

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-322

Judge:

Complainant:

ORDER

The complainant alleged a justice of the peace violated several provisions of the Code over an extended period of time.

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 that the judge engaged in improper demeanor, improperly gave legal advice to litigants, and improperly interrupted court business to conduct a wedding. While such conduct was improper under Rules 1.2, 2.2, 2.8(B), and 3.16(B), the Scope Section of the Code of Judicial Conduct provides that it is not intended that every transgression will result in the imposition of discipline. The commission decided, after considering all the facts and circumstances, to dismiss these portions of the complaint pursuant to Rules 16(b) and 23(a), but to issue a warning letter to the judge to refrain from giving legal advice to litigants, to be mindful of his language and tone in the courtroom, and to conduct all weddings in compliance with the Code.

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After further review, the commission found no evidence of ethical misconduct as to the remaining allegations in the complaint. The commission approved sending the judge an advisory letter reminding him to ensure that all litigants are afforded a meaningful opportunity to be heard, in compliance with Rule 2.6(A). These remaining allegations are dismissed pursuant to Rules 16(b) and 23(a).

Dated: May 11, 2018

FOR THE COMMISSION

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

Copies of this order were distributed to all appropriate persons on May 11, 2018.

COMP

2017-322

Commission on Judicial Conduct
1501 West Washington
Phoenix, Arizona 85007-3231

Re:

To whom it may concern:

I feel compelled to file a formal complaint against [redacted]. I have compiled a list of the following occurrences and violations of Rule 81, Supreme Court judicial ethic canons.

1. On [redacted] at [redacted] Judge [redacted] conducted a lift stay hearing pursuant to A.R.S. 12-1179(E) in case # [redacted]. The motion to set the hearing was received by the Court on [redacted]. First, Judge [redacted] violated that statute by failing to schedule the hearing "within five court days." (Rule 1.1 & 1.2)

During the above [redacted] hearing, the appellants conceded that they had not paid the rental bond, which was due to the Court by the first day of the month under the above statute, but rather, they paid it on [redacted]. Appellants blamed the court clerk for the error in the amount of the bond, but the Cost Bond worksheet prepared by the clerk clearly indicated that the rent bond was due [redacted]. Judge [redacted] without allowing me to cross-examine the testifying witness, and repeatedly interrupting my arguments, and without hearing closing arguments, decided that the clerk error involving the incorrect amount of monthly bond supposedly gave the appellants an excuse for paying the rent bond [redacted] late. Then Judge [redacted], over objections, granted the Appellants yet another [redacted] to pay the balance of the [redacted] rent bond,² which is not provided for in A.R.S. 12-1179(E). (Rule 1.1, 1.2, 2.2, 2.3, & 2.6(A)).

2. On [redacted], earlier in case # [redacted], Judge [redacted]

¹ Cost Bond Statement attached hereto.

² "Ruling on Motion" attached hereto.

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without comment or inquiring into any factors whatsoever, simply struck over half the attorneys fees requested on a forcible detainer judgment, even though I had been required to travel to and from the Court times for hearings in this case, let alone do the research into several filings by the defendants. (Judge had done this several times in the past on my cases, several of which are outlined herein). Furthermore, without taking any evidence other than asking the defendant what his former mortgage payment was, Judge without allowing cross-examination, cut the alleged fair market value rent from \$ to \$ even though the defendants never disputed or challenged the amount of the fair market value rent in the first place, and secondly, a defendants' former mortgage payment alone has no direct bearing on the fair market value rent. (Rule 1.1, 1.2, 2.2 & 2.5(A)).

3. On , Judge , again without comment or inquiry, struck the attorney fees and reduced the fair market rent on a post-trustee sale eviction judgment, even though the defendant had not even disputed or challenged the amount. (Rule 1.1, 1.2, 2.2 & 2.3).

4. On , Judge gave legal advice to a defendant in an eviction matter, then initiated and attempted to force a settlement upon the parties. (Rule 1.1, 1.2, 2.2, 2.3, 2.5, 2.6(B) & 2.7).

5. On , I observed Judge in open court giving legal advice to a tenant (Rule 1.1 & 3.10). In addition, the legal advice he gave was entirely incorrect, as he told her that she could have e-mailed a corrective notice to her landlord, which is not in compliance with A.R.S. § 33-1313.

6. On , I also observed Judge dismissing a driving on a suspended license citation at an arraignment hearing simply because the defendant said she had not been aware that her license had been suspended. (Awareness of the suspension is not an element of the offense, and the charge is a misdemeanor, which should only have been dismissed if the County Attorney had agreed.) (Rule 1.1, 1.2 & 2.9).

