

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 19-162

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Judge:

Complainant:

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**ORDER**

The Complainant alleged a superior court judge engaged in improper demeanor in a civil matter.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

After review, the Commission found that the judge's comments directed toward one of the attorneys were derogatory. While this was improper under Rules 1.2 and 2.8(B) of the Code of Judicial Conduct, the Scope Section of the Code provides that not 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 Commission Rules 16(b) and 23(a), but to issue a warning letter to the judge to be cautious of comments that may be overheard by others as those comments may not be "dignified or courteous" and give an appearance of impropriety.

Commission members Roger D. Barton and Colleen E. Concannon did not participate in the consideration of this matter.

Dated: September 23, 2019

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez  
Commission Chair

Copies of this order were distributed to all appropriate persons on September 23, 2019.

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

2019 - 162

**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, \_\_\_\_\_ represent Plaintiff \_\_\_\_\_ in Case No. \_\_\_\_\_  
An Arbitration Award was filed on \_\_\_\_\_ On \_\_\_\_\_ Plaintiff filed an  
Appeal of the Arbitration Award. The Court set a telephonic Trial Setting Conference on

\_\_\_\_\_ counsel for the parties, myself and \_\_\_\_\_ were on hold for  
a telephonic Trial Setting Conference at \_\_\_\_\_ when Judge \_\_\_\_\_ made questioned  
the merits of the Appeal filed by Plaintiff and made disparaging statements about counsel for  
Plaintiff. The tone of the disparaging statements made me seriously question Judge  
judicial temperament. I assume that the Court thought the parties were on hold and could not  
hear the Court's questionable and disparaging statements. However, counsel for the parties  
heard the disparaging conversation between Judge \_\_\_\_\_ and his judicial staff,  
including but not limited to \_\_\_\_\_ Presumably,  
the disparaging conversation took place in the court room because the telephonic Trial Setting  
Conference began immediately after the disparaging conversation ended.

Judge \_\_\_\_\_ made statements that Plaintiff allegedly improperly obtained a default  
judgment against an unbeknownst deceased party. Further, Judge \_\_\_\_\_ made  
statements that Plaintiff's counsel was " \_\_\_\_\_ " and filed an Appeal of the Arbitration  
Award hoping the " \_\_\_\_\_ ", insinuating that the Appeal filed by Plaintiff was to  
harass the Court as opposed to advancing Plaintiff's interests because the Arbitration Award is  
not consistent with the facts of this case or the law. Further, Judge \_\_\_\_\_ statements  
that Plaintiff was hoping that the " \_\_\_\_\_ " demonstrates that Judge  
\_\_\_\_\_ does not believe in the merits of the Appeal filed by Plaintiff, which will clearly unduly  
prejudice Plaintiff at trial. It was not proper for Judge \_\_\_\_\_ to mention anything  
nefarious about an Appeal from an Arbitration Award. Judge \_\_\_\_\_ was not at the  
Arbitration and did not know that insurance was improperly introduced by defense counsel, not  
to mention that Plaintiff has the right to appeal. It is not proper for a judge to secretly ridicule

attorneys before him. It undermines attorneys, smacks of partiality and frankly is above the Court.

According to Rule 1.2 of the Arizona Code of Judicial Conduct, “[a] judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” As discussed herein, Judge \_\_\_\_\_ questioned the merits of the Appeal filed by Plaintiff and made disparaging statements about counsel for Plaintiff. It is unknown if these statements were made in front of a full court room. Regardless, these statements were disparaging and placed Plaintiff and counsel for Plaintiff in a false light. Judge \_\_\_\_\_ did not act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. To the contrary, these statements make it clear that Judge \_\_\_\_\_ cannot be impartial in this case. Hence, Judge \_\_\_\_\_ actions also violate Rule 1.2 of the Arizona Code of Judicial Conduct.

According to Rule 2.3 of the Arizona Code of Judicial Conduct, “[a] judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.” A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Examples of manifestations of bias or prejudice include but are not limited to negative stereotyping and attempted humor based upon stereotypes. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased. For the reasons discussed herein, Judge \_\_\_\_\_ did not and cannot perform his judicial duties without bias or prejudice to Plaintiff.

According to Rule 2.8(B) of the Arizona Code of Judicial Conduct, “[a] judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge’s direction and control.” Judge \_\_\_\_\_ disparaging statements ridiculing an attorney and questioning the merits of the Appeal filed by Plaintiff immediately before a telephonic conference, while the parties could hear the conversation, clearly violates Judge \_\_\_\_\_ judicial obligations under Rule 2.8(B) of the Arizona Code of Judicial Conduct.

