

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 16-199

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Judges:

Complainant:

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**ORDER**

The complainant alleged that eight superior court judges issued improper rulings, failed to timely rule, and failed to report misconduct.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judges 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.

The commission does not have jurisdiction to review the legal sufficiency of the judges' rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the eight judges did not violate the Code in this case. Accordingly, the complaint is dismissed as to all eight judges, pursuant to Rules 16(a) and 23(a).

The commission approved sending one judge an advisory letter that the judge more fully review the file before issuing orders so as not to violate Rule 2.6 (Ensuring the Right to be Heard).

Commission member Anna Mary Glaab did not participate in the consideration of this matter.

Dated: November 14, 2016

FOR THE COMMISSION

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

Copies of this order were mailed to the complainant and the judges on November 14, 2016.

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

Judge

· Issued an improper order, ordering the matter to a settlement conference before Judge .

o Case and

In the pleadings dated between through , it was stated over and over how the parties asked that the Court make a declaratory judgment and select which form of license is to be approved.

On stated that License is the closest to the language agreed between the parties at the original Settlement Conference.

On , Judge Notice stated that the parties needed to submit any supplemental pleadings to this Court by no later than 30 days of this date, at which time the matter will be deemed “*under advisement*”. Either Judge Judge or Judge should have ruled and chosen one of the Licenses versus sending it to a third Settlement Conference.

The Court, Judge , failed to render any decision after the matter was “*under advisement*”. A Violation of **Rule 2.7 Responsibility to Decide**.

On Judge stated that “ .” Yet on already stated on the record, that License is the closest to the language agreed between the parties at the original Settlement Conference. The Plaintiff's very own counsel admitted in open Court that

· Issued an improper legal ruling where he permitted your attorney, to withdraw

o Case and

On Judge request to withdraw.

On Motion stated that had not paid his firm; however, his firm was paid the full amount due on stated that he had irreconcilable differences with yet is still our Statutory Agent for and also for all our . continues to advise us regarding real estate sales contracts and notes. stated that his withdrawal would not prejudice his Clients, yet we had and still have difficulties retaining replacement counsel due to his false statements on this Motion.

Plaintiff's counsel, used withdrawal to prejudice the Court against (see Plaintiff's Response in Opposition to Third-Party Defendant's Motion to Continue and For Withdrawal of Counsel and also see Court Minute Entry)

On Judge stated “ ” This was because we were not informed by or Judge that an was required to be represented by counsel. In addition, Judge was unaware that the Settlement Agreement had been signed by all parties, the cases were dismissed with prejudice, and that only the License Agreement was to be decided.

Judge \_\_\_\_\_ :

· Failed to report the misconduct by \_\_\_\_\_ to the state bar. Rule 42, ER 3.3 Candor  
Toward the Tribunal.

\_\_\_\_\_ made a false statement of fact in his \_\_\_\_\_ letter to Judge \_\_\_\_\_ . \_\_\_\_\_ stated  
“ \_\_\_\_\_ . This was  
false since the \_\_\_\_\_ plan and the \_\_\_\_\_ plan both clearly stated that they would  
be removing the vines and trenching 20 inches wide by 4.5 feet deep by 86 lineal feet long. This would  
destroy all the creeping vines. The License states, “  
\_\_\_\_\_.” and that \_\_\_\_\_ shall propose “  
\_\_\_\_\_”. And “  
\_\_\_\_\_”

In \_\_\_\_\_ letter to Judge \_\_\_\_\_ mislead Judge \_\_\_\_\_ by redacting paragraph 4  
of the Renewable License Agreement wherein \_\_\_\_\_ is named as the “ \_\_\_\_\_ ” Arbitrator.

\_\_\_\_\_ failed to disclose his close relationship with \_\_\_\_\_ during the \_\_\_\_\_ Status  
Conference. (see pages 34-39, 41, 75-78)

\_\_\_\_\_ failed to provide Disclosure by Arbitrator per ARS 12-3012.

· Failed to report the misconduct you alleged as set forth in your \_\_\_\_\_ letter, to the state bar.

