

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-250

Judge:

Complainant:

ORDER

December 11, 2020

The Complainant alleged a limited jurisdiction court judge (now retired) suffered from a disability that affected her judicial performance, was biased against one party, and made improper evidentiary and legal rulings 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 member Denise K. Aguilar did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on December 11, 2020.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2020-250

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.

Please See Attachment
by
CDROM, enclosed.

This is a Complaint of Disability and Judicial Misconduct against Judge _____ of the _____ Court.

This matter arises out of contested hearing, held in _____ for an Injunction against Harassment. Note that the Injunction was vacated on appeal. (As documented below.)

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

Disability

Judge _____ has a permanent physical Impairment which I believe disqualifies her from sitting in matters involving personal (face-to-face) appearances with the public. (In the audio below, Judge _____ explains her (permanent) physical disability. She also acknowledges that it makes communicating with her difficult because of confusing nonverbal cues.) As such, the first part of this Complaint falls under Rule 33 of the Commission's Rules.

Allegations of Misconduct

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

Background and Facts

1. On _____ Judge _____ heard a contested hearing for a Case # _____
2. The hearing was held in the _____ Court, where Judge _____ was sitting in place of _____ who had recused herself from this matter. (But not until after ruling against the defendant in an ex parte hearing.)
3. The plaintiff _____ who was the _____ and also the _____

(With _____)

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

The FTR audio starts at late _____

4. Before going on the record in the audio, Judge _____ can be heard in some banter. (Apparently in the court room already, before this matter officially started.)
5. At _____ Judge _____ tells the litigants that she is a " _____ " judge.
6. At late- _____ Judge _____ says that she knows nothing about _____ (In addition to the fact that plaintiff's _____ and has, in the past, _____ about the defendant's many past _____)
7. At late- _____ Judge _____ tells the defendant that he cannot interrupt the plaintiff's testimony. (That is, the defendant cannot object to hearsay, object to testimony that goes beyond what was in the petition, object to facts not entered into evidence, etc.)
8. At _____ the plaintiff embellishes her testimony by mentioning " _____ " (her husband) in her testimony. Judge _____ " _____ " sua sponte and stops that part of plaintiff's testimony. (The point being, there were parts of plaintiff's prosecution that were challengeable, and the defendant, if allowed to speak, could have made this objection - and more.)
9. At mid _____ the plaintiff mentions video. (The Commission should take notice that no video had been entered as evidence in the ex parte hearing that lead to this contested hearing. I documented this fact in a recent Complaint against Judge _____ involving the same case.)
10. At mid- _____ Judge _____ asks the plaintiff if she (the plaintiff) will be presenting videos to the court. Answer: _____ (Note that Judge _____ does not ask the plaintiff if the videos have been served on the defendant. In fact, Plaintiff had not served the video on the defendant. Plaintiff did not file a Notice of Filing, nor a Certificate of Service when she gave the DVD's to Judge _____ clerk. See Case History, Exhibit 1.)
11. At late- _____ Judge _____ says that " _____ "
12. At _____ Judge _____ tells the plaintiff to play the video. (Note that the video has not been entered into evidence. Consequently, Judge _____ did not ask the defendant if he had any objection to the video being entered into evidence. Nor can the defendant timely object sua sponte, since he's been told to keep quiet.)
13. At mid- _____ Judge _____ asks plaintiff when the videos were taken.

14. At late [redacted] defendant asks to physically move from his seat so that he can see the second video. (Making it apparent that he had never seen these videos before.)
15. At mid-[redacted] plaintiff testifies that defendant has been in jail before. Judge [redacted] sua sponte, objects, ruling the testimony "[redacted]" (But Judge [redacted] did not call it "[redacted]" Nor did she move for a mistrial, as a defendant might.)
16. At [redacted] a [redacted] into this hearing, Judge [redacted] says "

."

17. At [redacted] (cross examination of the plaintiff by the defendant), defendant asks plaintiff about a statement she made in her petition. Judge [redacted] sua sponte objects, saying the question is immaterial because plaintiff did not mention it in her testimony this day.
18. At late [redacted] Judge [redacted] sua sponte objects and rules plaintiff's statement as hearsay.
19. At [redacted] Judge [redacted] refers to material that plaintiff says was on [redacted] (But which Judge [redacted] had not entered into evidence. Nor had Judge [redacted] asked the defendant if he objected to it as evidence. (While Judge [redacted] is correct that [redacted] is a "[redacted]" of sorts, litigants have been known to doctor screen shots/print outs. As such, they might not be "[redacted]" copies.))
20. At late [redacted] the defendant says that he has video too, but it's on his iPhone. He asks Judge [redacted] if he can admit it as evidence. Judge [redacted] says "[redacted]" (The Commission should take notice that, in the ex parte hearing which led to this contested hearing, Judge [redacted] counseled the plaintiff to burn her video to DVD for this instant hearing.)
21. At [redacted] the defendant makes a comment to plaintiff's witness that sounds like [redacted] " At which point Judge [redacted] admonishes the defendant for "
22. At [redacted] defendant mentions an unsigned letter that was included as evidence against him in the petition. Defendant says "[redacted]"
23. Plaintiff admits that there is a "[redacted]" to the letter and that defendant doesn't

have it. Defendant says " " (As such, it is clear that it was never served on defendant. But Judge ' did not raise an objection.)

24. At Judge asks someone [clerk?] to make a copy of the front and back side of the letter.

25. Then Judge advises " "

26. At Judge sua sponte makes a comment that the letter is unsigned. She says that, as things stand now, she cannot consider the letter. The plaintiff chimes in that " " Judge offers that "

" (Judge does not offer that the defendant can object to this material being entered into evidence at this untimely date.)

27. At plaintiff speaks during defendant's time and, effectively objecting, corrects the judge on a point of procedure. (The point being, while Judge insisted that the defendant remain silent, Judge did not require the same from the plaintiff.)

28. At mid- plaintiff admits that an on-duty officer witnessed the incident who said " "

29. At mid- Judge interrupts defendant's pointed questioning of the plaintiff, admonishing him to " "

30. Then plaintiff makes a determination that defendant's question is " " and won't answer the question. Judge says nothing.

31. At late- Judge again admonishes the defendant " "

32. At Judge allows plaintiff to make an out-of-order response to defendant's cross examination.

33. At Judge sua sponte allows a witness for plaintiff to testify from the gallery instead of the witness stand.

34. At mid- the witness for the plaintiff ends her answer to plaintiff's final question. Judge sua sponte asks, " " To which the witness responds, " " Judge ' cuts her off saying, "]

**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.**