

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 18-062

Judge:

Complainant:

ORDER

The complainant alleged a small claims hearing officer failed to remain fair and impartial, did not afford him an opportunity to be heard, took on the role of an advocate, and made an improper ruling.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the hearing officer 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 the hearing officer did not afford the complainant an opportunity to be heard on one issue, and the hearing officer took on the role of an advocate, rather than a neutral fact-finder, and gave an appearance of pre-judging the case. 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 hearing officer to ensure all parties are afforded an opportunity to be heard, and to refrain from engaging in conduct that appeared to show he favored one party.

Commission members George H. Foster, Jr. and Anna Mary Glaab did not participate in the consideration of this matter.

Dated: June 12, 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 June 12, 2018.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2018-062

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.

I contend on behalf of _____ that _____ displayed Judicial misconduct during the hearing at _____ on _____ at _____ I believe _____ did not promote impartiality during the hearing, was incompetent in his interpretation of contract law and was biased in arriving at his decision. Please refer to the court recording of proceedings. Based on the record of this hearing we believe _____ violated one or more rules of the Arizona Code of Judicial Conduct including but not limited to Rules 1.1, 2.2, 2.3, 2.5, 2.6.

The said hearing was held for a _____ case involving a contract dispute between the parties. The Plaintiff was hired to perform janitorial services for the property the Defendant managed. The parties signed an agreement containing a _____ term for services. After _____ of service, Defendant notified Plaintiff to terminate the agreement in _____ because they " _____", with _____ left on the term. Upon receiving the termination notice, Plaintiff notified Defendant of the remaining time left on the agreement but did not receive a reply from Defendant. Plaintiff proceeded to continue servicing the property for _____ without objection from the Defendant and without payment from Defendant. Plaintiff then suspended services pursuant to the agreement for nonpayment. Plaintiff's claim was for damages resulting from this alleged breach.

It appears _____ had already made his decision in favor of the Defendant before any testimony was presented. Before the parties were sworn in, one of the Defendant's named in the claim, _____ was declared " _____" based on "documents" that were not testified to and before the Plaintiff had ever presented the executed agreement between the parties into testimony for _____ to consider. It seems before the decision was made to dismiss a Defendant from the claim, testimony should have been heard from the parties.

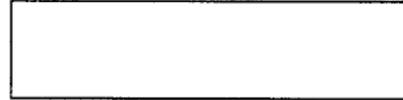
During the hearing, the Plaintiff was not allowed to present all testimony and evidence without being interrupted and essentially was " _____" by _____ It was as if _____ was asking questions on behalf of the Defendant to " _____" or discredit the Plaintiff, rather than listening to all testimony from the Plaintiff and then asking clarifying questions following the testimony. _____ did not ask the Defendant key questions to explain some relevant facts in the matter that favored the Plaintiff's case.

It appears _____ disregarded contract law and/or was incompetent in applying the law at several times during the hearing. At one point, when the Plaintiff was addressing a key provision in the agreement regarding the _____ and the termination of the auto renewal in the agreement, _____ interrupted Plaintiff saying " _____".

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Other comments made by _____ regarding the _____ provision were:

_____ seemed to acknowledge the Defendant did terminate the contract early, contrary to what the parties agreed to, when he asked:

After what appeared to be an indirect acknowledgment that the agreement was terminated early, _____ stated: "

Other comments _____ made which bring into question his understanding of contract law include:

(terminating early).

He seemed to be telling the parties that a contract cannot have a provision specifying the length of the term that can be enforced. He went on to state:

After the Plaintiff testified that services were continued at the facility for _____ following receipt of the termination notice, _____ asked " _____ ?" Plaintiff replied: Yes, I sure do. Johnson then asked: " _____ ?" Reply: An affidavit from our cleaner...

_____ never asked to read the Affidavit and was not interested in considering this evidence. If the evidence was not going to be considered, it brings up the question why did _____ ask for the evidence in the first place? It seems the " _____ " from _____ failed and he was not expecting a " _____ " answer from Plaintiff. Further entrenched in his defense of the Defendant, he continued to " _____ " by asking " _____ ?" in a condescending tone.

Other questionable/inappropriate remarks made by _____ to the Plaintiff included:

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Regarding the Affidavit from our cleaner stating she continued to clean: ‘ ..”

Plaintiff's Reply: We have
“ ”

And finally came this statement from

was " ' the Plaintiff rather than allowing the Plaintiff to testify uninterrupted, thus preventing Plaintiff's Right to be heard. He stated the final decision was made based on the fact that the Plaintiff and he were " " and " ' even though there was clear evidence that supported the Plaintiff's case.

refused to consider all evidence presented by Plaintiff (the affidavit and the amount Plaintiff testified to that was being paid on a monthly basis for services) even after asking for this evidence. Plaintiff was unable to finish testimony and presenting evidence to make the case.

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_____ did not " _____ " the Defendant in the same way he did the Plaintiff to understand the context of these facts:

- 1) Why Defendant terminated early
- 2) Why Defendant did not respond to Plaintiff's communication (after the termination notice was sent) that they were still time left on the contract.
- 3) Why Defendant allowed for Plaintiff's services to continue after the termination notice rather than requesting Plaintiff to not return.

For the above stated reasons, we believe _____ displayed misconduct that undermined the small claims process for this complaint thus preventing justice to be properly served.