Judge \_\_\_\_\_ was aware of \_\_\_\_\_ previous attempts to mislead the Court back in

On \_\_\_\_\_ a letter was sent to Judge \_\_\_\_\_ making him aware of \_\_\_\_\_ current attempts to  
deceive the Court and defraud \_\_\_\_\_ and \_\_\_\_\_ tried to violate  
\_\_\_\_\_ due process rights by failing to serve the lawsuit \_\_\_\_\_ in violation of the Rules  
of Civil Procedure for the \_\_\_\_\_ attempted to deceive Judge  
\_\_\_\_\_ into certifying the fruits of their fraudulent scheme. Judge \_\_\_\_\_ vacated all rulings made  
during arbitration.

Judge \_\_\_\_\_ :

· Failed to assign the matter to a settlement judge, but sat himself as a settlement judge, converting a status conference into a settlement conference that you weren't prepared for.

- o Please provide the date \_\_\_\_\_ Status Conference
- o Please confirm, was this in cases \_\_\_\_\_ and \_\_\_\_\_

· Erred by permitting the appointment of \_\_\_\_\_ people as arbitrator who were not properly disclosed to the parties ( \_\_\_\_\_ ). They did not provide disclosure per ARS 12-3012.

- o If there are relevant dates or orders, please let me know. \_\_\_\_\_ Status Conference in cases \_\_\_\_\_ and \_\_\_\_\_ (Transcript pg 25 and pg 29-32)

During the Status Conference, Judge \_\_\_\_\_ did not ask that \_\_\_\_\_ or \_\_\_\_\_ provide Arbitrator Disclosure per ARS 12-3012. \_\_\_\_\_ had to decline to serve as Arbitrator because of her relationship with \_\_\_\_\_ and \_\_\_\_\_ did not even arbitrate.

Judge \_\_\_\_\_ did ask that we provide \_\_\_\_\_ what she disclose any relationship that she might have with \_\_\_\_\_ or the \_\_\_\_\_. He failed to ask that \_\_\_\_\_ disclose any relationship she had with \_\_\_\_\_ Judge \_\_\_\_\_ admits that Judge selected \_\_\_\_\_ because Judge \_\_\_\_\_ with \_\_\_\_\_

· Erred by failing to report how the previous judges 'bungled' this case.

- o Please clarify what knowledge you allege Judge \_\_\_\_\_ had that would have triggered his duty to report.

Minute Entry Page 2: “

”

Status Conference Transcript Page 4: “

”

Ruling, Page 1: “

”

Judge

Rule 2.15 and 2.16

Failed to report attorney misconduct where he was aware the attorneys in the underlying case were extorting

Please provide the case number: Civil lawsuits: \_\_\_\_\_ and \_\_\_\_\_  
Settlement Conference

Please set forth what knowledge you allege Judge \_\_\_\_\_ had, that would have triggered his duty to report the alleged extortion. See attached file \_\_\_\_\_ Judge \_\_\_\_\_ at pages 41, 46, 74.  
During the Settlement Conference, Judge \_\_\_\_\_ helped Attorney \_\_\_\_\_ ts  
and Attorney \_\_\_\_\_ and \_\_\_\_\_, Attorney \_\_\_\_\_ (client \_\_\_\_\_),  
and Attorney \_\_\_\_\_ knowingly obtain “ \_\_\_\_\_ ” (\$ \_\_\_\_\_) from \_\_\_\_\_  
by means of threatening \_\_\_\_\_  
be extortion, a Class 4 felony \_\_\_\_\_ per ARS §13-1804.A.5 and ARS §13-1804.C.

In Civil Case \_\_\_\_\_ and \_\_\_\_\_ had to pay \$ \_\_\_\_\_ o \_\_\_\_\_  
\_\_\_\_\_ who then immediately paid \_\_\_\_\_ and \_\_\_\_\_ \$ \_\_\_\_\_ then  
dropped the criminal case \_\_\_\_\_ for \_\_\_\_\_ against \_\_\_\_\_ The  
Civil Cases involved a \_\_\_\_\_ ( See attached file \_\_\_\_\_ uge \_\_\_\_\_ The criminal  
matter is not \_\_\_\_\_ at pages 1-  
34)

These acts should be considered to be illegal or unethical generally if (1) the contemplated criminal matter is \_\_\_\_\_; (2) the lawyer does not have a well-founded belief that the civil claim and the potential criminal charges are warranted by the law and the facts; and (3) the lawyer does attempt to exert or suggest improper influence over the criminal process. At least this was the conclusion of the \_\_\_\_\_.

