

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 13-085

Judge: Barbara Madanick

Complainant: Karen McDade

ORDER

The complainant alleged a justice court hearing officer mishandled her small claims case and that a justice of the peace failed to properly address her attempt to seek redress with him concerning the conduct of the hearing officer.

Rule 1.2 of the Code of Judicial Conduct requires a judge to “act at all times in a manner that promotes public confidence in the judiciary.” Rule 2.2 requires a judge to “uphold and apply the law” and “perform all duties . . . fairly and impartially.” Rule 2.6(A) requires a judge to protect the right of every litigant “to be heard according to law.” Finally, Rule 2.8(B) requires a judge to be “patient, dignified, and courteous” with all litigants. Hearing Officer Barbara Madanick improperly berated a litigant for attempting to cite to Arizona law in a small claims proceeding, advising the parties against “quoting any of the rules or regulations of Arizona law.” Throughout the hearing, Ms. Madanick inappropriately employed a bullying tone and demeanor.

Accordingly, Hearing Officer Barbara Madanick is hereby publicly reprimanded for her conduct described above, pursuant to Commission Rule 17(a). The commission found no misconduct by the justice of the peace named in the complaint, and so the complaint is dismissed as to him pursuant to Commission Rule 16(a). The record in this case, consisting of the complaint, the hearing officer’s response, and this order shall be made public as required by Rule 9(a).

Dated: June 27, 2013.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judicial officers on June 27, 2013.

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

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2013-085

COMPLAINT AGAINST A JUDGE

Your name: Karin McDade Judge's name: Barbara Madanick 4/17/13

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

I wish to have Judicial Conduct Board to include
Judge. since there was no response
that he observed the recording on name my -
letters, exhibits which is evidence that
Barbara Madanick behavior was unfair. Consider
not adhering to the law ARS - 22-512 A, B.

April 17, 2013

State of Arizona
Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, AZ 85007

Dear Sir:

The letter addressed to the _____ dated March 26th was sent certified and I have a copy that it was received on Friday, March 29th. In addition, I have included a court stamped copy dated March 29, 2013 at 11:14am proving it was received that same day by the court. Other than this cover letter and the CD recording, I am sending you everything that I sent _____ for your consideration.

In addition to my request regarding the conduct of the hearing officer, Barbara Madanick, I am requesting the Judicial Conduct Board investigate the "conduct" of _____ to not review my case and my allegations regarding his hearing officer's behavior. It is my understanding that _____ presides over cases of the _____ Justice Court and I was giving him substantial information to review before I approached the Commission on Judicial Conduct. _____ should be appreciative that a plaintiff will invest substantial time and effort to help him with his justice court. Instead, _____ did not acknowledge my letter and substantial documentation regarding his hearing officer's behavior.

I am enclosing the audio and video recording of the hearing which I have copied and I taped the audio from the CD in its' entirety as well. My following comments may not be verbatim, but very fairly represent what Madanick said. The actual statements verbatim are available on the recording. At the beginning of the hearing I asked Barbara Madanick if _____ had a letter stating his authority to represent Circle K Stores at the hearing and she replied, "He doesn't need that." Then Madanick said that if she thought he was not a claims manager or claims supervisor it would be her job to do that. She then stated, "If this were a civil case or criminal case he would have to do that." Then when I read the ARS 22-512A, B she stated those legal requirements at the hearing are up to the judge or the hearing officer to make that decision. In other words, Madanick stated it was their discretion whether to follow the statutes. Then she stated, "Don't be quoting any of the rules and regulations of the Arizona law."

The _____ Justice court provided me with a two page document **"INFORMATION FOR FILING SMALL CLAIMS CASES IN JUSTICE COURT."** The document specifically states the Arizona Revised Statutes governing small claims procedures. The issue with _____ isn't whether he is a claims manager with Circle K Stores, but has he satisfied the ARS 22-512A,B requirements.

This issue was brought up by me early in the hearing and by my father after Madanick made her decision and the hearing was over, proves [redacted] did not possess the legal and necessary letter from the defendant to have the authority to represent the defendant at the hearing. Madanick either doesn't understand the statute or she simply chooses not to follow it. I have read nothing in this literature that allows a judge or hearing officer to make a determination whether to follow the Arizona Revised Statutes. If Madanick's version of the law is accurate, then the statute should specifically state that the judge or hearing officer has that discretion and this information should be included in this document and handed out and changed in the Justice Court's web site.

I sent approximately 40 exhibits, a detailed explanation of what occurred at the hearing and the fact that [redacted] has access to the recording of the hearing he still chose not to review this evidence. Instead, the court document dated April 10, 2013 denying said motion states, "There is no right to appeal or rehearing of small claims cases recognized by law." My father never said one word during the hearing until Madanick dismissed the case and she said the hearing was over. Then he also brought up the issue of the statute.

My father, [redacted] had an experience two years ago last month with a hearing officer at the [redacted] Justice Court. This hearing officer did not exclude any of the photo or other exhibits at the hearing. However, the conclusion she came to when dismissing his case with prejudice just didn't make sense. I have included the letter he sent to the Honorable [redacted] dated March 22, 2011. Judge [redacted] must have agreed that the dismissal was not fair and he permitted a rehearing of his small claims complaint.

