

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 16-319

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Judge: Rachel Torres Carrillo

Complainant: Catharine M. Castellanos

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**ORDER**

The complainant alleged she was denied the right to a trial and improperly had a judgment entered against her in an eviction proceeding.

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 1.2 of the Code requires that a judge “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Rule 2.2 states that “a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Rule 2.5(A) requires that “a judge shall perform judicial and administrative duties competently, diligently, and promptly.” Finally, Rule 2.6(A) of the Code states, “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.”

Catharine Castellanos was a defendant in an eviction proceeding in which her landlord alleged she had failed to pay one month’s rent, along with a \$100.00 fine. The commission reviewed a recording of the hearing conducted by Judge Torres Carrillo which showed that Ms. Castellanos presented evidence she had tendered the rent due and owing before the \$100.00 fine was assessed. Thus, Ms. Castellanos offered a defense to the eviction complaint.

Rule 11(b)(1) of the Rules of Procedure for Eviction Actions requires that if a court determines a defense may exist, the court is to conduct a trial on the merits. Judge Torres Carrillo did not conduct a trial, but rather ruled against Ms. Castellanos. Judge Torres Carrillo signed a judgment for the claimed past due rent and court costs. Ms. Castellanos later hired an attorney who moved to vacate the judgment which Judge Torres Carrillo granted, awarding Ms. Castellanos her attorney fees and court costs.

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

In her response to the complaint, Judge Torres Carrillo admitted that she had initially entered the judgment in favor of the landlord “due to the interest of trying to be efficient.” She acknowledged that she later corrected the error and vacated the judgment. Judge Torres Carrillo also indicated she would change her process in gathering evidence pertaining to a case, and be willing to set matters for trial.

The commission previously reprimanded Judge Torres Carrillo in Case No. 15-189 for similar conduct in an eviction proceeding. The commission is concerned that Judge Torres Carrillo’s failure to afford Ms. Castellanos a trial shows a lack of awareness of the due process required in these types of proceedings, despite the number of years Judge Torres Carrillo has served on the bench. A judge must comply with the law and the Code notwithstanding the demands of a high volume court.

Judge Torres Carrillo violated Rule 1.1 and Rule 2.2 when she failed to uphold and apply the law by not conducting a trial on the issue of payment of rent when Ms. Castellanos offered a viable defense. Judge Torres Carrillo’s multiple errors in this eviction proceeding demonstrate a lack of competence in this area of the law in violation of Rule 2.5(A). Additionally, Judge Torres Carrillo violated Rule 2.6(A) when she failed to afford Ms. Castellanos the right to present her defense to the failure to pay rent allegation and summarily found her guilty of unlawful detainer based on unsworn avowals.

Finally, Judge Torres Carrillo violated Rule 1.2 by failing to promote public confidence in the independence, integrity, and impartiality of the judiciary, and by failing to avoid impropriety and the appearance of impropriety in Ms. Castellanos’ eviction proceeding.

Accordingly, Judge Rachel Torres Carrillo is hereby publicly reprimanded for her conduct as described above and pursuant to Commission Rule 17(a). The commission further directs that Judge Torres Carrillo complete additional training on eviction proceedings, and provide proof of completion of the training to the commission. Commission staff will assist Judge Torres Carrillo in finding a suitable training program.

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).

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

Commission members Peter J. Eckerstrom and Art Hinshaw did not participate in the consideration of this matter.

Dated: February 6, 2017

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 February 6, 2017.

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

**CONFIDENTIAL**

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

**FOR OFFICE USE ONLY**

2016-319

**COMPLAINT AGAINST A JUDGE**

Name: Catharine Castellanos Judge's Name: Rachel Carrillo Torres

**Instructions:** Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

I went before judge Rachel Torres Carrillo on June 30<sup>th</sup> on an Eviction Case. I had viable proof that I paid my Rent. She violated my Civil Right to a trial. She found me guilty of Non-payment of Rent ordered me to pay the Court costs and Attorneys fees then signed a writ to have me evicted on the third day when by law its seven days. She had no knowledge of the law or didn't bother to try to do the case by the law. I gave her the copy of the money order with their Bank Stamp on the back. When I filed my answer with I have enclosed a copy of all the documents. And a letter explaining what happened.

