

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 21-438

Judge:

Complainant:

ORDER

June 30, 2022

The Complainant alleged a superior court judge intentionally disregarded the law, which violated Rules 1.1 and 2.2 of the Code of Judicial Conduct.

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

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 Barbara Brown, Michael J. Brown, and Delia R. Neal did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on June 30, 2022.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

21-438

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.

Please see attached materials.

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Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
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**RE: Complaint against Judge _____, _____ County
Court,**

Dear Sir or Madam,

I wish to make this complaint against now- _____ Judge _____ of the _____ County _____ Court regarding his conduct in the above-entitled case. I respectfully submit that Judge _____ violated Rules 1.1 and 2.2 of the Arizona Code of Judicial Conduct by knowingly and willfully failing to comply with, uphold, and apply clear and binding law in a _____ ruling he made in this case.

The basis for this complaint is not a mere disagreement with the interpretation of the law Judge _____ employed in his ruling. I submit that Judge _____ violated Arizona Code of Judicial Conduct Rules 1.1 and 2.2 by willfully and knowingly failing to uphold and comply with the clear and well-established law that when an opposing party fails to object to something at trial, that objection is deemed waived. In his ruling, Judge _____ simply ignored this well-settled and controlling law completely.

At a bifurcated trial in this case held on _____, after opening statements had concluded, Judge _____ raised concerns on his own initiative about facts mentioned by undersigned counsel during opening statements. When stating his concern, he specifically noted that the opposing counsel did not make any objections during undersigned counsel's opening statement. Even after Judge _____ raised his concern, opposing counsel did not make any objection or ask for any curative measures such as a

RE: Complaint against Judge _____, _____ County Court,

jury instruction or mistrial. The trial continued without any further issue being raised concerning opening statements and the jury found against the opposing counsel's clients at the conclusion of trial.

Nearly _____ weeks later, opposing counsel filed a motion for a new trial alleging for the first time that facts uttered by undersigned counsel during opening statements constituted misconduct. Judge _____ granted the motion for a new trial on the basis of opposing counsel's post-trial objection in his _____ ruling. In doing so, Judge _____ failed to comply with and uphold clear and binding case law holding that objections that are not timely made at trial are deemed waived. In place of the controlling law, Judge _____ ruling invented a balancing test that has no lawful basis. The controlling law does not permit trial courts to exercise any discretion in considering waived objections, absent a finding of fundamental error. Judge _____ ruling did not find that any fundamental error occurred.

Factual Background

The _____ trial in _____, arose from an incident in which an intoxicated pedestrian who was in the roadway on _____ in _____ at approximately _____ on _____, and was struck and killed by an oncoming vehicle. The area the pedestrian was in was an industrial area that was not near any intersection or any marked or unmarked crosswalks. The pedestrian's parents sued the landscaping company that maintained the plants on the shoulders of _____, the City of _____, and the State of Arizona. _____ is also known as US _____, a federal highway the State of Arizona controls and maintains within the boundaries of the state.

Undersigned counsel represented the State of Arizona in this case. The State submitted a motion pursuant to A.R.S. § 12-820.03 for a bifurcated trial before and

separate and apart from a trial on damages. Judge _____ granted this motion and set a Phase I trial to include the State's affirmative defense under this statute as well as the duty and breach elements of the plaintiffs' negligence case. The Phase II trial was set to cover causation, comparative fault, and damages. This split created significant legal issues for the Phase I trial because case law makes clear that the State's duty to design, construct, and maintain reasonably safe roadways includes the minimal expectation that travelers follow the usual rules of the road.¹ This meant that whether the pedestrian violated any traffic laws at the time of the collision was not merely a matter of comparative fault reserved for later, but was inherently essential and relevant to the question of whether the State negligently breached its duty to maintain _____ Avenue in a reasonably safe condition.

Prior to the Phase I trial, opposing counsel filed a motion in limine broadly asking that unnamed evidence relating solely to causation, comparative fault, and damages be precluded. (See Exhibit 1 – Plaintiffs' Motion in Limine #5). The only specific evidence plaintiffs' counsel asked to be precluded in this motion was any evidence the pedestrian was intoxicated at the time of the collision. The State filed a response objecting to precluding broad and abstract categories of evidence without specifying what exact facts or evidence would be barred. (See Exhibit 2 – State's Response to Plaintiffs' Motion in Limine #5).

Judge _____ granted this motion in limine, but did not address the State's concerns about what unknown and uncited facts or evidence might be relevant solely to the issues of causation, comparative fault, and damages. The only specific fact or

¹ "The [public entity] is not bound to provide perfect intersections or streets, but only those which are 'reasonably safe.' What is 'reasonably safe' takes into consideration certain minimal expectations that travelers follow the usual rules of the road."

**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.**