

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 21-213

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Judge:

Complainant:

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**ORDER**

December 15, 2021

The Complainant alleged that a superior court judge made incorrect legal rulings.

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).

Copies of this order were distributed to all appropriate persons on December 15, 2021.

21-213

**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 believe that Judge \_\_\_\_\_ has violated the judicial code of ethics. Judge \_\_\_\_\_ actions have the appearance of partiality and defy logic or any basis in the law. I am not bringing this complaint because I am a disgruntled \_\_\_\_\_ unhappy with a ruling. My \_\_\_\_\_ are being harmed and are losing faith in the judicial process because of Judge \_\_\_\_\_. He has shown \_\_\_\_\_ instances of partiality to Plaintiff' s case and refuses to follow the law. Also, he essentially gave Plaintiff and his counsel a slap on the hand for directly soliciting a perjured declaration and testimony from one of my \_\_\_\_\_. Both the attorney and the client were involved. My \_\_\_\_\_, who do not have financial means, are being forced to undergo the expense and trauma of a trial on bogus legal claims. There is no legal merit, and the claims should have been dismissed on summary judgment.

Specifically, \_\_\_\_\_ inexplicably found an egregious and punitive ( " \_\_\_\_\_ " ) reasonable without any supporting evidence from Plaintiff. Judge \_\_\_\_\_ by fiat declared that the \_\_\_\_\_ was reasonable without engaging in a reasonableness analysis. He has also gutted Arizona' s rule from Orca Commc' ns Unlimited, LLC v. Noder, 233 Ariz. 411, 314 P.3d 89, (Ariz. App. 2013) holding that employers have no protectable interest in potential customers or former clients who have no current business ties by carving out a meritless exception.

The underlying facts are that Defendants were newbie \_\_\_\_\_ and joined Plaintiff' s \_\_\_\_\_. After joining they were forced to sign an egregious \_\_\_\_\_ containing non-compete and anti-piracy clauses. The \_\_\_\_\_ claims that \_\_\_\_\_ leads or prospects, \_\_\_\_\_ and former \_\_\_\_\_ all belong to Plaintiff. If Defendants leave the team, they are barred from working with anyone they merely met while working on Plaintiff' s team for a period of \_\_\_\_\_. If they do work with anyone, they must turn over \_\_\_\_\_ of their commissions to Plaintiff. Plaintiff is claiming over \$ \_\_\_\_\_ in bogus damages. The \_\_\_\_\_ is invalid and unenforceable as a matter of law for the reasons set forth below.

Plaintiff has the burden of proving that this \_\_\_\_\_ is no more restrictive than necessary to protect a legitimate \_\_\_\_\_ interest. The burden is on the employer to prove a protectable interest. Bryceland v. Northey, 160 Ariz. 213, 217, 772 P.2d 40 (Ariz. App. 1989). Arizona law requires a reasonableness analysis to determine the validity of the restrictive covenant. Judge \_\_\_\_\_ did not engage in a reasonableness analysis in his verbal summarv judgment decision nor in his written order. See attached Minute Entry, dated \_\_\_\_\_ ( " \_\_\_\_\_ " ). He cannot because there is no evidence to analyze. He also denied my motion for reconsideration requesting a reasonableness analysis and pointing an inconsistency in his ruling. In his summary judgment minute entry, Judge \_\_\_\_\_ states without analysis, " \_\_\_\_\_ " See Order, p.2. Further below in the Order, it also states:

"

" p.4.

21-213

**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.

These two sentences are inconsistent. If the Order notes that most transactions resolve within \_\_\_\_\_ Defendants fail to see how the Judge \_\_\_\_\_ arrived at his determination that \_\_\_\_\_ duration is reasonable as a matter of law. This case involves a dispute over commissions that were earned well beyond that \_\_\_\_\_ period. The ruling is arbitrary and capricious.

The \_\_\_\_\_ also fails to state any \_\_\_\_\_ boundaries and it requires a \_\_\_\_\_ % punitive referral fee. Plaintiff presented nothing—no evidence—to support either of terms either.

