

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 18-034

Judge:

Complainant:

ORDER

The complainant alleged a justice of the peace and a pro tem justice of the peace allowed a judgment to be entered improperly against a party and allowed the court's docket to be improperly altered. Additionally, the complainant alleged that the justice of the peace failed to appropriately supervise the pro tem justice of the peace and court employees.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judges 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 justice of the peace did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

After further review, the commission found that the pro tem justice of the peace did not afford a party an opportunity to be heard on a motion before entering judgment on that motion. While this was improper under Rules 1.2, 2.2, and 2.6(A), 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 the complaint pursuant to Rules 16(b) and 23(a), but to issue a warning letter to the pro tem justice of the peace, reminding him to ensure all parties are afforded an opportunity to be heard on a motion before a ruling is entered.

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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.

CONFIDENTIAL

Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2018-054

COMPLAINT AGAINST A JUDGE

Name: _____ **Judge's Name:** _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

See Attached.

I. INTRODUCTION

This Complaint is being filed because my clients, _____, had a Judgment entered against them by the _____ without being afforded any due process. A Judgment was entered against them without a motion being filed against them, without an opportunity to respond, without a hearing or trial, and without any opportunity to object to the Judgment that was entered. Despite repeated efforts of undersigned counsel to cause the _____ ; _____ or his _____, to correct this error, the Court failed and refused to set aside the improperly entered Judgment.

We allege that these judges violated the following canons of the Arizona Code of Judicial Conduct: Rule 1.2, about the need to promote confidence in the judiciary; Rule 2.2, requiring such proceedings be conducted fairly; Rule 2.5, requiring the duties of a judicial officer be performed competently and diligently; Rule 2.6, requiring a judge afford to every person the right to be heard; and Rule 2.12, requiring that a judge act to ensure that its staff and Court officials act in compliance with the Arizona Code of Judicial Conduct and the Code of Conduct for Judicial Employees.

We further allege violations of the following rules of the Code of Conduct for Judicial Employees: Rule 1.1, requiring judicial employees comply with the law; Rule 1.2, requiring that judicial employees act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and which avoids impropriety and the appearance of impropriety; Rule 2.2 requiring judicial employees perform their duties fairly and impartially; Rule 2.3, requiring judicial employees perform their duties without bias or prejudice; and Rule 2.5, requiring judicial employees perform their duties competently, diligently, and promptly.

The entry of a Judgment against _____ without any due process being offered evidences an extreme indifference to the rights and well-being of these Defendants. The Judgment against _____ has caused _____ significant hardship and undermines their confidence in the judicial system. As such, undersigned counsel for _____ asserts the following complaint.

II. FACTUAL SUMMARY

On _____, Plaintiff _____ filed a Complaint against _____ with the _____ On _____, Defendants _____, through their attorney _____, filed an Answer to the Complaint. On that same date, _____, Defendants also filed a Motion for Summary Judgment against the Plaintiff, _____ (See Exhibit "A," attached hereto). Defendants' Motion for Summary Judgment alleged that Plaintiff's Complaint had been filed beyond the statute of limitations.

On _____, Plaintiff filed its Response to the Defendants' Motion for Summary Judgment. (See Exhibit "B," attached hereto). On _____, Defendants filed their Reply in Support of Their Motion for Summary Judgment (See Exhibit "C," attached hereto). On _____ the Court provided Notice of Oral Argument for _____ (See Notice of Court Date, attached hereto as Exhibit "D"). The Notice of Court Date indicated that the oral argument was on Defendants' Motion for Summary Judgment. On _____ the parties appeared before _____ and Defendants argued their Motion for Summary Judgment against Plaintiff. At that hearing, Plaintiff's representative, _____, handed both to Judge _____ and to Defendants' counsel, _____, a document labeled "Statement of Facts in Support of Plaintiff's Motion for Entry of Summary Judgment." The Statement of Facts delivered to Defendants' counsel is attached hereto as Exhibit "E." Defendants' counsel assumed the Statement of Facts delivered by _____ on behalf of Plaintiff was meant to be a Statement of Facts in Support of Plaintiff's Response to Defendants' Motion for Summary Judgment, because in its reply memorandum, Defendants' counsel had made an issue over the Plaintiff's failure to provide a statement of facts with its Response to Defendants' Motion for Summary Judgment and because Plaintiff had not filed a Motion for Summary Judgment.

