

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-224

Judge:

Complainant:

ORDER

The complainant alleged a small claims hearing officer did not enforce her subpoena of an adverse party and did not afford her a fair hearing.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the hearing officer 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 hearing officer's rulings. In addition, the commission found no evidence of ethical misconduct and concluded that the hearing officer did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

Dated: October 18, 2017

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were distributed to all appropriate persons on October 18, 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

2017-224

COMPLAINT AGAINST A JUDGE

Name: _____ Judge's Name: _____

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.

See attachment

Complaint Against A Judge

2017-224

Name:

Judge's Name:

The Court did not enforce and could not locate the properly served and registered subpoena, the Court did not compel the Defendant to provide or produce the subpoena evidence for the hearing. Although, Defendant, appeared to court for the hearing, and acknowledged service of the subpoena he did not bring any of the requested information as detailed in the subpoena. See Exhibit A; Subpoena (The Hearing Officer) here after will be referred to as (Speaker 1.) Audio Time Stamp "

" (Speaker 1.) Audio Time Stamp

"

"

The plaintiff asked the defendant for the items covered under the subpoena. The Court replied (Speaker 1.) Audio Time Stamp ."

" Which is a clear violation of due process

Ariz. R. Civ. P. 26(a)(6) Discovery methods. -- A party may obtain discovery by any of the following methods: subpoenas for production of documentary evidence or for inspection of premises under Rule 45(c). Under Rule 45. Subpoena Failure to produce documentary evidence. Contempt. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed in contempt of the superior court of the county from which the subpoena is issued. An adequate cause for failure to obey exists

when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c) (3). Failure to produce documentary evidence. Upon failure to produce documentary evidence as provided in this Rule, secondary evidence of the books, papers, documents or tangible things may be given at trial.

The environment in the courtroom, at the hearing, the Court proceeded to discuss the rules of the proceedings for the first time. As the Court explained the proceeding, the Court stated, the hearing had strict time constraints. See Exhibit B; (Speaker 1.) Audio Time Stamp “

The Court allowed less than 15 minutes between the two parties to argue their points for the case. Which was not enough time for either side especially the Plaintiff to be able to put on her case. The Constitution guarantees a fair trial through the Due Process Clauses. *Strickland v. Washington*, 466 U.S. 668, 684-685, 104 S. Ct. 2052, 2063, 80 L. Ed. 2d 674, 691, 1984 U.S. LEXIS 79, *32, 52 U.S.L.W. 4565 (U.S. May 14, 1984).

The Plaintiff stated, Exhibit B; (Plaintiff) will be referred to as (Speaker 2.) “

" *J.A.O. Acquisition Corp. v. Stavitsky*, 8 N.Y.3d 144, 148, 863

N.E.2d 585, 831 N.Y.S.2d 364 (2007). *Vulcan Capital Corp. v. Miller Energy Res., Inc.*, 2015 U.S. Dist. LEXIS 7360, *25 (N.D. Tex. Jan. 22, 2015). Here the Court failed to allow the plaintiff to show the special relationship and that information, upon which reasonable reliance was given was in fact incorrect.

Based on the audio of the proceeding, there was no way for the Plaintiff to have a fair hearing to allow the Court to fairly and impartially rule on the merits of Plaintiff claims. As evidenced by the audio, the courtroom environment was rushed and hurried by the court; countless interruptions by the Court, the [redacted] even threatened the plaintiff to dismiss the case prior to all of the evidence being present was heard, evidence that required more time to be reviewed was not considered. See Exhibit B; (Speaker 1.) Audio Time Stamp [redacted] " Here the court didn't explain what it meant by "[redacted]" "Seemingly the court didn't what the evidence presented as it pertains to the plaintiff's case and the court never allowed the plaintiff adequate time to clarify.

The Court had more time to explain Court procedures than the Plaintiff had to present her arguments and evidence. The Court's use of time, constant interruptions while Plaintiff was attempting to present her case and explain questions asked, as well as the failure to give full faith and credit to the properly served subpoena was patently unfair.

The Court's dismissal with prejudice of this case showed an abuse of discretionary authority. As in the case of *State v. Taft, 2007 Ariz. P12* We review a trial court's dismissal with prejudice for an abuse of discretion. *State ex rel. Berger v. Superior Court, 111 Ariz.*

335, 339, 529 P.2d 686, 690 (1974). An abuse of discretion occurs when a "

" Grant v. Arizona Public

Service Co., 133 Ariz. 434, 455-56, 652 P.2d 507, 528-29 (1982), or where a "

For the following reasons, we reverse. *State v. Taft*, 2007 Ariz. (Ariz. Ct. App. Feb. 1, 2007)

State v. Chapple, 135 Ariz. 281, 297, n.18, 660 P.2d 1208, 1224.(1983). *State v. Taft*, 2007

Ariz.

RESPECTFULLY SUBMITTED

Copy of the foregoing
electronically filed
this

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