

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-182

Judge:

Complainant:

ORDER

October 1, 2020

The Complainant alleged a superior court commissioner was biased against him, engaged in improper demeanor, and erroneously upheld an injunction against harassment.

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 members Louis Frank Dominguez and J. Tyrrell Taber did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on October 1, 2020.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2020-182

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.

On [redacted] at approximately [redacted] judicial officer [redacted] presided over the hearing of case [redacted]. Despite the statewide stay-at-home order ending on [redacted] [redacted] due to [redacted] maintained that the hearing would be held telephonically. During the hearing [redacted] heard testimony from the plaintiff, the defendant, and their respective witnesses. The hearing lasted approximately [redacted] hours when it abruptly ended at [redacted].

The matter of the case involved an Injunction of Harassment. The plaintiff had previously filed an Injunction of harassment in [redacted] but it was quashed. The plaintiff and defendant are involved in a separate private arbitration involving the plaintiff's breach of contract. [redacted] included [redacted] complaints that were outside the statute of limitations, one of which was part of the first injunction that was quashed. The [redacted] complaint was an alleged threat that was not proven, nor directed to the plaintiff as offered by the testimony. The defendant's attorney sought to quash the order as the claim does not follow the rules set forth for injunctions of harassment, that complaints fell outside the statute of limitations, and that the plaintiff had not met the burden of proof.

This complaint is to bring attention to the actions of judicial officer, [redacted] as he presided over the hearing. The Arizona Code of Judicial Conduct and relevant statutes will highlight how [redacted] was in violation of the Code and should have discharged himself from the case.

A.R.S. 13-107(B)(2) provides: *"Except as otherwise provided in this section and section 28-672, prosecutions for other offenses must be commenced within the following periods after actual discovery by the state or the political subdivision having jurisdiction of the offense or discovery by the state or the political subdivision that should have occurred with the exercise of reasonable diligence, whichever first occurs—[F]or a misdemeanor, [redacted] year."* The injunction's [redacted] complaint alleged a trespass on [redacted] and a [redacted] complaint alleged a trespass in [redacted]. Since the [redacted] complaint was heard [redacted] days after the occurrence of the alleged incident it falls outside of the statute, it should not have been accepted as a valid complaint. Since the [redacted] complaint was part of the [redacted] injunction of harassment that was quashed, it should not have been accepted as a valid complaint. Even if the injunction was upheld, the year in which it would have been enforced would now have expired.

A.R.S. 13-2921(E) provides: *"For the purposes of this section, "harassment" means conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person."* Despite the fact that the testimony heard from the plaintiff and their witnesses differed from the original complaint, and that the submission of evidence for the hearing differed from the original complaint, no statement or testimony made claim of a threat that was directed at the plaintiff directly. For not upholding the law, [redacted] was in violation of Rule 1.1, which states, *"A judge shall comply with the law, including the Code of Judicial Conduct."* [redacted] was also in violation of Rule 2.2, which states, *"A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially."*

During the hearing, while the attorneys were questioning and cross-examining each party's witnesses, [redacted] sought to interject his own questioning towards two of the witnesses, taking the place of the [redacted].

attorneys. For acting as a lawyer, [redacted] was in violation of Rule 2.11, which states, *"A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances...acting as a lawyer in the proceeding."*

In addition, at different points during the proceeding, [redacted] cut off and/or spoke over the attorneys, sometimes raising his voice. Specifically, at the end of the hearing, the plaintiff's counsel was attempting to make his closing statement, and [redacted] yelled at him and cut him off. For his behavior during the proceeding and for not upholding the law, [redacted] was in violation of Rule 1.2, which states, *"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."* [redacted] was also in violation of Rule 2.8, which states, *"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."*

The hearing ended abruptly at [redacted]. After [redacted] cut off the plaintiff's counsel, he stated that he was upholding the order and ended the call. He did not provide any reasoning for his decision prior to ending the hearing. That it was the [redacted] should not have prompted [redacted] to reject any further discussion without drawing any concern about the time. That [redacted] upheld the order even though the plaintiff had not met the burden of proof, that the claims were not supported by the law's definition of harassment, and that claims were outside the statute of limitations, the defendant was left without knowledge as to the reason for the ruling.

Out of an abundance of caution, the defendant's counsel stated that he may have done so simply because the defendant is a [redacted] and the plaintiff is a [redacted]. For [redacted] actions at the end of the hearing, he was in violation of Rule 1.3, which states, *"A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so."* He was also in violation of Rule 2.4, which states, *"A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgement."* He was also in violation of Rule 2.3, which states, *"A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."* Rule 2.3 also states, *"A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in the harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, etc."*

The minutes received on [redacted] show that [redacted] found *'by a preponderance of the evidence that Defendant has committed acts of harassment or may commit an act of harassment in the future.'* As the testimonies show that the Defendant directed no acts of harassment directly to the Plaintiff, that the claims fell outside the statute of limitations, as well as that the Defendant has had no contact except through legal means with the Plaintiff in over [redacted] it was unfounded to claim the Defendant has or 'could' commit an act of harassment against the Plaintiff. It should be noted that the time recorded that the matter concluded on the minutes was [redacted], however this time is premature. As stated, and call records from the Defendant's attorney would show, the matter concluded abruptly at [redacted] without explanation.