

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 22-491

Judge:

Complainant:

ORDER

February 2, 2024

The Complainant alleged a justice of the peace failed to follow the law in a civil case.

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 February 2, 2024.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2022 - 491

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.

See attached.

JP has violated Rule 1.1, Canon 1 and Rule 2.2, Canon 2 of the Arizona Code of Judicial Conduct by repeatedly refusing to follow contract law and not awarding default judgments to landlords regarding post-possession damages after evicting tenants for breaching the terms of the rental agreements. In the two cases referenced herein, JP impermissibly denied default judgments by interjecting his personal belief that it is unconscionable that a landlord would seek damages after a tenant was evicted though those damages are enforceable pursuant to the rental agreements signed by the tenants.

In Defendants signed a rental agreement for a 12-month term from at a monthly rental of \$ **See copy of rental agreement in the attached default judgment packet.** Defendants failed to pay rent and a forcible detainer judgment was entered against them on

See copy of forcible detainer in the attached default judgment packet. The Landlord retook possession and incurred cleaning and repair costs in order to make the property habitable for re-rent. The property was then re-rented on

The landlord assigned the account to and the referenced lawsuit was filed after Defendants refused to voluntarily pay. Defendants were personally served with the lawsuit, failed to answer and an application for default was filed. After still no answer was filed, a packet requesting a default judgment without a hearing was filed. **See attached default judgment packet.** On JP denied the default judgment and issued a minute entry. **See copies attached.** Plaintiff did not receive the denial nor the minute entry until after Plaintiff's appeal time had expired. JP impermissibly interjected his own opinion in rejecting Plaintiff's request for a default judgment and failed to set a default hearing to allow Plaintiff the opportunity to be heard if JP had issues with the default judgment being requested. At a minimum, JP should have awarded Plaintiff rent from through the administrative and marketing fee, collection fee, costs and attorney's fees as provided for in the written lease.

It was uncontroverted that Defendants breached the Lease and were evicted for non-payment. This lawsuit sought post possession damages pursuant to ARS 33-137. This statute provides that a landlord has both a claim for possession and for rent (a typical forcible detainer remedy pursuant to ARS 12-1178) and a separate claim for actual damages for breach of the rental agreement. Therefore, as in this case, once the landlord has retaken possession of the property, the tenant is still responsible for the post possession damages for breaching the lease. These damages are different damages as provided for in a forcible detainer case as those damages are limited by statute to rent and possession of the property but cannot include rent accrued after the writ of restitution date nor damages not known by the landlord until after retaking possession and making the apartment habitable for re-renting. Also, see ARS 12-1183 and Rule 13, Rules of Procedure for Eviction Actions provides that a forcible detainer judgment does not bar an action for damages ascertained post possession.

Moreover, a general principle of contract law is that where parties bind themselves by a lawful contract and the terms of the contract are clear and unambiguous, a court must give effect to the contract as written. *Estes Co. v. Aztec Const., Inc.*, 139 Ariz. 166, 168, 677 P.2d 939, 941 (App. 1983). Further, a court cannot revise, modify, alter, extend, or remake a contract to include terms not agreed upon by the parties. *Isaak v. Massachusetts Indemnity Life Insurance Company*, 127 Ariz. 581, 584, 623 P.2d 11, 14 (1981). The court's duty is confined to the construction or interpretation of the contract which the parties have made for themselves and where the intent of the parties is expressed in clear and unambiguous language, there is no need or room for construction or interpretation and a court may not resort thereto. *Goodman v. Newzona Investment Co., Inc.*, 101 Ariz. 470, 421 P.2d 318 (1966).

Therefore, contrary to the written contract between the parties and Arizona law, JP violated Rule 1.1, Canon 1 and Rule 2.2, Canon 2 of the Arizona Code of Judicial Conduct by refusing to follow the law and denying Plaintiff default judgment nor setting a default hearing so Plaintiff could be heard.

Unfortunately, this is not an isolated instance where JP has failed to properly follow contract and Arizona law and denied Plaintiff a default judgment. In

Defendant signed a rental agreement for a 12-month term from at a monthly rental of \$ See copy of rental agreement in the attached default judgment packet. Defendant

failed to pay rent and a forcible detainer judgment was entered against her on See copy of forcible detainer judgment in the

attached default judgment packet. The Landlord retook possession and incurred \$ in cleaning costs in order to make the property habitable for re-rent. The property was then re-rented on The landlord assigned

the account to and a lawsuit was filed after Defendant refused to voluntarily pay. Defendant was personally served with the lawsuit, failed to answer and an application for default was filed. No answer was filed and a packet requesting a default judgment without a hearing was filed. See attached default judgment packet. On JP

denied the default judgment via minute entry ruling it was unconscionable for Plaintiff to request recoupment of the lost rental income. See copy attached. Plaintiff has subsequently noticed JP and this matter was assigned to the Justice Court. Again, JP

impermissibly interjected his personal belief that it is unconscionable that a landlord would seek damages after a tenant was evicted even though those damages are enforceable pursuant to the rental agreements signed by the tenants. Therefore, JP failed to follow contract and Arizona law as previously cited to in this complaint.

Justice Courts, Arizona

Justice Court

CASE NUMBER: _____

Plaintiff(s) Name / Address / Email / Phone

Defendant(s) Name / Address / Email / Phone

Attorney for Plaintiff (s) Name / Address / Email / Phone

Attorney for Defendant(s) Name / Address / Email / Phone

MINUTE ENTRY

Date: _____

There was an eviction judgment against the defendant on
plaintiff would try to recoup the _____ of rent.

The court finds is it unconscionable that the

I CERTIFY that I delivered / mailed a copy of this document to:



Plaintiff at the above address



Plaintiff's attorney



Defendant at the above Address



Defendant's attorney

Date: _____

By _____

Clerk

**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.**