Almost without exception, bar associations, courts and legal commentators who have addressed the issue, as well as the drafters of the Model Rules, have concluded that abusive threats of criminal prosecution were in fact adequately covered by other more general prohibitions in the Model Rules, and there was no need to address such threats specifically. [Geoffrey C Hazard & W. William Hodes, *The Law of Lawyering* (3<sup>rd</sup> ed. 1985), at § 40.4] These general provisions are ER 8.4(b) (prohibition against a lawyer committing a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects); ER 8.4(c) (prohibition against a lawyer engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); ER 8.4(d) (prohibition against a lawyer engaging in conduct that is prejudicial to the administration of justice); ER 3.1 (a lawyer shall not bring a proceeding unless there is a good-faith basis in law and fact); ER 4.4 (a) (a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden any other person); and ER 4.1(a) (a lawyer shall not make a false statement of material fact or law to a third person).

Rule 2.9

Engaged in ex-parte communications with \_\_\_\_\_ based on the fact that he appeared during a hearing on a motion to compel plaintiff to execute the settlement documents.

Please provide the date of the hearing.

Please confirm the support for this allegation is your inference that Judge \_\_\_\_\_ and attorney \_\_\_\_\_ must have communicated where Judge \_\_\_\_\_ appeared at the hearing. (See attached file Judge \_\_\_\_\_ at pages 96-97.)

This hearing was a Status Conference before Judge \_\_\_\_\_ spoke to Judge \_\_\_\_\_ about re-opening Settlement and invited \_\_\_\_\_ to the hearing without notifying our attorney,

Do you have a recording of this hearing?

Judge

· Issued an improper order where he ordered arbitration when  
been served.

a party, had not

o Please confirm whether this is

o Please provide the date of the order.

Case was initiated on

It was not served upon

Judge signed the Order to Compel Arbitration and to Appoint Arbitrator on  
after the initiation of

Judge

· Failed to report attorney misconduct to the bar where he knew or should have known the opposing party committed fraud. - misconduct per Rule 42, ER 3.1

o Please clarify how Judge knew/should have known of the fraud.  
Judge knew that the lawsuit was not served and that Judge order was improperly timed,  
see Judge Order, his Order, **letter to the Court**, and the Minute Entry.

· Issued an improper order by ordering arbitration when a party, had not yet answered.

o Please provide a copy of this order. See Minute Entry. The Court order to retain counsel within and to submit the names of two potential arbitrators. The Court did not grant the opportunity to Respond to the Initial Summons in case

· Failed to timely disclose his conflict until after denying motion to dismiss

o Please clarify what alleged conflict of interest existed. Please see Order that states: “

”

Or confirm that you assert Judge order was untimely. He should have made the disclosure made in that order earlier. That Order was mailed to received it on and mailed it to on . It was received by on The deadline to file an objection was which is only after the Order was made.

· Minute Entry recorded incorrect information.

The Minute Entry states: “

.” and “

.”

It was who made those oral arguments not .

Ultimately,

client, has no current plan to be arbitrated. contractor, of was a tenant of had his on . Then had his died on before the Hearing. Therefore, repeated attempts to go before an arbitrator with no arbitrable plan were an abuse of process per Rule 42 of the Arizona Rules of Professional Conduct, ER 3.1 – Meritorious Claims and Contentions.

Judge \_\_\_\_\_ :

- Erred by holding a settlement conference on a matter that Judge \_\_\_\_\_ dismissed with prejudice.
- Erred by allowing you to engage in the practice of law where you, a non-lawyer, represented \_\_\_\_\_
- Erred by not being aware of the fact that Judge \_\_\_\_\_ dismissed the case with prejudice.
- Erred by conducting a settlement conference without all parties present.

o Case \_\_\_\_\_ and \_\_\_\_\_

What party was absent? \_\_\_\_\_ and \_\_\_\_\_

o What was the date of the settlement conference?

We either had a global Settlement on \_\_\_\_\_ or we didn't.

On \_\_\_\_\_ Judge \_\_\_\_\_ stated “

\_\_\_\_\_” This was because we were not informed by \_\_\_\_\_ or Judge \_\_\_\_\_ that an \_\_\_\_\_ was required to be represented by counsel.

