

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 16-123

Judge:

Complainant:

ORDER

The complainants alleged a superior court judge was biased against them, denied their right to be heard, incompetently reviewed the file, improperly communicated with another judge, and improperly delayed advising them of his ultimate decision costing them time and money.

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(a).

Dated: June 22, 2016

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainants and the judge on June 22, 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.

Sign

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.

ABSTRACT

This complaint submits facts as Exhibits I-VII supporting violations of the Arizona Judicial Code of Conduct against Honorable _____ in his conduct towards Plaintiffs _____ . This complaint illustrates a pattern of behavior and conduct by Judge _____ towards Plaintiffs, across two separate cases involving Plaintiffs. Judge _____ pattern of conduct demonstrates lack of impartiality, fairness, competence, diligence and cooperation. It also demonstrates denial of the Plaintiffs' rights to be heard, as well as an improper ex parte communication and judicial statement to another judge on an impending case. The ex parte communication appeared to be intended to deny Plaintiffs the right to a fair hearing in the future, as well as indicate disagreement with the other judges ruling. These overall violations of the Arizona Code of Judicial Conduct tarnish confidence in the Judiciary.

Points of Fact Supporting Violations of Rule 1.2, Rule 2.2, Rule, 2.5, Rule 2.6, Rule 2.9 and Rule 2.10 for Case Number

Rule 2.6: Evidence Against Ensuring the Right to Be Heard, Rule 2.2: Evidence of Partiality & Unfairness;

Plaintiffs site lack of impartiality and fairness against Plaintiffs from Judge in that Plaintiffs were self-representing as their right. Plaintiffs feel self-representation was used against Plaintiffs, where demands were placed on them being specifically disadvantaged without an attorney. These demands created scenarios where Judge could site the need for an attorney. Judge states in Court Order dated second page, paragraph four, presented as evidence **Exhibit I:**

“The court would highly suggest to the Plaintiffs to either retain, or at minimum, consult with an attorney as it is very apparent that there are pleading, service and statutory issues the Plaintiff has to address in this matter.”

Rule 2.5: Evidence Against Competence, Diligence and Cooperation;

“Comment 4. In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.”

Case Numbers and were filed by Plaintiffs as Tax Lien Purchases with the Notice of Intent to File Foreclosures. The property and parcels for both cases are vacant parcels without any roads or improvements in . The value of the parcels are considerably low, and the cost of an attorney over a two year period of filing paperwork would far exceed the value of the properties.

Rule 2.5: Evidence Against Competence, Diligence and Cooperation;

Plaintiffs site incompetence in case review evidenced by the Treasurer’s Affidavit noting a “fatal discrepancy” of not sending the Notice of Intent Certified Mail, which would cause the case to be dismissed. **Plaintiff’s filed the Treasurer’s Affidavit in person on at the Clerk of the Superior Court the afternoon before the Default Hearing on before the Honorable in .** The Treasurer’s Affidavit was not reviewed by Judge on the day of the Default Hearing to cause dismissal. Judge ordered Plaintiffs to show Proof of Service to Defendants, and Treasurer instead. The Treasurer’s Affidavit and Court Order granting the Default Hearing are presented as evidence **Exhibit II A Exhibit II B.**

Rule 2.5: Evidence Against Competence, Diligence and Cooperation:

Plaintiffs submit Judge _____ own words in his Court Order dated _____ demonstrating incompetence in case review to find the fatal defect on the Treasurer's Affidavit mentioned previously, presented to him in Court on _____ which sites a separate case with the same Plaintiffs as evidence

Exhibit III:

"The Court would further question whether this matter even remains viable. At a Default Hearing on today's date, in the matter of Cause No. _____ it was brought to the Court's attention that the pre-litigation notice was not sent by certified mail to the _____ COUNTY TREASURER. The failure to send the pre-litigation notice by certified mail to the _____ COUNTY TREASURER constitutes a fatal defect in a tax lien or certificate of purchase foreclosure action. In accord with A.R.S. 42-18202(A), the Plaintiff must send notice of intent to file the foreclosure action by certified mail to the _____ COUNTY TREASURER. In accord with A.R.S. 42-18202(C), the Court is not to allow any action to foreclose the right to redeem under Article 5 of Title 42, A.R.S. 42-18201, et. seq. until the purchaser sends a notice required by A.R.S 42-18202..."