Another issue I briefed is the Arizona Court of Appeals decision in Orca Commc' ns Unlimited, LLC v. Noder, 233 Ariz. 411, 314 P.3d 89, (Ariz. App. 2013) that states an employer does not have a protectable interest in potential customers or former clients who no longer have any current business ties with the employer. There are no exceptions: potential customers and former clients are not protectable. The undisputed facts show that the underlying buyers/sellers nothing but speculative \_\_\_\_\_ leads while Defendants were on Plaintiff' s team. It was only after Defendants left the team that these people actually made the decision to \_\_\_\_\_. The undisputed evidence shows that in every case, these people reached out to Defendants and invited them to handle their business. Only one \_\_\_\_\_ was a \_\_\_\_\_ but he had no current business ties to Plaintiff. Plaintiff produced no evidence that he had any current business ties with the \_\_\_\_\_ because there is none.

Judge \_\_\_\_\_ also side-stepped the ruling from Orca by stating that \_\_\_\_\_ is reasonable as long as there was a " \_\_\_\_\_ " There were simply no transactions involved. Plaintiff did not show any evidence of a transaction because there were none. If all an employer has to do to escape the Orca rule is to claim potential customers and former clients were assigned, the Orca ruling is useless. Judge \_\_\_\_\_ should have followed the law on this as well. If Plaintiff wants an extension of the law, it should bear the burden to take it up on appeal.

In a tangential matter, Judge \_\_\_\_\_ again favored the plaintiff. Last year, Plaintiff and his counsel conspired together and solicited perjured testimony from my \_\_\_\_\_ to support their motion for summary judgment. They approached \_\_\_\_\_ directly and proposed that she sign a declaration full of false statements in return for being dismissed from the case. Perjury is a Class 4 felony. Following a hearing on \_\_\_\_\_, Judge \_\_\_\_\_ essentially gave them a slap on the hand. \_\_\_\_\_ did not bother to appear at the hearing. Defendants' brief set forth case law showing that this egregious misconduct warranted dismissal of Plaintiff' s case. Instead of dismissal and in spite of the plaintiff not even bothering to appear, Judge \_\_\_\_\_ refused to dismiss the case and imposed only monetary sanctions. Plaintiff' s \_\_\_\_\_ is being formally investigated by \_\_\_\_\_ for his part in the conduct.

- I believe that Judge \_\_\_\_\_ actions violate:
1. RULE 1.2 - Promoting Confidence in the Judiciary
  2. RULE 2.2 - Impartiality and Fairness
  3. RULE 2.5 - Competence, Diligence, and Cooperation

COURT OF ARIZONA  
COUNTY

CLERK OF THE COURT

HONORABLE

v.

MINUTE ENTRY

Courtroom

This is the time set for Oral Arguments regarding Plaintiff's Motion for Summary Judgment, filed on \_\_\_\_\_, and Defendants' Revised Cross Motion for Summary Judgment, filed on \_\_\_\_\_ Plaintiff \_\_\_\_\_, is represented by counsel. \_\_\_\_\_ appearing via Court Connect. Defendants \_\_\_\_\_, and \_\_\_\_\_ are represented by counsel, appearing via Court Connect.

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A record of the proceedings is made digitally in lieu of a court reporter.

Arguments are presented.

The Court made its findings and conclusions on the record from the Bench. The following is a summary of the Court's Rulings, based on the facts and case law it considered in making its oral pronouncements.

Plaintiff sought summary judgment on his causes of action for breach of contract, breach of the covenant of good faith and fair dealing, misappropriation of trade secrets, breach of fiduciary duty, tortious interference with contractual relationship, and aiding and abetting tortious conduct. Defendants' cross motion sought summary judgment that Plaintiff's causes of action above had no merit as a matter of law.