See enclosed  
Documents

I paid my landlord the rent on or about June 1st on June 8th my landlord served me with a 7 day non-payment of Rent and returned my money order with her bank stamp on the back. On Friday June 24th I was served with Court Summons went to court on June 27th and filed an answer in the Court with a copy of the money order with the Bank stamp of my landlord on the back. Viable proof I had paid my rent and was not in fact guilty of non-payment went to court on June 30th again presented proof that I had in fact paid my rent. Judge Carrillo refused to honor my Constitutional rights. Found me guilty of non-payment order me to pay the Court cost and lawyers fees. By the 6th of July on the 5th of July I paid the amount of ~~\$38500~~ <sup>sum 16900</sup> on the 6th Judge Carrillo signed a writ to have me thrown out by the Constable again violating my rights to due process. On July 14th the constable came and gave me two minutes to get out of my house leaving my animals unattended and me and my dogs homeless. I had to hire an attorney to point out her mistakes. On my attorney file for a Emergency Motion to vacate on the 14th of July. She set the court date out as far as she could it was set for the 21st of July. On the 21st of July she didn't make a decision in court she stated she would let us know by the end of the day. At 5pm on July 21st she overturned her judgement and granted my Motion to vacate. I had my attorney file a petition for Court cost & lawyers fee and damages. She has to this date not heard my petition for Damages, Court cost and lawyers fee. She doesn't have knowledge for the law or people Constitutional Rights He lack of knowledge for the law cause me & my family a great hardship.



## Maricopa County

Resp

JAN 06 2017

2016-319

Rachel Torres Carrillo  
Justice of the Peace

WEST MCDDOWELL JUSTICE COURT  
620 West Jackson, Suite 1038  
Phoenix, Arizona 85003  
602-372-6300

January 2, 2017

COMMISSION ON JUDICIAL CONDUCT  
1501 West Washington Street, Suite 229  
Phoenix, Arizona 85007

Re: Case CV-2016 -112588EA

Attention Members of the Commission:

I want to inform the Members that I received the following complaint that was filed against me by Catherine Mina Castellanos on November 28, 2016 after returning from being off (2) weeks. I will respond to the following complaint.

“The defendant states that I entered an eviction judgment improperly against her by denying her a trial when she has a valid defense to the allegation of non-payment of rent. Which forced her to incur the costs of hiring an attorney to have the judgment vacated.”

I want the Commission to know that after reviewing the tape, I agree that this did happen, due to the interest of trying to be efficient I did allow testimony from Defendant and the Plaintiff. When the Defendant's Attorney submitted a letter to the court explaining clearly what occurred, I then corrected my error, and vacated the Judgment.

In the future, this will not happen again, I will change my process in gathering information or evidence pertaining to a case and just set the case for trial.

If the Commission Members believes that I have not explained enough of what happen, I am willing to answer any questions. I am submitting the tape, and the file along with this answer. Thank you for giving me this opportunity to answer this complaint.

A handwritten signature in black ink, appearing to read "Rachel Torres Carrillo". The signature is written in a cursive style with a large initial "R" and "C".

Judge Rachel Torres Carrillo  
Justice of the Peace  
West McDowell Justice court

**FILED**

**FEB-21 2017**

**ARIZONA COMMISSION ON  
JUDICIAL CONDUCT**

1 **Williams, Zinman & Parham P.C.**  
2 Attorneys at Law  
3 7701 East Indian School Road  
4 Suite J  
5 Scottsdale, Arizona 85251  
6 (480) 994-4732  
7 Michael A. Parham, #004853  
8 clerkofcourt@wzplegal.com  
9 Attorney for Respondent Judge

6 **STATE OF ARIZONA**  
7  
8 **COMMISSION ON JUDICIAL CONDUCT**

8 In re: )  
9 Rachel Torres Carrillo ) No. 16-319  
10 McDowell Mountain ) Motion for Reconsideration  
11 Justice of the Peace )  
12 Maricopa County, Arizona )

12  
13 Rachel Torres Carrillo, the Respondent Judge in this matter (Respondent) by  
14 and through undersigned counsel moves the Commission to reconsider its Order  
15 pursuant to Commission Rule 23(b)(1).  
16

17 Respondent has served as the Justice of the Peace for the West McDowell  
18 precinct since January 1999. Before joining the bench, Respondent worked in a  
19 variety of programs related to the prevention of child abuse, domestic violence and  
20 drug abuse. She was a Victim Witness Advocate for the Maricopa County Attorney's  
21 Office in the early and mid 1990s and was named Advocate of the Year in 1995.  
22

23  
24 Since becoming a Judge, Respondent has served the judicial community in two  
25 capacities relevant to the instant proceeding. First, from 2007 until 2009 she co-  
26 chaired the Arizona State Bar Landlord/Tenant Task Force that created the

1 procedural rules for eviction actions, adopted by the Arizona Supreme Court in  
2 January 2009. It is these rules that apply to the case involved in this Complaint.

