

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-002

Judge:

Complainant:

ORDER

The complainant alleged a pro tem justice of the peace improperly dismissed his civil case and denied him the right to be heard.

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: February 22, 2017

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were distributed to all appropriate persons on February 22, 2017.

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

I believe the conducted judicial misconduct on my case for which I am the Plaintiff, The judge is in violation of the Arizona Code of Judicial Conduct, Rule 2.6 (A)- Ensuring the Right to be Heard- A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

On the dismissed my case without prejudice for the following reason: "

' (|)

This case was filed for a violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §227. s as follows:

Defendant states this case is based on federal statute (). Defendant states that they wish to hear this case in a court with appeals process (). Defendant had the opportunity to transfer this case from the small claims to the civil division of this court pursuant to A.R.S. 22-504. Plaintiff has transferred this case to preserve his right to appeal as well as to conduct discovery. Small claims and justice courts have jurisdiction over TCPA cases. The about justice courts () states that justice courts have jurisdiction over the following (Exhibit B):

Civil Jurisdiction

Justice courts hear lawsuits when the amount in dispute is \$ or less, including:

Eviction Actions and Landlord & Tenant Disputes

Collection Cases

Consumer Complaints Against Businesses

Negligence Actions, (e.g. Motor Vehicle Accidents)

Breach of Contract Cases

The amount of this suit was \$ or less, and this is a Consumer Complaint Against a business () under federal law. In particular, I would like to call to your attention (b)(3)(A) on from of TCPA rules in of this -A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation.

Furthermore, in *Mims v Arrow Financial Services* (Supreme Court, No. 10-1195, 2012) the Supreme Court upheld that both federal and state courts have jurisdiction over the TCPA (at issue was whether Congress' provision for private actions to enforce the TCPA rendered state courts the exclusive arbiters of such actions. The Court found no convincing reason to read into the TCPA's permissive grant of jurisdiction to state courts any barrier to the U.S. district courts' exercise of the general federal-question jurisdiction they have possessed since 1875. Therefore, the Court held that federal and state courts have concurrent jurisdiction over private suits arising under the TCPA.

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The Supreme Court has binding authority over all state and federal courts, including the . The Supreme Court has affirmed that state courts (including small claims courts), in addition to federal courts, have jurisdiction over TCPA actions. The Arizona Judicial Branch website lists this case as a case that the Justice Court has subject matter jurisdiction over (Consumer complaint against businesses).

The pro tem judge erred by dismissing the case without prejudice, and violated the Arizona Code of Judicial Conduct Rule 2.6. This ruling prejudices the Plaintiff by having to refile at the Plaintiff's time and expense; Plaintiff sought to file in Justice Court where the procedures are simpler and rules are less complex.

Plaintiff respectfully requests action be taken against the pro tem judge, and for the case to be reopened in Justice Court under the supervision of the main judge. Defendant did not file timely response to Plaintiff's motion for summary judgement, and summary judgement should be granted in favor of the Plaintiff and against the Defendant, rather than forcing Plaintiff to refile this case in