

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-251

Judge:

Complainant:

ORDER

The complainant alleged a justice of the peace failed to comply with the law concerning judgment renewal affidavits, was biased against self-represented litigants, did not afford him the right to be heard, engaged in ex parte communications, and failed to report attorney misconduct.

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

After review, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23(a).

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

Dated: November 22, 2017

FOR THE COMMISSION

/s/ Margaret H. Downie

Margaret H. Downie

Executive Director

Copies of this order were distributed to all appropriate persons on November 22, 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

2017-251

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.

Please see attached.

2017-251

COMPLAINT AGAINST JUDGE TYLER KISSELL

This complaint arises from an oral argument noticed by Judge _____ dated _____, in Case No. _____ in the _____ The Court's notice (copy attached) stated specifically that said oral argument would be on "_____" (copy attached). The oral argument took place on _____, and I prepared for same based upon the Court's notice that it was to be on my motion for "Court's ruling on validity of _____," and logically and rightfully assumed that _____ would address the issues raised in the described motion, and the rules and laws also cited therein in support of same. When the hearing began, I expressed to _____ that I was very nervous and anxious since I never had to appear in court before. I read a prepared outline which reiterated and expanded upon the issues raised in my motion (copy attached).

_____ breached his duty to abide by the Code of Judicial Conduct as follows:

Canon 1, Rule 1.1 Compliance with the Law

Although asserted in my motion, _____ ignored and failed to comply with the clear and concise laws concerning all of the essential elements of Judgment Renewal Affidavits [A.R.S. 12-1612] and affidavits in general, namely Justice Court Rule of Civil Procedure 109(d) and 28 U.S.C. 1746, which state, respectively:

"An affidavit is a statement that is sworn to before an authorized official such as a notary. When a party or person is required by these rules or by law to submit an affidavit, the person or party may, instead of swearing before an official, provide a signed statement under oath, which is shown by adding the following words at the end of the statement: '*I declare under penalty of perjury that the foregoing is true and correct. Signed on the ___ day of _____, 20__.*' The person shall place their signature directly below those words [emphasis added]."

"Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury; and dated, in substantially the following form: (2) If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) **under penalty of perjury** that the foregoing is true and correct. Executed on (date). (Signature)' [emphasis added]."

_____ violated the law by allowing the _____, which unequivocally failed to contain the essential language required by law, sworn to "under penalty of perjury," to establish its validity and to remain in effect and enforceable.

_____ also ignored the fact that the Judgment Renewal Affidavit (hereinafter "_____") (copy attached) did not meet the full criteria of A.R.S. 12-1612(C) in that it was not verified. The word "verify" per Webster's Dictionary means: "to prove the truth of, as by evidence or

testimony, confirm; to ascertain the truth, authenticity, or correctness of, as by examination or research; to act as ultimate proof or evidence of, serve to confirm.”

Canon 1, Rule 1.2 Promoting Confidence in the Judiciary

complete disregard of the clear and concise court rules, Arizona statutes, and laws set forth above constitute improper conduct and entirely eroded my public confidence in his duty to act with integrity and impartiality and to avoid the appearance of impropriety and impartiality. prevented me from accessing reasonable justice.

completely deviated from the stated purpose of the oral argument and totally ignored every single issue raised in the “motion for court’s ruling on validity of . Instead, instructed me that he was basing his ruling on a which I did not understand, was never previously advised of, and was denied any opportunity to either prepare for or defend. knew that I was not an attorney, was not represented by an attorney, and could not possibly understand the legal terminology or any aspect of the that he was espousing. asked me if I understood his during the oral argument and I stated I did not. Any assumption he may have garnered that I did understand was obtained under duress and coercion as I felt I had to agree with what he was saying. never even raised any of the issues in my motion, nor did he address the rules and laws that were cited therein, all of which were undisputably breached.

My defense since being served with the was that it could not proceed on a that was deficient and defective by law. That defense had nothing to do with the original default judgment. failed to even acknowledge my defense, did not mention my defense in his discussion of the but completely ignored my defense and the laws in support of my defense.

The , represented by debt collectors/attorneys, also never submitted a response to my motion or offered a rebuttal to the violations and deficiencies of the , nor did require them to do so. thus completely ignored the rule of law and deprived me of my right to a valid defense. actions constitute a failure to act with impartiality to opposing counsel and a failure to promote public understanding and confidence in the administration of justice.