3 Second, from its creation in August 2014 through December 31, 2016 she was  
4 a member of the Arizona Commission for Access to Justice (ACAJ) and played a  
5 leadership role by chairing a work group responsible for developing proposed  
6 changes in eviction rules and forms for recommendation to the Supreme Court. Her  
7 ACAJ term expired December 31, 2016.  
8  
9

10 **Factual Background**

11 Since this is a Motion for Reconsideration, Respondent for these purposes  
12 accepts the facts as determined in the Order.  
13

14 **Relevant Law and Rules (emphasis added in bold in selected quotations)**

15 Comment 3 to Rule 2.2 of the Code of Judicial Conduct states:

16  
17 3. A good faith error of fact or law does not violate this rule.  
18 However, a pattern of legal error or an intentional disregard of the law  
19 may constitute misconduct.

20 Arizona Commission on Judicial Conduct Commission Rules, January 1, 2015  
21 include the following provisions:

22 Rule 6. Grounds for Discipline The grounds for judicial discipline  
23 include willful misconduct in office, willful and persistent failure to  
24 perform judicial duties, habitual intemperance, conduct prejudicial to  
25 the administration of justice that brings the judicial office into  
26 disrepute, or a violation of the code.

27 Rule 7. Misconduct Distinguished from Error **The commission shall**  
28 **not take action against a judge for making erroneous findings of**  
**fact or conclusions of law in the absence of fraud, corrupt motive,**  
**or bad faith on the judge's part, unless such findings or**

1 **conclusions constitute such an abuse of discretion as to otherwise**  
2 **violate one of the grounds for discipline described in these rules**  
3 **or the code.**

4 Rule 11(b) of the Rules of Procedure for Eviction Actions (RPEA) covers the  
5 rules applicable to initial appearances by litigants in eviction actions and provides in  
6 relevant part:

7 b. Defendant's Plea.

8 (1) If the defendant appears and contests any of the factual or legal  
9 allegations in the complaint or desires to offer an explanation, **the**  
10 **judge should determine whether there is a basis for a legal**  
11 **defense to the complaint** either by reviewing a written answer filed  
12 pursuant to Rule 7 or **by questioning the defendant in open court. If**  
13 **the court determines that a defense or proper counterclaim may**  
14 **exist, the court shall order a trial on the merits.** If the trial is to be  
15 continued to a later date, the court may require the defendant to file a  
16 written answer. If the court orders a written answer to be filed, the  
17 court should advise the defendant of both the requirement of an  
18 answer fee and the defendant's right to apply for a waiver or deferral  
19 of the fee.

20 (2) The defendant shall not be required to answer until the initial  
21 appearance. At the initial appearance, if the trial is not continued, the  
22 defendant may file an oral answer on the record. No answer fee shall  
23 be required for an oral answer.

24 **Background**

25 It is generally acknowledged that approximately 60,000 eviction cases move  
26 through the 26 Maricopa County Justice Courts each year. This is in addition to the  
27 staggering workload of other kinds of cases. The instant case was filed on June 23,  
28 2016 with an initial hearing date scheduled for June 30.

This was a mobile home park case meaning the tenant rented only the land and

1 owned her own mobile home. The usual landlord tenant laws applicable to most  
2 evictions did not apply in this case; the Arizona Mobile Home Parks Residential  
3 Landlord and Tenant Act A.R.S. §33-1401 *et seq.* did.

4  
5 Respondent's court hears eviction cases twice a week and because of rent  
6 payment schedules and various notice requirements, most eviction case hearings get  
7 scheduled towards the end of each month.

8  
9 Court calendars for June 30 are not readily available so Respondent does not  
10 know how many cases were scheduled for the half hour allotted to eviction cases that  
11 day. By way of comparison however, on February 21, 2017, some 21 eviction cases  
12 are set for the period 8:00 to 8:30 AM. The June 30, 2016 calendar was probably  
13 comparable.

