

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 21-378

Judges:

Complainant:

ORDER

November 17, 2022

The Complainant alleged a justice of the peace and justice of the peace pro tem did not perform their judicial duties in a competent manner and were biased in favor of his landlord.

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 Barbara Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on November 17, 2022.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2021-378

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 owned a mobile home and leased space at _____ owned by _____
who leased the land from the _____ located at
Arizona.

On, or about _____ filed a special detainer action against me in the _____
Court under Case No. _____ which they voluntarily dismissed after I paid all the
amounts due. Thereafter, on _____ sent me a Seven-Day Notice for Non
Payment of Rent claiming I was in default of rent, utilities, late charges, and "alleged" attorneys' fees in
the amount of \$ _____ for a total of \$ _____

On _____ filed a second detainer action stating I was in default and owed
\$ _____ for rent; \$ _____ n late fees, \$ _____ for costs and process server fees, \$ _____ for attorneys'
fees, and \$ _____ for utilities totaling \$ _____ excluding the \$ _____ amount included in the Seven Day
Notice.

On _____ Judge _____ held a telephonic hearing and _____ admitted that I had
attempted to pay the amounts due under the Seven Day Notice with the exception of the \$ _____, and
they refused my payment and filed the Complaint. _____ attorney, _____ also
testified that the \$ _____ amount was for additional attorneys' fees incurred in the
eviction proceeding that Plaintiff was entitled to be paid as the " _____ " party. I attempted to cross
examine the attorney who refused to answer my question on whether they had ever provided me any
evidence to support the amount claimed and he would not answer and then I sought assistance from
Judge _____ to order him to answer and she refused to do and further would not allow me to enter any
evidence. Judge _____ took the matter under advisement and granted the eviction judgment in favor of
_____ and possession of my mobile home and a monetary award of \$ _____ and accruing
interest without any evidence to show I owed the \$ _____ amount.

On _____ appealed the Judgment to the _____ Superior Court and Honorable
_____ rendered the ruling on _____ and vacated the Judgment and remanded the
case to the _____ Justice Court finding that Judge _____ erred in allowing the testimony from
_____ attorney and granting the judgment without any proof or evidence to support the amounts due.
(See Exhibit "1" attached)

Upon remand a trial was held or _____, by Judge _____ who failed to follow the
appeal ruling and entered judgment in favor of _____ without evidence to substantiate the
amount claimed in the \$ _____ invoice.

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On _____ I filed a second Notice of Appeal with the Superior Court and Honorable _____ rendered a 26 page decision and vacated the Judgment finding that Judge _____ violated the Rules of Evidence in granting the judgment without evidence to show I owed the \$ _____ and, further, an attorneys fee award was not enforceable under the terms of lease. (See Exhibit "2" attached)

Judge _____ failed to perform her judicial function as shown by entering an eviction judgment without evidence and showed partiality towards the Plaintiff which constitutes "fraud upon the court" as defined in *Bulloch v. United States*, 763 F.2d. 1115, 1121 (10th Cir. 1985) "where the impartial functions of the court have been directly corrupted" and the judicial machinery of the Court is governed by the Civil Rules of Procedure and Rules of Evidence.

Although the fraudulent eviction judgment was vacated _____ sold my mobile home and denied me access to get my personal property which included software I had developed and patented and I am filing legal proceedings against Judge _____ Judge _____ and _____ for damages in excess of 2.25 million dollars.

COUNTY

CLERK OF THE COURT

HONORABLE

v.

RECORD APPEAL RULING — VACATED & REMANDED

Lower Court Case No.

Appellant/Defendant/Tenant, appeals from an eviction judgment entered against him in the Justice Court. That trial court found in favor of Appellee/Plaintiff/Landlord, (d/b/a

This Court has jurisdiction pursuant to Ariz. Const. art. VI, § 16; A.R.S. §§ 12-124, 22-261; and Rule 17, Rules of Procedure for Eviction Actions.¹ For the following reasons, the trial court's judgment is vacated and the case remanded.

¹ Undesignated rule references are to the Rules of Procedure for Eviction Actions.

COUNTY

PROCEDURAL HISTORY & FACTUAL BACKGROUND²

Landlord filed an eviction complaint on [redacted] The court held a bench trial on [redacted] Tenant appeared and was sworn.⁴ No witnesses appeared for Landlord, although Landlord was represented by counsel. Tenant raised various issues, including his tender of rent to Landlord's agent and the agent's refusal to accept that tender because Tenant was "suing" Landlord; Landlord not providing Tenant with a correct statement of the amount he owed for rent;⁵ and whether Landlord's claim for certain attorneys' fees from an earlier case where correctly assessed against his rent obligation.

