

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-110

Judge:

Complainant:

ORDER

September 22, 2023

The complainant alleged improper legal rulings and poor demeanor by a superior court judge hearing a family 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).

Commission members Denise K. Aguilar, Barbara Brown, and Louis Frank Dominguez did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on September 22, 2023.

My complaints against Judge _____ are that she does not appear to have good judgement as explained in this document, she appears to have an aversion to hearings, and it appears that she has included unsubstantiated “facts” into her trial ruling on my case. Her conduct on the bench as it relates to hearings must be investigated. All _____ of my divorce attorneys (_____) personally told me or confirmed that Judge _____ does not like to hold hearings. Given that at times she looked like she was going to fall asleep during my trial on remand from the _____ Court, I understand why Judge _____ has this reputation. This trial was via Zoom. I asked my attorney, _____, to record Judge _____ on his computer while she appeared to be struggling to stay awake at the time it was happening, but I’m not sure he did. We did ask for and received a video copy of the trial, but it is in segments that are not in chronological order and difficult to watch. Hopefully somebody can review the Court’s copy of the Zoom recording and confirm Judge _____ condition. I believe Judge _____ aversion to hearings in general jeopardized my trial on remand given that my tracing case was considered complex and required additional time to get the pertinent facts into the record. Note that my attorney had submitted _____ Exhibits per my **Petitioner’s Separate Pre-trial Statement**. My attorney conservatively asked the Court for a full day (meaning we could have used _____ days) and unfortunately for me, Judge _____ reduced it to _____ hours total. That left me with _____ hours to present my case that was also burdened by the requirement for court procedures requested by opposing counsel that significantly reduced the amount of time I could actually testify and present my case. In addition, as described in my _____ **Court Petition for Review pp. (Reference Exhibit _____ Court Petition for Review),**

“

_____. Transcript, p. _____ The judge stated early in the hearing on remand:

[...]

[...]

Transcript, p. _____ As a result, the trial court was not in a position to determine if the equalization payment was reasonable "

."

The trial court's characterization of property is a question of law that is reviewed de novo. Hammett v. Hammett, 247 Ariz. 556, 559, ~ 13 (App. 2019), citing In re Marriage a/Pownall, 197 Ariz. 577, 581, ~ 15 (App. 2000). The trial court's division

of the parties' property is reviewed for an abuse of discretion. In re Marriage O/Flower, 223 Ariz. 531, 535, ~ 14 (App. 2010). "A trial court abuses its discretion when it misapplies the law or predicates its decision on incorrect legal principles." State v. Jackson, 208 Ariz. 56, 59, ~ 12 (App. 2004). In this case, the trial court's ruling went against the clear weight of the evidence on the nature and extent of the community property, and it failed to do an appropriate analysis of substantive fairness pursuant to A.R.S. § 25-317(B)."

The aversion to hearings also helps to explain why Judge _____ denied my multiple requests to set aside the Rule 69 agreement and my request for a Sharp hearing. Below is Judge _____ ruling for denying my Sharp hearing. Note the reason for the denial due to "_____. " Not on the merits mind you. It is pertinent to note that I have filed complaints against my first _____ attorneys with the _____ for not providing standard of care (incompetence) and for not disclosing critical evidence to opposing counsel prior to mediation among other things.

Per _____ Appellant's Opening Brief, p.

On _____, Husband's new counsel filed a Motion to Set and Request to Set Sharp Hearing (hereafter "Request to Set Sharp Hearing"). IOR 115. Wife did not file a Response to it before the court entered a minute entry on _____ that read in pertinent part:

The following two Arizona Statutes are very pertinent to what Judge [redacted] was required to do, but my complaint will conclusively show that it was NOT done.

A.R.S. § 25-317(A). “[T]he terms of the separation agreement . . . are binding on the court unless it JONES v. JONES Decision of the Court 4 finds, **after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, . . . the separation agreement is unfair.**”

A.R.S. § 25-317(B). “Rule 69 agreements are presumed valid and a party challenging their validity “has the burden to prove any defect,” **but the superior court must independently assess their fairness.** See Ariz. R. Fam. Law P. 69(c); see also Buckholtz v. Buckholtz, 246 Ariz. 126, 128, ¶ 1 (App. 2019).”

With regard to my trial on remand required by the first [redacted] Court, it’s as if Judge [redacted] never looked at nor considered anything from my **Petitioner’s Separate Pre-trial Statement** or the **Petitioner’s Proposed Findings of Fact & Conclusions of Law** document as required by A.R.S. § 25-317(A). It will become apparent that Judge [redacted] did not independently assess the fairness of the FSA per A.R.S. § 25-317(B) given her ruling per the Questions and Answers 1 – 5 below. **Especially note Answer 5(3)d. This revelation obliterates Judge [redacted] entire ruling with regard to the [redacted] equalization payment since it was NOT based on any of the reasons given by Judge [redacted]. And so goes the fairness of the equalization payment then so goes the fairness of the Rule 69 FSA agreement – which is to say it was unfair.**

See Petitioner’s Separate Pre-trial Statement (**Exhibit B attached to email**) for reference as well as Petitioner’s Proposed Findings of Fact & Conclusions of Law (**Exhibit C attached to email**).

Had Judge [redacted] considered the 5 questions below as part of her independent assessment, there is no way she could have legitimately ruled that the Rule 69 FSA was not unfair.

Question 1: What was the nature (community or sole & separate) of each of Husband’s assets and how can that be proven? The nature is determined at acquisition.