7. On , Judge again without comment or inquiry, arbitrarily reduced the fair market rent on a post-trustee sale eviction judgment,

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even though the defendant had not even disputed or challenged the amount. (Rule 1.1, 1.2, 2.2 & 2.3).

8. On _____, I observed Judge _____ advise a tenant who had pled not guilty to an eviction action on who to bring to court as witnesses to testify. (Rule 1.2, 2.2, 2.3 & 3.10).

10. On _____, I observed Judge _____ performing a wedding that extended into court business hours- the wedding ended at _____ and evictions were scheduled at _____ (Rule 2.1 & 3.1(A) & 3.16(B)).

11. On _____, Judge _____, again without comment or inquiry, arbitrarily reduced the attorney fees requested on a post-trustee sale eviction judgment, even though the defendant failed to appear. (Rule 1.1, 1.2, 2.2 & 2.3).

12. On _____ I observed Judge _____ allowing a person who merely had a power of attorney appear for a plaintiff in an eviction proceeding. (Rule 1.1, 1.2, 2.2, 2.3, 2.5(A), Rule 38, Rules of Supreme Court, Rule 11(a)(1), RPEA).

13. On _____, I observed Judge _____ 1) granting a *pro se* plaintiff a judgment for possession and rent, even though the plaintiff admitted to having received and accepted a partial payment without a required non-waiver agreement, in violation of A.R.S. §33-1371, and without requiring from the plaintiff proof of delivery of the five day notice once the defendant argued that he had not received it. 2) Judge _____ then proceeded to give legal advice to the tenant and advised the tenant that they had the right to sue the landlord for damages. (Rule 1.1, 1.2, 2.2, 2.3, 2.5, 2.6(A), 3.10, A.R.S. § 33-1368(B), Rule 11(b)(1), RPEA.).

14. On _____, Judge _____, again without comment or inquiry, arbitrarily reduced the attorney fees on a stipulated judgment, in violation of numerous appellate decisions. When I saw that the he had reduced the fees, I objected. Rather than correct the judgment, Judge _____ stated that it was my job as an attorney to advise the tenants of his cap on attorney fees. (Rule 1.1, 1.2, 2.2, 2.3, 2.5, 2.6(A), 2.9, 2.10(B)).

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15. On _____, Judge _____ court returned an Application for Attorney Fees and a proposed Judgment form I had submitted in a _____ action, stating that since Judge _____ had granted my motion to dismiss, the case was over and the court would not consider the fee application or sign the judgment. At my client's added expense, I had to re-submit the entire package and explain to the court that the granting a motion to dismiss did not terminate the case. (Rule 1.1, 1.2, 2.2, 2.3, 2.5, 2.6, & 2.7).

16. On _____ I observed Judge _____ give legal advice to a tenant in an eviction action on how to recover their security deposit, and then he gave incorrect advice. (Rule 1.1, 1.2, 2.2, 2.3, 2.5, 2.10 & 3.10).

17. On _____, I observed that Judge _____ called a case before it was actually scheduled. When the plaintiff arrived from _____ on time, and informed the Court that the case was called early, Judge _____, rather than take corrective actions to fix his mistake, made the plaintiff file a Motion to Vacate the dismissal. (Rule 1.1, 1.2, 2.2, 2.3, 2.5, 2.6, 2.8).

18. On _____ in an eviction action, the defendants and I stipulated to continuing the case for _____, and we all appeared in front of Judge _____ to inform him. He ordered the case continued. On the way out of court, the defendants confided in me that they were surprised that Judge _____ did not recuse himself from the case, since they told me he was _____

I then, at my client's expenses, had to file a motion for a change of judge. (Rule 1.1, 1.2, 2.2, 2.3, 2.5, 2.11(A)(1)).

19. On _____, Judge _____, without explanation, did not start his calendar until _____ after _____ On _____, Judge _____ without explanation, did not start his calendar until _____ after _____ On _____, Judge _____, without explanation, did not start his calendar until _____ minutes after _____ (Rule 1.1, 1.2, 2.5).

While each of the foregoing allegations alone is not particularly egregious I have documented the infractions going back years to demonstrate my belief that Judge _____ conduct represents a continuing pattern of failing to comply with judicial ethics, and a disregard for the laws of Arizona. I was an _____ at the

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when Judge _____ first started as a _____, and even then, as his prior _____ there had forewarned me, he demonstrated an attitude that he knew everything and did not want to hear anything that contradicted his beliefs. Over the years that I have been in his Courtroom, I have not seen him improve his attitude or his performance, in many cases, to the detriment of my clients and of other parties. I only appear in his court so the fact that I have witnessed so many infractions obviously only represents a small portion of the potential violations he could have committed. The fact that the numbers and variety of his ethics violations have not abated, even to this date, is the reason I felt compelled to file this complaint.

Sincerely,

Encl: 2