When a different hearing officer heard the case, she realized that the representative of the defendant did not meet the requirements of ARS 512A, B and she told him that he was not able to legally represent Carpet Direct and she provided a judgment of \$2,500 to my father who was the plaintiff. The courts are very busy as noted by the article that [redacted] was featured in the Phoenix Republic on October 13, 2010. [redacted] was also featured on KPHO.com regarding the same subject. The one article in the Arizona Republic, "As he begins his day, Justice of the Peace [redacted] eyes the pile of yellow case files stacked a couple of feet high on a shelf at his office." "I see yellow in my sleep," [redacted] said. I have enclosed a copy of each article. This may explain why [redacted] could not find the time to review my case even though my evidence was compelling. It is my understanding that [redacted] presides over his hearing officer Barbara Madanick and he should have taken the responsibility to review my allegations.

The honorable Judge [redacted] realized the injustice of his hearing officer's decision and even though his court is extremely busy he allowed a rehearing of [redacted] case.

My entire complaint was based on Circle K Stores having a legal duty to provide **reasonable and ordinary care** in designing their station. The only way I could prove this was by observing and taking photos of the stations in the proximity of the defendants.

If it was apparent that the other stations satisfied their legal duty when compared to the circumstances of the defendant's station, I felt I could prove that the defendant breached their legal duty.

I realized the defendant's design of pump #12, the unusually short "bumper", dark color paint and the iron railing approximately 11' in front of my vehicle when parked at the pump were unusual circumstances when compared to all of the other station of which 4 were Circle K stations too. Counting the defendant's Circle K station, and the other stations in their proximity, 5 of the 10 stations were Circle K stations.

However, only the defendant's station had the turning restriction of the iron railing only 11' in front of my parked vehicle at gas pump number 12 and only the defendant's station pump #12 had severe damage at that "bumper." Barbara Madanick absolutely refused to allow my photo exhibits to establish that the other stations in the proximity to the defendant's station satisfied their legal duty in providing a safe environment through **ordinary and reasonable care** in their design and egress. This was very unfair and it destroyed my ability to prove the defendant had a legal duty and breached their legal duty.

Moments after her comments that I stated above she refused to enter any of the photo exhibits **If it's not pertinent to this case, I don't want to see them. If the photos are of other stores, not his store, I don't want to see them.**

I believe Barbara Madanick's behavior demonstrates that she is was very unfair in her interpretation of the statute, disallowing all of my photo exhibits of the other stations in the proximity to the defendant's station and it was apparent she was resentful that I questioned her about the statue and told me that I was not to discuss anything about the rules and regulations of the Arizona Law. You will realize by my outlines that I have provided and the recording that the only rule or regulation that I brought up was ARS 512A, B. My interpretation was that if I was restricted to be at the hearing and my father who took the photos would not be entered into evidence, why should the defendant not be required to adhere to the requirements of the statute.

If you have any questions please call me and thank you for your help.



May 17, 2013
State of Arizona
Commission on Judicial Conduct
1501 W. Washington St. Suite 229
Phoenix, AZ. 85007

re: Case # 13-085

To Whom It May Concern:

Thank you for the _____ in answering this matter since I was on vacation.

I am in receipt of your letter on the above case number as well as the information sent in by Karen McDade. In that complaint, the plaintiff refers to ARS 22 512-A, B and indicates that the defendant did not satisfy the requirement by that statute and that I was ignorant of the statute in allowing the defendant to represent the company. ARS 22-512 B4 states "a full time officer or **authorized employee** shall represent a corporation". No where in that statute does it state the representative must have a letter of representation from the company. This defendant had adequate information for this hearing officer (i.e. - company letter in the file with his name and position, business cards with his name and position) to feel that ARS 22-512 B4 was being adhered to. The employee was not responsible for any authority to negotiate for the company. Since I felt I had the proper information from the defendant, and did not have the statute in front of me, I felt the plaintiffs objection was not warranted.

However, in hindsight, I believe I should have refrained from stating that "we are not going to be quoting from any rules or regulations of the Arizona Law". That statement was a definite mistake, and one I am sorry for making.

In the second part of your letter, you referred to my making the comment "I know women love to talk" I do not feel it was an inappropriate gender stereotype remark. The defendant was given the opportunity to present her case for 48 minutes, and _____ repeated herself and since I am a women and indicated such in that statement, and both she and her father agreed, laughed and shook their heads in

agreement, I felt it was a lighthearted comment and was taken as such. No where in the plaintiffs complaint does she refer to this comment.

I feel the plaintiff was incorrect in her interpretation of ARS 22-512A, B and since the defendant was not charged with negotiating for the company, all necessary requirements were met. However, I will refrain from making the statement that plaintiffs and defendants shouldn't quote rules and regulations of Arizona Law.

Ms. McDade and her father were quite upset that I did not rule in their favor and that Circle K should have been responsible for the damages to her car.

I hope this satisfies the commission's request for a response, however, should there be any other questions, please feel free to contact me at the above address.

Sincerely,

A handwritten signature in blue ink, appearing to be the name Barbara Madanick.

Barbara Madanick