While Landlord's counsel offered various explanations and factual assertions to address Tenant's issues, counsel was not sworn as a witness nor did he call any witnesses to counter Tenant's sworn testimony. Instead, it appears that the judge accepted the allegations in the complaint as true and put the burdens of proof and persuasion on Tenant to disprove Landlord's allegations. FTR Recording, [redacted] near [redacted] It further appears that the trial judge accepted Landlord's counsel's statements as true because of the serious consequences facing attorneys if they lied to a court. *See id.* near [redacted] Indeed, when Tenant tried to test the accuracy of counsel's statements, the trial judge told Tenant that counsel was not subject to cross-examination. *Id.* near [redacted] At the close of the proceeding, the court awarded judgment for Landlord. This timely appeal followed.

DISCUSSION

An eviction proceeding is a civil action with the burden of proof by a preponderance of the evidence on the party seeking possession. *See generally Harvey v. Aubrey*, 53 Ariz. 210, 213-14 (1939). That burden, however, must be met with proof that is competent and admissible under the Arizona Rules of Evidence. Rule 11(d)(2).

Tenant raised various factual issues regarding his attempted payment of the full amount of the rent and Landlord's refusal to accept that rent. Thus, Landlord had the burden of proving,

² Because the parties are familiar with the factual and procedural history of this case, it is not recounted in detail here.

³ Unless otherwise indicated all date references are to calendar year

⁴ Due to the COVID-19 public health emergency and pursuant to applicable administrative orders issued by the Arizona Supreme Court and the presiding judge of the Superior Court in [redacted] County, the trial was held telephonically.

⁵ Tenant's rent was the sum of a fixed base amount plus an additional variable amount for utilities.

COUNTY

with competent and admissible evidence, that either the full amount was not properly tendered and that the rent amount was properly calculated pursuant to the lease terms. Rather than present a witness with personal knowledge, however, Landlord's counsel gave unsworn statements purporting to meet Landlord's burden of proof.

There is no clearer rule in American law that the unsworn statements, assertions, and argument of counsel are not evidence and cannot be used to establish material facts notwithstanding a lawyer's ethical duty to be honest and candid with a tribunal. *See, e.g., Woerth v. City of Flagstaff*, 167 Ariz. 412, 420 (App. 1990); *Quine v. Godwin*, 132 Ariz. 409, 412 (App. 1982); *Smith v. Mack Trucks, Inc.*, 505 F.2d 1248, 1248 (9th Cir. 1974). Thus, all of counsel's unsworn statements about the alleged facts did not constitute competent and admissible evidence upon which to base any judgment for Landlord.

Because this matter is being remanded, this Court notes the following. The right to cross-examine actual, adverse witnesses is a fundamental trial right, even in civil cases. *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) ("In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses."). Eviction cases, although summary in nature, must still comport with due process for all parties. *See Lindsey v. Normet*, 405 U.S. 56 (1972). This remains true even under conditions of a public health emergency.

The fact that eviction trials are summary in nature does not make them something less than trials. They are "summary" in the sense that the cognizable issues are limited, the time frames short, and discovery highly discretionary with the court. *See* Rule 8 (limiting counterclaims); Rule 11(c) (limiting continuances); Rule 10 (disclosure). But this summary nature aside, once it is determined that a trial shall be held, the Rules of Procedure for Eviction Actions envision a trial with all the typical attributes common to trials in our courts. Trial procedures commonly include opening statements, presentation of evidence by witnesses, and argument. *See* Rule 12(c). Witnesses must testify under oath. Rule 11(d)(1). Jury trials are available on proper demand. Rule 11(d). The Arizona Rules of Evidence apply to all eviction trials. Rule 11(d)(2). Those rules specifically provide for cross-examination of adverse witnesses. Rule 611(b), Arizona Rules of Evidence.

DISPOSITION & ORDERS⁶

⁶ The Court notes that on Appellant filed a "Motion to Set Aside Judgment Dated
' It is unclear what judgment Appellant is referring to as the clerk's docket does not indicate any judgment
being entered by this Court on The Motion also refers to an oral argument held on
with respect to this appeal. Again, the clerk's docket does not reflect any court proceeding in this appeal being
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