

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 19-366

Judge:

Complainant:

ORDER

May 12, 2020

The Complainant alleged a superior court commissioner was biased against him, engaged in disparate treatment, made false statements, failed to afford an opportunity for all parties to be heard, and made improper rulings in a probate proceeding.

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.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission member Michael J. Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on May 12, 2020.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2019-366

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 am a party to this action, have paid my appearance fee, and am also an heir in the case. From the first scheduling conference through every appearance and hearing the Judge, Commissioner _____ has shown bias/prejudice against me. She has allowed the opposing litigant _____ the current Executor of the estate and her counsel to speak 2-3 times as long as I when I was a pro se litigant and has restricted my attorney similarly as well once retained.

Before I even spoke Commissioner _____ stated that she felt that my only purpose or desire was to drain the estate which is certainly not true. She has accused me of base motives while she allows the Executor to shirk her duties.

The executor _____ never served me with notice that she was applying to be executor. She has not given me requested information that she has a duty to give such as accounting of the estate, the inventory, expenses paid etc. She recieved _____ orders from the court outlining her duties as executor and has only completed _____ of them. She completely disregarded Commissioner _____ order to give all parties the pictures/video that she took under the auspices of making an inventory. The judge has not spoken one word to her on not doing her duty. The judge has not required them to even give the parties their court filings, many of which I was not given and am entitled to under 16 A.R.S. Rules of Civil Procedure, Rule 5(a).

My sister and fellow heir and litigant _____ was prevented from speaking at all in multiple hearings. The most egregious example occurred on _____ in a hearing on the sale of the house belonging to the estate. Commissioner _____ was notified that _____ wished to address the court at the beginning of the hearing. Towards the end the judge was again reminded that she was a party to the case and that she would like to address the court. The judge verified with the clerk of the court that she was a party to the case, but she was still dismissed rudely and abruptly and was still not allowed to speak. Her objection was noted, but she was prevented from speaking. She was also not given the opportunity to cross examine any witnesses. Litigants are guaranteed due process by both the U.S. Constitution—Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652 (1950)—and the Constitution of the State of Arizona, Article 2, Section 4. When a litigant is so restricted in presenting his or her position that the litigant lacks a meaningful opportunity to be heard, fundamental error occurs. Fundamental error is error that goes to the case's very foundation and prevents a party from receiving a fair trial. State v. Henderson, 210 Ariz. 561, 567, 115 P.3d 601, 607 ¶ 19 (2005). It is a flexible concept. In Matthews v. Eldridge, 424 U.S. 319, 334, 96 S. Ct. 893 (1976) the U.S. Supreme Court ruled: [D]ue process is flexible and calls for such procedural protections as the particular situation demands.

According to ARPOP, Rule 8(D), _____ had the right to cross-examine the adverse party and the witnesses who testified. State v. Correll, 148 Ariz. 468, 473, 715 P.2d 721, 726 (1986). Although Rule 8(D), ARPOP, mandates the right to cross-examination in a contested hearing, the trial court did not afford Litigant _____ this important constitutional right.

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Parties Right To Be Heard. The judicial officer shall ensure that both parties have an opportunity to be heard, to present evidence and to call and examine and cross-examine witnesses.

In *Marco v. Superior Court*, 17 Ariz. App. 210, 496 P.2d 210 (Ct. App. 1972), the Arizona Court of Appeals commented on the constitutional mandates required in a proceeding. After the trial court accepted counsels' averments prior to sustaining cross petitions for protective orders, the Court of Appeals vacated the trial court's action, stating: The due process clause requires that every man shall have the protection of his day in court, and the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry and renders judgment only after trial. It means that no citizen shall be deprived of his life, or his liberty, or his property, without reasonable notice and reasonable opportunity to be heard according to the regular and established rules of procedure. *Marco*, id, 17 Ariz. App. at 212, 496 P.2d at 638 [citations omitted]. In *State ex rel Romley v. Superior Court, In and For County of Maricopa*, 172 Ariz. 232, 236, 836 P.2d 445, 449 (Ct. App. 1992) the Arizona Court of Appeals held: The defendant also has a concomitant right to effective cross-examination of a witness at trial. Failing to provide the opportunity to cross-examine the witnesses against a litigant is fundamental error. Although fundamental error is rare in civil cases, it can occur. *Monica C. v. Arizona D.E.S.*, 211 Ariz. 89, 118 P.3d 37 ¶¶ 23 – 25 (Ct. App. 2005). Fundamental error occurred in this case.

Commissioner _____ also did not allow me to have someone to help me speak. I am a disabled person _____. She did not allow me to have someone to speak for me violating my rights under the Americans with Disabilities act.

Right after she admitted that she did not have jurisdiction to evict me, she fined me \$ _____ per day until I moved from the estate house where I had been asked to stay until the estate was ready to sell. I know of no statutory support for her order. I ended up paying \$ _____ dollars, I don't think she had a legal right to fine me that way. She fined me because she was biased against me. She stated that she had purposefully fined me more than rent would be so that I would leave quickly. I know that I will have to appeal, because I know I will never get a fair trial with Commissioner _____. She is tainted, and very biased against me.

Sincerely,