State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-015

Complainant: No. 1204010952A

Judge: No. 1204010952B

ORDER

An attorney alleged that a justice of the peace demonstrated bias against his client by acting outside of his authority and by issuing untimely rulings with falsified dates.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After review, the commission decided to dismiss this matter with a private advisory comment reminding the judge of his obligation to comply with relevant statutory and constitutional time limits. The case is dismissed pursuant to Rules 16(b) and 23(a).

Dated: May 31, 2012.

FOR THE COMMISSION

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed
to the complainant and the judge
on May 31, 2012.

This order may not be used as a basis for disqualification of a judge.

2012-015

JAN 1 1 2012

January 11, 2012

Commission on Judicial Conduct
Arizona State Courts Building
1501 West Washington Street # 229
Phoenix, Arizona 85007

Re: Hon.

To Whom it may concern,

I filing a formal complaint against Hon. of the Highland Justice Court. It is my belief that Judge has committed several ethical violations that warrant only my second judicial complaint in over twenty years of practicing law. It is my belief that Judge is 1) biased against landlords, especially represented ones; 2) that Judge is not ruling on matters in a timely fashion and is falsely dating rulings and Orders to make it appear to be ruling timely; and 3) that Judge is acting without judicial authority in matters in which he is not adequately trained nor competent.

Judge on several occasions in the past has manifested bias and inappropriate behavior against me and my clients by interjecting his opinions in unopposed and default matters, namely, by denying or modifying claims for fair market rent in eviction actions following foreclosures. However, this complaint arises out of a civil action CC2011- RC involving a who on 5/31/11 filed a small claims action for $1324.26 against my client, Action Property Management. Mr. filed his claim for the return of a security deposit against my client, who was a disclosed property manager, instead of properly naming and suing the owner of the property. *See* Exhibit 1. Thus, on 6/3/11 I filed on my client's behalf a Motion to Dismiss, a motion I have filed no less than 80 times in the last 20 years! *See* Exhibit 2. The Plaintiff filed a response which never addressed the merits of the Motion to Dismiss, but only requested to file a Motion to Amend the Complaint to change my client's name. *See* Exh. 3. Rather than

summarily grant the Motion to Dismiss, as should have been done under the circumstances, Judge set the matter for oral argument on 7/18/11. *See* Exh. 4. Judge later revealed in his Order that he set the matter for oral argument to determine whether my client had properly disclosed its agency status in the lease agreement, which it had, and which was clearly shown to Judge in the motion. Because Judge either did not read the pertinent statute, couldn't understand it, or chose to disregard it, however, he set the matter for oral argument.

On 7/18/11, oral argument was held, but Judge did not preside over the matter. Rather, Justice *pro tem* presided, and ultimately and correctly ruled that the Motion to Dismiss should be granted. *See* Exh. 5. On July 27, 2011, I filed a proposed judgment and an Application for Attorney Fees with the Court. *See* Exh. 6. The Plaintiff never responded to the fee application, nor objected to the form of judgment. On September 2, 2011, Judge and not Judge *pro tem* ruled on the fee application and entered the judgment, denying all but $250.00 of the requested $1400.00 attorney fees. Again, this was in spite of the fact that there was no objection to the fees and that the award of reasonable fees was mandatory pursuant to the contract. Judge never addressed any issues of what services were not necessary nor addressed whether which fees were unreasonable, but simply crossed off the requested amount and wrote in "$250.00." *See* Exh. 7.

On September 9, 2011, I filed a Motion for Reconsideration of Attorney Fees and to Amend the Judgment in order to permit the Court to correctly award fees and to extend our appeal deadline. *See* Exh. 8. Again, there was no response or objection from the Plaintiff. I received no response from the Court for some time, so I personally called the Court clerk on October 31, 2011, and after a few minutes, was informed that the file was "on Judge desk and had not yet been ruled upon." Around November 10th, the 60th day after filing the motion, I again telephoned the Court clerk and was again informed after a few minutes that the file was "on Judge desk and had not yet been ruled upon." At that point I asked the clerk to see if she could get the Court to rule, but reminded her that Judge should not be ruling on the matter, but rather, that Judge *pro tem* should be the one to rule. After another week went by without a ruling, on November 17th, I called the Court one last time and spoke to a male clerk. He took quite a while to get back on the phone, and when he came back, he again stated

that he had finally found the file on Judge desk, and that the Motion still had not been ruled upon!

After that the third call and same responses, I filed the same day a Motion to Expedite Ruling on Motion to Amend and Reconsider. *See* Exh. 9. In it, I reminded the Court that the ruling was outstanding over 60 days and that Judge *pro tem* Seyer should rule on the issue of attorney fees. On November 21st, the Court clerk mailed out Judge Order, which was actually postmarked November 22, 2011. The Order was dated November 4, 2011 and was signed by Judge despite my confirming that the Motion had not yet been ruled upon as late as November 17, 2011! *See* Exh. 10 & 11.

In the backdated Order, Judge went outside the pleadings by *sua sponte* arguing that my client had supposedly not complied with ARS 33-1322(A), an issue that he never had in front of him at any time. Judge claimed that the above statute requires the name and address of the landlord to be disclosed to a tenant, and that therefore, my client had not complied with the law and could be responsible for the return of the security deposit, essentially over-ruling Judge *pro tem* Yet, that issue was never raised in any pleadings by the Plaintiff and it was never addressed at oral argument. Moreoever, ARS 33-1322 does not in fact require that the landlord's name and address be disclosed, but rather specifically states:

> **33-1322. Disclosure & tender of written rental agreement**
>
> A. The landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name & address of each of the following:
>
> 1. The person authorized to manage the premises.
>
> 2. An owner of the premises **or a person authorized to act for & on behalf of the owner** for the purpose of service of process and for the purpose of receiving and receipting for notices and demands. (emphasis added).

