State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-125

Judge: David H. Fletcher

Complainant: C. Steven McMurry

ORDER

The complainant alleged a justice of the peace pro tempore displayed inappropriate courtroom demeanor and did not ensure the litigants' right to be heard.

Rule 1.1 of the Code of Judicial Conduct states that "a judge shall comply with the law, including the Code of Judicial Conduct." Rule 2.2 provides that "a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Rule 2.5(A) states that "a judge shall perform judicial and administrative duties competently, diligently, and promptly." Rule 2.6(A) requires that "a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." Finally, Rule 2.8(B) states "a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . ."

Judge Pro Tem Fletcher presided over an eviction proceeding. He did not provide the litigants any guidance on how the trial would proceed. While the elderly defendant was still preoccupied with finding a chair to accommodate her and her walker, Judge Pro Tem Fletcher asked if she had an opening statement, and when she advised she was still locating a chair, he stated she did not have one and told the plaintiff to call her first witness. After the plaintiff made a brief statement of the relief she was requesting, he asked "You're done. Really?" in a sarcastic tone. He then proceeded to state the plaintiff did not meet her burden, and entered judgment for the defendant, but then dismissed the case without prejudice.

Judge Pro Tem Fletcher's tone during the trial was not "patient, dignified, and courteous." He failed to afford either party a fair opportunity to be heard on their case. Additionally, the simultaneous entry of judgment for the defendant, but dismissing the case without prejudice reflects a lack of knowledge of the law.

Accordingly, Judge Pro Tem David H. Fletcher is hereby publicly reprimanded for his conduct as described above and pursuant to Commission Rule 17(a). The record in this case, consisting of the complaint, the judge's response, and this order shall be made public as required by Rule 9(a).

Dated: August 14, 2015

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on August 14, 2015.

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

Comp

MAY 08 2015

2015-125

Date May 4 15

Name: David Fletcher

Phone:

Court: ,. McDowell Mt.

Case Number: CC2015 061960 FTR Record 4 16 1.30

Read to Complainant: *If your concern involves judicial decisions, court staff, understanding court procedure or process, appeals, court rules, filing a motion for reconsideration, or motion to set aside, then I will be happy to help you. I can explain the courts procedure and process, and give you option's to consider. I will not give legal advice. If you believe a Judge, Pro Tem, or Hearing Officer has acted unethically or with misconduct, I will supply you with the address and phone number for the Commission on Judicial Conduct. It would be improper for me to become involved with something the Commission on Judicial Conduct has jurisdiction over.*

Please explain your concerns -- Pro tem Fletcher was rude and de-grading.

Review. Pro Tem Fletcher called both litigants forward the litigants stipulated there was two months' rent due, but disagree as to some HOA fines, Pro tem Fletcher said you have a right to go to trial but it is foolish, and invited the litigants to be seated at the tables, without any instruction as to how the trial would proceed ask the plaintiff for opening statements , the plaintiff was not aware of how to proceed, finally said I want my house back and the rent paid, pro tem Fletcher turned to the defendant and ask for opening statement a very elderly lady using a walker who did not like the chair and was pre occupied with trying to get a different chair, when pro tem Fletcher could not get her attention he told the plaintiff to call your first witness, she did not know what to do, finally she said I am the only witness, and he said raise your right hand and swore her, he said state your case, she said I want my house and two rent, you are done "really" he said is that all and she said yes, he told her to return to the table and said, " The plaintiff has the burden of proof, by a preponderance of the evidence the plaintiff at the conclusion of her case , did not prove her case by a preponderance there was no evidence of notice of any notice given to defendant, with that good luck with that you are free to go. pro tem Fletcher signed the judgment giving not guilty for defendant,

Anger Index start finish

Action to be taken: Judge Carrillo was ask to talk to Pro tem Fletcher, Presiding Judge McMurry referred the case to the commission.

may 8 15

Date

Resp
MAY 27 2015

May 25, 2015

Commission On Judicial Conduct
1501 W. Washington Street, #229
Phoenix, Arizona 85007

Case No. 15-125 Response

I served as a Justice of the Peace, pro tempore, in the McDowell Mountain Justice of the Peace court, on April 16, 2015.