Rule 2.2: Evidence of Partiality & Unfairness, Rule 2.5: Evidence Against Competence, Diligence and Cooperation, Rule 2.6: Evidence Against Ensuring the Right to Be Heard:

1) In a case that should have been dismissed, but ordered to continue with time and cost to Plaintiffs, Proof of Service to _____ County Attorney to satisfy the Court had to be demonstrated by the Deputy County Attorney, _____ signing the receipt of the Complaint and Summons.

Plaintiffs called _____ office to fulfill the Court's demands, and were instructed by the office that an agent of _____ will sign the return receipt sent to their specific P.O. Box, or Plaintiffs may use a process server.

Plaintiffs proceeded with service according to the Deputy Attorney's office instructions, presented Proof of Service to _____ and Proof of Service was rejected by Judge _____ as not signed by _____ herself.

Plaintiffs have learned through multiple conversations with the County Attorney's office on how to have the County Attorney personally sign receipt of Complaint and Summons to satisfy the Court. The Court's demands can only be achieved in person at the County Attorney's office. A process server does not achieve a personal signature from the County Attorney, nor does registered receipt mail. These two avenues of service are the only ways the County Attorney processes these matters. It is unknown to Plaintiffs if an appointment with the County Attorney in person to sign the receipt of Complaint and Summons personally is even possible, as this is not the standard in these matters. Plaintiffs live in _____

2) Proof of Service to Defendant, _____ was presented to Judge _____ through Registered Return Receipt Mail with the word "Complaint" accidentally omitted on the Proof of Service form by Plaintiffs. _____ responded with certified letters to both the Plaintiffs and the Court. containing the exact words "**Complaint and Summons**", In _____ letters, _____ disavowed any continued ownership in the property. Judge _____ rejected proper service by Plaintiffs in _____ Court Order dated _____ and rejected Defendant, _____ responding to the "Complaint and Summons" as evidence of receiving the "Complaint and Summons" Judge _____ held in partiality and unfairness that _____ was not served the Complaint and just the Summons.

Furthermore, Judge _____ applied different and unfair standards to the same letter written by _____ The words of _____ were not accepted when they supported Plaintiffs in proper service, yet the words of _____ were accepted when they allowed _____ to name another Defendant, _____ for Plaintiffs to serve.

In the _____ of Honorable _____ Court Order of _____ the Court stated: "***Defendant _____ answer clearly indicates he transferred title to therefore, _____ must be named as a Defendant and served with a copy of the Summons and Complaint***"

Plaintiffs prepared a notarized motion in response to Judge _____ having named the additional Defendant, _____. Deed and Title search by Plaintiffs, with the aid of the County Recorder and County Assessor's offices directly, revealed there was never any instrument recorded in the name of _____ on the said property.. The Deed and Title research presented the Defendant and owner as _____ a single man, in a Special Warranty Deed recorded in _____. The Defendant, _____ did not appear on the Deed and Title research, but was present on the Assessor's tax payer information. This notarized motion containing proof of recorded titles was rejected by the Court as not acceptable without an original copy. Plaintiffs were denied the right to be heard.

As stated previously, an extensive search was conducted with the help of the County Assessor's and Recorder's offices. The additional demand that the Plaintiffs serve _____ and _____ are unfounded. In all, every important document submitted to this Court was individually notarized, as required by this Court, and sent by certified mail with return receipts copied and submitted in evidence.

The letter from _____ and Judge _____ response in Court Order dated _____ as well as the Plaintiffs notarized and rejected motion with receipt of Certified Mail are presented as evidence **Exhibit IV A, Exhibit IV B, Exhibit IV C and Exhibit IV D.**

Rule 2.9 Ex Parte Communication, Rule 2.10 Judicial Statements on Pending and Impending Cases;

Plaintiffs submit Judge _____ own words as ex parte communication to sway another Judge under his authority against Plaintiffs on a separate impending case as well as to sway another Judge under his authority on any future filings from Plaintiffs in Court Order dated _____. It is known to Judge _____ that Plaintiffs' cases are dismissed, and would need to be re-filed in the future presented as evidence **Exhibit V**:

“As Plaintiffs have specified, Judge _____ has already proceeded to render a Default Judgment in a factually similar case (_____ Cause No. _____) therefore, the Court is providing a copy of this Court Order to _____.”

