

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 20-070

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Judge:

Complainant:

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**ORDER**

June 25, 2020

The Complainant alleged a justice of the peace made erroneous rulings in a small claims 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.

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 June 25, 2020.

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

2020-070

**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.

Minute Entry and Order dated \_\_\_\_\_ (Exhibit #1)

The Judge rules \_\_\_\_\_ was "apparently served only in his capacity as the statutory agent for the defendant". Defendant \_\_\_\_\_ was named as a defendant in the original complaint, and WAS served (as was his wife \_\_\_\_\_, as an individual, AND as Statutory Agent for the LLC. "I personally served true copies of the documents upon: Defendants \_\_\_\_\_ and \_\_\_\_\_ by leaving the documents with \_\_\_\_\_ Defendant and \_\_\_\_\_ by leaving the documents with \_\_\_\_\_ as Statutory Agent...." (Exhibit # 2-copy of Certificate of Service)

The Minute Order states Plaintiff can amend the complaint, but when I called the Court I was told that since \_\_\_\_\_ was originally named and served as a Defendant it would NOT be necessary to amend the complaint, but to address that issue at the Hearing scheduled for \_\_\_\_\_. On that date The Hearing Officer stated the Judge's ruling would stand, and \_\_\_\_\_ was not a Defendant.

Quote from Minute Entry "The Defendant filed a motion....." The Motion to Set Aside/Vacate Judgment (Exhibit #3) was filed \_\_\_\_\_ by \_\_\_\_\_ If the Court ruled \_\_\_\_\_ was NOT a defendant how could he file a motion in this case?  
{ARCP 1(a)-(d), (f)-(j) Naming a defendant by the proper name--all defendants must be identified properly and by the correct legal name.}

Also that Motion was not served on the Plaintiff according to rules (in fact, Plaintiff knew nothing about that motion until she received the Minute Entry and went to the \_\_\_\_\_ Court to obtain a copy of that Motion, even though Defendant certified he mailed a copy on \_\_\_\_\_  
{A.R.S. Rule 120 and ARCP 5(c)(4) Service of a motion after entry of judgment -- must be served on the other party as if serving a summons and complaint under Rule 113.}  
{A.R.S. Rule 113 Personal service on individuals in the state of Arizona. A CASE OR CLAIM AGAINST A DEFENDANT CANNOT PROCEED WITHOUT PROPER SERVICE.}

This Rule further states personally served by a constable or private process server and proof of service must be filed with the Court.

Though the Rule states "Defendant", as it is being applied to a post entry of judgment, I would assume Other Party or "Plaintiff" would be an appropriate substitute regarding legal service on the other party.

As the Court had no proof of service, the case should not have proceeded; and as the Motion was NOT filed by the Defendant, the Court should not have addressed any issues in that Motion. There should

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not have been a Minute Entry and Order, as that Entry was based on the information in the Motion filed by Defendant, as an Individual and not as Statutory Agent for ...LLC.

Copy of the letter sent to Court is Exhibit #4. Again the Court states the Individuals were not served; a copy of the Certificate of Service was enclosed with that letter.

Plaintiff filed a Motion (Exhibit # 5) on \_\_\_\_\_ asking for an Oral Argument to Deny that hearing. That Motion was not responded to by the Court.

On \_\_\_\_\_ Plaintiff again filed for an Entry of Default against \_\_\_\_\_ and  
That motion has not been responded to by the Court.

( pages of attachments )

# 1

County

Courts, State of Arizona

CASE NUMBER:

Plaintiff(s)

Defendant(s)

**MINUTE ENTRY and ORDER**

**Procedural History**

The Plaintiff filed this small claims actions against "Defendants and/or persons in their employ" for a variety of property damage claims. In the complaint, the Plaintiff also listed individuals, of whom is the statutory agent for the Defendant. The other individuals listed were not served. The statutory agent, was apparently served only in his capacity as the statutory agent for the Defendant.

The Defendant filed an Answer denying the Plaintiff's allegations. The Court mailed a Notice of Hearing to the parties; but the Defendant's address was listed as " rather than The hearing was set for on On the Court received a return mail notice indicating mail could not be delivered to the " address.

Only the Plaintiff appeared for the small claims hearing. She was awarded a default judgment against the Defendant.

**Post-Judgment Motions**

On the Court received an ex parte letter from the Plaintiff requesting that the default judgment be amended to include the individuals who were not served. She had previously requested something similar in a motion and was denied.

As a general rule, the owners and employees of a Limited Liability Corporation (LLC) are not personally responsible the for debts of the business. If an LLC is named in a lawsuit, the owners are generally not required to use their personal money to pay any judgments. That is one of the main reasons people form LLCs. As such, it was not a mistake by the Court to only include the business as the Defendant on the judgment.

The Defendant filed a motion requesting a new hearing because it did not receive notice of the hearing date.

#1

Order

The Defendant's motion for a new hearing is granted. The judgment dated \_\_\_\_\_ is set aside.

This case will be set for a new Small Claims Hearing.

The Plaintiff can amend her complaint if she has a factual and legal basis to allege that the individual owners or employees are personally liable for the actions of the LLC.

Date: \_\_\_\_\_

Justice of the Peace

I CERTIFY that I mailed a copy of this Minute Entry to:

Plaintiff at the above address or  Plaintiff's attorney       Defendant at the above address or  Defendant's attorney

Date: \_\_\_\_\_ By: \_\_\_\_\_

IN THE  
COUNTY OF

JUSTICE COURT  
STATE OF ARIZONA

v.

Plaintiff,

Defendants.

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No.  
Certificate of Service of Process

I, \_\_\_\_\_ a private process server, having been so appointed by the court, state:  
On \_\_\_\_\_ I received from Plaintiff, \_\_\_\_\_ the following documents:

Small Claims Complaint and Summons

I personally served true copies of the documents upon: Defendants and Property  
by leaving the documents with Defendant  
Investments LLC, by leaving the documents with \_\_\_\_\_ as Statutory Agent at  
on \_\_\_\_\_ at \_\_\_\_\_

I state under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_.

Service of Process:

**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.**