14  
15 **The Initial Appearance**

16  
17 Court records show that Scott Clark, an experienced practitioner (and another  
18 member of the State Bar Task Force that developed the RPEA) represented the  
19 plaintiff.

20  
21 When this case was called, the defendant appeared *pro per* claiming to have  
22 paid her rent. The plaintiff denied this and Respondent conducted her RPEA 11(b)(1)  
23 inquiry to determine if there was a *legal defense* necessitating a continuance and trial  
24 setting. Respondent attempted to question the defendant to determine if there had  
25 been a tender of rent and late charges owed that the plaintiff accepted. Defendant  
26 claimed to have paid by check but could not produce a *cancelled* check. Defendant  
27  
28

1 was excitable and distracted. At various times she was claiming retaliation, partial  
2 payment, disputed plaintiff's math, and finally asked to explain way she had not paid.

3 Despite a full calendar and the excited state of the defendant, Respondent is  
4 well aware of the especially severe consequences to a tenant of being evicted from a  
5 mobile home park, and she made every effort to determine if there was a *legal*  
6 *defense* that would support a continuance and trial setting. Based on what took place  
7 before her that morning, she determined there was not.  
8  
9

10 The Order characterizes part of the plaintiff's claim as a "fine." That is a  
11 mischaracterization. A.R.S. §33-1414(C) specifically allows a mobile home park  
12 landlord to require payment of a late charge of up to \$5 per day if rent is not paid by  
13 the fifth day after the due date.  
14

15 RPEA 13(e) addresses late fees in mobile home park eviction cases:

16  
17 e. Late Fees in Mobile Home Park and Recreational Vehicle Park  
18 Evictions. In cases involving mobile home parks and recreational vehicle  
19 parks, the court shall limit the award of periodic late charges in an eviction  
20 action arising out of such a tenancy to the statutory amount, and **the court**  
21 **shall not reduce late charges calculated in accord with that limitation**  
22 **unless the plaintiff fails to establish the existence of a written**  
23 **agreement regarding such late charges.**

24 The evidence presented to the Respondent made it clear in her mind at that  
25 time that not only had rent not been paid or tendered on a timely basis but that late  
26 fees were provided for in the rental agreement and came to \$100 as of June 30.

27 At one point defendant seemed to claim that a partial payment had been  
28 tendered since defendant could not pay all rent, utilities and late fees prior to her

1 court date. Normally this is a significant defense, but not in a mobile home park  
2 eviction. RPEA 13(a)(4) addresses partial payments:

3 (4) If it appears that a landlord has accepted a partial payment in a case  
4 claiming nonpayment of rent **under the Arizona Residential Landlord**  
5 **and Tenant Act**, the court shall inquire whether the landlord accepted the  
6 partial payment, and if so, can produce a partial payment agreement and  
7 waiver signed by the defendant as required by the statute. If the landlord is  
8 unable to prove that the waiver was signed, the court shall dismiss the  
9 action.

10 This was not a Residential Act case but was a Mobile Home Parks Act case. The  
11 partial payment waiver rules of the Residential Act do not appear in the Mobile Home Parks  
12 Act and that is why RPEA 13(a)(4) makes this distinction. In fact the partial payment  
13 waiver rule was specifically repealed from the Mobile Home Parks Act in 1987 (*see former*  
14 *A.R.S. §33-1479*).

### 15 **Result**

16 Judge Carrillo followed the law in handling the initial appearance in this  
17 matter. It is the Commission that misconstrues the law. A mere claim that rent was  
18 paid alone absent corroborating evidence, and especially when the claim is not clear  
19 and consistent, and is mixed in with many other excited utterances does not support a  
20 continuance and trial setting. A.R.S. §12-1177(C) conditions a continuance and trial  
21 setting to cases where good cause is shown. In Respondent's opinion at that time,  
22 under those circumstances and after due inquiry sufficient cause was not shown.  
23

### 24 **The Aftermath**

25 It is not a perfect world and Respondent does not claim to meet a standard of  
26 perfection. A motion to vacate was filed on July 14, 2016. Upon reviewing it  
27  
28

1 Respondent stayed the writ of restitution and scheduled an OSC. At this hearing it  
2 turned out that defendant did have legal defenses and in fact they were well taken.  
3 The eviction judgment was vacated and defendant was awarded her attorney's fees.