Subject to possible defenses, the parties knowingly agreed to the ( ). The terms of the are clear and unambiguous, and the interpretation of the is a question of law for the Court. *ELM Retirement Center, L.P. v. Callaway*, 226 Ariz. 287, ¶15 (App. 2010). The law generally presumes, especially in commercial contexts, that private parties are best able to determine if particular contractual terms serve their interests. *1800 Ocotillo, LLC v. WLB Group, Inc.*, 219 Ariz. 200, ¶8 (2008). A court must enforce a valid contract according to its terms, even though enforcement may be harsh. *Freedman v. Continental Service Corp.*, 127 Ariz. 540, 545 (App. 1980). The is a valid contract between the parties.

Although Defendants' counsel contended that the duress defense was not raised in the summary judgment proceedings, Plaintiff's summary judgment pleadings argued that the duress defense was not available to Defendants as a matter of law. Because the issue was raised, the Court addressed it. Contracts procured under duress are unenforceable. *USLife Title Co. of Arizona v. Gutkin*, 152 Ariz. 349, 356 (App. 1986). However, an act or threat constituting duress must have placed the party entering into the transaction in such fear as to preclude the exercise of free will and judgment. *Dunbar v. Dunbar*, 102 Ariz. 352, 355-6 (1967). There is some evidence of duress, especially as to Defendant . Nonetheless, the duress defense is a genuine issue of material fact, on which the Court cannot rule as a matter of law.

The contains both a non-compete clause, and an anti-piracy clause. Although the did not prohibit Defendants from competing with Plaintiff's it has a non-compete effect by the inclusion of a hefty penalty for competing. Defendants argued that the is unenforceable as being too broad, because it prevents Defendants from competing with Plaintiff's who are known or unknown to Defendants. The does not say that. The relevant portion of the provides:

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It is understood that all \_\_\_\_\_ referred to the Team Member by the \_\_\_\_\_ are, and always will be, \_\_\_\_\_ The Team Member promises not to work with these \_\_\_\_\_ after he/she terminates this agreement for a period of \_\_\_\_\_. If for any reason, the Team Member works with any of \_\_\_\_\_, a \_\_\_\_\_ % referral fee will be paid by the Team Member to \_\_\_\_\_ on the close of escrow of any of these transactions.

Team Member understands and agrees that any \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ or \_\_\_\_\_ provided to them by \_\_\_\_\_ is a transaction specific assignment, and that the \_\_\_\_\_ or \_\_\_\_\_ and any and all referrals by extension are considered part of the \_\_\_\_\_ list of, and owned by,

Team Member agrees to make clear to any \_\_\_\_\_, \_\_\_\_\_ or \_\_\_\_\_ with who they work at the direction of \_\_\_\_\_ that the relationship is with \_\_\_\_\_ and that any \_\_\_\_\_ from them provided directly to a Team Member will be immediately forwarded to \_\_\_\_\_ for review, acceptance and assignment.

The former Team Member agrees that this “\_\_\_\_\_” shall be valid regardless of which Broker the former Team Member may be with for the \_\_\_\_\_ ( ) period following the termination of the agreement and relationship, whether it is \_\_\_\_\_ or any other \_\_\_\_\_ in The State of Arizona, and that provision of a copy of this agreement to \_\_\_\_\_ or any other \_\_\_\_\_ in The State of Arizona shall serve as confirmation of instruction by the former Team Member that the referral fee is due to \_\_\_\_\_, or the then current \_\_\_\_\_ for the benefit of \_\_\_\_\_.

The \_\_\_\_\_ sanctions apply only to \_\_\_\_\_ or \_\_\_\_\_ referred to an agent on a transaction specific assignment. The Court finds that this restriction is not unreasonable, as long as it applies to the \_\_\_\_\_ or \_\_\_\_\_ for a transaction specific assignment. By its very terms, it does not apply to other non-referred transactions with those \_\_\_\_\_. A transaction specific assignment is subject to modification or termination based on intervening facts. For example, this could include a situation where the “\_\_\_\_\_” fired Plaintiff for dissatisfaction, or independently abandoned the assignment for \_\_\_\_\_ and then contacted Defendants with knowledge of their prior relationship with Plaintiff. It would be unreasonable to apply the penalty to such situations, because of the fluid nature of potential \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_.

**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.**