

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 21-023

Judge:

Complainant:

ORDER

The complainant alleged a justice of the peace did not timely issue or distribute judgments and erroneously altered the interest rate under the judgments.

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.

After review, the Commission found that the judge failed to follow the law regarding interest rates and that his staff failed to timely distribute judgments. While this was improper under Rules 2.5(A) and 2.12(A) of the Code of Judicial Conduct, the Scope Section of the Code provides that not every transgression will result in the imposition of discipline. The Commission decided, after considering all the facts and circumstances, to dismiss the Complaint pursuant to Commission Rules 16(b) and 23(a), but to issue a warning letter to the judicial officer reminding him to ensure his staff timely distributes rulings and to research and follow the law regarding interest rates.

Commission members Roger D. Barton, Barbara Brown and Delia R. Neal did not participate in the consideration of this matter.

Dated: September 17, 2021

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were distributed to all appropriate persons on September 17, 2021.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2021-023

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.

I sued a former client for payment of his balance with my firm plus interest per his fee agreement. The client agreed to pay interest on his unpaid balance at the rate of 1.5% per month. (Exhibit 1). I filed for default on _____ (Exhibit 2). I filed my motion for entry of judgment on _____ (Exhibit 3). After _____ passed, I followed up via telephone. After several more follow ups, I finally received a judgment on _____ (Exhibit 4). The judge signed the judgment on _____ (Exhibit 5). The deadline to file a notice of appeal in a civil case in Justice Court is 14 days. Rule 4(a), Superior Court Rules of Civil Appellate Procedure.

Furthermore, the judge entered a judgment that is legally indefensible. Rather than grant a judgment that accrues interest at the contract rate, he granted interest at the judgment rate. (Exhibit 5). Arizona statute sets forth:

Interest on any loan, indebtedness or other obligation shall be at the rate of ten per cent per annum, unless a different rate is contracted for in writing, in which event any rate of interest may be agreed to. Interest on any judgment that is based on a written agreement evidencing a loan, indebtedness or obligation that bears a rate of interest not in excess of the maximum permitted by law shall be at the rate of interest provided in the agreement and shall be specified in the judgment.

ARS § 44-1201(A). Arizona has no limits on allowable interest. See, e.g., Rascon v. Transamerica Financial Corp., 168 Ariz. 201, 203, 812 P.2d 1019, 1021 (Ariz. App. 1990). Therefore, the judge had no discretion to award his own interest rate and should have left the contractual interest rate in the judgment. In this case, the parties agreed to interest at the rate of 1.5% per month. Therefore, Arizona law requires that the judgment bear interest at the rate of 1.5% per month.

Therefore, the judge entered a default judgment _____ after the request for entry of judgment that includes interest in an amount not pursuant to the contract, and then delayed sending the judgment until well after the time to appeal expired.

The judge violated Rule 1.2 because his conduct undermines confidence in the judiciary.

The judge violated Rule 2.2 because the judgment is unfair. The litigant went to court with a contract that was undisputed and the judge gave a random result, reducing the interest on the judgment for no apparent reason. Then the judge waited until well past the deadline for an appeal to send the judgment to the litigant

The judge violated Rule 2.5 by failing to follow well-established law (competence) and then waiting well past the deadline to file a notice of appeal to send the judgment to the litigant and waiting _____ to enter the judgment (diligence).

The judge may have violated Rule 2.12 by failing to supervise court staff, resulting in the failure to send a judgment until after the deadline to file a notice of appeal.

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EXHIBIT 1

FEE AGREEMENT WITH ATTORNEY
DISSOLUTION OF MARRIAGE

DATE: _____

THIS AGREEMENT made between _____, hereinafter called "client"
and _____, hereinafter called "attorney", to-wit:

1. **EMPLOYMENT-LEGAL SERVICES:** Client hereby employs attorney to draft a consent decree in a dissolution of marriage matter. Attorney will not appear as attorney of record. Such services shall include but not be limited to consultations - both in the office and telephone consultations, research, preparations, correspondence, pre-trial or pre-hearing discovery, investigations, negotiations, actual trial or hearing time including travel time and court appearance time or any other time or services provided by the attorney concerning the matter.