According to Rule 2.11(A)(1) of the Arizona Code of Judicial Conduct, a judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned because the judge has a personal bias or prejudice concerning a party or a party’s lawyer. Judge \_\_\_\_\_ made disparaging statements that Plaintiff

\_\_\_\_\_ and filed an appeal hoping the " \_\_\_\_\_ ' clearly demonstrate that Judge \_\_\_\_\_ has a personal bias and prejudice against Plaintiff and counsel for Plaintiff. Judge \_\_\_\_\_ statements demonstrate that he does not believe in the merits of the Appeal filed by Plaintiff, which will clearly prejudice Plaintiff at trial. Under these facts, pursuant to his obligations under Rule 2.11 of the Arizona Code of Judicial Conduct, Judge \_\_\_\_\_ should disqualify and recuse himself from Case No. \_\_\_\_\_ because his impartiality may reasonably be questioned as a result of his personal bias and prejudice to Plaintiff and counsel for Plaintiff.

According to Rule 2.12(A) of the Arizona Code of Judicial Conduct, “[a] judge shall require court staff, court officials, and others subject to the judge’s direction and control to act in a manner consistent with the judge’s obligations under this code.” According to Rule 2.12(C) of the Arizona Code of Judicial Conduct, “[a] judge shall require staff, court officials, and others subject to the judge’s direction and control to comply with the provisions of the Code of Conduct for Judicial Employees adopted by the supreme court.” A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge’s direction or control. A judge may not direct court personnel to engage in conduct on the judge’s behalf or as the judge’s representative when such conduct would violate the code if undertaken by the judge. Again, Judge \_\_\_\_\_ questioned the merits of the Appeal filed by Plaintiff and made disparaging statements and ridiculed counsel for Plaintiff in a conversation that he had with his judicial staff. It is unknown if the court room was empty or full when \_\_\_\_\_ made these disparaging and impartial statements. How can Judge \_\_\_\_\_ require his staff to comply with the Arizona Code of Judicial Conduct when he is violating the Code with his judicial staff? He cannot. Clearly, Judge \_\_\_\_\_ actions violate his judicial obligations under Rule 2.12 of the Arizona Code of Judicial Conduct.

According to Rule 42.2(b) of the Arizona Rules of Civil Procedure, a party may seek a change of judge for cause but must establish grounds by affidavit as required by A.R.S. § 12-409. Grounds for a change of judge under A.R.S. 12-409 include situations where a party has cause to believe and does believe that on account of the bias, prejudice, or interest of the judge, the party cannot obtain a fair and impartial trial. For the reasons discussed herein, Plaintiff has cause to believe and does believe that on account of the bias and prejudice of Judge \_\_\_\_\_ Plaintiff cannot obtain a fair and impartial trial. In addition to violating numerous sections of the Arizona Code of Judicial Conduct, Judge \_\_\_\_\_ actions rise to the level of requiring a change of judge pursuant to Rule 42.2 of the Arizona Rules of Civil Procedure and A.R.S. 12-409.

Attached herewith are a Notice of Change of Judge Pursuant to Rule 42.2 of the Arizona Rules of Civil Procedure and A.R.S. § 12-409 and an Affidavit Pursuant to A.R.S. § 12409, which were filed with the \_\_\_\_\_ on \_\_\_\_\_

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*Attorneys for Plaintiff*

Plaintiff,  
v.

Defendants.

CASE NO.:

**NOTICE OF CHANGE OF JUDGE PURSUANT  
TO RULE 42.2 OF THE ARIZONA RULES OF  
CIVIL PROCEDURE AND A.R.S. § 12-409**

(Assigned to the Honorable )

1 Plaintiff: ("Plaintiff"), by and through counsel undersigned,  
2 pursuant to Rule 42.2 of the Arizona Rules of Civil Procedure and A.R.S. § 12-409, hereby files its  
3 Notice of Change Judge. An Affidavit pursuant to A.R.S. § 12-409 is attached herewith.  
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5 **DATED** this :  
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7  
8 By\_\_\_\_  
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10 *Attorneys for Plaintiff*  
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13 **ORIGINAL** electronically filed  
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26 *Attorneys for Defendant .*

27 /s/ \_\_\_\_\_

**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.**