Since my client had disclosed that it was the "person authorized to act for and on behalf of the owner for the purpose of service of process and for the

purpose of receiving & receipting for notices and demands," there was absolutely no legal requirement to disclose the name and address of the owner. Thus, not only did Judge pursue issues that were never even addressed by the parties or the *pro tem* Judge, and which were never before him, he was also blatantly incorrect in his ruling. Moreover, since he was not the Judge who was assigned to and presided over the oral argument and ruled on the Motion to Dismiss, he should not have re-assigned himself to the case and ruled on any of the merits, let alone the attorney fees issue. By doing so, he essentially created a collateral appeal of Judge ruling on the merits.

Judge went on in his Order to claim that my client had not appropriately pled a request for attorney fees in the pleadings, since we did not file an Answer. In fact, no Answer was required to be filed. Our Motion to Dismiss was the only pleading that needed to be filed, since the Plaintiff filed his claim against the wrong party. Notwithstanding that fact, we did specifically request an award of attorney fees in the original Motion to Dismiss, which Judge apparently either did not see or chose to disregard.

Then Judge went outside the pleadings again and clearly demonstrated his bias by researching how many times my client had been involved in landlord/tenant cases in Maricopa Justice Courts! That issue should never have been researched or even considered by the Court in awarding fees. It certainly is not an issue set forth by the in Schweiger v. China Doll, 138 Ariz. 183, 673 P.2d 927, 931 (App. 1983), the benchmark case for the award of attorney fees in Arizona. Judge then argued *sua sponte* that my client should have "easily limited their costs by simply answering the complaint." In other words, Judge clearly determined that property managers like my client should submit to small claims resolution rather than availing themselves of the right to legal counsel, discovery and appeal, and the legal right to transfer cases to civil division and to dispose of frivolous cases against them with motions to dismiss, all of which are not permitted in small claims division! If they do not stay in the small claims division, it is Judge obvious position that property manager should not be entitled to the award of their actual and reasonable legal fees, even if the Plaintiff's complaint was frivolous or filed against an incorrect party! And Judge is determined to apply his opinion, even in cases in his Court in which he is not the Judge of record on the merits!

Judge makes yet another *sua sponte* argument against the award of fees to my client, by arguing that there would be a "chilling effect" on persons attempting to resolve matters in small claims cases. Again, Judge disregards the rights of defendants to remove actions from small claims to preserve their appeal rights, or to perform discovery, or to invoke their right to have legal counsel represent them. He also disregards the chilling effect he creates for defendants who are sued in his small claims division and want to transfer their cases to civil division any o fthe above reasons, but are reluctant to do so because he arbitrarily denies them their legal fees later.

Judge then makes a comment that the poor small claims plaintiff is "suddenly faced with the prospect of thousands of dollars in Defendant's attorney fees with no absolute ability at that point to even dismiss their complaint. Such an argument clearly demonstrates bias. In this matter, there was no request for fees in the "thousands." Furthermore, in this case, the only reason the attorney fees requested by Defendant were as high as they were was because Judge set an oral argument on a Motion to Dismiss that was never properly opposed, and therefore, should have been ruled upon summarily! Moreover, the Plaintiff in this matter could have moved to dismiss his Complaint against my client and reduced the amount of attorney fees involved any time before the court granted the Motion to Dismiss, but he persisted in pursuing his claim against the wrong party all the way through oral argument.

Finally, Judge again reverts back and repeats his incorrect *sua sponte* legal argument that my client had not followed the law and was therefore not entitled to any more attorney fees than those he already had allowed. Again, this issue was not for Judge to consider, and Judge was clearly erroneous about the disclosure law.

Judge dating of the Order, despite being obviously fictitious, also precluded a proper appeal within 14 days, since the Order was not even mailed out until 17 days after Judge claimed to have prepared and signed the Order. I still personally filed a Notice of Appeal on November 30, 2011 and pointed out therein that the Court had taken 17 days before mailing the Order and that I had confirmed that the Motion had not been ruled upon at least as of November 17th. *See* Exh. 12. I only discovered later that the Notice of Appeal I filed was in fact void, and that I would have had to file a Motion to Vacate the judgment and then

file a new Notice of Appeal if and when the Court re-issued a judgment. However, in an apparent attempt to cover himself, in a *sua sponte* minute entry apparently dated December 9th , he Judge illegally extended the time for appeal to December 15, 2011, claiming that the delay in mailing was "unintentional." *See* Exh. 13. However, once again, the Court took another three days before mailing out that Minute Entry, and it was not received by me until after December 15th. See Exh. 14. Due to the amount of money involved, my client chose to abandon the attempt at appeal and instead chose to join me in this judicial complaint.

In summation, I believe that Judge conduct in this matter alone demonstrates his lack of understanding of the law, even when he cites it. It clearly demonstrates that he is not ruling promptly and is even falsely dating Orders to comply with ARS 11.424.02. This should be able to be confirmed by questioning the clerks involved. Finally, this case clearly demonstrates Judge bias against any property manager who appears with legal counsel and who seeks to avail themselves of the legal right to counsel, discovery and appeal. He manifests his bias by withholding reasonable attorney fee awards to those parties who choose to have legal counsel rather than waive their legal rights and submit to small claims court jurisdiction, even when they are not the proper party to the lawsuit. While Judge may consider himself to be trying to be "fair," he certainly is either disregarding the law, or is ignorant of it.

I will be available should any further information be needed. Please feel free to contact me at the number above if you have any other concerns.

Sincerely

Enclosures