I presided over the case, "Danielle Coletto v. Elay Glena", CC2015-061960.

In response to staff attorney, April P. Elliott, letter dated May 18, 2015, I agree that a judge be "patient, dignified, and courteous". Regarding the allegation that I was in violation of Rule 2.6, that I "...did not ensure each party the right to be heard...", I respectfully DENY the allegation.

The original Complaint was made to the Justice Court by the losing plaintiff, Danielle Colette. I have not been provided with a copy of this original Complaint. I do not know if it even exists. "Presiding Judge McMurry" then involved himself with the filing of his Complaint, of which I was provided a copy by staff attorney Elliott. I ask the Commission to carefully review the record of the proceeding. I point out the fact that the losing self represented plaintiff was afforded a trial at which she testified. At the conclusion of her presentation, I asked, "Are you done with your case?" The plaintiff responded, "Yes. I'm done." The losing self represented plaintiff was not denied the right to be heard in violation of Rule 2.6. The prevailing defendant, Elay Glena, has not lodged any Complaint against me.

I now respond to the Complaint filed against me by Complainant, dated May 8, 2015.

Complainant alleges, "...the litigants stipulated there was two months' rent due..." This is a misstatement of the record. The litigants did not enter into any stipulation. Please review all written documents, there is no written stipulation. Please review the entire record of the proceeding. The word, "stipulation", is never uttered. There was a pretrial attempt at settlement of the case which failed. Such settlement discussions are not admissible into evidence at trial, the litigants have not been sworn. I have had hundreds of cases reach settlement in this manner. I believe settlement discussion is allowed and desirable.

"Complainant next alleges, "...Pro tem Fletcher said you have a right to go to trial but it is foolish,..." This mistates the record. Please review the record and you will find the plaintiff say, "I don't have a copy of the lease with me." Later I say, "You are the plaintiff and you have the right to go forward I believe, even if you do so foolishly". The difference is important because the plaintiff was seeking late fees damages in her Complaint dated April 10, 2015. A.R.S sec. 33-1377(F) provides, "...for late charges stated in the rental agreement,...". A.R.S. sec. 33-1368(B), also provides, "...a reasonable late fee set forth in a written rental agreement...". The plaintiff must have her lease with her to obtain the late fees damages she seeks. I later ask the plaintiff, "Do you want to have your trial today?" The plaintiff responds, "Yes, I do." It is common for unprepared plaintiffs to seek a continuance in landlord tenant actions, which may be up to three days, to marshall evidence and witnesses. I have granted such continuances thousands of times. I do not believe that I, as judge, can tell the unprepared self represented plaintiff, "Plaintiff you are unprepared. You should ask for a continuance." This would assist the unprepared self represented plaintiff, but it would be detrimental to the self represented defendant, who would then have to appear twice.

Complainant is correct that I opened the trial by asking the plaintiff for opening statement. That is the correct procedure for a trial. "Complainant" then offers his conjecture, "..., the plaintiff was not aware of how to proceed,..." The plaintiff proved the conjecture false by giving an opening statement.

Complainant then alleges his conjecture, "...pro tem Fletcher turned to the defendant and ask for opening statement a very elderly lady using a walker who did not like the chair and was pre occupied with trying to get a different chair, when pro tem Fletcher could not get her attention he told the plaintiff to call your first witness..." This misstates the record. Please carefully review the record. I told the defendant, "Defense opening statement", and again "Defendant opening

statement", and finally "I'll take it that the defendant has no opening statement", prior to my asking plaintiff to call her first witness. It is correct trial procedure for the plaintiff to call her first witness after opening statements.

Complainant then alleges his conjecture, "... she did not know what to do, finally she said I am the only witness, and he said raise your right hand and swore her,..." This misstates the record. The conjecture is proved false because, as Complainant notes, "she said I am the only witness". Please review the record and and you will also find when I attempted to have the plaintiff raise her right hand, the plaintiff raised her left hand instead. I insisted the plaintiff use her right hand to be properly sworn in. It is not "rude and de grading" to require the plaintiff to be properly sworn.

