

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-016

Judge:

Complainant:

ORDER

April 16, 2020

The Complainant alleged a superior court judge failed to take appropriate action to address disclosure/discovery violations and improperly granted an opposing party's motion for summary judgment.

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).

Copies of this order were distributed to all appropriate persons on April 16, 2020.

Arizona Commission on Judicial Conduct

1501 W. Washington St. suite 229

Phoenix Arizona 85007

2020-016

Re; The honorable .

Case at issue:

My Address:

Telephone # {

To Whom It May Concern,

I am submitting this complaint regarding the conduct of judge in the case

BACKGROUND FACTS

After more than years of practice I have been disbarred. That decision is currently being challenged in the U.S.District Court. My practice has always been civil litigation.

As my disbarment was being finalized, with the approval of the client, I met with attorney to discuss his assumption of representation in a personal injury case. That case was I had filed the lawsuit in late When I met with in discovery had ended in the case, the court had set a settlement conference. During my almost years of litigating the case there had been multiple hearings, about ten depositions had been taken, informal settlement discussions had been held.

During the meeting we discussed the facts of the case, the issues, the subject of the hearings and the substance of the depositions. We discussed my work on the case. Also, that defendants had offered to settle the case, a figure that, considering the unusual facts, was in the ballpark. made repeated assurances that he would pay my fees and costs . We also agreed that I would prepare the settlement conference memorandum, which I subsequently did. A few days later sent me the signed retainer agreement with Enclosed is a copy of that retainer agreement. As you can read a provision in the retainer agreement is that, upon resolution of the case, would pay me for my work and costs. He followed up with an email further assuring me that he would fairly compensate me for my work and the costs I had incurred. (enclosed)

Not long afterward stopped communicating with me, he didn't take my calls or respond to my emails. More than a year later I learned from a third party that the case had settled. After my almost years of litigating the case took it over in late The case settled in February . He had been on the case about months.

refused to respond to my inquires and subsequent offers to have our fee issue resolved through the State Bar fee Arbitration process, what could be more fair? I was compelled to retain an attorney. In response to my attorney's inquires [redacted] at first claimed that I had abandoned the case. We responded with [redacted] emails, regarding the case, primarily from me. [redacted] then claimed that my fee belonged to my bankruptcy estate. I had filed bankruptcy in [redacted] We responded that the bankruptcy trustee had been informed of the case. He declined to assert a claim because the overwhelming majority of the case had been litigated after the bankruptcy petition was filed so it was not considered an asset of the estate. If he really believed this why didn't he tender my fee to the bankruptcy trustee? [redacted] third spurious claim was that I had committed malpractice by not including the U.S.Dept. of the Interior as a defendant. [redacted] had been injured on federal land leased by the defendant [redacted] have litigated dozens of cases against the United States more than a dozen of which were against the U.S.Dept. of Interior, the entity [redacted] claimed I should have included in the lawsuit. [redacted] has never litigated against the United States or any of its agencies. I had evaluated a potential claim against the United States and decided the liability simply was not there. As with his other claims [redacted] offered no facts to support his absurd allegations.

I had allowed [redacted] to assume representation because discovery had ended, defendants had expressed a desire to settle. During the deposition of the owner of [redacted] he stated he needed to settle the case, he had other contracts pending with the Department of the Interior and did not want this case to affect the negotiations, and, as stated, Defendants had already offered [redacted] to settle. It was also agreed that if the case went to trial I would prepare the entire case including questions for each witness.

My retainer agreement with [redacted] was the standard personal injury retainer agreement approved by the State Bar. Since the case was in litigation the agreement was that I was to be paid [redacted] percent of the amount recovered plus my costs. Instead of paying my portion of the fees [redacted] pocketed the entire fee plus my [redacted] in litigation costs.

Since [redacted] had refused to negotiate or agree to State Bar Fee Arbitration, I had no alternative but to file a lawsuit. As it relates to my complaint against judge [redacted] I complained to the court that [redacted] had refused to cooperate to submit the Joint proposed Scheduling Order, judge [redacted] took no action. Subsequently, I complained on multiple occasions, that [redacted] had refused to submit his Rule 26. 1 Initial Disclosure. Again, judge [redacted] took no action. I had submitted requested discovery which [redacted] had ignored. My complaints to [redacted] fell on deaf ears. I filed a Motion For Summary Judgment. His motion reiterated his three prior baseless claims. Additionally, every other word in his motion crowed that I had been disbarred.

During an [redacted] hearing I again complained to judge [redacted] about [redacted] refusal to respond to my requested discovery which had taken critical importance with his pending Motion For Summary Judgment. [redacted] rose stating that some documents I had requested were privileged. I responded that I was willing to sign a confidentiality agreement, which in such situations is provided for by Rule 26(C).Judge [redacted] rejected my offer and moved on to other matters. Judge [redacted] should certainly know that a confidentiality agreement is the standard method. Moreover, judge [redacted] knows that [redacted] had a duty to respond to my requested discovery. Standard practice is to submit responses to the requested discovery. Any relevant documents not produced must be listed describing the document and the legal basis for not producing the information so that the claimed privledged can

be challenged. Instead she bluntly rejected my appropriate offer and moved on, judge [redacted] took no action.

During an [redacted] hearing I again complained to judge [redacted] about [redacted] refusal to respond to my requested discovery which in light of his pending [redacted] had taken critical importance, she ignored my complaint. Toward the end of the hearing I once again raised the discovery matter. Judge [redacted], picking up a pen and paper, demanded that I, then and there, list the documents I required to respond to the [redacted]. Due to the extensiveness of the file and my trust in [redacted] I had not made a copy of the file and the [redacted] depositions. I tried to list the documents needed also stating that the [redacted] contained references to documents generated after [redacted] assumed representation. Judge [redacted] realizing the futility of her demand moved on.

