State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 21-188

Judge:

Complainant:

ORDER

The Complainant alleged that a pro tem justice of the peace was not impartial, had poor demeanor, and should have recused earlier in the proceedings.

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 judicial officer permitted ex parte communications and did not allow a party to be heard on a matter. While this was improper under Rules 1.2, 2.6(A), and 2.9(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 of his obligations to not initiate, permit, or consider ex parte communications as well as to ensure the litigants' right to be heard.

Dated: January 26, 2022

FOR THE COMMISSION

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

Copies of this order were distributed to all
appropriate persons on January 26, 2022.

JUDICIAL CONDUCT COMPLAINT
AGAINST JUDGE
FILED 2021

I will preface this complaint by saying, I appreciate the ability to complain about ; due to the extremely poor job this Judge did in handling our garnishment case. That said, I do so with much reluctance and trepidation. I fear reprisal and retaliatory adverse rulings on my future court appearances. It will not be OK for the Court judges to say " ". And you won't/can't fix a Judge's errors, so, frankly, " ?"

I have much to lose and nothing to gain by filing this complaint. But here I go, doing it anyway.

Judge (hereinafter "the Judge") is in violation of the following Rules (from Arizona Code of Judicial Conduct,):

- Rule 2.2, Impartiality and Fairness
- Rule 2.5, Competence, Diligence, and Cooperation
- Rule 2.11, Disqualification

I am going to attach several documents and the oral record for your review. I'm not going spend hours sorting through everything for you. I am simply going to bullet-list and brief my allegations, and let you consider them in the context of the attachments.

Allegations:

1. The Judge was not fair and impartial. In totality, I concluded that he was acting as an advocate for the defendant/garnishee (we are the plaintiffs/creditors). We fully complied with all aspects of the garnishment process. The garnishee complied with zero elements of the process. Nonetheless, the Judge entirely and erroneously ruled in the Garnishee's favor, while nothing was done in our favor. Examples:

    - At the show cause/default judgment hearing, the Garnishee, who was required to attend and to show cause for his non-compliance with the law (that person being of a local franchisee), in fact, did not. He sent his daughter in his place. She is not the Garnishee or the Garnishee's attorney. Therefore, she had no standing. Nonetheless, the Judge swore her in, took her testimony, and used it to craft a decision adverse to us.
    - The Judge ruled that our legal service on the Garnishee was insufficient, because we served the Garnishee's general manager (which our service agent did at the Garnishee's direction) rather than the statutory agent (who coincidentally is also the Garnishee). The Judge said that we must serve the statutory agent. That is incorrect. The civil procedure rules specify several categories of individuals that can be served at a corporation. The universe of case law validates service can be effected on many corporate entities, it does not have to be the statutory agent. Furthermore, Courts are to presume that service is legal and sufficient unless a defendant raises the issue. I should not have to justify myself or to fight with the Judge, and in essence " ", on this element.

- The Judge also ruled against us for the default judgment, apparently because of his erroneous " " ruling, and in spite of the fact that the garnishee did not attend the hearing and show cause. We were entitled to the default judgment, but did not receive it.
- The Judge held us to high, impossible-to-attain standards with respect to our performance on the garnishment, while holding the Garnishee to no standards at all. This pertains to what the Judge accepted as legal service or delivery. On the one hand, the Judge refused to accept our legal service upon the company's general manager as sufficient. Then, on the other hand, he accepted testimony from the garnishee's daughter that the company had emailed us an <u>unsigned</u> Answer to the Writ on (the day before the hearing) and determined that delivery/service was sufficient (the correct answer is, THE GARNISHEE IS REQUIRED TO PERSONALLY SERVE THE SIGNED ANSWER TO THE WRIT upon us, as the Creditors). That the Judge would find that an email of an unsigned Writ, which came not from the Garnishee but from a payroll clerk, is valid service, demonstrates his sloppy attitude toward his job, and an appalling ignorance of the law.
- At the hearing, the Judge gave the not-in-attendance Garnishee more time to Answer the Writ. This violated our right to receive a default judgment under the law. He allowed the Garnishee 10 extra business days, which is arbitrary, capricious, and nowhere authorized by the law, and violates our rights and impedes our ability to appeal the ruling within the 14-day justice court window. And then finally, he accepted as valid, an emailed Answer sent only to the Court that arrived on the 10th business day, which violates the law regarding what constitutes legal service of the Answer upon us as the Creditors.
- It is also possible that this Judge , while not impartial, may be " ". In that, he was navigating the treacherous garnishment waters in such a manner as to frustrate our ability, as the Creditors, to ever achieve the final goal of obtaining a signed " " from the Court. Thereby, benefiting his friends at s. All of the Court's actions could be deviously designed to place us into a box, making it impossible for us to get that legally-required Order.
- The Judge has now recused himself, without explanation. This tells me he had pre-existing conflicts, but heard the case anyway. During that time, he did everything he could to harm us and to help his friends. But now that it is clear to him that I have refused to roll over and accept his unsupportable rulings, he has decided to run and hide.

