

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 20-308

Judge:

Complainant:

ORDER

February 3, 2021

The Complainant alleged a superior court judge (now retired) did not afford him an opportunity to be heard, engaged in ex parte communications, and made improper rulings in a civil 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).

Commission members Michael J. Brown and Christopher P. Staring did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on February 3, 2021.

Judicial Complaint Against Judge/Justice
Complaint Narrative With Supporting Exhibits & Appendix

Preface: Current _____, Justice and former _____ Court Judge _____ hearing conduct followed by his _____ Under Advisement Ruling ("Ruling") in _____ combine to repeatedly violate the Arizona Code of Judicial Conduct (2009)¹ as to Rule 2.6 (Ensuring the Right to be Heard), Rule 2.9 (Ex Parte Communication), Rule 1.1 (Compliance with the Law), Rule 1.2 (Promoting Confidence in the Judiciary) and Rule 2.2 (Impartiality and Fairness), by:

- Not permitting known parties (served but who had not yet Answered and absent at the hearing, including the undersigned) to have notice of and the opportunity to appear and oppose new relief sought verbally by _____ for Plaintiffs
- Allowing and encouraging extensive ex parte statements by _____ alleging unethical conduct by absent defendant _____ and relying on same for many "Findings" in the Ruling.
- Judging the merits of _____ counterclaim and ethical conduct in a prior case prematurely (without notice or opportunity to be heard) as stated in the Findings.
- A Ruling with many erroneous Findings of Fact lacking supporting evidence (later fully set aside as "based upon argument, not fact"²).
- Findings far exceeding the narrow scope of issues before the Court. The limited scope of issues is as stated by Judge _____: only a contract-based request for a stay of proceedings and arbitration.
- Causing many damaging results such as (1) two additional lawsuits, (2) _____ in subsequent legal and expert witness fees and costs for _____, (3) false support for _____' lawsuit against _____ and their State Bar Complaint against _____ and (5) _____ almost destroying _____ right to recover one cent for her \$ _____ judgment.

¹ The 2009 version of the Code of Judicial Conduct was still in effect in 2013 when the alleged misconduct took place and is relied upon here.

² _____ ruling of Hon. _____

Table of Exhibits

Exhibits. All cited exhibits are reproduced in the attached CD with the digital copy of this Complaint, hyperlinked to assist in the review of evidence. This lists all exhibits:

1. [Minute Entry Order of Court](#) in Court, approving Plaintiff's motion to withdraw and ordering that
2. [" \(seeking](#)
3. ["\);](#), denies most of the Complaint allegations and affirmatively alleges that variously breached the Assignment and Covenant Agreements.
4. ["\) filed her *Defendant/ Counterclaimant Motion to Stay and to Compel Arbitration on*](#)
5. [filed a *Third Party Complaint on*](#), against the Defendants, alleging breach of duty by attorney
6. [filed a *Response to Motion to Stay and Compel Arbitration on*](#), disputing the claimed right to arbitrate.
7. [Court Minute Entry Order dated](#), indicating hearing summary facts.
8. [Transcript of hearing.](#) [Emphasis supplied.]
9. [Notice of Appearance for Third Party Defendants \[Defendants\] dated](#)
10. [Under Advisement Ruling.](#) [Emphasis added.]
11. [Third Party Defendants' Motion to Reconsider and Set Aside or Modify Under Advisement Ruling.](#)
12. [ruling of Judge](#)

"), finding that representation of
was only nominal based on owning 100% of the
claims asserted by so
had no actual interest in that litigation to conflict with.

13. [Declaration of](#) (stating that she didn't understand what was going on in the case and just followed the advice of her long-time lawyers whom she trusted more than).
14. [An Agreement for Discipline by Consent \(Respondent Only\), signed by](#) on . This Agreement fails to mention the hearing before Judge or his Ruling, but it otherwise provides a fairly complete, independent and fully admitted by history of his long-term pattern of violations of Rule 42, Rules of the Supreme Court Ethical Rules, including but not limited to violations of 3.2 (Expediting Litigation), 3.3 (Candor Toward the Tribunal), 3.7 (Lawyer as Witness), 8.4(c) (Misrepresentation), and 8.4(d) (Prejudice to the Administration of Justice) in Cases 1, 2 and 3 listed above.³
15. [Authorization to Provide Full Disclosure of All Client Files and Related Information dated](#) , signed by (reserving right to assert privilege as to any disclosure beyond).
16. [Motion for Summary Judgment in](#) , filed (after the Ruling).