Thereafter, by "Ruling on Motion" dated _____, Judge _____ issued an order indicating that Defendants had filed a Motion for Summary Judgment, that Plaintiff had filed a response, that Defendants had filed a reply, and that after considering that which had been submitted by the parties, that the Court was granting Defendants' Motion for Summary Judgment

(see Exhibit "F"). In the ruling the Court indicated that "At oral argument, contract found to be valid, case filed within statutory time limits, Plaintiff to file form of judgment." Defendants' counsel was confused by the ruling, as the ruling indicates that the Defendants' Motion for Summary Judgment had been granted but suggests that Plaintiff's claim was filed within the statutory time limits. As such, Defendants inquired with the Court about the language in the Court's order, and thereafter a new ruling was provided, pursuant to the Court's Minute Entry dated _____, attached hereto as Exhibit "G." The new Minute Entry provided that:

After oral argument, _____ on both Plaintiff's Motion for Summary Judgment and Defendants' Motion for Summary Judgment, the Court finds that the contract between the parties was valid and the case was timely filed, therefore the Court denies the Defendants' Motion for Summary Judgment and grants the Plaintiff's Motion for Summary Judgment. The Plaintiff shall file form of Judgment.

Upon Defendants' counsel receiving the Minute Entry indicating that apparently the Court had changed its previous ruling from granting a motion in favor of Defendants to granting a motion in favor of Plaintiff, Defendants immediately filed a Motion for Reconsideration pointing out to the Court that no Motion for Summary Judgment had been filed by the Plaintiff and that, therefore, the Plaintiff's Motion could not have been granted. Defendants' assertion that Plaintiff had not filed a Motion for Summary Judgment was based upon the fact that Defendant had never received such a Motion from Plaintiff, the Court docket indicated that no such Motion had been filed, and because at the oral argument, no such Motion had been addressed.

Plaintiff thereafter filed its Response to Defendants' Motion for Reconsideration, and attached a document Plaintiff referred to as a Motion for Summary Judgment, but which was actually the "Statement of Facts" that Plaintiff had handed to Defendants' counsel at the hearing on _____ Plaintiff referred to the "Statement of Facts" as a "Motion for Summary Judgment," and indicated that the Court's granting of Plaintiff's Motion for Summary Judgment

was appropriate, because Plaintiff had filed a motion for summary judgment on _____, although the document itself describes itself as a "Statement of Facts." (See Statement of Facts, attached hereto as Exhibit "E").

Shortly thereafter, Defendants' counsel received a phone call from Plaintiff's representative, _____, indicating that Plaintiff had contacted the Clerk of the Court to explain to the Clerk that she had filed a Motion for Summary Judgment that had not been entered into the record. _____ indicated that after her call, the Court had changed the record to reflect her filing of a Motion for Summary Judgment. Defendants' counsel became alarmed after speaking to Plaintiff and hearing Plaintiff's assertion that, in fact, she had filed a Motion for Summary Judgment, and that the Clerk of the Court had now recognized that motion. Defendants immediately checked the docket of the Court, only to discover that the record had been altered and that the docket now reflected that a Motion for Summary Judgment had been filed against Defendants on _____. The original version of the docket not showing a motion for summary judgment filed by Plaintiff on _____, is attached as Exhibit "H." The altered version of the docket now showing a motion for summary judgment had been filed by Plaintiff on _____ is attached as Exhibit "I."

On either version of the docket, the docket indicates that on _____, the date of the Oral Argument, a document was received which was marked as "_____" . According to a third version of the docket, attached hereto as Exhibit "J," the item received on _____ was described in the Court's file as follows: "

_____." As such, all versions of the docket show that on _____, the Plaintiff had filed a Statement of Facts which, as indicated by Defendants' counsel above, was the same date that Plaintiff had appeared in court and handed a Statement of Facts to both the judge and to Defendants' counsel. For whatever reason, when Plaintiff filed their Statement of Facts on the day of the hearing, _____ the Court described it as "_____ " but when the Court thereafter altered the record and provided that Plaintiff had filed the same document on _____, it was now listed as a Motion for Summary Judgment

**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.**