4 Judges are not held to a standard of perfection.<sup>1</sup> It is because they do not  
5 perform at that level that the system (here the RPEA) provides checks and balances.  
6 RPEA 15 provides that relief valve and here it served its purpose.  
7

8 Judges walk a fine line. While the Order recites various provisions of the Code  
9 of Judicial Conduct, the Commission should be mindful of Comment 4 to Rule 2.5:

11 4. In disposing of matters promptly and efficiently, a judge must  
12 demonstrate due regard for the rights of parties to be heard and to have  
13 issues resolved without unnecessary cost or delay. **A judge should**  
14 **monitor and supervise cases in ways that reduce or eliminate dilatory**  
15 **practices, avoidable delays, and unnecessary costs.**

16 Respondent is criticized in the Order for "trying to be efficient." But that effort  
17 is clearly in keeping with Comment 4. She found a lack of good cause at the time of  
18 the initial appearance following her examination of the defendant pursuant to RPEA  
19 11(b)(1). If this Commission wishes to second-guess her and apply the rule of  
20 hindsight, or to hold her to a standard close to perfection, she will live with that. But  
21 to say she is not aware of due process requirements, that she lacks competence in an  
22

23  
24 <sup>1</sup> See, e.g. *Matter Of Alvino*, 100 N.J. 92, 96, 494 A.2d 1014, 1018 (1985) where the Court stated:

25 Not every failure of a judge to conform to the standards of the Code amounts to  
26 judicial misconduct or merits formal discipline. While judges are held to the very  
27 highest standards of performance in this state, they are not infallible. It was never  
28 intended that each and every failure to conform to the standards of the Code  
would lead to judicial discipline. Some shortcomings were undoubtedly  
contemplated as inevitable, and, assuming good motives, they were not thought  
to provide cause for either criticism or discipline.

1 area where she has actually been involved in writing and teaching the rules and that  
2 she denied the defendant the right to present her defense and granted judgment on the  
3 basis of unsworn avowals is simply not supported by the record (the Commission  
4 needs to understand that the Complaint is verified by the plaintiff and any judgment  
5 entered on it is most assuredly *not* based on unsworn avowals. *See*, RPEA 5 (b) (8)).  
6

7 **The Prior Reprimand**

8  
9 The last Reprimand should have been challenged for reasons similar to this one  
10 but it was not. An immediate eviction for criminal conduct was involved. Under the  
11 law and the RPEA those cases (where possible) get tried at the initial appearance and  
12 are continued only under extraordinary circumstances. Plaintiffs typically allege  
13 unpaid rents in immediate eviction cases under oath in their complaints. But it is not  
14 Respondent's purpose here to litigate that Reprimand.  
15

16 **Conclusion**

17  
18 If the Commission wants to reprimand another Justice of the Peace, it should  
19 be honest about holding her to a standard approaching infallibility and be clear that it  
20 is second-guessing her actions with the full benefit of hindsight.  
21

22 The Order makes clear that presiding over a "high volume" court does not  
23 excuse a judge from the requirements of the ethical rules and Respondent agrees with  
24 that. But the demands placed on judges by the high volume environment must  
25 nevertheless be taken into account in judging their conduct. Here the record is clear  
26 that perfection was not achieved and that the defendant did have legitimate defenses.  
27  
28

1 At the initial hearing however that was not clear, and in Respondent's *informed*  
2 judgment under the circumstances at the time, good cause for continuance and trial  
3 had not been met.

4 Dated: February 21, 2017.

7 **Williams, Zinman & Parham P.C.**

8  
9  
10 

By: \_\_\_\_\_

Michael A. Parham

11  
12 Original of the electronically filed  
13 pursuant to Commission Rule 12  
14 this 21st Day of February, 2017 with:

15 Commission on Judicial Conduct  
16 1501 W. Washington St., Suite 229  
17 Phoenix, AZ 85007

18 

April P. Elliott (Bar #016701)  
Disciplinary Counsel  
Arizona Commission on Judicial Conduct  
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Telephone: (602) 452-3200  
Email: *aelliott@courts.az.gov*

STATE OF ARIZONA

COMMISSION ON JUDICIAL CONDUCT

Inquiry concerning	)	Case No.: 16-319
	)	
<b>Judge Rachel Torres Carrillo</b>	)	<b>Response to Motion for</b>
McDowell Mountain Justice of the Peace)	)	<b>Reconsideration</b>
Maricopa County	)	
State of Arizona,	)	
	)	
Respondent.	)	

