

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 18-058

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Judge:

Complainant:

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**ORDER**

The complainant alleged a pro tem superior court judge improperly altered the terms of a settlement agreement.

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).

Commission member Art Hinshaw did not participate in the consideration of this matter.

Dated: May 8, 2018

FOR THE COMMISSION

/s/ Margaret H. Downie

Margaret H. Downie

Executive Director

Copies of this order were distributed to all appropriate persons on May 8, 2018.

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

2018-058

**COMPLAINT AGAINST A JUDGE**

Name: \_\_\_\_\_ Judge's Name: \_\_\_\_\_

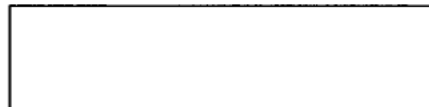
**Instructions:** Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. 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.

On \_\_\_\_\_ at approximately \_\_\_\_\_ the parties appeared with their counsel at the office of \_\_\_\_\_ for a continued settlement conference. Also in attendance during the conference was undersigned counsel's paralegal, \_\_\_\_\_ and Petitioner's paralegal, \_\_\_\_\_. Petitioner and his legal team were in Judge \_\_\_\_\_'s office. Respondent and her legal team were in a conference room, in an area on the other end of \_\_\_\_\_'s office building, completely segregated and separated from each other. Neither Party had the ability to hear the other nor see the other during the conference due to the layout of the office. At no time did the parties or either legal team meet in the same room with Judge \_\_\_\_\_ during the settlement conference, including the swearing in and questioning of the parties, nor to hear a recitation of the agreements by Judge \_\_\_\_\_.

- 2.) The sequence of events of \_\_\_\_\_ are as follows:
- A. On the outset, Judge \_\_\_\_\_ provided to Counsel for Respondent was provided with an Attachment A dated \_\_\_\_\_ which was \_\_\_\_\_ pages long for utilization during settlement discussions which Judge \_\_\_\_\_ routinely prepares in advance of a settlement conference.
  - B. Judge \_\_\_\_\_ met first with Petitioner and his legal team in her personal office.
  - C. Judge \_\_\_\_\_ met with Respondent and her legal team in a conference room in her office building. The conversation entailed a settlement offer from Petitioner's side, and a counter offer was made. Judge \_\_\_\_\_ left the conference room and presumably went back to where Petitioner and his legal team was located.
  - D. A short time after, Judge \_\_\_\_\_ returned to the conference room with a copy of an Attachment A, which was \_\_\_\_\_ pages in length, that she had prepared while in her personal office with Petitioner and his legal team. Judge \_\_\_\_\_ stated that there were no agreements except on the vehicles. She presented the document which purportedly contained this agreement and purportedly consolidated the previous agreements made in the \_\_\_\_\_ Order Settlement Conference. Counsel for Respondent reviewed the document thoroughly. A revision was requested by Counsel for Respondent, specifically at Paragraph \_\_\_\_\_ under the heading \_\_\_\_\_". This paragraph specifically differs from the \_\_\_\_\_ order in the sentence wherein it states "

There were in fact a few other items agreed in the \_\_\_\_\_ which were not in the \_\_\_\_\_ order which Counsel for Respondent reviewed, and did not request a revision of those additional sections.

E. Judge \_\_\_\_\_ took with her the first draft of the Attachment A and left the conference room and presumably went back to her personal office, where Petitioner and his legal team were located. Counsel for Respondent was not provided a copy of the initial draft of Attachment A to keep. Thereafter, Judge \_\_\_\_\_ made revisions to the document. It is assumed that they were made in her personal office, however Counsel for Respondent, Respondent, nor \_\_\_\_\_ were in any position to view where she made the revisions.



**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.

F. Judge \_\_\_\_\_ returned to the conference room and provided Counsel for Respondent a revised Attachment A, which again was \_\_\_\_\_ pages in length. In the process of reviewing the document, Counsel undersigned inquired of Judge \_\_\_\_\_ if the only revision made was to the section that Counsel for Respondent requested. Judge \_\_\_\_\_ responded that there were some revisions requested by Petitioner's Counsel of a typographical nature. Counsel for Respondent reviewed the \_\_\_\_\_ page Attachment A and verified the requested revision was made, as well as reviewing the revisions purportedly requested by Counsel for Petitioner.

G. There were no additional revisions made to the second draft presented. Judge \_\_\_\_\_ swore and questioned Respondent as to the agreement. Judge \_\_\_\_\_ provided Counsel for Respondent with a copy of the signed Order dated \_\_\_\_\_ and the \_\_\_\_\_ page Attachment A was attached thereto. Counsel for Respondent, Respondent and \_\_\_\_\_ cleared the conference room and left the building.

H. Judge \_\_\_\_\_ was witnessed leaving the building and driving away after all parties cleared the office building. Counsel for Petitioner conversed briefly with undersigned Counsel, prior to departure.

