

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-234

Judge:

Complainant:

ORDER

October 24, 2023

The Complainant alleged a superior court judge imposed an improper fine after not appearing at an order to show cause hearing.

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 Barbara Brown and Christopher P. Staring did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on October 24, 2023.

Comp

2023-234

Commission on Judicial Conduct
15501 West Washington Street, Ste. 100
Phoenix, AZ 85007

Dear Commission Members:

Subject: Judicial Complaint against Hon.

Reference: Court Pro Bono Appointment, Compulsory Arbitration Case

In _____, I was selected to be a court-appointed, pro-bono arbitrator for the above reference case. I am filing this complaint because this judge has treated me in a cruel, mean-spirited, and biased manner. He had levied fines upon me that are based upon unfounded facts and upon a biased stereotype of who he thinks I am.

The Judge's Cruel Decision and Bias Treatment; Fine Levied of _____ for my disobeying his denial of my request to attend a relative's funeral.

The above cited case was scheduled in court on _____ for an Order to Show Cause. This was the first appearance that I was requested to appear in court on the above case. The reason for the Order to show cause is in the third section of this complaint.

Because I wanted to attend a relative's funeral on _____, I timely requested a continuance and a rescheduling of the case to a new date. I attempted to notify the Court by phone when I received the information; however, I could not get a "live person" to speak to. I wrote a short letter and sent the letter by registered mail, return receipt, for next-day delivery. The mailing cost me about _____ dollars. The USPS tracking document indicates that my letter was received at the front desk/mail room/reception of the courthouse on _____.

After receiving my letter, a Court representative telephoned me; I answered my cell phone. (I had purposely included my phone number, labeled as Mobil, underneath my signature in my letter.) I informed the Court at that time that the requested continuance was for attending a relative's funeral. The Court orally denied my request without stating the reason for the denial. Later, the Court sent an Order denying my request and levied a fine.

I decided to go to the funeral; I felt that I had a right to grieve. In fact, I think that all attorney's should have the "right" to grieve, which is one of the reasons for filing this Complaint. I think that the Court's decision was cruel, mean spirited, and an INCORRECT DECISION. I ask this Committee to THINK! What would you do if your grandchild, sibling, mother/father, or other relative died?

Hon.

Complaint

I “ ” my decision about the funeral. If not for the funeral, I would have been in Court on . I would not disrespect the Court. This is not a failure-to-appear and this is not a disobedience. This is an abuse of power and bias by an elected judge.

This case was not of such earth-shaking importance that a week’s delay or less could not be given. No one’s life or freedom was in danger.

I do not have “ ” with this Judge. I am a criminal lawyer and I have not encountered this Judge in any of the criminal courts in . I have done several of these pro bono, court-appointed compulsory-arbitration cases. All have been timely completed with no extensions of time requested and no complaints from any of the parties to the matter.

With respect to bias, if I am the only person that has been subjected to this judge’s behavior, I think that fact supports bias. I cannot believe that anyone else subjected to this judge's behavior would not also file a complaint. The State and the County must have bereavements policies and practices that could be used as guide lines by this judge.

What bias behavior am I talking about? The behavior that does not give me the “ ” or “ ”; but instead, automatically assumes a negative, stereotyped character for me.

The Judge’s Failure to Exercise Due Diligence in Notifying Me of his Revised Court Date; Fine Levied of for failure to appear.

The Judge failed to exercise due diligence in notifying me that he had reconsidered his decision and that he had rescheduled the appearance to .

The Judge had said orally and in writing that there would be NO continuance and NO rescheduling of my Court appearance. The Court’s notification for the revised court date was sent by regular United States Postal Service (USPS) mail. The mail system is not what it used to be. (It takes longer to receive mail— working days instead of ; and USPS makes lots of mistakes in delivery.)

I received the Court’s letter of notification in my Post Office Box, but it was after . The notification letter was post-marked on

The Court had available more timely and more reliable ways to send its notification to me. For example, the Court could have given me a “heads up” telephone call or text message on . They had my cell phone number; after all, they had called me before to emphatically say NO to my request for a continuance and rescheduling. Why not call or text me on , and tell me that “the Judge had rescheduled the appearance as requested to ”?

Or, the Court could have mailed a notification to me in the same way I mailed my timely request to the Court, by REGISTERED MAIL, RETURN RECEIPT, NEXT-DAY DELIVERY. If the Court had chosen either of these choices, I would have known about the change by . I would have been in Court on

THINK! What motivation would I have to NOT appear on ? The Court was giving me what I asked for (at least one-half), by rescheduling the appearance. Why would I aggravate the situation, for no benefit, by not showing up?

Hon.

Complaint

I have never had a Failure-to-Appear in my entire professional life. I am in my _____ This Court is besmirching my professional reputation and record without facts to support its charges. The Judge cannot make me responsible for his bias, his ineptness, and his desire to scapegoat its own management shortcomings.

Failure of the Judge to manage Case effectively and without bias; Fine Levied of _____ for my not finishing the case on _____

The Arbitrator on these court-appointed, compulsory arbitration cases needs the following information from the Plaintiff and Defense lawyers to complete his/her task: (1) An agreed upon Date-Time-Place and (2) the lawyers' individual Discovery. This information is in the Compulsory Arbitration statutes.