2. The Judge was incompetent. His demeanor at the hearing was halting, bumbling, and borderline incoherent. He does not appear to understand even the basic rules of civil procedure or the tenets of garnishment law. Listen to the recording.

    - The Judge ruled that our legal service on the Garnishee was insufficient, because we served the Garnishee's general manager (which our service agent did at the Garnishee's direction) rather than the statutory agent (who coincidentally is also the Garnishee). The Judge said that we can only serve the statutory agent. That is incorrect. The civil procedure rules specify several categories of individuals that can be served at a corporation. The universe of case law validates service can be effected on many corporate entities, it does not have to be the statutory agent. Furthermore, Courts are to presume that service is legal and sufficient unless a defendant raises the issue. I should not have to justify myself or fight with the Judge, and in essence " ", on

this element.

- The Judge also ruled against us for the default judgment, apparently because of his erroneous " ' ruling, and in spite of the fact that the garnishee did not attend the hearing and show cause. We were entitled to the default judgment, but did not receive it.
- The Judge held us to high, impossible-to-attain standards with respect to our performance on the garnishment, while holding the Garnishee to no standards at all. This pertains to what the Judge accepted as legal service or delivery. On the one hand, the Judge refused to accept our legal service upon the company's general manager as sufficient. Then, on the other hand, he accepted testimony from the garnishee's daughter that the company had emailed us an unsigned Answer to the Writ on (the day before the hearing) and determined that delivery/service was sufficient (the correct answer is, THE GARNISHEE IS REQUIRED TO PERSONALLY SERVE THE SIGNED ANSWER TO THE WRIT upon us, as the Creditors). That the Judge would find that an email of an unsigned Writ, which came not from the Garnishee but from a payroll clerk, is valid service, demonstrates his sloppy attitude toward his job, and an appalling ignorance of the law.
- At the hearing, the Judge gave the not-in-attendance Garnishee more time to Answer the Writ. This violated our right to receive a default judgment under the law. He allowed the Garnishee 10 extra business days, which is nowhere authorized by the law, and violates our rights and ability to appeal the ruling. And finally, he accepted an emailed Answer sent only to the Court that arrived on he 10th business day as valid, which violates the law regarding what constitutes legal service of the Answer upon us as the Creditors.
- It is also possible that this Judge , while not impartial, may be " ". In that, he was navigating the treacherous garnishment waters in such a manner as to frustrate our ability, as the Creditors, to ever achieve the final goal of obtaining a signed " " from the Court. Thereby, benefiting his friends at All of the Court's actions could be deviously designed to place us into a box, making it impossible for us to get that legally-required Order.

3. The Judge should have disqualified himself from this case before it began. We hope it is clear that the Judge showed extreme partiality toward the Garnishee, and/or exhibited gross ignorance and incompetence. Either or both ways, the Judge had an obligation to realize he should not be hearing this case BEFORE the case was called, not long after. The damage, and there has been a lot of it, was done by the time the Judge finally decided maybe he ought to step away.

Please review the attached documents and audio recording for further amplification of our argument. While I know you cannot ' ', I want you to know that I have had to waste in excess of 20 hours trying to fix this matter. Hours I should not have had to devote, had the Judge acted impartially and with a proper grasp of the applicable rules and laws. It is angering and frustrating to have to be doing this work. Everyone should be able to expect judges to know the laws and to " " – we should never have to spend our time and money, or hire attorneys where they are not needed, to fight over stupid stuff. Justice should be blind, not deaf and dumb.