On February 6, 2017, the Commission on Judicial Conduct (Commission) publicly reprimanded Judge Rachel Torres Carrillo (Respondent) for violations of the Arizona Code of Judicial Conduct (Code). Respondent filed a Motion for Reconsideration on February 21, 2017. 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 Rules 1.1, 1.2, 2.2, 2.5(A), and 2.6(A) of the Code, as she denied the complainant the right to a trial and improperly entered a judgment against her in an eviction proceeding.

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 1.2 of the Code requires that a judge “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Rule 2.2 states that “a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Rule 2.5(A) requires that “a judge shall perform judicial and administrative duties competently, diligently, and promptly.” Finally, Rule 2.6(A) of the Code states, “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.”

The complainant, Catharine Castellanos, was a defendant in an eviction proceeding in which her landlord alleged that she had failed to pay one month’s rent (June 2016), along with a \$100.00 fine<sup>1</sup> for breach of the mobile home park’s rules and regulations. The commission reviewed a recording of the hearing conducted by Respondent, which showed that Ms. Castellanos had tendered a money order to the landlord for the June rent. The landlord stamped the money order for deposit only into the landlord’s bank account, but later returned that money order to Ms. Castellanos, alleging she had not paid the \$100.00 fine. However, the date of breach

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<sup>1</sup> In her Motion for Reconsideration, Respondent states for purposes of the Motion for Reconsideration, she accepts the facts in the Reprimand Order. However, Respondent later claims this \$100.00 “fine” was an incorrect characterization, and tries to treat it as late fees. The judgment ultimately entered by Respondent clearly distinguishes between the two – late fees of \$420.00 were stricken, as well as “other damages” of \$100.00, which was the fine for the alleged breach of the mobile home park’s rules and regulations.

notice assessing the \$100.00 fine was June 8, 2016, after Ms. Castellanos had already tendered the money order, and eight days after the June rent was due. The notice specifically stated the \$100.00 fine was to be paid with the next rent payment. Thus, Ms. Castellanos offered a defense to the eviction complaint, and a trial should have been held.

Rule 11(b)(1) of the Rules of Procedure for Eviction Actions requires that if a court determines a defense may exist, the court is to conduct a trial on the merits. Instead, Respondent did not set a trial, but entered a judgment for the landlord. Interestingly, Respondent struck from the judgment the \$100.00 fine, finding that Ms. Castellanos did not know about that when she tendered the money order for the June rent, and Respondent also struck the late fees, stating that Ms. Castellanos tried to pay her rent on time. Ms. Castellanos later hired an attorney who moved to vacate the judgment, which Respondent granted and awarded Ms. Castellanos her attorney's fees and costs.

In her response to the complaint, Respondent did not dispute Ms. Castellanos' allegations, but rather stated she entered the judgment in favor of the landlord "due to the interest of trying to be efficient." She did acknowledge that she later corrected the error by vacating the judgment, and indicated that she would change her process in gathering evidence pertaining to a case and be willing to set matters for trial.

In Case No. 15-189, the commission reprimanded Respondent for near identical conduct in an eviction proceeding. Respondent has been a judge for almost twenty years, and should be well-versed in the due process requirements in these types of proceedings, particularly if she served on the task force that created the

Arizona Rules of Procedure for Eviction Actions as she stated she did in her Motion for Reconsideration. The concept of progressive discipline could have resulted in the filing of formal charges against Respondent in this matter, exposing her to censure, suspension or removal, however, based on the facts and circumstances, the Commission chose to issue another reprimand.

## **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's conduct had significant consequences for Ms. Castellanos, by evicting her from her mobile home park. Ms. Castellanos was forced to hire an attorney. Respondent did rectify her error by setting aside the judgment and awarded Ms. Castellanos her attorney's fees and costs, however, her failure to afford Ms. Castellanos the initial due process rights undermines public confidence in the judiciary.

This factor weighs in favor of a sanction.