2. **FEES:** Client agrees to pay an initial deposit of _____; this deposit shall be paid prior to attorney providing any legal services and the hourly charges will be credited against it. The minimum retainer is the minimum amount necessary before the firm agrees to undertake client's representation and take responsibility for this matter on behalf of client. This minimum amount is to ensure the availability of the firm to accept representation and based upon the fact that the firm may decline other matters as a direct result of having accepted representation in this matter. The RETAINER, once earned, shall be retained by the firm regardless of the outcome of the matter. All fees are considered earned when billed and client agrees that attorney will deposit all fees paid in his trust account. If and whenever your initial deposit is exhausted, we reserve the right to demand further deposits, each up to the maximum of the initial deposit amount or we can bill you monthly and you will pay any balance due immediately. You agree to pay all further deposits or monthly billings within ten (10) days of our demand. Any unused deposit at the conclusion of our services will be refunded. There is a \$50.00 charge for bad checks (returned checks) to cover attorney and secretarial time.

If you elect to make payments by credit card, client acknowledges and agrees that all service fees will be paid by client. Client further acknowledges that such servicing rates are subject to change without warning.

3. **CONDITIONS:** This agreement will not take effect, and attorney will have no obligation to provide legal services until client signs this agreement and pays the deposit called for herein.

4. **ATTORNEY'S SCOPE AND DUTIES:** Client hires attorney to provide legal services as stated in this agreement. Attorney shall provide those services reasonably required to represent client, and shall take reasonable steps to keep client informed of progress and to respond to client's inquiries. If this matter concerns litigation, this action is at the Superior Court level and this agreement is not for any trials, hearings or actions above the Superior Court level. After judgment we will not represent you on appeal, in post judgment actions or in execution or collection proceedings unless you and we make a different agreement in writing.

5. **CLIENT'S SCOPE AND DUTIES:** Client shall be truthful with attorney, cooperate with attorney, keep attorney informed of developments, abide by this agreement, pay attorney's bill on time, keep attorney advised of client's address, telephone number and whereabouts, cooperate in the preparation and trial of the case, appear upon reasonable notice for depositions, court appearances and consultations with the attorney, and comply with all reasonable requests made in connection with the preparation and presentation of the case. The client acknowledges and understands that the law firm of _____ has numerous clients at any given time and, while each client is important, there are some times when these other client's cases may take precedent over this case. The client understands that if any papers are accidentally sent by the court (including notices of court procedures and notices of dismissal of the dissolution) to the client, the client must notify the attorney immediately. If any documents are received either from the court or the spouse, the client must notify the attorney immediately.

6. **LEGAL FEES AND BILLING PRACTICES:** You agree to pay by the hour at our prevailing rates for the time spent on your matter by our legal department. Our current hourly rates for legal personnel (and other billing rates) are as follows: Attorneys - \$250.00 per hour; paralegals - \$135.00 per hour; Clerical/Secretary - \$50.00 per hour; Copies - \$.25 per copy; Faxes - \$2.00 per page. We will charge you for all time expended on your matter at the below rates including the time we spend on telephone calls relating to your matter, including calls with you or opposing counsel. The legal personnel assigned to your matter will

confer among themselves about the matter as required. When they do confer, each person will charge for the time expended. We will charge for waiting time and for travel time in court and elsewhere. We charge for our time with the initial minimum unit of .25 hour (15 minutes) and all additional time billed in .1 (6 minute) increments. The rates on this schedule are subject to change on 10 days written notice. If you decline to pay any increased rates, we will have the right to withdraw as your lawyers. Additional charges may be rendered if the outcome of the matter warrants the same.