Complainant then alleges, "...he said state your case..." This misstates the record. I actually said, "State your name for the record please." I then said, "You may proceed". The difference being Complainant's misstatement may be considered rude, whereas the record version is polite. Complainant then continues to misstate the record with ",...you are done "really" he said is that all and she said yes, he told her to return to the table..." A review of the record will show that plaintiff testifies, ending with "...and that would be all". I then said "You're done. Really?" The difference between the misstatement and the record is that it is the plaintiff that is saying "...and that would be all", not me. The words are hers not mine. Instead of the misstatement "...he told her to return to the table...", the record shows I said, "You may step down. Thank you." The misstatement may be considered rude, but the record version is polite.

Please note that the plaintiff did not introduce into evidence the lease, the rental accounting ledger, or the 5 day notice. The plaintiff thus failed to prove the elements of her case. The plaintiff must therefore lose her case. The proper decision was made. I do not believe that I, as judge, can tell the self represented plaintiff, "You should introduce into evidence the lease, the rental accounting ledger, and the 5 day notice". This would assist the self represented plaintiff, but it would be detrimental to the self represented defendant.

Complainant then continues to misstate the record, but rather than focus on that, instead focus on his quote, under the heading of "Pro tem Fletcher was rude and de-grading", the end of his Complaint. "The plaintiff has the burden of proof, by a preponderance of the evidence the plaintiff at the conclusion of her case, did not prove her case by a preponderance there was no evidence of notice of any notice given to defendant, with that good luck with that you are free to go. pro tem Fletcher signed the judgment giving not guilty for defendant". Although it misstates the record it amazes that Complainant considers any of that "rude and de-grading". I used the correct burden of proof by a preponderance of the evidence. I correctly placed the burden of proof on the plaintiff. I correctly ruled for defendant. I correctly signed the judgment of "dismissal without prejudice" Said "dismissal without prejudice" means the plaintiff may refile her case. To correct one misstatement, I actually said, "...good luck to you all, court stands adjourned". I also advised the litigants of their right to appeal. I have spoken the burden of proof standards into the record thousands of times. I believe it is legally correct to do so for purposes of appeal. I have said good luck to you all, thousands of times. I consider it a courtesy to the litigants.

The Arizona Supreme Court in decisions has enunciated the standard that a self represented litigant is held to the same standard as an attorney. If the Commission wishes to alter this standard for self represented litigants, it would be useful to be specific regarding pretrial settlement discussion, continuances, and trial presentation of the elements of the case.

If the Commission carefully reviews the record, then subtracts out Complainant's misstatements of the record, and his conjectures, from his Complaint, there is nothing left.

I respectively DENY that I was "rude and de-grading".

Thank you for your attention to this Response, and if you have any questions please do not hesitate to contact me.

Judge MR

AUG 2 0 2015

15-125

August 18, 2015

Commission On Judicial Conduct
1501 W. Washington Street, #229
Phoenix, Arizona 85007

Case No. 15-125 Motion For Reconsideration

I have received the Disposition Of Complaint dated August 14, 2015.

The Order is correct that, "He did not provide the litigants any guidance on how the trial would proceed." The eviction proceeding is a "summary Proceeding" according to many Arizona Supreme Court decisions. 5,000 such actions are filed every month in Maricopa County. If the standard is applied that self represented litigants are held to the same standards as an attorney, as enunciated in many Arizona Supreme Court decisions, then procedural guidance is not required. I think attorneys who practice in this area of law would be insulted by such guidance. As a practical matter, even 5 minutes of procedural guidance per case would swamp the lower courts. Courts can have over 100 such cases on the daily calendar. Litigants must appear prepared in this area of law.

