

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 18-160

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge lacked candor and made misstatements about his conduct to another authority.

The responsibility of the Commission on Judicial Conduct is to impartially determine if a judicial 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 no evidence of ethical misconduct and concluded that the judicial officer 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: August 15, 2018

Copies of this order were distributed to all appropriate persons on August 15, 2018.

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

" The duty of candor requires the disclosure of material facts. *Denise H. v. Arizona Dep't of Econ. Sec.*, 193 Ariz. 257, 260, 972 P.2d 241, 244 (Ct. App. 1998). The Rule was seemingly designed to ensure full transparency and so the [redacted] would be apprised of all material facts to ensure a full, fair, objective, and impartial review. This full disclosure requirement is necessary in light of the inherent deference afforded to Judges, the serious ramifications upon attorneys' financial well-being and reputation, and due to the fact that Judges enjoy quasi-immunity from civil lawsuits and liability for filing false, malicious, and defamatory complaints.

Judge [redacted] lack of candor occurred within a [redacted] Complaint he made against me with the [redacted] A full copy of the [redacted] Complaint is attached as Exhibit 1. In full disclosure, Judge [redacted] and imposed [redacted] in the related case.

I am not filing this Complaint against Judge [redacted] because he filed a [redacted] Complaint against me, [redacted] in the litigation, or issued an [redacted] I am [redacted] I have been [redacted] now and have endured my share of unfavorable outcomes and decisions. I am currently cooperating with the [redacted] and taking appropriate action in front of Judge [redacted]; and the [redacted] thereafter, to challenge Judge [redacted] determinations, which are not before you.

I am abiding by my ethical obligation to report misconduct because I believe that within his [redacted] Complaint Judge [redacted] failed to disclose material facts, was not candid or forthcoming about material events, and actually misrepresented the authority and some facts he relied upon to justify the [redacted] Complaint. I will discuss several of those issues below.

I. JUDGE [redacted] MISSTATED THE ETHICAL RULE.

To justify the [redacted] Complaint, Judge [redacted] relied upon and referenced only one ethical rule, ER 3.3(a)(3). With respect to that Rule and its alleged violation, Judge [redacted] represented as follows:

Judge [redacted] did not honestly represent the Rule or its application. Instead, Judge [redacted] omitted material portions of [redacted] and altered it, which presented the false and misleading impression that I owed a duty under that Rule and violated that duty. The full text of [redacted] reads:

The full text of [redacted] and the portions omitted by Judge [redacted], plainly establish that I had no duty under [redacted], that [redacted] has no application to the facts at issue, and that I unquestionably did not violate [redacted] in any form or fashion.

I did not offer evidence that I knew to be false or any evidence at all during the deposition as Judge [redacted] misrepresents. The deponent was [redacted] and I was not conducting [redacted]. Counsel for the opposing party [redacted] and the testimony at issue. [redacted], as it exists, has no application under its plain language and as supported by the official comments. *See e.g.* Comment 5 (“[redacted]

”); Comment 6 (“

”) (emphasis added); Comment 10 (“

”) (emphasis added).

Judge [redacted] had a crucial duty and responsibility necessary for the administration of justice to disclose the full language of the Rule and present all material facts surrounding the application of the Rule as it actually exists. Had Judge [redacted] done so, it would have been clear to the [redacted] that the Rule has no application and could not have been violated [redacted] under the true circumstances. I understand that [redacted] and even Judges are not perfect and can misinterpret and misunderstand rules and statutes from time to time. However, Judge [redacted] omission of crucial facts and events was not just limited to one instance and the basis for accusing a lawyer of serious unethical conduct should not be based upon distortions of the actual ethical rules and a disclosure of only selected facts designed to reach a desired result.

II. JUDGE [redacted] MISREPRESENTED AND OMITTED KEY FACTS SURROUNDING THE [redacted]

Judge [redacted] represented in his [redacted] Complaint that I purposely and intentionally removed harmful language from a [redacted]. However, Judge [redacted] did not provide the [redacted] with all of the underlying facts showing the context of how the events transpired or the entirety of the language that was removed. Within the documents attached to his [redacted] Complaint, Judge [redacted] represented that:

If not outright false, Judge [redacted] description of what transpired is certainly misleading and incomplete. Initially, I never gave such direct instructions to [redacted]. The suggestions were made in an email [redacted]. Moreover, the actual information that I suggested be removed is much larger than the few words isolated and taken well out of context by Judge [redacted]. The additional portions are set forth below:

On or about _____, _____ and _____, with *advice from* _____, decided to do a pro-rata distribution (“_____”) to the individual members of _____ of their pro-rata membership interest of the _____ ownership from _____. This would release _____ from being owned directly by _____ and strengthen the _____ structure.