In addition, Judge \_\_\_\_\_ was unaware that the \_\_\_\_\_ Settlement Agreement had been signed by all parties, the cases were dismissed with prejudice in \_\_\_\_\_ and that only the License Agreement was to be decided. Judge \_\_\_\_\_ then tried to re-write the License Agreement by inserting a Stipulation into the language of the License Agreement that would allow \_\_\_\_\_ to pursue to claim for attorney's fee.

On \_\_\_\_\_, Judge \_\_\_\_\_ Notice stated that the parties needed to submit any supplemental pleadings to this Court by no later than \_\_\_\_\_ of this date, at which time the matter will be deemed “\_\_\_\_\_”. Either Judge \_\_\_\_\_, retired Judge \_\_\_\_\_, or Judge \_\_\_\_\_ should have ruled and chosen one of the Licenses versus sending it to a third Settlement Conference. The Court failed to render any decision after the matter was “\_\_\_\_\_”. A Violation of **Rule 2.7 Responsibility to Decide**.

Judge \_\_\_\_\_ :

\_\_\_\_\_ Issued an improper legal ruling where he \_\_\_\_\_ motion to re-open settlement.

Please provide the case number: \_\_\_\_\_ and \_\_\_\_\_

Please provide a copy of this order: Please see attached document titled “\_\_\_\_\_”.

Please note that the Settlement Conference took place \_\_\_\_\_ . From \_\_\_\_\_ through \_\_\_\_\_ , Motions were filed for the Court to decide on the Final language of the License Agreement which needed to be attached to the \_\_\_\_\_ Settlement Agreement. On \_\_\_\_\_ , Judge \_\_\_\_\_ signed the Order of Dismissal with Prejudice for \_\_\_\_\_ . On \_\_\_\_\_ , Judge \_\_\_\_\_ signed the Order of Dismissal with Prejudice for \_\_\_\_\_ . The License Agreement was not attached to the Settlement Agreement.

From \_\_\_\_\_ through \_\_\_\_\_ , more Motions were filed asking the Court to rule on the Final language of the License Agreement which needed to be attached to the \_\_\_\_\_ Settlement Agreement.

On \_\_\_\_\_ , Judge \_\_\_\_\_ issued an Order stating that \_\_\_\_\_ were resolved the Final language of the License Agreement. He stated that the Court had been in contact with Judge \_\_\_\_\_

On \_\_\_\_\_ Judge \_\_\_\_\_ issued a Notice that the Court had reviewed the \_\_\_\_\_ Settlement Conference transcript and all previous pleadings. It directed counsel to submit supplemental pleadings to the Court within \_\_\_\_\_. The matter would then be deemed “\_\_\_\_\_”. Judge \_\_\_\_\_ did NOT state that Judge \_\_\_\_\_ (or any future Judges) would be conducting any additional Settlement Hearings.

The Court, Judge \_\_\_\_\_ , failed to render any decision after the matter was “\_\_\_\_\_”.

From \_\_\_\_\_ through \_\_\_\_\_ more pleadings were filed due to the lack of any Order from Judge \_\_\_\_\_ . **A Violation of Rule 2.7 Responsibility to Decide.**

At the \_\_\_\_\_ appeared with \_\_\_\_\_ [refer to the \_\_\_\_\_ Judge \_\_\_\_\_ Complaint regarding ex-parte communication Rule 2.9 violation: Engaged in ex-parte communications with \_\_\_\_\_ attorney, \_\_\_\_\_ based on the fact that he appeared during a hearing on a motion to compel plaintiff to execute the settlement documents.]. \_\_\_\_\_ conceded in open court that the form of license agreement that \_\_\_\_\_ presented was closest to the language agreed between the parties at the settlement conference. However, Judge \_\_\_\_\_ did not rule in favor of the Defendants at that time. Instead, Judge \_\_\_\_\_ ordered that another Settlement Conference before \_\_\_\_\_ be scheduled. [ please refer to the recording sent \_\_\_\_\_ titled “\_\_\_\_\_” ]

Judge \_\_\_\_\_ also refused to acknowledge \_\_\_\_\_ pleading.

From \_\_\_\_\_ through \_\_\_\_\_ Judge \_\_\_\_\_ refused to acknowledge any pleadings from either counsel or make any other Orders and Rulings.

Neither Judge \_\_\_\_\_ or Judge \_\_\_\_\_ would render a Ruling for over \_\_\_\_\_