Synopsis. Judge , in a newly filed case's preliminary hearing known to be lacking some parties, on the limited issues of whether to arbitrate and/or stay the proceedings, conducted the hearing so as to create many *Code of Judicial Conduct* ("Code") violations, *see Ex. 8* hearing transcript, and then added more violations in his Ruling, *Ex. 10*, due to his complete reliance upon false statements of attorney without supporting evidence, and failure to follow several basic principles of the *Code*.⁴

Procedural History. The complex procedural history involves two prior Court proceedings creating the context for this third case which led to two more civil actions: five civil actions in all. Only the first three cases apply here. An independent but incomplete (no mention of) fact summary

³ *Ex. 14* Overview: attorney filed an insurance provider malpractice action against and its agent alleging negligent failure to adequately advise of the risks of only \$ coverage limits for their business auto. After raised the issue of legal malpractice under the same negligence theory as to the lawyer who incorporated ' business, law partner and son-in-law began a long series of misleading statements and unethical actions to protect from a potential malpractice claim by who was represented by , leading to false statements to Judge during the hearing. *See, e.g., Ex. 14.*

⁴ *See fn. 2.*

and procedural history is presented in *Ex. 14*, the Agreement for Discipline by Consent. *See* the attached Appendix for additional contextual explanations of the facts relating to this Judicial Complaint.

Case 1: . This motor vehicle negligence claim was by , represented by , against , represented by insurance defense counsel plus lawyers .

A trial stipulation (approved and ordered by the Court, later fully documented) provided that would accept a “ ” in claims in a pending Court action by) against and its agent for malpractice for allegedly failing to adequately advise the of the risks of only minimum \$ liability insurance coverage on their business and personal auto. ⁵

In return, agreed to provide with a Covenant Not to Execute on any subsequent judgment under terms that required to furnish ""⁶

The trial verdict of a \$ award led to judgment for far exceeding auto liability coverage limit of \$ with Insurance, **leaving at risk for potential liability of \$ plus interest if they breached the Assignment or Covenant.**

Case 2: (a.k.a. the **litigation**). Judge knew before issuing the Ruling that the second civil action involved ’ insurance malpractice claim alleging negligent failure to advise of the risks of choosing minimum auto insurance coverage limits against and its agent. The Court (Hon.) refused to allow motion to become a party Plaintiff as contemplated in the Covenant and Assignment agreements, so were required to

⁵ Both the Covenant and Assignment Agreements are reproduced in full as attached exhibits to *Ex. 3* herein, Answer and Counterclaim.

⁶ Unknown to Judge (due to his decision to rule before allowing notice or opportunity to be heard by or unethically failed to disclose material information to the Court and : that was identified as a potential non-party at fault by before the Covenant and Assignment were agreed to as learned soon after becoming ’ attorney of record. *See Ex. 14* ¶¶ 17-25 for stipulated admissions confirming this.

continue as nominal plaintiffs pursuant to the terms of the Assignment and Covenant in Case 1 and Judge [redacted] said ruling.

[redacted] replaced [redacted] as attorney of record for [redacted], who continued as Plaintiffs in name only on behalf of [redacted] 100% assigned ownership of all claims pursuant to the terms of the Covenant and Assignment agreements (*See Ex. 3, [redacted] Answer and Counterclaim, for attached copies of the Covenant and Assignment Agreements).*

[redacted]”) as defendant in Case 2 filed a motion for discovery sanctions for [redacted] prior assertion of “attorney client privilege” in denying requested discovery relating, *inter alia*, to [redacted] possible malpractice. Differences arose after [redacted] replaced [redacted] as attorney of record in the [redacted] litigation when [redacted] through [redacted] asserted attorney-client privilege to prevent [redacted] from learning the facts needed to defend the motion and to learn whether [redacted] had potential liability.⁷ questioned whether [redacted] were complying with their contracted duty to “furnish [redacted] . . .” disclosure duty.

Unknown by Judge [redacted] due to his too-early Ruling, important additional material facts in the [redacted] litigation relating significantly to the merits of Case 3, [redacted] (see Appendix Part Two: [redacted] case history (attached), and below quoted portions of *Ex. 14*, the Agreement for Discipline by Consent):

- [redacted] requested information from [redacted] through [redacted] consistent with their contracted duty to supply [redacted]” which [redacted] through [redacted] refused to provide due to “ [redacted] .”
- The requested information was necessary to defend a discovery motion requesting sanctions by [redacted] (later successful), and so [redacted] could determine if [redacted], the business lawyer for [redacted] before the Case 1 auto crash, and [redacted] law partner and son-in-law, had committed the same malpractice for failure to advise as to adequate auto liability insurance coverage that [redacted] (and now [redacted] by Assignment [redacted]

⁷ [redacted] potential liability for malpractice was by then known by [redacted] to have been unethically concealed by [redacted] and [redacted] in the Case 1 proceedings and continued to be concealed. *See fn. 6.*

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PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
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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.**