unable to appear in person due to _____ mandated by _____. Petitioner inquired as to whether the matter could be continued until after _____. Consequently, the Court informed Petitioner that she would have to make an appearance telephonically.

On _____, Petitioner appeared telephonically for the scheduled hearing in the matter. During the hearing, Petitioner was not afforded the opportunity to present evidence or call witnesses during the proceedings. This was due to the restrictions imposed by appearing telephonically and a lack of notice that an hearing was being conducted. After a hearing in the matter, a Judgment Order _____ was issued on _____, designating Respondent _____ in the matter.

On _____, Petitioner filed a _____ : alleging that her due process rights were violated and proper notice wasn't given. On _____, Judge _____ issued a Minute Entry Order pursuant to _____ denying Petitioner's _____. On _____, Petitioner filed a _____ alleging the court failed to address the issue of proper notice and due process. On _____, Judge _____ issued an _____.

RULES VIOLATED

VIOLATION OF RULE 1.2. Promoting Confidence in the Judiciary

VIOLATION OF RULE 2.2. Impartiality and Fairness

ACTIONS THAT CONSTITUTE VIOLATIONS

As stated above, Petitioner was served with an Order _____ on _____. According to the Order to Appear, the parties were appearing for a hearing on the relief requested in Respondent's

. First, on [redacted] In. [redacted] of Respondent's [redacted] , the only relief requested is a [redacted] :
[redacted] . The portion that pertained to [redacted] ; [redacted] and [redacted] | [redacted] was
left blank. Despite the foregoing, Judge [redacted] issued an order designating Respondent as
without proper notice of an [redacted] r hearing to Petitioner.

According to Rule 8.4(l) of [redacted] Local Rules, Respondent was required to give notice to Petitioner
and the Court that testimony and evidence would be offered. Consequently, Respondent failed to file a [redacted] :
[redacted] that testimony or evidence would be produce. Also, the Order [redacted] fails to
give notice of any evidence or testimony being presented.

Rule [redacted] of the [redacted] states in pertinent part that "the deletion of information required by
a form or the failure to complete a portion of a form is a representation to the court and to all adverse parties that
the question(s) or item(s) are not applicable."

If the committee will review the Order [redacted] of the standard forms designated by
Rule [redacted] both contain an option whether evidence will be produced or not. Consequently, Respondent's Order
fails to contain any language stating whether evidence would be produced. Therefore, according to Rule
[redacted] no evidence or testimony should of been offered at the hearing held on [redacted] This
would of required the Court to set the matter for an [redacted] hearing at a later date. By doing so, the parties
would of had sufficient time to conduct discovery and assemble witnesses pursuant to Rule [redacted] of the

Consequently, Petitioner was required to 1. submit a Response, 2. collect evidence, 3. assemble witness, 4.
and travel over [redacted] miles to appear in person with less than [redacted] days notice. This, despite being in her last
trimester of pregnancy and without proper notice of an [redacted] r being conducted. It should be noted that the
Judge [redacted] arbitrarily decided to conduct an [redacted] hearing on [redacted] . This is confirmed by
Judge [redacted] statement issued in the [redacted] , Order [redacted] :
which states:

It is clear from the docket in the matter that Petitioner was not given sufficient time to file a Response in the matter. So this suggest that Judge [redacted] questioned the parties as to their wishes with regards to [redacted] at the hearing held on [redacted]. Once it was determined that the parties were unable to come to an agreement, the court arbitrarily conducted an [redacted] hearing without proper notice to the parties.

Second, Judge [redacted] issued orders on [redacted], denying Petitioners Motion to [redacted]. Every order issued by Judge [redacted] in the past has always been signed pursuant to Rule [redacted]. However, the Order [redacted] issued on [redacted], was mysteriously left unsigned. Petitioner believes this was intentionally done by Judge [redacted] in an effort to delay or disrupt the appeals process in the matter. This is confirmed by Judge [redacted] untimely delay in reissuing a signed Order [redacted], despite a request being filed on [redacted]. Judge [redacted] actions at a minimum show the appearance of impropriety.

Last, a [redacted] was filed in the matter on [redacted]. Accordingly, the Court was prevented from conducting any further actions in the matter. On [redacted], Judge [redacted] conducted a hearing without proper service pursuant to Rule [redacted]. Further, Judge [redacted] after receiving the [redacted]

[redacted] knew or should of known that he was prohibited from conducting any further proceedings until the appellant process had concluded. Consequently, during the hearing Petitioner was sanctioned [redacted] and admonished by the court in violation of Arizona Law.

RULE 1.2. of the Arizona Rules of Judicial Conduct states that "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. Judge [redacted] actions in the matter have undoubtingly called into question his integrity and impartiality as a Judicial Officer. Further, his failure to sign the Order [redacted] in a timely manner after being requested to do so, suggest an appearance of impropriety.

RULE 2.2. Of the Arizona Rules Judicial Conduct states that "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially. Comment 1. To ensure impartiality and fairness to all parties, a judge must be objective and open-minded. 2. Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question. 3. A good faith error of fact or law does not violate this rule. **However, a pattern of legal error or an intentional disregard of the law may constitute misconduct.** 4. It is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard."

As stated above, a pattern of legal error or an intentional disregard of the law may constitute misconduct. It is clear in the matter that the Order issued in the matter failed to contain any language suggesting that an hearing with testimony and witnesses would be conducted on Further, Judge intentionally failed to sign the Order with knowledge that failure to do so would delay or disrupt the appeals process in the matter. Last, Judge held a hearing on , despite Petitioner not being served pursuant to Rule and a Notice of Appeal filed in the matter.

This isn't the first time that Judge has failed to apply the statutes correctly. In the appellant case The appellant court held that Judge erred in his findings that that is based on allegations of : involving a . However, because Judge reached the correct result the matter was affirmed.

In the above-entitled matter it is clear that Petitioner's due process rights were violated and Judge intentionally failed to sign the Order Further, Judge failed to reach the correct results in this matter. This resulted in a lost of trust by Petitioner in is his ability to remain impartial and rule fairly. In closing, Judge patterns of legal error and intentional disregard for law constitute a finding of judicial misconduct.