I. On or about \_\_\_\_\_ Counsel for Respondent received via \_\_\_\_\_ (Counsel's contracted courier service) a court stamped copy of the Order Settlement Conference dated \_\_\_\_\_, which was filed on \_\_\_\_\_ at \_\_\_\_\_ by \_\_\_\_\_. It is not known to Counsel for Respondent who sent the original Order for filing.

J. Counsel for Respondent had the document hole punched and placed into the pleadings file as Counsel was in the process of preparing the matter for trial. Counsel already had the signed agreement in the file from Judge \_\_\_\_\_.

K. On \_\_\_\_\_ at \_\_\_\_\_ counsel for Respondent sent a full settlement offer to Petitioner's counsel that clearly references Respondent's fraud claim, which is evidence that Respondent had never given up her claim for fraud at the settlement conference the day before. Petitioner's counsel sent back a counter offer to Respondent's counsel on \_\_\_\_\_ at \_\_\_\_\_. A Response and counter were sent back to Petitioner's counsel at \_\_\_\_\_ that again clearly shows that Respondent did not give up her fraud claim. (See Attachment 1)

On \_\_\_\_\_ Counsel for Respondent became aware, in court, of the addition of a \_\_\_\_\_ page to the \_\_\_\_\_ Order that had not been provided to her during the settlement conference at Judge \_\_\_\_\_ office. Counsel had already received, from Judge \_\_\_\_\_ a signed, by Judge \_\_\_\_\_, \_\_\_\_\_ page document, that reflected the parties agreement so when the conformed was received from the court it was simply filed with the original Order. Counsel for Respondent had no way of knowing that there was a \_\_\_\_\_ page added, that changed the terms of the agreement. Specifically paragraph \_\_\_\_\_ is problematic as it is contrary to what the Respondent's position has been during the entire pendency of this matter and the Respondent's position at the settlement conference and after the settlement conference.

Counsel for Respondent has great concerns about what transpired without her knowledge.

5.) Counsel for Respondent maintained in her file a copy of the Order that was provided by Judge . This is the ONLY copy that was provided to Counsel for Respondent by Judge , and contained the court's Order page, signed by Judge , and affixed to the top of Attachment A. This Order is verifiably the form which was given by as it contains in the upper left corner an automatic stapler staple. It is not from a copy machine, but rather an automatic stapler device. The staple is intact and the order is intact as it was provided to Counsel for Respondent during the meeting. There are no other holes indicating a staple having been removed. The only alteration to the document was the placement of a 3 hole punch by Counsel for Respondent's office staff to place the document in the pleadings binder kept in this matter. To remove a page from the document would cause disturbance to the staple due to the overlaying nature of the back of the staple. This has been maintained in counsel's file and is available for review.

6.) Counsel for Respondent **never saw and never received** page of the Attachment A from Judge . Respondent **never saw and never received** page of the Attachment A from Judge . Counsel's legal assistant **never saw and never received** page of the Attachment A from Judge . It was not provided in the original presentation of the document, nor in the revision thereafter, yet is attached to the form filed with the Court.

7.) Counsel for Petitioner is taking the position that no error occurred and that page is an accurate reflection of the agreement. Counsel for Petitioner has no way of knowing what was agreed to since the parties were never brought together as they were in the first settlement conference and has no way of knowing what Respondent and her counsel received. Counsel for Respondent has communicated with Judge who has responded that due to Counsel for Petitioner not agreeing to the correction she cannot make same and cannot comment as to whether there was or was not an error.

What is also of concern is the way that Judge conducted the settlement conference at her office. Generally the parties start off together and then they are separated out if requested. I did not think to much of this at the time because it was our second one. I have never had a settlement conference were the Judge or the Judge did not bring the parties together at the end of the settlement conference to swear them in and recite the agreement and put it on the record so everyone knows what is being agreed to, what Judge did is not standard practice, for obvious reasons. There was no issue bringing the parties together in the first settlement conference at the Court house, to swear them in and put the agreements on the record. This did not happen at the settlement conference that took place at Judge office, so neither party knows what the other agreed to. Neither party knows what was given to the other party to review. Judge also attempted to allow opposing counsel and his client to change the first agreement without discussing what those changes were and simply said they were typographical in nature.

Judge knowingly filed a document that the parties did not agree to, and has refused to correct the error.

This is not the first time that [redacted] has changed a document after the fact with this counsel. In [redacted] in her capacity as an attorney removed one word that changed the entire meaning of the sentence. It cost my client thousands of dollars to try and undo what [redacted] did. Those circumstances were similar in the fact that [redacted] was the one drafting the document and after everyone had agreed went to print a clean version of the document for signatures, it is believed at that time [redacted] removed the nearly undetectable word "and". This Counsel wanted to give [redacted] the benefit of the doubt but firmly believes after this incident, that incident was purposeful. [redacted] got off that case right after the agreement was signed.

[redacted] in her capacity as a Judge [redacted] has a lot of power and she has abused that power by her unethical conduct that has harmed my client. It appears that she has violated multiple rules of Judicial conduct with her behavior including but not limited to 2.3(B), 2.4(A)(B)©, 2.5(A), 2.6(B) and 2.11.

I appreciate your time in this matter.