Canon 2, Rule 2.2 Impartiality and Fairness

Arizona Supreme Court Judicial Ethics Advisory Committee, Formal Advisory Ethics Opinion 16-01 (February 2, 2016), found as follows:

“The rules in the Code are rules of reason that should be applied consistent with **constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances.** The rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions. ‘Independence’ is defined in the Terminology section of the Code as meaning ‘a judge’s freedom from influence or controls **other than those established by law**’ [emphasis added].”

“Rule 2.2 provides that ‘A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially’. The Terminology section of the Code defines ‘Impartial,’

‘impartiality,’ and ‘impartially’ to ‘mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.’ Comment 1 to Canon 2 provides that, ‘To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.’”

failed to interpret and imply the rules and laws cited in my motion during the oral argument and in his ruling, failed to be objective and impartial, and denied me the opportunity to be fairly heard as a self-represented litigant.

knew I was at a disadvantage in not having attorney representation, which I simply could not afford. Instead of addressing the issues raised in my motion concerning the deficiency of the by law, which deficiency could not be denied, diverted that fact and unfairly introduced his which he knew I would be unable to understand.

deliberately placed me at a further disadvantage and unfairly ignored and denied my defense which was valid according to the rules of his own United States Code, and Arizona statute. Therefore, wrongfully exercised his “independence” since doing so violated the controls established by law.

Further, Comment 4 of Rule 2.2 states that “it is not a violation of this rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.” In that regard, prohibited my who accompanied me to the oral argument and helped me with my defense, from affording me any assistance whatsoever in understanding

Canon 2, Rule 2.3 Bias, Prejudice, and Harassment

actions constitute conduct that is reasonably perceived as bias in support of opposing counsel and against self-represented litigants, and thus impaired the fairness of the proceeding.

did not require opposing counsel to follow the rule of law or explain why the was deficient. allowed opposing counsel to proceed on a deficient and lawfully invalid that also lacked verification in violation of A.R.S. 12-1612(C). allowed opposing counsel to more than double the original default judgment amount with absolutely no documentation or evidence to support it (verification), and without having sworn to its truth upon the penalty of perjury.

Canon 2, Rule 2.4 External Influences on Judicial Conduct

actions constitute conduct that is reasonably perceived to be swayed in support of parties represented by counsel and against self-represented litigants, and relationships with counsel to unfairly influence his ruling in this proceeding. failed to conduct the oral argument independently and decide the case according to the laws and facts presented in my motion, and on the merits of my motion, without regard to whether the particular laws were unpopular to his friends (attorneys); and doing so would have been unfavorable to opposing counsel. actions eroded the public confidence in the judiciary to be free of outside influence.

Canon 2, Rule 2.5 Competence, Diligence, and Cooperation

is not an attorney and, although justices of the peace are not required to be attorneys, failed to demonstrate due regard for my right to be heard, and denied my right to be heard and my issues resolved, by completely failing to address the specific issues in my motion and the rules and laws cited therein. actions in imposing the were deceptive, misleading, prejudicial, and totally veered from the stated purpose of the oral argument, "Defendant's motion for Court's ruling on validity of the

" took advantage of my inability to understand or prepare a defense to his

Canon 2, Rule 2.6, Ensuring the Right to be Heard

denied me the right to be heard according to law by completely ignoring the issues raised in my motion, and the rules and laws cited therein in support of my motion, and instead imposed his knowing full well that I am not sophisticated in legal matters and would not understand his espousing of the during oral argument, and that I was without counsel to explain it to me or defend against it.

has been a legal assistant for many years and helped me research and prepare my defense in this matter, as most would naturally do. She accompanied me to the oral argument and attempted to tell that I did not understand the was rude to my and completely cut her off and told her she was not allowed to speak on my behalf. posed the question to my . " ?" replied, How ironic that himself is not an attorney, yet is allowed to rule in such a manner that completely ignores the rules and laws put before him. After the oral argument, my attempted to ask a question about why he completely veered from the issues raised in my motion. again was rude to my , refused to answer her question, stated that he was the judge and could basically conduct the hearing as he chose, and informed my that she was not entitled to ask any questions.

In fact, had I been given notice that would not stick to the specific issues raised in my "motion for Court's ruling on validity of the" as the Court's notice thereof reflected, I feel confident that I would have been able to successfully raise a defense to but I was deprived of that opportunity. In that regard, the is an improper venue for this matter and I never received any of the statutorily required documents from the judgment creditor,

Nor was I ever personally served in this matter back in . Nor did I ever receive any mailed notice of this lawsuit. When I relayed those statements to however, he completely disregarded them as well.

My defense on the deficiency of the would have been successful had merely observed, followed, and enforced the rules and laws cited in my motion. He failed to render a decision based on the merits of my defense and the rule of law, and thus denied me the right to be heard according to the law.

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**