The Order misstates the record, "...Judge Pro Tem Fletcher asked if she had an opening statement, and when she advised she was still locating a chair, he stated she did not have one and told the plaintiff to call her first witness." As was stated in the Response, I told the defendant, "Defense Opening statement", and again "Defendant opening statement", and finally, "I'll take it that the defendant has no opening statement." Three tmes should be sufficient, the Commission requirement of more is onerous. The Order provides, "After the plaintiff made a brief statement of the relief she was requesting,..." Plaintiff has already had her opening statement, this is now testimony on plaintiff's part for the elements of her case. The Commission has misanalysed what portion of the trial we were in. The Order then proceeds, " 'You're done. Really?' in a sarcastic tone." The plaintiff was provided one last opportunity to testify as to the necessary elements of her case, which she had failed to provide. The Commission feels this to be a bad thing, rather than the good thing it was. The Order then proceeds, "He then proceeded to state the plaintiff did not meet her burden, and entered judgment for the defendant, but then dismissed the case without prejudice. Judge Pro Tem Fletcher's tone during the trial was not 'patient, dignified, and courteous'. He failed to afford either party a fair opportunity to be heard on their case. Additionally, the simultaneous entry of judgment for the defendant, but dismissing the case without prejudice reflects a lack of knowledge of the law." There was a trial at which the plaintiff testified, "and that would be all" and "yes, I'm done." That is a fair opportunity to be heard, your conclusion is not supported by the record. As to the "without prejudice" argument, Complainant did not raise it as an issue, the Commission's Staff Attorney did not raise it as an issue. The Commission has decided to ambush me on the issue, raising it for the first time in the Order. How very unfair.

The Commission has a "lack of knowledge of the law", which weighed heavily in the Commission's Order. The Commission noted twice that it is improper to find for the defendant but dismiss the case without prejudice in it's Order. Normally, in the usual case, the Commission would be correct, but not here in the unique forcible detainer, special detainer, eviction proceedings area of law, where it is incorrect. The statutes are archaic, requiring the finding of "Not Guilty" in a defendant's judgment. The judge then has the option of dismissal "with prejudice" or "without prejudice". If the judge dismisses "with prejudice", then that becomes res judicata for the elements of plaintiff's case. That would mean that the plaintiff could no longer recover the rent she alleged was owed if she were to refile her case. Because the issues in these "summary proceeding" cases are so highly constricted, and the elements of the case so technical, dismissal "with prejudice" is incorrect. The reason plaintiff lost her case was a technical one, notice was not testified to, which is an element of her case. The merits of the rental nonpayment was not the deciding factor. If the case is dismissed "without prejudice", as I properly did, then the plaintiff is not foreclosed in a refile from winning the rent due, since it is not res judicata. Since the Order will become public and people will rely on it,

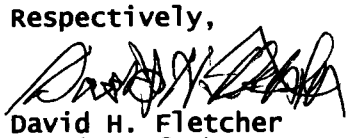
I think you should correct your error of law. If I was in error in the judgment being "without prejudice", such a matter could be corrected on appeal. There was no appeal of this case. The Commission now substitutes itself as the court on appeal. I am lead to believe that no member of the Commission has ever presided over a forcible detainer, special detainer case. These detainers are very swift cases with unusual rules and elements. It was very tempting for me to spend no further time on this matter but my conscience got the better of me.

I think a judge's "tone" is subjective, and you have found mine wanting, which although I disagree, I accept. I would not have filed this Motion had you not also misunderstood the law. Because of this case I now retire after 28 years on the bench, and presiding over more than 100,000 detainer cases. I simply don't see my error, too close to me I suppose.

I also wish to apologize to presiding Justice of the Peace, C Steven McMurry, as I had thought his Complaint was ridiculous. Since an independent group, the Commission, has now ruled against me, I realize that he was right to file the Complaint.

Even though it has ruled against me, I wish to thank the members of the Commission for the volunteer work they do. I realize it is tough and thankless work. Good luck to one and all. I harbor no ill will to anyone.

Respectively,



David H. Fletcher
Justice of the Peace Pro Tempore

Commission on Judicial Conduct
1501 W. Washington St., Suite 229
Phoenix, AZ 85007
Telephone: (602) 452-3200

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning **Judge Pro Tem David H. Fletcher** West McDowell Justice Court Maricopa County State of Arizona, Respondent.	Case No.: 15-125 **ORDER DIRECTING THE FILING OF A RESPONSE**

Respondent Judge David H. Fletcher filed a Motion for Reconsideration of the public reprimand issued on August 14, 2015.