According to legal counsel and his submitted declaration to the court, _____ advocated that since there were not third parties involved in the _____ and therefore no changes to the existing membership structure, there was no need for a unanimous vote from any members of _____. _____ thereby declared that in order to complete the transfer of the _____ ownership block from _____ to the individual members of _____, no member approval vote was needed from the members of _____.

Nonetheless, according to the _____ (drafted by _____) and _____ (“_____”), a _____” stature had been affected. Therefore, the _____, which did not have _____ by all members, was the impetus of a court’s immediate action of Preliminary Injunctive Relief.

Accordingly, the Court allowed into evidence a handwritten letter by _____ and _____ acknowledging that they did not approve the _____. Furthermore, since _____ contain a _____” policy, the _____ resulted in all members unlawfully losing their membership rights, which automatically turned into a financial interest only. On _____ the Court _____ and the _____ as a manager of _____, effectively turning the units owned into limited partner financial interests.

This judgment/settlement allowed _____, as manager of _____, to dilute _____ interest in the Company by performing a mandatory capital, according to the mandatory call, effectively diluting _____ financial ownership in _____ to _____ down from approximately _____.

The former manager of _____; specifically _____, seeks to obtain a business appraisal in order to determine the value of the Company as of _____ the date at which his managerial powers of the Company were revoked. _____ believes he was given improper counsel by _____ and _____ (“_____”), resulting in the loss of his managerial rights and subsequent financial interest in _____. Accordingly, this is the nexus of the aforementioned _____ (Exhibit 2, Pg. 8-10).

Despite the expansive language, Judge _____ provided only selected portions of the _____ to the _____ Judge _____ failed to disclose _____ pages of omitted text and the main portions

related to the valuation that were not altered. (Exhibit 1, Pg. 18-20). This information was germane to the issues and clearly material to fully assess whether my motivations were intentional or malicious, the actual reasons why the language was removed, whether I specifically selected potentially harmful language to be removed, whether the information I suggested be removed was material to ; whether I would have remembered my suggestion to remove language that I thought was immaterial, whether I simply wanted to remove all of the background information, whether I requested that alter his valuation conclusions or the basis for his valuation conclusions, and whether I conducted any assessment to determine whether the information to be removed was potentially unfavorable or favorable.

Because of Judge omissions, the would not know that the overwhelming majority of the removed information (probably), other than words, was unquestionably favorable to . Had this information been provided, the would be able to consider that I never focused on or cared about the substance of the background information. was hired to prepare a simple and straightforward valuation at a date certain. I suggested to () that all of the background information be removed because it was extraneous, immaterial, and not germane to the valuation. I did not specifically select or reference the language about referenced by Judge for removal. I did not suggest the removal of any language from , including the language about because it could be construed as unfavorable or harmful to . To me, my suggestions would have been non-events because they did not impact or seek to change the expert's valuation.

Judge failed to submit the material portions of showing the extent of the information that I requested be removed and the substantive portions related to the actual valuation and underlying valuation opinions. By omitting material information, Judge gave the appearance that I selectively targeted harmful language for redaction and wanted only that specific language replaced with language of my choosing. Judge representation of the events was a distortion and oversimplification of what actually transpired as well as my motivations. The would have no way of knowing or suspecting otherwise, because the material facts and crucial pages of : refuting Judge ; positions were not disclosed.

III. JUDGE FAILED TO DISCLOSE THAT THE PARTIES AND

Judge represented to the that it was unethical and improper for me to fail to disclose reports and correspondence to ; without an appropriate privilege log. However, Judge failed to disclose to the that there was nothing untoward about this practice and that both parties operated as if draft and with counsel were ; and did not have to be identified in a privilege log.

The practice of non-disclosure by all parties |
, when Judge | my objection on

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COMPLAINT IN THIS MATTER,
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THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**