

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-261

Judge:

Complainant:

ORDER

The complainant alleged a justice of the peace was biased against him and ruled incorrectly.

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.

The commission does not have jurisdiction to review the legal sufficiency of the judge's rulings. In addition, 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 members Gus Aragón and Art Hinshaw did not participate in the consideration of this matter.

Dated: March 20, 2018

FOR THE COMMISSION

/s/ Margaret H. Downie

Margaret H. Downie

Executive Director

Copies of this order were distributed to all appropriate persons on March 20, 2018.

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

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

Greetings,

I am referring this matter to you because it is my opinion Judge [redacted] violated several rules of the Arizona Code of Judicial Conduct in connection with my complaint.

On [redacted] I filed a [redacted] with the [redacted] in [redacted] against [redacted] and [redacted] (Defendant), of [redacted] for [redacted]

[redacted] Please refer to attachment 1 for the details of my complaint.

On [redacted] my case was heard before Judge [redacted] At the start of the proceedings, the Judge stated he had a personal association, or words to that effect, with the Defendant. The Judge did not explain the exact nature of the association and I assumed he would have recused himself from the case if he couldn't be fair and impartial.

During the hearing I presented evidence in the form of [redacted] and the [redacted]

[redacted] and
Please see attachments 1, 1A, 1B, 1C, and 1D.

Defendant stated his company turned the irrigation system on and serviced it on [redacted] and provided a [redacted] as evidence. Please see attachment 2. He had no explanation for the master control box being found unlocked with the switch in the "off" position nor why the water bill for the period [redacted] to [redacted] reflected no water usage. He said the plants must have died over the winter. He opined the 1,000 gallons water usage from [redacted] to [redacted] proved the irrigation system was on. I told the Judge I was confused by Defendant's comments concerning the 1,000 gallons and would have to study the matter. I subsequently advised the Judge the 1,000 gallons of water usage was due to the use by houseguests and not the irrigation system, which would have used around 8,000 gallons had it been on. The plants, which had survived numerous winters, must have died from the heat and lack of water. Please see attachments 2, 3, and 4.

On _____ the Judge issued his judgment (see attachment 5), in favor of Defendant, stating he believed the system was on based upon the \$ _____ water cost from _____ that some how it was turned off, how and why was a mystery, long enough for the plants to die.

In my letter of _____ (see attachment 6), I pointed out a careful, thoughtful, thorough, and complete review of the water bills proved the irrigation system was not turned on for either the period _____ to _____ a time period the Judge choose to ignore in his judgment, or the period _____ to _____

I challenged his assumption, which was not based in fact, of some unknown person being responsible for turning the irrigation system off and on, as not being logical or reasonable. I concluded by asking the Judge to either vacate his erroneous judgment and enter a correct one in favor of the Plaintiff; or vacate the judgment, recuse himself due to his personal association with Defendant, and have the case assigned to another judge – one who could truly be fair and impartial and decide the matter based solely on the facts of the case.

It is my opinion Judge _____ thru his actions and in-actions, violated Rule 1.2 of the Arizona Code of Judicial Conduct by not recusing himself based upon his personal association with the Defendant and by failing to act in a manner that promotes public confidence in the independency, integrity, and impartiality of the judiciary, and by not avoiding impropriety and/or the appearance of impropriety. Furthermore, his failure to disqualify himself also violated Rule 2.11.

The Judge violated Rule 2.2 by failing to conduct a careful, thoughtful, thorough, and complete review of the facts and circumstances in this case as set forth in the Complaint, _____ and my letters of _____. He also violated Rule 2.2 by not being objective and open-minded, thereby failing to ensure impartiality and fairness to all parties; this is also a violation of Rule 1.2, as referred to above.

The Judge violated Rule 2.3 by failing to perform the duties of judicial office without bias. He clearly manifested his bias in favor of Defendant by failing to recuse himself based upon his personal association with defendant, by failing to conduct a careful, thoughtful, thorough, and complete review of the facts and circumstances of this case, by basing his findings on erroneous information; namely, _____ during _____ to _____ proved the master control switch was on, and by making assumptions not based in fact: namely,

The Judge violated Rule 2.5 by failing to conduct a careful, thoughtful, thorough, and complete review of the facts and circumstances of this matter as set forth in the Complaint, _____ and my letters of _____ and _____ thereby failing to be thoroughly and fully prepared to perform his responsibilities of judicial office.

Furthermore, by failing to be thoroughly and fully prepared to perform his responsibilities of judicial office, the Judge violated Rule 2.6 by not ensuring my right to be heard before issuing his judgment. During the hearing, I clearly told the Judge I was confused by the Defendants comments concerning the usage of 1,000 gallons of water during the period to and would have to study the matter. I provided my reply to the comment (see attachment 2), later that day.

The Judge's actions, or in some cases in-action, are a violation of Rule 2.11 concerning disqualification. By failing to demonstrate impartiality and fairness by not being objective and open-minded, by manifesting a bias in favor of Defendant, by not being thorough and fully prepared to perform his responsibilities of judicial office, and by not ensuring my right to be heard, the Judge should have disqualified himself because his impartiality could reasonably be questioned. His obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

As of this date, I have not heard back from the Judge concerning my request for him to vacate his erroneous judgment (see attachment #6). His ignoring, or future denial of, my request constitutes, or will constitute, a violation of Rule 2.6 by denying my right to be heard. It is also a violation of Rule 1.1 because he is not complying with the law, which affords me the right to request an erroneous judgment be vacated. His failure to act on my request also violates Rule 1.2 because it reflects poorly on the integrity of the judiciary; Rule 2.2 because it demonstrates his lack of impartiality and fairness, and Rule 2.5 in that it demonstrates his failure to perform judicial duties competently, diligently, and promptly.

In conclusion, let me state again these are my opinions and I'm referring the information to you as the appropriate disciplinary agency to regulate judicial behavior.

Attachments:

1. Complaint,
2. Letter,
3. Letter,
4. Letter,
5. Judgment and Order,
6. Letter,

Sincerely,