Brief Timeline of events

On or about _____, I spoke with Defendant's attorney, _____. He called me. He introduced himself and told me why he had called—He wanted to know if I would treat him fairly. Before he could go further, I asked him if he had an attorney (Court documents indicated he was representing himself). He " _____ " on his answer to my yes/no question. So, I asked him another way. I asked him how he had responded to the Court. He informed me that he had used _____ to assist him. I told him that I could not discuss the case with him because it would be a conflict of interest and because I did not know anything about the case. I explained that my knowledge of the case would come from the case material that he would have to supply to me. I told him that I would cover the " _____ " with him. What I meant by " _____ " is what is contained in my _____ e-mail to the party lawyers. _____ received instructions orally and in writing that he had to supply case material to me.

_____ did not participate in the " _____ "; My speculation is that he was "in over his head" representing himself.

On _____, the Plaintiff's Attorney, _____, sent his first letter (dated _____ and postmarked _____ which contained suggested dates in _____ for the Arbitration.

On _____, the Court filed an Order which was USPS mailed to me and postmarked _____. In the Order, the Court stated the following. "

On _____, I responded to the Plaintiff's first letter by E-MAIL. My e-mail, titled _____ was sent to both party attorneys simultaneously. Because the emails were not returned to me as being undeliverable by my e-mail system, I must assume that the e-mails were received by each attorney on _____. I obtained each attorney's e-mail address from the Court's documents. The e-mail addresses are correct if the court documents are correct.

The Plaintiff's Attorney's letters and my e-mail are attached as exhibits. Please read Plaintiff's Attorney's letter and my email before proceeding with this complaint letter.

I confirmed my all-day availability within the dates _____, which coincided with the dates offered by the Plaintiff's Attorney. The statutory time ended _____. If the party attorneys did not want those dates, then they should get together, as I said in my letter, and offer an alternative date and time. I will look at my calendar for availability. Finding the " _____ " is an iterative procedure which

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requires both party attorneys to participate in. We are all working attorneys, and this is not the only client/job each person has.

Delivering the case material is individual, each attorney is responsible for delivering the case material to me not later than _____ days before the date set for the arbitration. It is advisable to send the case material as soon as possible. Without the case material, I will not do an Arbitration; I will not come to an Arbitration unprepared.

In my opinion this Arbitration could have been completed in _____. It was not, why?

On _____ Plaintiff's Attorney filed Request for a New Arbitrator and Extension of Time. If he sent a copy of his Request to me, I did not receive it.

On _____ the Court granted the Plaintiff's Attorney's Request for an Extension of Time and Ordered the Arbitrator "

The Judge made his decision without notice to me and without input or rebuttal from me. His Order was postmarked and sent to me on _____.

A good manager would have had all _____ attorneys in the room to discuss the reasons why the arbitration was not completed. The Judge has the responsibility to manage his assigned cases through the court system. A manager must determine the reasons for the failure of the task; otherwise, a second attempt to complete the same task will most likely result in a second failure. The discussion should not be a "_____", figuratively speaking. The tone of the meeting is set by the manager. He needs to question what was to be done, who was to do, what were the perceived obstacles, etc... What a good manager would NOT DO is what this judge did. Listen to one person, make his decision, and do the same thing over again. The results were the same.

On _____, the Plaintiff's Attorney sent his second letter. Which I consider a "_____" letter to cover-up for the fact that he did not do his part. What was he supposed to do? He was supposed to confirm a date or provide an alternative date. He was supposed to provide discovery documents as outlined in the Statutes. He did not provide the discovery--not one item. In fact, from _____ to _____ he did not provide any discovery or confirm a Date-Time-Place. His lack of action is an obstruction to the arbitration process, which is certainly unethical behavior.

Based upon the profiles for the Plaintiff's attorney located in various places on the internet, he has _____ years of experience as a lawyer. He should know how to make Date-Time-Place appointments, and he should understand that making such appointments is an iterative process which requires action on his part. He should know what discovery is. He should know that he should provide the documents requested and required by statute. I expected to be working with a professional lawyer, not a _____-year-old "_____" that needs to be told repeatedly and exactly what to do by his "_____". His obstruction was intentional.

The question is: Did the Plaintiff's attorney tell the judge that he did not send the necessary discovery to me? If Plaintiff's Attorney did not inform the Court that (1) he had not confirmed the dates offered or offered alternative dates and (2) that he had not sent discovery material to me, he is omitting material information. The Court must have all material information to make an informed decision. Omitting known material information is lying by omission. Lying by omission is lack of candor to the tribunal, which is an ethical issue, ER 3.3.

Hon.

Complaint

If the Plaintiff's attorney did inform the Court and if the court did not include the material information in its court documents and decision-making, then the court is not presenting a balanced court record in its Minute Entry nor making a balance, well thought out decision. The Court is lying to the public by omission. The Court has a responsibility to truthfully support its decisions and truthfully maintain its records.

On _____, Parties stipulated to wave arbitration and trial setting was set for _____.

In _____, This Court fined me for not finishing this Case by _____. As far as I know, I am the only one of the _____ attorneys (me, Plaintiff and Defendant attorneys) who has been fined for not finishing this case by _____. If my assumption is true, this judge's ruling is ludicrous.

In conclusion, more could be said; but I think that you have sufficient information to understand my concerns with bias, lack of respect (exclusion from decision making, business and personal schedules), negative assumptions about my integrity, and a harsher standard of performance required of me while nonperformance by the other attorneys is acceptable.

What do I want this committee to do? I want my record cleared and my fines eliminated. They are unjust. If you have questions, please ask me for clarification.

(cell)

**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.**