Answer 1: I claimed that all [redacted] of my houses and my [redacted] Policy were my sole & separate property. I included [redacted] Exhibits in my **Petitioner’s Separate Pre-trial Statement** for the trial on remand that methodically documented each asset for: when it was acquired; with what funds it was purchased; and with what funds it was paid for to prove it was my sole & separate property. As described previously in my **Petition for Review (Exhibit A)**, pp. [redacted], Judge [redacted] would not allow this into the record and the [redacted]-hour hearing was definitely not reasonable.

For the purpose of this complaint, I am including a sampling of the [redacted] documents available to prove what I have claimed to support my houses and [redacted] Policy being my sole & separate property that would result in total community property being valued at approximately [redacted]. House appraisals, paid for by ex-wife, were disclosed for all [redacted] houses as of the [redacted]

Complaint against Judge

as it relates to Case No.:

(marriage date)/purchase date and (divorce filing date) ([Reference Exhibit D - Ex-wife's 4th Supplemental Disclosure with house appraisals](#)). In addition, documents showing mortgage amounts outstanding for each house were also disclosed ([Reference Exhibit I - AZ houses mortgage payoff amounts](#)). Appraisal value minus outstanding mortgage amount equals equity value. Note that I have sole & separate documents signed by ex-wife for the houses and also for when I refinanced of the Arizona properties that were not needed since I purchased the AZ houses prior to marriage and they were all already sole & separate ([Reference Exhibit G - Sole & Separate Agreements for Houses](#)). I did this as an extra precaution. Detailed copies of checks and documents are available upon request.

The policy was created on as part of buy/sell agreement between the partners ([Reference Exhibit H - Policy Trial Prep Doc from](#)). Note that I included my trial prep for this since it is in question/answer form and is easier to follow. The backup has lots of confidential information in it so I thought it easier to provide relevant documents as they are requested.

The house in was purchased on (p.). The down payment of was from my sole & separate funds since the community did not have time to earn that much at the time. The financial information is in the audited Excel files and backup that is available upon request.

The house in was purchased on (pp.). The down payment of was also from my sole & separate funds since the community did not have time to earn that much at the time. The financial information is in the audited Excel files and backup that is available upon request.

Question 2: What was value of Husband's equity on date of marriage vs date of divorce filing date? How were assets paid for during marriage?

Answer 2: The Arizona homes () were purchased prior to marriage and each of these homes were appraised to be worth more on the date of marriage () than on the date of divorce filing () – meaning all accumulated appreciation and equity as of belonged solely to me (husband). [Reference Exhibit E - Home Equity at Marriage and Divorce Filing](#) that shows purchase prices, appraised values and equity at Date of Marriage and Date of Divorce Filing as well as funds paid for mortgages, etc. where the information sources are closing docs and banking records that were audited to 100% accuracy by an independent auditor ([Reference Exhibit K - Executive Summary - and Exhibit L - Affidavit - notarized](#)). Note that appraisals were paid for by ex-wife.

My assets were primarily paid for with distributions totaling over million dollars I received from my sole & separate share in purchased . In addition, tenant rent payments that were sole & separate paid for house mortgages and maintenance costs, as well as the proceeds from the sale of the house in for which there is a sole & separate agreement ([Reference Exhibit D - Ex-wife's 4th Supplemental Disclosure with house appraisals](#)). For reference, the total of my assets listed in Answer 1: above were valued at as of divorce filing date. This includes in home appreciation on the Arizona properties ([Reference Exhibit E - Home Equity at Marriage and Divorce Filing](#)). Which means I spent just over million of the million distribution dollars I received on my assets which shows I didn't need community dollars.

distributions are sole & separate as explained below. Excerpt taken from pp. of Pre-trial Statement. ([Reference Exhibit B - 04 27 21 Petitioner's Separate Pretrial Statement](#)). The text below closely follows what I had written in my Amended Interrogatory #17 early on in these proceedings. This document contains a lot of and personal confidential information and will be shared upon request on an individual basis if required.

revenue is attributed primarily to the inherent qualities of the business. specializes in Ship and Debit (S&D) recovery audits for businesses primarily in the semiconductor industry. audit findings, which ultimately lead to revenue if and when the audit findings are collected by clients, are dependent on the volume of business done by clients, changes in the client's product pricing, as well as the internal controls and sophistication of clients' ERP () systems/processes or lack thereof. ERP is an acronym that stands for " ,” the consolidated process of gathering and organizing business data through an integrated software suite. ERP software contains applications which automate business functions like production, sales quoting, accounting, and more. There is no way to tell how much revenue each audit will produce for until the audit is completed and the client actually collects the dollars owed them by their distributors. Furthermore, business model is contingency based, meaning that only makes money on findings identified by and collected by its clients. If there are no findings, there is no revenue for . Because I has no control over the processes implemented by these businesses in keeping their records, nor any influence in their decision whether to pursue collection, Husband's efforts at the business really have no influence on how successful the company is in any given year. Other than the audit process itself, has no control over income for any audit. Furthermore, Husband only worked part-time and stayed home for much of the marriage to care for the parties' child. He did not contribute anything to the business beyond what any employee would do. Husband notes that most of the clients of were clients of the division of in one form or another when purchased that business. Husband did not supervise any auditors himself, and his personal efforts at auditing accounted for only 3.1% of all earned auditor commissions during the entire marriage. Most work was performed by the audit staff at , and by , one of the

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