IT IS ORDERED that Disciplinary Counsel for the commission shall prepare and file a response to Respondent's motion by September 4, 2015. Disciplinary Counsel shall provide a copy of her Response to Respondent on or before September 4, 2015. Absent a request from the commission, Respondent may not submit a written reply brief or any additional materials.

Dated this 21st day of August, 2015.

FOR THE COMMISSION

/s/ Louis Frank Dominguez
Hon. Louis Frank Dominguez
Commission Chair

Copies of this pleading were delivered on August 21, 2015, via U.S. mail, to:

Hon. David H. Fletcher
2012 E. Orion St.
Tempe, AZ 85283

Respondent

April P. Elliott
aelliott@courts.az.gov

Disciplinary Counsel

By: /s/ Kim Welch
Kim Welch, Commission Clerk

April P. Elliott (Bar #016701)
Disciplinary Counsel
Arizona Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, Arizona 85007
Telephone: (602) 452-3200
Email: *aelliott@courts.az.gov*

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning	)	Case No.: 15-125
	)	
Judge Pro Tem David H. Fletcher	)	**Response to Motion for**
West McDowell Justice Court	)	**Reconsideration**
Maricopa County	)	
State of Arizona,	)	
	)	
Respondent.	)	

On August 14, 2015, the Commission on Judicial Conduct (Commission) publicly reprimanded Pro Tem Justice of the Peace David H. Fletcher (Respondent) for violations of the Arizona Code of Judicial Conduct (Code). Respondent filed a Motion for Reconsideration on August 20, 2015. Undersigned Disciplinary Counsel submits this response pursuant to Commission Rule 23(b), respectfully requesting that the commission deny the motion.

I. Good Cause Exists for the Imposition of the Reprimand

The Commission's reprimand was based on a finding that Respondent violated five rules of the Code, as he displayed inappropriate courtroom demeanor, did not ensure the litigants' rights to be heard, and issued a ruling that reflected a lack of knowledge of the law.

Respondent presided over an eviction proceeding. He did not provide the litigants any guidance on how the trial would proceed. While the elderly defendant was still preoccupied with finding a chair to accommodate her and her walker, Respondent asked if she had an opening statement, and when she advised she was still locating a chair, he stated she did not have one and told the plaintiff to call her first witness. After the plaintiff made a brief statement of the relief she was requesting, he asked "You're done. Really?" in a sarcastic tone. He then proceeded to state the plaintiff did not meet her burden, and entered judgment for the defendant, but then dismissed the case without prejudice.

Respondent's tone during the trial was not "patient, dignified, and courteous." He failed to afford either party a fair opportunity to be heard on their case. Additionally, the simultaneous entry of judgment for the defendant, but dismissing the case without prejudice reflects a lack of knowledge of the law.

Rule 1.1 of the Code of Judicial Conduct states that "a judge shall comply with the law, including the Code of Judicial Conduct." Rule 2.2 provides that "a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially." Rule 2.5(A) states that "a judge shall perform judicial and administrative duties competently, diligently, and promptly." Rule 2.6(A) requires that "a judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law." Finally, Rule 2.8(B) states "a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . ."

In his Motion for Reconsideration, Respondent disputes the factual findings of the Commission, as well as the conclusion that the simultaneous entry of judgment for the defendant, but dismissing the case without prejudice reflects a lack of knowledge of the law. Respondent alleges he was ambushed with this issue as it was not raised by Disciplinary Counsel in her request for response from him. Disciplinary Counsel concedes that she did not raise it as an issue in her initial letter to Respondent seeking a response to the complaint, however, Respondent argued in his response that he made the correct judgment.[1]

Respondent is correct that statutes for eviction proceedings require a finding of "guilty" or "not guilty" on the part of the defendant to the action.[2] If a judge finds the defendant guilty, the statutes provide for the court to give judgment to the plaintiff for restitution of the premises, rent, late charges, costs, etc. Those particular statutes also provide for the issuance of a writ of restitution. If a judge finds a defendant not guilty, judgment is to be given for the defendant against the plaintiff for costs, and possibly possession if the plaintiff acquired possession prior to the commencement of the action. Disciplinary counsel could locate no rule, statute, or case law discussing that when judgment is entered in favor of the defendant that the action be dismissed with or without prejudice.

