

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-482

Judge:

Complainant:

ORDER

A superior court judge self-reported an instance of pressuring parties to settle a civil case and improperly ordering an attorney to make a charitable contribution.

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 the judicial officer's statements to the parties regarding settlement were coercive. While this was improper under Rule 2.6(B) 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 to be mindful of his obligations under Rule 2.6(B) in the future.

Commission members Roger D. Barton and Christopher P. Staring did not participate in the consideration of this matter.

Dated: May 31, 2023

FOR THE COMMISSION

/s/ Joseph C. Kreamer

Hon. Joseph C. Kreamer
Commission Vice-chair

Copies of this order were distributed to all appropriate persons on May 31, 2023.

Arizona Commission on Judicial Conduct

1501 W. Washington St., Suite 229
Phoenix, Arizona 85007

Commissioners:

My name is _____ I am a judge at the _____ County Superior Court. I write
to self-report any ethical issues related to an _____ hearing in
A transcript of that hearing is enclosed as

Exhibit 1.

I believe the salient issue here involves applying Rule 2.6(b) to a statement I made
towards the end of this hearing on transcript page 10. The parties statements at that
hearing and a subsequent _____ hearing should also be considered. *See*

Exhibit 2.

Rule 2.6(b) states in relevant part that "A judge...shall not coerce any party into
settlement." There is no known evidence that my statement at issue had any effect on the
ultimate settlement between the parties, or that either party to the matter felt coerced to
settle. The parties statements on _____ and _____ demonstrate otherwise.
Nonetheless, the parties subjective beliefs may not necessarily be the sole relevant test.
As such, I submit this letter for consideration.

My Background

I have been a judicial officer for about _____ No one to my
knowledge has ever before made a complaint to this Commission about me. No one to
my knowledge ever complained to _____ about me during my prior
_____ I do not recall a
judge ever sanctioning me when I was an attorney. My entire law practice was spent at

Chronology of Relevant Events

A *Verified Complaint for Money Due on Account* was filed and assigned to me. The [redacted] asked therein for \$ [redacted] related to medical treatment [redacted] was provided during her [redacted] emergency room visit there after a single car on curb collision. *See also* [redacted] *Answer*. Plaintiff's counsel in that matter is a debt collection law firm in [redacted] that consists of about [redacted] of which are licensed to practice in [redacted] licensed attorneys were listed on the *Verified Complaint* at issue. I was previously assigned to matters involving this law firm and its [redacted] licensed attorneys without incident or issue.

I issued written notice to Plaintiff's counsel and [redacted] – who herself on [redacted] filed an *Answer* that denied the alleged financial obligation – about a telephonic [redacted] trial setting conference set for [redacted] at [redacted]

My staff, the court reporter, the clerk, and I timely went on the record for the scheduled conference. [redacted] timely appeared as a self-represented litigant. Plaintiff's counsel did not appear. My staff spent about fifteen (15) minutes – per my normal protocol – trying to contact Plaintiff's counsel by phone calls and emails to said counsel and a plethora of persons at said counsels' multi-attorney and multi-staff law firm. None of this resulted in any response. Therefore, I made orders – contained in a *Minute Entry* that was subsequently issued to the parties – vacating the [redacted] trial setting conference and setting a telephonic [redacted] Trial Setting Conference/Order to Show Cause (as to why sanctions should not issue for failing to appear at this hearing) hearing on [redacted] at [redacted]. The *Minute Entry* also stated that if Plaintiff's counsel filed a notice that he made a \$ [redacted] charitable contribution, the Court would vacate the Order to Show Cause. I have issued that latter order in other cases. I crafted that order after consulting with judges and attorneys about its propriety and benefit.

The hearing at issue happened. **Exhibit 1.** [redacted] herself again timely appeared. My staff, the court reporter, the clerk, and I timely again timely went on the record for that matter. Plaintiff's counsel again did not timely appear. My staff again initiated a phone call and email campaign to locate Plaintiff's counsel. Those efforts resulted in Plaintiff's counsel finally calling in about sixteen minutes late, beyond time this Court normally waits to start hearings. As the Commission reviews **Exhibit 1** and reaches its conclusions, it may want to consider the following:

- Plaintiff's counsel, by his own admission, had no excuse for not being present at the [redacted] hearing and being untimely on this date. He did not utilize the computer he had for this matter at any time this date and, ironically, was instead at a phone store where there are phones.
- [redacted] missed time at work for these matters for a second time.