The rationale to communicate with a Commissioner under his authority and under these circumstances appears to show his disagreement with the other Judge's ruling and an attempt to change past, or sway any possible future rulings in his Court.

Points of Fact Supporting Violations of Rule 1.2, Rule 2.2, Rule, 2.5 for Case Number _____ :

Rule 2.2: Evidence of Partiality & Unfairness, Rule 2.5: Evidence Against Competence, Diligence and Cooperation:

On the other case in front of Judge _____, Plaintiffs attest that Judge _____ did not review Plaintiff's Application of Due Diligence and Means of Alternative Service, which demonstrated Proof of Service to _____. This also showed due diligence to attempt to serve _____ son, _____ as well as Proof of Service to _____ County Treasurer. Incompetent case review is evidenced by his rejection of Proof of Service to _____ County Treasurer in the Default Hearing dated _____ and presented as evidence **Exhibit VI**.

Plaintiffs submit the Application for Alternative Means of Service approved by Judge _____ at an eventual cost of \$ _____ to Plaintiffs, should have been rejected, and cost avoided if Judge _____ maintained proper service was not completed to _____ County Treasurer. Approval of Application for Alternative Means of Service in Court Order dated _____, Proof of Service to _____ County Treasurer, and Affidavit of Publication in the _____ are presented as evidence **Exhibit VII A, VII B, VII C**.

Rule 2.2: Evidence of Partiality & Unfairness, Rule 2.5: Evidence Against Competence, Diligence and Cooperation:

Plaintiffs submit evidence of partiality and unfairness as well as further evidence against competence, diligence and cooperation in that demands for proper service to County Treasurer increased beyond the demands of Case No. _____ as previously advised.

Judge _____ demanded at the Default Hearing on _____ that proper service not only include a personal signature from the _____ County Attorney, but in addition, an Acceptance of Service form to be completed by the _____ County Attorney with an additional Addendum, asking the _____ County Attorney to give "*consent to entry of judgment*". The Acceptance of Service form with Addendum must then be copied to the _____ County Treasurer, presented as evidence in the Court transcripts, which were never conveyed to the Plaintiffs.

As stated previously, Plaintiffs live in _____ and have learned from actions in _____ that the demands of Judge _____ for proper service can only be achieved in person with a personal appointment with the _____ County Attorney. It is unknown if this is possible, as stated previously, as the office of the _____ County Attorney has stated clearly its means of acceptance of service in two ways, and both do not include an in person appointment or personal signature from the _____ County Attorney.

If all these actions for proper service were necessary to apply for showing Due Diligence and Requesting Alternative Means of Service, Plaintiffs should have been advised at the time of Application, and not allowed to proceed, resulting in a high cost and effort.

Summary of Evidence & Conclusion

Plaintiffs respectfully submit the above with Exhibits I-VII in evidence as a pattern of behavior and conduct towards Plaintiffs, across two separate cases involving Plaintiffs on behalf of Judge _____ Judge _____ pattern of conduct is demonstrated by a lack of competent review causing Plaintiffs to proceed forward in a timely and costly manner with unviable discrepancies known by Judge _____ yet unknown by Plaintiffs. Judge _____ conduct displays action to deny the right to be heard, and shows blatant partiality and unfairness in ex parte communication, swaying known impending cases, ultimately demonstrating utter lack of confidence in the judiciary. It is added that Judge _____ boasted to Plaintiffs that he has never had a case overturned on appeal. _____ also went on to say that _____ authored all the documents which _____ required the Plaintiffs to obtain, and submit to the _____ County Clerk of the Superior Court from their website.

Plaintiffs fully accept the outcomes and dismissals of their cases due to the fatal defects found in the Treasurer's Affidavits, and do not seek to change these outcomes. Plaintiffs only seek to be treated fairly under the law.