In the instant case, the plaintiff wanted to proceed to trial, and a trial was immediately held. Respondent found that the plaintiff did not prove her case, and he

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[1] See Respondent's Response to Commission dated May 25, 2015, page 2, 3rd full paragraph.

[2] *See, e.g.*, A.R.S. §33-1377, A.R.S. §12-1178, and Rule 13, Arizona Rules of Procedure for Eviction Actions.

found in favor of the defendant and entered judgment for the defendant. Thus, the defendant was not guilty. To then dismiss the case without prejudice and allow the plaintiff the potential opportunity to try to prove the same allegations in a subsequent proceeding runs afoul of well-established legal theories of res judicata, laches, and estoppel. Respondent's argument to the contrary is without merit, and he cites no specific statutes, rules or case law allowing a plaintiff the proverbial second bite at the apple when they failed to prove their case the first time.

II. Factors Supporting a Sanction

The Scope section of the Code sets forth several factors for the commission to consider in determining whether a sanction is appropriate in a particular case. On balance, those factors support the issuance of the reprimand in this case.

A. Seriousness of the Transgressions

Respondent fails to acknowledge that his conduct and manner in the hearing were even remotely improper courtroom demeanor. He shows no introspection. The recording of the hearing speaks for itself. The conduct displayed by Respondent during that hearing does not promote public confidence in the judiciary.

This factor weighs in favor of a sanction.

B. Facts and Circumstances Existing at the Time of the Transgression

When Respondent commenced the trial, he was either oblivious to or deliberately ignored the fact that the elderly defendant was having a difficult time in finding a chair that would accommodate her. She likely did not hear him request her opening statement, and instead of patiently waiting for her to get situated at the

table, he forfeited her right to an opening statement. Respondent was very curt and abrupt with the plaintiff, who was clearly a struggling self-represented litigant. While there is established case law that states a self-represented individual is held to the same standard as an attorney, there is more recent case law and a growing trend to be more accommodating to self-represented litigants, including the United States Supreme Court's holding in Turner v. Rogers, 131 S.Ct. 2507 (2011).[3] Respondent also ignores that the script in the Limited Jurisdiction Bench Book has a specific advisement on trial procedure to be read to self-represented litigants in eviction proceedings. While Respondent may have said "good luck to you all" at the conclusion of the hearing, his general tone throughout the actual trial was sarcastic. He was not "patient, dignified, and courteous" as required by Rule 2.8(B), nor did afford either party a full and fair opportunity to be heard as required by Rule 2.6(A). Disciplinary Counsel has already addressed Respondent's lack of competency in the law in Section I.

This factor weighs in favor of a sanction.

C. Extent of Any Pattern of Improper Activity or Previous Violations

In 2009, Respondent's improper courtroom demeanor rose to the level of the Commission issuing him a public reprimand in Case No. 09-150 for being argumentative, not allowing litigants to be heard, and aggressively cutting off the litigants' comments.

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[3] *See also* Comment 4 to Rule 2.2 which provides, "It is not a violation of this rule for a judge to make reasonable accommodation to ensure self-represented litigants the opportunity to have their matters fairly heard."

This factor weighs in favor of a sanction.

D. The Effect of the Improper Activity Upon the Judicial System or Others

The success of our judicial system requires that the public have trust in the independence, integrity, and impartiality of the judges who serve on the bench. When a judge exhibits improper demeanor, such behavior undermines that trust. Respondent's improper demeanor is not an isolated case. This factor weighs in favor of a sanction.

All four factors that the commission must consider weigh in favor of issuing a sanction (a dismissal with an advisory comment or warning is not a sanction).

III. Aggravating and Mitigating Factors

Rule 19 of the Commission Rules sets forth 10 aggravating and mitigating factors for the commission to also consider.

A. Nature, Extent and Frequency of the Misconduct

Respondent has previously been reprimanded for improper courtroom demeanor. That he has repeated that improper conduct is an aggravating factor.