7. **COSTS AND EXPENSES:** In addition to paying legal fees, client shall reimburse attorney for all costs and expenses incurred by attorney, including, but not limited to, process servers' fees, fees fixed by law or assessed by courts or other agencies, court reporters' fees, expert witness fees and all other costs and expenses incurred on client's behalf. Client authorizes attorney to incur all reasonable costs and to hire any investigators, consultants or expert witnesses reasonably necessary in attorney's judgment.

8. **STATEMENTS:** Attorney shall send client periodic statements for fees and costs incurred. Client shall pay attorney's statements within ten (10) days after each statement's date.

9. **LIEN:** Client hereby grants attorney a lien on any and all claims or causes of action that are the subjects of attorney's representation under this agreement. Attorney's lien will be for any sums due and owing to attorney at the conclusion of attorney's services. The lien will attach to any recovery client may obtain, whether by arbitration award, judgment, settlement or otherwise and also attach to any and all matters or amounts or property which legally are in attorney's possession. Attorney shall have all general possessory or retaining liens and all special or charging liens known to common law. Any attorney representing the client in this action will honor this lien as if specifically signed by the client. Transfer of the file will not negate attorney's charging lien for all amount due under this agreement. An attorney's charging lien applies to any amount recovered, any amounts paid to the attorney for the client's benefit or any amounts which the client has a claim against which come into the attorney's possession and a retaining lien applies to the client's file to secure payment of fees and costs.

10. **INTEREST AND COLLECTION COSTS:** Client agrees to pay interest at the rate of ONE AND ONE-HALF (1 1/2) PERCENT PER MONTH (which is an annual percentage rate of EIGHTEEN PERCENT) on the outstanding balance due beyond ten (10) days after presentation of each statement, the accrued interest to be deducted from each monthly payment with the balance being applied to principal. It is further understood that, should recourse to litigation be necessary to collect on this obligation, the client will pay an additional amount incurred for reasonable attorney's fees in the collection litigation plus costs incurred therein. If attorney employs a collection agency client will pay all charges made by the collection agency. Collection agency costs, charges and fees will be added to the remaining principal amount owed to the attorney. The client understands and agrees that the attorney is not in the business of extending credit for his services nor is this agreement intended to be an extension of credit to the client.

11. **DISCHARGE AND WITHDRAWAL:** Client may discharge attorney at any time. Attorney may withdraw with client's consent or for good cause. Good cause includes client's breach of this agreement, non-payment of fees or costs as provided for herein and within the time stated herein, client's refusal to cooperate with attorney or to follow attorney's advice, client not being truthful or any other fact or circumstance that would render attorney's continuing representation unlawful, unethical or not feasible. The firm has the right to withdraw from your representation should you verbally abuse or use profanity to either the attorney or the staff. In the event the client discharges the attorney, the client agrees to pay attorney for all services rendered by attorney calculated on the basis of actual work hours expended at the rate of - Partner, \$250.00 per hour, Associate, \$200.00 per hour and for all other fees, charges and expenses incurred pursuant to this agreement prior to the date of such discharge or withdrawal. If court permission is required to be acquired client will pay attorney for all services performed until the court signs the withdrawal. Said sum shall be paid by client to attorney within ten (10) days all amounts charged to client pursuant to this agreement. Transfer of the file will not negate attorney's charging lien for amount due under this paragraph and any attorney representing the client will honor this lien as if specifically signed by the client. Client also agrees to reimburse the attorney for any expenses advanced by the attorney on client's behalf as provided for in this agreement.

12. **SETTLEMENT:** Client and attorney mutually agree that they will make no settlement without the approval of each other. If the attorney obtains an offer in settlement that, in his opinion, is reasonable, and the client desires not to accept, attorney will have the right to withdraw from representation of the client. In such an event, the client agrees to promptly pay attorney for all services rendered by attorney prior to the date of such withdrawal. Payment of all fees and costs due shall be made within ten (10) days of withdrawal.

13. **CONCLUSION OF SERVICES:** When attorney's services conclude, all unpaid charges shall become

**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.**