Why didn't judge [redacted] just order [redacted] to comply with the rules and cooperate with the preparation and submission of the Joint Proposed Scheduling Order, also to order him to submit his Rule 26.1 Disclosure and to respond to my properly submitted discovery requests? It can't escape notice that [redacted] blatantly ignored complying with the applicable rules without fear of court sanction. The point being that there are other factors influencing her actions beyond any prejudice she has for my disbarment.

Judge [redacted] set an [redacted] hearing on [redacted] Motion For Summary Judgment. I was torn between submitting a partial response which she would treat as Plaintiff's Response or insisting on Defendants' response to my discovery. I was ill the day of the hearing. During a telephonic conference, ostensibly, to set a new hearing date, instead Judge [redacted] stated that she had enough to render a decision. On [redacted] Judge [redacted] ruled that since I was no longer a lawyer had no duty to pay me. (enclosed) This is the height of audacity. Judge [redacted] well knows the applicable law. I did the work when I was licensed. Arizona applies the legal principal of quantum meruit. Added to this is that [redacted] as I pointed out, has also defrauded [redacted] He assured [redacted] in the retainer, that he would compensate me. Instead he pocketed the entire fee and my costs. I pointed this out in my pleadings that [redacted] actions violated Arizona's criminal fraud statute; ARS 13-2310. Soon after he assumed representation [redacted] stopped communicating with me which establishes that his criminal intent formed at about the time, he obtained the file. In addition to her other actions is her malefaction abetting [redacted] fraud on both me and [redacted]

Throughout the case judge [redacted] has continually demonstrated her bias and prejudice. It has occurred to me that despite my continual complaints of [redacted] plain refusal to comply with the rules, he just ignores the issues; no offered excuses or half-hearted attempt to comply. It is as though [redacted] knew he would not be sanctioned. There is something more here than judge [redacted] bias and prejudice because of my disbarment.

If you require any additional information you can contact me at:

FEE AGREEMENT

Dear

This Agreement, by and between _____ hereinafter called "Client" and
_____ hereinafter called "Attorney" provides as follows:

WHEREAS, Client asserts a cause of action occurring on _____ against
_____ for personal injuries and other special damages and has agreed to employ
Attorney, and other para-professionals working at Attorney's direction, to investigate, prosecute and
collect on Client's claim, including any uninsured and underinsured claim arising therefrom, or other
settlement or compromise satisfactory to Client; and

WHEREAS, Attorney has consented to accept said employment;

NOW, THEREFORE, the following is agreed upon between Client and Attorney:

In consideration of the services already rendered and to be rendered by Attorney in
connection with the Client's cause of action, Client agrees to pay Attorney
_____ of any sum collected or recovered by reason of a negotiated settlement
before the filing of a lawsuit. In the event a lawsuit is filed, or arbitration initiated, Client agrees to
pay Attorney _____ of any sums collected or recovered by reason thereof. The
Attorney's fee shall be based upon the gross judgment or settlement, prior to the payment of Client's
unpaid medical expenses and necessary costs and expenses. In the event that any proceedings are
required after the first trial, such as the granting of a new trial or an appeal to an Appellate Court,
Client agrees that this Agreement shall be renegotiated.

All necessary costs and expenses incurred in the Client's case shall be paid by Client. These costs may include fees for investigation, court costs, depositions, medical records and reports, expert witnesses, consultations, photocopying, travel and all other costs related to Client's claim. These costs are in addition to Attorney's fees and are to be deducted from Client's portion of any settlement. Although, it is the Client's responsibility to pay these costs as they accrue, Attorney may advance these costs, but upon conclusion of the matter, regardless of the outcome, or in the event Attorney's services are terminated, Client shall immediately reimburse all costs advanced therefore, together with a _____ service fee for each cost so advanced, in consideration of Attorney advancing these costs instead of the Client.

Client and Attorney mutually agree that they will make no settlement without the approval of each other. Despite the aforesaid provision for fees, it is hereby agreed that if the Attorney obtains an offer of settlement that, in his opinion, is reasonable, and the Client desires not to accept, Client agrees to be responsible for Attorney's fees based on the amount of the offer, regardless of the outcome of the action.

It is agreed that Attorney has made no guarantees regarding the outcome of Client's case, and all expressions which may be relative thereto are a matter of opinion only.

Client expressly gives to Attorney full power and authority to sign Client's name to all checks, drafts, releases, and other documents incidental to resolution of this claim, which power will be used only when the Client has previously consented to the settlement.

Client expressly gives Attorney authorization to pay directly to medical providers any balance owed by Client for medical services related to Client's injury.

Our firm provides clients with detailed statements for professional services performed. Statements are rendered on a periodic basis and are due and payable upon receipt. If payment in full is not received within _____ days of the statement date, Client's account will be subject to a finance charge of _____ Attorney's continued representation in this case is contingent upon Client's prompt satisfaction of amounts billed as they become due.

When Attorney's work has concluded on any given matter, Attorney will retain a copy of Attorney's file documents for _____. After that point in time, Attorney will be allowed to destroy such documents after notice to Client and after Client is given an opportunity to request file documentation. Client agrees to keep Attorney apprized of Client's current address, email address and telephone number so that Attorney can contact Client when the time comes for destroying Client's file. Notice will be sent to the address Attorney has on file for Client.

As our representation proceeds, we will provide Client with copies of all correspondence and legal papers we generate or which are provided to Attorney from others. Attorney will not retain any original documents or "original copies" of any documents that you provide to us. Rather, we will merely retain copies of (1) documents Client provides to Attorney, (2) documents and correspondence Attorney creates on behalf of Client and (3) documents and correspondence that

**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.**