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

As noted, Respondent stated she entered the judgment in favor of the landlord "due to the interest of trying to be efficient." In her Motion for Reconsideration, Respondent appears to allege this was a good faith error of fact or law, and not a pattern of legal error or an intentional disregard of the law which would constitute

misconduct under Rule 2.2. The underlying eviction action was never fully litigated on the merits. The reprimand was issued for Respondent failing to afford Ms. Castellanos the right to be heard at a trial on her defense, and the failure to know and follow the law which required a trial to be set, as required by Rules 1.1, 1.2, 2.2, 2.5(A), and 2.6(A). Respondent also quotes comment 4 to Rule 2.5 in her Motion for Reconsideration, which states:

In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. **A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.** (as emphasized in the Motion for Reconsideration)

Disciplinary Counsel asserts that the appropriate emphasis should be on the first sentence, rather than the second – “In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay.” As the reprimand order reflects, the Commission was clearly mindful of the pressures and demands on a judge in a high volume court, however, that judge must still comply with the law and the Code. Respondent’s conduct in this case fell short in this regard.

This factor weighs in favor of a sanction.

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

Respondent has previously been publicly disciplined for near identical conduct in an eviction case (Case No. 15-189).

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 fails to follow the law, such behavior undermines that trust. Respondent has engaged in similar conduct in the past, and as a result, at least two litigants in eviction proceedings have been denied their due process rights.

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).

Respondent asserts that the Commission is attempting to hold her to a standard of perfection, and appears to argue that the matter should be dismissed outright. However, Disciplinary Counsel disagrees with Respondent's characterization of the Commission's reasoning, and believes the imposition of a public reprimand protects the public "by assuring that the judge will refrain from similar acts of misconduct in the future." Commission Rule 5 (Purpose of Judicial Discipline).

**III. Aggravating and Mitigating Factors**

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

**A. Nature, Extent and Frequency of the Misconduct**

This is the second instance that the Commission is aware of in which Respondent failed to afford due process rights to a defendant in an eviction

proceeding by setting the matter for trial, after the defendant has proffered evidence that a defense *may* exist. Respondent acknowledges that she has a high volume eviction calendar. The near identical misconduct in both a 2015 and 2016 matter give more weight to this being an aggravating, rather than a mitigating factor.

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

Respondent just began her nineteenth year on the bench. She has substantial experience, including service on the task force that created the eviction rules. She should be well-versed in her 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**

Ms. Castellanos was evicted from her residence as a result of Respondent’s initial actions. She was then forced to hire an attorney, who fortunately, was able to get Respondent to vacate the judgment, and award Ms. Castellanos her attorney’s fees and costs. Based on what she stated in her complaint, Ms. Castellanos has a perception that Respondent “. . . had no knowledge of the law or didn’t bother to try to do the case by the law.” Respondent’s conduct also clearly impacted 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**

Respondent ultimately vacated the judgment in this matter. In her response, Respondent stated she would change the process for how she gathers information about a case and be more willing to set a case for trial. This is a mitigating 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 previously received a reprimand in Case No. 15-189 for near identical conduct. That reprimand was issued on November 13, 2015. The conduct in the underlying eviction matter occurred on June 30, 2016, approximately seven-and-a-half months later. 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.

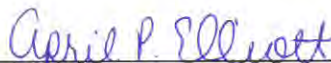
The aggravating factors outweigh the mitigating factors. Again, given the repetitive nature of the conduct, Respondent's substantial experience, the injury to the tenant, and the injury to the public perception of the judiciary, Disciplinary Counsel argues that the overall balance is in favor of upholding 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 February 6, 2017, in this case.

Dated this 6th day of March, 2017.

#### **COMMISSION ON JUDICIAL CONDUCT**



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April P. Elliott  
Disciplinary Counsel

Copies of this pleading delivered via first class U.S. mail and email on March 6, 2017, to:

Hon. Rachel Torres Carrillo  
West McDowell Justice Court  
620 W. Jackson, Suite 1038  
Phoenix, AZ 85003  
*Rachelcarrillo@mcjc.maricopa.gov*

Respondent

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

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 16-319

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Judge: Rachel Torres Carrillo

Complainant: Catharine M. Castellanos

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**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 May 4, 2017, 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).

Commission members Peter J. Eckerstrom and Art Hinshaw did not participate in the consideration of this matter.

Dated: May 17, 2017

FOR THE COMMISSION

/s/ Louis Frank Dominguez

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Hon. Louis Frank Dominguez  
Commission Chair

Copies of this order were distributed to all appropriate persons on May 17, 2017.

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