- Plaintiff's counsel is that one that first raised the issue of early settlement discussions. (p. last paragraph [“ ”])

- In response, expressed disinterest in discussing settlement. She instead expressed an “

” Plaintiff's counsel immediately asked to say something. That was permitted. Plaintiff's counsel then explained his “

”, that “ ” (p.) Plaintiff's counsel said “

then said “ ” and “ ” (p.) He

” (p.) Those statements made ‘ ’ to early settlement discussions with Plaintiff. (*Id.*) In accordance, I vacated and rescheduled the trial setting conference/OSC, rescheduled those matters for at ordered the parties per their above statements to beforehand “

”, found that sanctions were proper here against Plaintiff and/or its counsel, and deferred a decision on the sanction amount until the next hearing. I then made the statement at issue (discussed below in the “*Analysis*” section of this letter). Immediately thereafter, Plaintiff's counsel stated “

”

At the parties filed a *Notice of Settlement* stating “

.” I did not know about this submission before the hearing this date. **Exhibit 2.** At that hearing, the parties advised they stipulated to an amicable settlement of this matter. said she was “ ” about the settlement. (p.) The terms of that settlement were not announced. However, those terms involved paying the hospital some amount of money by credit card. (*Id.* at p.) I ordered Plaintiff to take the laboring oar in timely submitting an appropriate and standard *Stipulation and Order to Dismiss* this matter within the next thirty (30) calendar days. Thereafter, on inquiry, Plaintiff's counsel avowed that he made a \$ contribution to charity. I determined that no additional sanction was necessary. Plaintiff's counsel again apologized “ ” and did not articulate a concern with or displeasure about the settlement. (p.)

I presented at the for County from At about during the the

presiding judge for the Court, initiated a conversation with me. We stepped into a private space and talked for about five minutes. Judge said he was told about the hearing by a source he would not disclose. Judge told me that, in response, he obtained a transcript of this hearing, reviewed it, and was concerned about 2.6(b). I told Judge that I generally remembered this matter but that I did not remember exactly what I said during the hearing at issue. Judge understood and agreed to give me the hearing transcript to review. We also agreed to communicate sometime after when Judge would be returning from an out of town trip.

I saw an envelope marked "*Personal and Confidential*" in my chambers when I arrived that morning. I assumed it was the promised transcript from Judge

At the parties filed a standard *Stipulated Dismissal*. I signed the separately lodged *Final Order of Dismissal*, that was entered at [n the evening I opened the "*Personal and Confidential*" envelope. It contained the transcript at issue and an entire copy of the *Arizona Code of Judicial Conduct*. I reviewed that transcript and the only section of the *Code* that was marked (with a blue tab extending from margin), Rule 2.6.¹ I talked to Judge again and confirmed his view that 2.6(b) was the ethics rule he was concerned about.

I contacted ethics counsel at about this matter. I discussed this matter in detail with said ethics counsel once around the lunch hour and again in the afternoon.

I prepared this letter.

I mailed this letter to the Commission.

Analysis

I believe and understand the problem statement from page of **Exhibit 1** is "

" I should not have said anything like this irrespective of the ethical rules. I am confident that I have not said anything like this before. I have no intention of every saying anything like this again. It was unnecessary in context. It was inconsistent with my repeated statements from the bench at this hearing about not wanting to be heavy handed. I never have or would have sanctioned the client for its counsel's wrong in this context. I knew about

¹ I did not review the transcript earlier because I was striving to complete and issue requisite rulings during then significantly limited work hours because of my

Rule 2.6 (not the exact rule number or verbatim language thereof, but the concept) and to stay away from these kinds of statements because they can improperly coerce a settlement. In the many sleepless hours I have had contemplating this transcript after I read it, I cannot with any reasonable certainty tell you exactly what I was thinking or why I said what I said. My best conclusions that I can articulate with reasonable certainty are that I lost discipline because I was angry with Plaintiff's counsel for obvious reasons, and that I my sensitivity from repeated training to the experience of self-represented litigants in court went too far. In response, this weekend I taped a notecard to the final door I enter before taking the bench, along with another on my bench computer, with an acronym reminder thereon (that only I would understand) to not let either happen again. In addition, I re-read the entire *Arizona Code of Judicial Conduct*. However, there is no evidence that my statement—at the end of that hearing and after Plaintiff's counsel initiated the settlement issue and aggressively articulated the strong likelihood of settlement if _____ would communicate with him – coerced or in any way affected the settlement here. The two enclosed transcripts demonstrate otherwise.

Ethics counsel noted in our communications a possible issue about the application of Rules 1.1 and 2.2 to my order issued here (and, in full disclosure, in other matters) that gives “no prior notice no-shows” the option of making a relatively small charitable contribution (usually between \$ _____ and \$ _____) to avoid an OSC hearing on the no-show. Attorney no shows without any prior notice to the Court, and the related costs and inefficiencies therefrom, have been a significant recurring issue since I took the bench (and I suspect for many years before that). I want to, and have been trying to, minimize it. The optional pre-OSC charitable contribution allows the no prior notice no-show, if he or she chooses, to avoid undue stress about an OSC at which the individual must publicly explain the issue without knowing what the Court will do, if anything, about the no prior notice no show. That order was crafted after conversations with judges and attorneys. The consensus was that this order would be a more positive approach to the no prior notice no-show problem rather than ordering and conducting an OSC and, thereafter, possibly imposing a sanction. No judge – including Judge _____ – or attorney ever identified an ethical problem with the order at issue. I do not believe that the order violates the ethical rules. However, that ethics counsel identified it to me for the first time as a potential ethics issue is enough for me to sprint away from it. I will not issue it again. I have no interest in coming anywhere close to violating the applicable ethical rules.

Conclusion

I respect the Commission and its collective wisdom. However, I think this matter should be dismissed and that I should not be disciplined. I have educated myself on the factors this Commission considers in making these determinations. I ask the Commission to consider the following:

**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.**