B. Judge's Experience and Length of Service on the Bench

Respondent has been a judge pro tempore for approximately 28 years. He has substantial experience, and should be well-versed in his ethical obligations under the Code. Therefore, this is an aggravating factor as well.

C. Whether the Conduct Occurred in the Judge's Official Capacity or Private Life

The conduct occurred in Respondent's official capacity, however, Disciplinary Counsel does not deem this factor applicable to this case.

D. Nature and Extent to Which the Acts of Misconduct Injured Other Persons or Respect for the Judiciary

The underlying complaint did not come from one of the litigants, so Disciplinary Counsel does not have any direct evidence of injury to the plaintiff other than that her case was dismissed. However, Respondent's conduct clearly impacts the public's perception and respect for the judiciary, and casts the judiciary in a negative light. This is an aggravating factor.

E. Whether and to What Extent the Judge Exploited His or Her Position for Improper Purposes

Disciplinary Counsel does not deem this factor as applicable.

F. Whether the Judge has Recognized and Acknowledged the Wrongful Nature of the Conduct and Manifested an Effort to Change or Reform the Conduct

In his motion for reconsideration, Respondent clearly disagrees with the Commission's findings, although he states he "accepts" them, but he initially found the complaint to be "ridiculous." Respondent does not recognize how his conduct was perceived, and he is in complete disagreement with the Commission on the law, in fact stating "I am led to believe that no member of the Commission has ever presided over a forcible detainer, special detainer case." Accepting a result does not suggest recognition of the wrongful nature of the conduct and does not manifest a desire to change or reform the conduct the commission has found wanting. Disciplinary Counsel argues this is an aggravating factor.

G. Whether There Has Been Prior Disciplinary Action Concerning the Judge, and if so, its Remoteness and Relevance to the Present Proceeding

As stated previously, Respondent has a prior public reprimand for similar conduct. Thus, this is an aggravating factor.

H. Whether the Judge Complied with Prior Discipline or Requested and Complied with a Formal Ethics Advisory Opinion

Disciplinary Counsel does not deem this factor as applicable.

I. Whether the Judge Cooperated Fully and Honestly with the Commission in the Proceeding

Respondent has fully cooperated and has been honest as best as Disciplinary Counsel can determine. This is a mitigating factor.

J. Whether the Judge was Suffering from Personal or Emotional Problems, or from Physical or Mental Disability or Impairment at the Time of the Misconduct

This was not raised as a defense by Respondent, and Disciplinary Counsel does not deem this factor applicable to this case.

While the aggravating factors balance the inapplicable and mitigating factors numerically, the commission is free to assign whatever weight it chooses to the factors. Again, given the repetitive nature of the conduct, Respondent's substantial experience, and the injury to the public perception of the judiciary, Disciplinary Counsel argues that the overall balance is in favor of upholding the prior sanction.

IV. Conclusion

Disciplinary Counsel respectfully requests that the commission deny Respondent's motion, and leave in place the public reprimand order issued August 14, 2015, in this case.

Dated this 27th day of August, 2015.

COMMISSION ON JUDICIAL CONDUCT

April P. Elliott

April P. Elliott
Disciplinary Counsel

Copies of this pleading delivered via first class U.S. mail on August 27, 2015, to:

Hon. David H. Fletcher
2012 E. Orion St.
Tempe, AZ 85283

Respondent

By: Kim Welch
Kim Welch, Commission Clerk

State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-125

Judge: David H. Fletcher

Complainant: C. Steven McMurry

ORDER DENYING RESPONDENT JUDGE'S MOTION FOR RECONSIDERATION

The respondent judge filed a motion for reconsideration of the commission's reprimand decision as set forth in its previous order. Pursuant to Commission Policy 23, disciplinary counsel was requested to file a response to the motion, and did so.

On September 18, 2015, the commission denied the motion for reconsideration. As provided in Commission Policy 23, the respondent judge's motion for reconsideration, disciplinary counsel's response, and this order denying the motion for reconsideration shall be made a part of the record that is posted to the commission's website with the other public documents (the complaint, the judge's response, and the reprimand order).

Dated: September 25, 2015

FOR THE COMMISSION

/s/ Louis Frank Dominguez

Hon. Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on September 25, 2015.

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