

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-269

Judge:

Complainant:

ORDER

December 4, 2024

The Complainant alleged a superior court judge improperly granted a summary judgment in a civil case.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Denise K. Aguilar, Barbara Brown, and Delia R. Neal did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on December 4, 2024.

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

Dear Members of the Arizona Commission on Judicial Conduct,

My name is _____, and I am writing to express my concerns regarding the handling of a child abuse case in _____ County (Case: _____), which has raised significant issues about the conduct of the presiding judge. This is outside of the scope of my lawyer's representation, so direct all responses to me.

As a parent of a child abuse victim, I feel compelled to seek guidance from the commission to ensure the well-being of vulnerable children involved and to address the troubling procedural and ethical concerns I have observed. The judge is _____. The information presented in this letter is based on a memo my lawyer conveyed to me during an update on the case proceedings. There's a lot that happened, but I am copying and pasting the relevant case law and issues discussed in that memo.

Procedural Concerns:

1. Unilateral Summary Judgment:

According to the memo from my lawyer, the judge granted a summary judgment motion in favor of the Defendant to dismiss one of the plaintiffs, despite neither party having moved for summary judgment. The Court made this decision unilaterally, without any motion from either party, even though there are disputed facts in the case. Our process server served the school district with notice of claims, supported by an affidavit. While there is evidence that the district received these notices, they raised an affirmative defense that one notice was missing. However, they did not file a motion for summary judgment. This discrepancy is a significant point of contention, yet the Court sided with the Defendant without the Defendant providing any motion.

2. Legal Implications:

The memo highlights that, according to established legal principles, a judge may not issue summary judgment sua sponte if there are disputed facts. Summary judgment is generally inappropriate when there are genuine disputes over material facts (*Wolfinger v. Cheche*, 206 Ariz. 504 (2003)). The rule is designed to resolve cases without trial only when there is no genuine issue of material fact, allowing for judgment as a matter of law. If disputed facts exist that could influence the outcome of the case, the Court should withhold summary judgment until these

disputes are resolved at trial. This ensures that the non-moving party has an opportunity to present their case fully in court, rather than having it prematurely dismissed based on a judge's assessment of the likely outcome.

2. Improper Conversion of Motions:

The memo further explains that the plaintiffs filed a motion to invoke estoppel, supplementing the record with evidence that the District had engaged in misconduct. The Court could have either accepted or rejected it. Instead, the Court converted this into a summary judgment motion to rule in favor of the Defendants. There is no legal basis for converting such a motion into a summary judgment, and as indicated earlier, the Court did not follow the procedure under Rule 56(f). This raises concerns not only about legal errors but also about potential ethical violations.

As was explained to me in a memorandum about this case, when a judge violates a rule of civil procedure, several ethical canons from the Code of Judicial Conduct are implicated (*Bergeron ex rel. Perez v. O'Neil*, 205 Ariz. 640 (2003)). These violations generally revolve around the principles of maintaining the integrity, impartiality, and independence of the judiciary.

1. Canon 1: Upholding Integrity and Independence:

This canon emphasizes that a judge should uphold the integrity and independence of the judiciary (*Bergeron ex rel. Perez v. O'Neil*, 205 Ariz. 640 (2003)). Failing to follow the rules of civil procedure undermines these foundational principles.

2. Canon 2: Avoiding Impropriety:

This canon requires a judge to avoid impropriety and the appearance of impropriety in all activities (*Matter of Haddad*, 128 Ariz. 490 (1981)). By violating a rule of civil procedure, a judge may give an appearance of bias or lack of fairness, which directly contravenes this canon.

3. Canon 3: Performing Duties Impartially and Diligently:

This canon specifically states that a judge should perform their duties impartially and diligently (*Matter of Haddad*, 128 Ariz. 490 (1981)). Violating civil procedure rules may indicate a lack of diligence or partiality in handling judicial duties.

4. Canon 4: Conduct Outside Judicial Duties:

This canon covers the conduct of a judge outside of their judicial duties but also stresses that any such conduct should not affect the independence, integrity, or impartiality of the judiciary. Violations of procedural rules could reflect poorly on a judge's ability to manage their judicial and extrajudicial responsibilities effectively.

The principles embodied in these canons promote public confidence in the judiciary and ensure that justice is administered fairly and without bias (*In re Abrams*, 227 Ariz. 248 (2011)). Misconduct, such as not adhering to the rules of civil procedure, can lead to disciplinary actions like censure, suspension, or removal from office, depending on the severity and circumstances.

One of the cases that was provided to me, when I asked my lawyer's assistant to help me research this matter is how the Court of Arizona has emphasized that judges must uphold these ethical standards to ensure justice and fairness in their proceedings. As noted by the Court:

“Under our system of government, judges hold office subject to rules of conduct that are designed to ensure a basic concept of fairness—that judges will dispense justice, not favors or revenge. In the final analysis, Respondent's actions violated not only the Code but this most basic concept of justice. Removal from office is therefore appropriate.” (Court of Arizona, In Banc. February 03, 1994, 177 Ariz. 283, 867 P.2d 853)

From what was explained to me when I asked my lawyer to research these issues it appears that in this case, the judge's actions of issuing a summary judgment without a motion from either party, and without providing adequate notice or an opportunity to be heard, violate several ethical canons, especially when comparing this to issues in other jurisdictions:

1. Canon 1: Upholding Integrity and Independence - A judge must follow the rules of civil procedure to maintain the integrity and independence of the judiciary.
2. Canon 2: Avoiding Impropriety- By acting outside established legal procedures, the judge gives an appearance of bias, undermining public trust.
3. Canon 3: Performing Duties Impartially and Diligently - The judge's failure to follow proper procedures suggests a lack of impartiality and diligence.
4. Canon 4: Conduct Outside Judicial Duties - Violating procedural rules reflects poorly on the judge's ability to manage both judicial and extrajudicial responsibilities effectively.

The principles embodied in these canons are designed to promote public confidence in the judiciary and ensure that justice is administered fairly and without bias. When a judge fails to adhere to these principles, it erodes public trust and can lead to disciplinary actions.

In conclusion, the judge's actions in this case raise serious procedural and ethical concerns. I respectfully request that the commission review these issues to ensure that justice is served and that the integrity of our judicial system is upheld.

My lawyer is following procedure in trying to rectify this matter, so he will not be involved in the resolution or escalation of this matter. However, I am doing my part and will be contacting members of the legislature, if necessary to ensure transparency and fairness.

Thank you for your time and consideration.

Sincerely,