PLAINTIFFS' MOTION FOR A JCRCP RULE 141
CORRECTION/SET ASIDE OF JUDGMENT OR ORDER
AND REQUEST FOR SUMMARY JUDGMENT AGAINST GARNISHEE

IN RE:

RELATES TO THE COURT'S ADVERSE DECISION
AT SHOW CAUSE HEARING,

The plaintiffs, and hereby request the Court to set aside its order against the plaintiffs from the show cause hearing, and to enter a summary judgment against the garnishee/defendant, and for the plaintiffs, in the amount of $

The plaintiffs assert that:

1. The Court erred in its finding that plaintiff's service upon garnishee/defendant was improper/insufficient/inadequate, and
2. If not for this errant Court finding, the plaintiffs would have prevailed and would have been granted a judgment against for $

The applicable Justice Court Rules of Civil Procedure (JCRCP) are Rule 141 and Rule 113, see Attachment A.

Argument for Setting Aside the Order

The plaintiff asserts that the Court was mistaken in its reading, understanding, and application of Rule 113 as regards process service upon the garnishee. When queried by the plaintiff, The Court stated that according to JCRCP Rule 113, the process service had to be made upon statutory agent (s), and that no one else could be served. At the hearing, it appeared to the plaintiff that the Court was unsure about its interpretation, and the Court was worried about an appeal on the issue from the garnishee).

The plaintiff asserts that the Court's interpretation of JCRCP Rule 113 is incorrect, based both on a " " test of the Rule, and on the case law. This Rule lists various (at least 4) alternatives for process service on a corporation. That a plaintiff may serve process upon a person other than a corporation's registered/statutory agent is an unambiguous fact, which is recognized by the legal community as settled law. In fact, the plaintiff's research found no contradictory cases/legal cites (that is, the plaintiff found nothing saying that process on a corporation must/only can be served upon the registered/statutory agent).

In our matter, the person served with process ( ) was designated by as its " ".

Discussion and cites, which should provide the Court with substantial, clear, and convincing evidence on this issue, follows below.

One relevant case on point is Williams v Geico (source: https://casetext.com/case/williams-v-geico-

corporation). Here are some relevant excerpts from the case's "insufficient service of process" discussion:

To satisfy constitutional requirements, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. Actual receipt of notice is not necessary.

Service on a corporation may be accomplished "by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment *or law to receive service of process." The law is clear that "the party on whose behalf service is made has the burden of establishing its validity when challenged."*

Delivering a summons and complaint to a corporate representative who is not an officer, a managing or general agent, or an agent authorized to accept service fails to satisfy the requirements (for example, finding insufficient service of process on a corporation when summons and complaint were left at receptionist's desk, or on a public university when mail room clerk signed for a Federal Express package not addressed to an officer or agent of the university).

A plaintiff bears the burden of showing that "the process server had cause to believe that the party was authorized to receive service." *Service of process was properly effected when a secretary looked at the summons and complaint and inaccurately stated she was authorized to accept the documents before the process server served her ("Plaintiff should not be penalized for the purportedly inaccurate representation by one of [defendant's] employees", finding service of process sufficient when a corporate secretary inaccurately stated she was authorized to accept service on defendant's behalf).*

A plaintiff must use "due diligence before service of process to determine the proper agent *and to conform to the requirements of the rule (noting that* ***timely calls to corporate headquarters*** *or the Secretary of State* ***to inquire as to the proper agent for service of process could indicate due diligence****); A process server should, at the very least, ask who is authorized to accept service of process.*

With regard to the meaning of "managing or general agent", these terms have been extensively tested in federal cases. Here are some relevant passages (source: https://casetext.com/case/sullivan-realty-v-syart-corp):

The phrase "managing or general agent" is used in a majority of the states and has been interpreted in many federal cases*. In the 1893 case of Taylor v. Granite State Provident Assn., the Court of Appeals undertook to define the term "managing agent" as used in the laws governing civil practice and adopted the distinction known to the common law as stated above, namely, that* ***"[a] managing agent must be some person invested by the corporation with general powers involving the exercise of judgment and discretion" as distinguished from a mere employee "who acts in an inferior capacity and under the direction and control of superior authority****, both in regard to the extent of his duty and the manner of executing it" .*

In analyzing the Federal cases, it is important to note that at common law ***the actual authority of a person to act as the agent of another could be created*** *in one of two ways, either expressly by written or spoken words, or impliedly, from written or spoken words, or* ***from other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him to so act on the principal's account, through appointment.***

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.