

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 15-326

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Judge:

Complainant:

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**ORDER**

The complainant alleged a superior court judge improperly held a hearing after a notice of change of judge had been filed.

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. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: December 23, 2015

FOR THE COMMISSION

/s/ George A. Riemer

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George A. Riemer  
Executive Director

Copies of this order were mailed to the complainant and the judge on December 23, 2015.

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

1 **CONFIDENTIAL ATTACHMENT TO:**  
2 **AZ CJC COMPLAINT FORM 1**

3  
4 Regarding Superior Court Judge,

**ARIZONA CONSTITUTION  
ARTICLE 6, SECTION 14,  
SUPREME COURT RULES,  
ARIZONA RULES OF CIVIL  
PROCEDURE, ET. AL.**

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10 **REVIEWING AUTHORITY**

11 Arizona Commission on Judicial Conduct  
12 1501 West Washington Street  
13 Suite 229  
14 Phoenix, AZ 85007

15 **PARTIES**

16 **Judicial Parties:**  
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**RELEVANT AUTHORITIES**

The following authorities are stated by way of reference and not to meant to infringe upon the authority of the Judicial Commission and by any way limit its review of any and all other authorities, relevant rules, etc., in this matter.

- Arizona Constitution, Article 6, Section 14, et. al.*
- A.R.S. Sup. Ct. Rules, Rule 81, et seq., Code of Judicial Conduct, Canon 1, a Judge Shall Uphold and Promote the Independence, Integrity of the Judiciary, and Shall Avoid Impropriety and Appearance of Impropriety, Canon 2, A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently, Canon 3, A Judge Shall Conduct Extrajudicial Activities to Minimize Conflict with the Obligations of Judicial Office.*
- A.R.S. Sup. Ct. Rules 31, et. seq., (a) Supreme Court Jurisdiction Over the Practice of Law and relevant ER rules under A.R.S. Sup. Ct. Rule 41, et. seq.*

**STATEMENT OF FACT**

On about \_\_\_\_\_, plaintiff, \_\_\_\_\_; filed a civil action for a tortuous breach of a real estate contract covenant concerning a commonly owned water well against herein known "individual defendants" of the unknown

1 entity, which group of property owners (including  
2 plaintiff) was insured by ; was  
3 brought into the action by a declaratory judgment action as their existed a conflict  
4 of interest for under the co-insureds' insurance policy as addressed  
5 by the Arizona Supreme Court in *Rawlings v. Apodaca*, 151 Ariz. 149, 726 P.2d  
6 565 (Ariz. 1986). breach was discovered after the complaint filed.  
7 Subsequent to the filing of the complaint, no notice or investigation by the  
8 insurance company, occurred, with no notice to plaintiff from  
9 prior to Accordingly, plaintiff initiated contact  
10 with attorneys therein discovering by nondisclosure  
11 had undertaken the defense of co-insured defendants and intended response to the  
12 complaint by motion, which motion was filed on  
13 Subsequently, some nine (9) motions (involving some 100 court filings and/or  
14 1,000 pages of documents) were filed in the action many of which motions filed  
15 by the subject defendants had no supporting authority, requested improper factual  
16 determinations, or simply misstated relevant legal and/or factual support whereby  
17 on certain motions the plaintiff only legal support in opposition was *Ariz. R. Civ.*  
18 *P. Rule 11, et. seq.* Such burdensome litigation  
19  
20 for intervention to stop such abuse of the judicial process and burden on plaintiff.  
21 As of , no court intervention had been effected, conversely,  
22 the court, through some means currently unknown, allowed an adverse party,  
23 ( for individual defendants), to issue a Superior Court Order  
24 on an Unnoticed Motion to effect a Hearing concurrent with another matter the  
25 Superior Court had issued an order to be heard on  
26 Given the onerous litigation to date, lack of court intervention, and an erroneous

1 hearing order, amongst other complex issues discovered after the filing of the  
2 civil action, plaintiff filed a change of judge under *Ariz. R. Civ. P. Rule 42(f)(1),*  
3 *et. seq.*, on \_\_\_\_\_ which change of judge was received, reviewed,  
4 and then changed \_\_\_\_\_, attempted to have plaintiff waive its  
5 substantive rights under the change of judge by attempting use of undue judicial  
6 influence through its judicial assistant informing plaintiff he was expected to  
7 attend the improper hearing on \_\_\_\_\_. This \_\_\_\_\_,  
8 teleconference with changed judge assistant occurred after the close of the court,  
9 Friday, therefore, plaintiff specially, informed changed judge assistant that he  
10 would file a change of judge for cause on first of court opening on Monday,  
11 \_\_\_\_\_ to assure no confusion with taking the improper hearing off-  
12 calendar thereby preserving plaintiff's substantive rights, etc., and that the judicial  
13 assistant should inform all parties in order to mitigate any unnecessary  
14 appearances. On \_\_\_\_\_, as not required under Arizona law,  
15 plaintiff was required to unnecessarily file change of judge for cause (at about  
16 \_\_\_\_\_), and, then, as set forth in the affidavit for change of judge for cause,  
17 called ( \_\_\_\_\_ ) changed judge and had to leave a telephone message that  
18 change of judge for cause had been filed, and, again, any parties should be  
19 advised accordingly, as discussed and confirmed with changed judge judicial  
20 assistant on the preceding Friday, \_\_\_\_\_ ( \_\_\_\_\_ ).  
21 Without notice to plaintiff, the changed judge proceeded with the improper  
22 hearing on \_\_\_\_\_, ex parte with attending party known to be,  
23 \_\_\_\_\_, attorney at this time. Moreover, changed judge issued a "Chamber  
24 Notice" that is not supported by fact or law on \_\_\_\_\_.  
25 Supporting Documents attached (as tabbed):  
26 1. \_\_\_\_\_, Chamber Notice by changed judge, \_\_\_\_\_;

- 1 2. Preemptory Change of Judge, filed
- 2 3. Change of Judge for Cause filed
- 3 4. Motion to Vacate Unconstitutional Orders and Change Venue
- 4
- 5 5. Excerpts from Underlying Civil Action re: Summary of Case Chronology,
- 6 Plaintiff Statement of the Case, and Plaintiff Biography.
- 7

### 8 TENATIVE CONCLUSIONS

- 9 1. Changed judge, , was judicially required to intervene to stop
- 10 abuse of the judicial process by defendant attorneys and failed to do so;
- 11 2. Changed judge, , should not have allowed an opposing party
- 12 (a party whose conduct had been called into question) to issue a Superior
- 13 Court Order (outside the Superior Court jurisdiction) for hearing on an unnoticed
- 14 motion and was required to remedy such action and conduct and failed to do so;
- 15 3. Changed judge, , was required to effect the change of judge
- 16 filed on , under plaintiff's Ariz. R. Civ. P. Rule 42(f)(1), et.
- 17 seq., request and failed to do so;
- 18 4. Changed judge should not have moved forward with the improper
- 19 , hearing ex parte, especially after change of judge for cause was filed
- 20 early that morning pursuant to notice provided changed judge on
- 21 and, again, the morning of , and to the prejudice of
- 22 plaintiff did improperly move forward with such and is believed to have issued
- 23 unconstitutional orders to the due process prejudice of rights and remedies of the
- 24 plaintiff, etc., when such changed judge was required to transfer the civil action to
- 25 another judge and failed to do so;
- 26 5. Fact and law do not support changed judge, , Chamber

**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.**