

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-315

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge entered orders against a non-party without proper notice, issued inconsistent rulings, and incorrectly applied the law.

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 an advisory letter to thoroughly familiarize himself with the applicable family law rules so as not to violate Rule 1.1 (Compliance with the Law). The complaint is dismissed pursuant to Rules 16(b) and 23(a).

Commission members George Foster, Anna Mary Glaab, and J. Tyrrell Taber did not participate in the consideration of this matter.

Dated: February 5, 2016

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on February 5, 2016.

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

I understand the commission cannot reverse court orders or assign a new judge to a case.

I declare, under penalty of perjury, that the foregoing information and the facts I have provided upon which my allegations of judicial misconduct are based are true and correct.

Signature _____

Date: _____

INSTRUCTIONS

Use the following space or plain paper of the same size to explain your complaint. Explain why you believe what the judge did constitutes judicial misconduct. Be specific and list the names, dates, times, and places relevant to your allegations. Additional pages may be used and relevant copies of documents may be sent with your complaint (please do not send original documents). Use one side of each page only and write legibly or type your complaint. Please keep a copy of your complaint for your records.

1.

I represented _____ in Judge _____ Court in _____. On _____, Judge _____ signed the order allowing me to withdraw from the case. Exhibit 1. After Judge _____ signed the order, I was neither a party nor counsel in that case. On _____, my former client's conservator filed a motion to compel me to turn over my original file and petition for sanctions against me, although he had never asked for my original file. On _____, Judge _____ set a return hearing on the conservator's motion and petition by minute entry and did not endorse me on the minute entry. Exhibit 2. Although I was never served or given any other notice (Exhibit 3), Judge _____ held a hearing in my absence on _____ inexplicably found that I had been given notice in spite of the fact that personal service was required and I had not even been given any notice, and entered orders against me. Exhibit 4. Judge _____ set a hearing affecting the rights of a non-party, did not communicate that order to the non-party, and then held a hearing in that non-party's absence although that non-party had not been served otherwise been given notice, and then proceeded to make orders against that party.

Judge _____ actions do not promote public confidence in the independence, integrity and impartiality of the judiciary, and do not avoid impropriety or the appearance of impropriety in violation of Rule 1.2 of the Arizona Code of Judicial Conduct.

Judge _____ did not apply the law, and did not perform his duties of judicial office fairly and impartially in violation of Rule 2.2.

Judge _____ did not perform his duties competently in violation of Rule 2.5.

Judge _____ minute entry and the hearing on _____ were ex parte communications in violation of Rule 2.9.

2.

When I was counsel in this matter, Judge _____ had set oral argument on an issue. Exhibit 5. After the opposing party filed a motion to continue alleging that she was _____ to attend the oral argument, as well as many other things, Judge _____ granted the motion to continue, adding to the order to continue oral argument the words, " _____." Exhibit 6. Knowing that the opposing party argued that Judge _____ conducted discovery on it. After I filed a motion to compel on the discovery due to the opposing party's refusal to respond, the opposing party argued that Judge _____ granted the motions for reasons other than Petitioner's _____ I pointed out that Judge _____ had specifically said in his order, " _____." Judge _____ then issued an order denying the motion to compel, saying in part, " _____." Exhibit 7. Therefore, Judge _____ said one thing when he granted the motion to continue, but then, when that one thing was not convenient to the way he wanted to rule on a later motion, he made an assertion that is completely irreconcilable with the language of his order granting the motion to continue.

Judge _____ actions do not promote public confidence in the independence, integrity and impartiality of the judiciary, and do not avoid impropriety or the appearance of impropriety in violation of Rule 1.2 of the Arizona Code of Judicial Conduct.

Judge _____ ruling on the motion to compel was not impartial in violation of Rule 2.2, otherwise he would not have had to claim that his previous order said something other than what it actually said.

Judge _____ did not perform his duties competently in violation of Rule 2.5.

3.

Judge _____ predecessor entered an order purporting to grant some of my client's _____ to his former spouse. I filed a motion to vacate those orders. Exhibit 8. As you can see, the law could not be more clear. However, Judge _____ predecessor asked for briefs regarding how my client's alleged incompetence effected the analysis. Exhibit 9. As you can see, federal case law sets forth very specific elements when determining a _____ capacity to determine his beneficiaries. Also, not evidence was ever taken regarding my client's capacity to determine his beneficiaries. However, Judge _____ entered an order vacating the orders requiring my client to make his former spouse the sole beneficiary of his _____ but also purporting to order that any selection that my client made after a certain date was void due to his alleged incompetence. Exhibit 10. As you can see, Judge _____ totally disregarded the federal case law on these benefits, as well as the fact that he had taken no evidence on this issue. Furthermore, Judge _____ issued an order refusing to rule on part of the motion. Exhibit 11.

Judge _____ actions do not promote public confidence in the independence, integrity and impartiality of the judiciary, and do not avoid impropriety or the appearance of impropriety in violation of Rule 1.2 of the Arizona Code of Judicial Conduct.

Judge _____ did not apply the law, and did not perform his duties of judicial office fairly and impartially in violation of Rule 2.2.

Judge _____ did not perform his duties competently, or, in the instance of deciding to not rule, promptly, in violation of Rule 2.5.

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