

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-244

Judge:

Complainant:

ORDER

January 27, 2021

The complainant alleged a municipal court judge failed to timely disqualify herself, made erroneous rulings, and advocated for one side in a protective order 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 members Denise K. Aguilar, Colleen E. Concannon and Louis Frank Dominguez did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on January 27, 2021.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2020-244

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.

SIEE ATTACHMENT
+
CD ROM

This is a complaint of judicial misconduct against Judge _____ of the _____ Court.

This matter arises out of an ex parte hearing for an Injunction against Harassment, as well as an administrative failure by Judge _____ arising later in the case when the Defendant appealed her decision. Note that the Injunction was vacated on appeal. (As documented below.)

The primary evidence in this matter is the FTR audio of the ex parte hearing, a true copy of the court's CDROM enclosed.

Allegations

The allegations are that Judge _____ violated, at a minimum, Rules 1.1, 1.2, 2.2, 2.3, 2.4, 2.5, 2.6, 2.7, 2.9, 2.11, and 2.12 of the Code of Judicial Conduct.

Background and Facts

1. On _____ Judge _____ heard an ex parte petition for a civil Injunction against Harassment, case # _____
2. The plaintiff was a _____ who was the _____
3. Judge _____ is _____
4. _____ is a small town, and, given Judge _____ "_____ " to the plaintiff that the defendant would almost certainly contest an Injunction (below), it is reasonable to assume that Judge _____ has personal knowledge of the defendant too.

Here are highlights from the FTR audio, as they pertain to the section *Analysis*, which follows.

The FTR audio starts at _____

5. At _____ Judge _____ begins by reading and acknowledging the law, that an Injunction has to be *based* on the written petition.
6. Nevertheless, in the same breath, she tells the plaintiff that if, during plaintiff's _____

testimony, plaintiff adds anything verbally to what is written in the petition, then the plaintiff should add these new allegations—in backdating fashion—to the petition. Judge offers that the plaintiff can amend her petition now, before the hearing proceeds further, or offers that the judge will allow the plaintiff to back-amend her petition as " " as the hearing progresses.

7. Plaintiff opts to modify her petition on-the-fly.
8. Judge cautions the plaintiff that the defendant will probably challenge the petition.
9. Judge begins reading plaintiff's petition.
10. At Judge asks if plaintiff filed a police report. (Plaintiff did not attach any police report to her petition. But it would magically appear in the paperwork for a contested hearing.)
11. At Judge confirms with plaintiff that it was only this " " and states that an Injunction " " requires incidents of harassment. (As Judge would affirm later (at ¶), the law absolutely requires incidents. As the appeal court would also affirm.)
12. The plaintiff stated verbally that the defendant had harassed her in the past, but did not document this in her written petition.
13. So at late- Judge goes on a fishing expedition, asking about past alleged acts of harassment, acts that were not written in the petition.
14. At the plaintiff tells about a past incident, and Judge questions her about this incident.
15. At the plaintiff mentions having video. But no video was offered as evidence at this hearing, nor, as Judge says at was video mentioned in the petition.
16. So at Judge counsels the plaintiff to add mention of video to her petition so that the judge can lawfully consider it.
17. Judge essentially tells the plaintiff that, as her petition stands now it's " " but " "

18. At late- Judge explains that she could hold off on ruling until the defendant was heard. Or Judge could issue the injunction now based on " (The implication being ")
19. At Judge counsels the plaintiff as to what the plaintiff would have to add to her petition for Judge to issue an Injunction that day.
20. At , the plaintiff tells Judge that an on-duty police officer, who witnessed the whole incident, told the plaintiff that the defendant was not harassing her, but was engaging in free speech. (There is precedent for this. *LaFaro v. Cahill*, 56P. 3d 56 - Ariz: Court of Appeals, 1st Div., Dept. B 2002.)
21. At Judge counsels the plaintiff that if she wants to use her video in court later [for a contested hearing], that she should burn it to CD. (No one counseled the defendant to do same with his video.) Judge admits that, at this time, it is not evidence.
22. At Judge tells that plaintiff that she (Judge) expects that the defendant will challenge the (not yet issued) injunction, and counsels the plaintiff that video would help make her case against the defendant.
23. At plaintiff refers to people to Judge by first name only: Apparently Judge knows these by first name.
24. At Judge reads the law which requires specific acts and dates of occurrence in order to issue an Injunction. Judge notes that the incidents (only mentioned in the petition so far) occurred on the same date, and solicits new evidence from the plaintiff, asking " ?"
25. Answer:
26. At late- Judge asks if defendant had ever threatened plaintiff. (Even though there was nothing in the petition about threats.) Plaintiff rambles, finally claiming that defendant ' to damage her business. Judge acknowledges that plaintiff does "
27. At late- Judge says that this is " " and should probably bring the defendant in to hear his side. OR, Judge will allow plaintiff to amend her petition (to add in all the new verbal allegations) so that Judge can issue an Injunction now.

28. At late- Judge " " the on-duty law enforcement officer who witnessed the incident (and did not see harassment). (Judge never heard testimony from the law enforcement officer.)
29. At mid- Judge says "
30. At Judge announces that she is going to give the plaintiff a chance to add to her petition, saying "
31. At mid- Judge counsels plaintiff that "
32. Judge explains again that the defendant will probably contest and then appeal, and so counsels that plaintiff will have to make her petition air tight.
33. At Judge specifically tells the plaintiff what to add to her petition to make it stick.
34. At late- Judge asks if plaintiff feels " " by defendant.
Answer:
35. At Judge acknowledges that plaintiff is adding on to (testifying about) incidents not in her petition. And that, according to the petition, "
" And again instructs the plaintiff that she needs to burn her video to CD for future use in court. (Judge does not tell the plaintiff that she (the plaintiff) must serve a copy of the video on the defendant well before any contested hearing.)
36. At late- Judge asks the plaintiff if she (the judge) should give the plaintiff more time to amend her petition or if the judge should hold a hearing with the defendant. Judge asks the plaintiff if she would be " " with a hearing.
37. At , the plaintiff says she would prefer to add more to her petition.
38. Judge explains to the plaintiff that, as her petition stands now, it is defective (my words) and that, at a contested hearing the defendant would say "

**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.**