

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-353

Judge:

Complainant:

ORDER

December 17, 2024

The Complainant alleged a superior court judge misapplied relevant case law during appellate review of an appeal from a justice court matter.

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 member Louis Frank Dominguez did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on December 17, 2024.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2024-353

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.

First of all, thank Honorable Judge [] for vacating the attorneys' fees award of the Justice Court.

However, Honorable Judge [] ignored some significant evidence presented in [] s Appeal Memorandum and Motion for Rehearing. Honorable Judge [] used a lot of portions of her Rulings (dated []) that HOA had [] address only, so HOA could not send potential CC&Rs amendment to [], however, [] did say [] had an address in [] AZ during the trial, and in the Motion for Rehearing, there are two Exhibits to show HOA does have [] AZ address and first email communication was made on [], months after new CC&Rs have been amended. If no notice was delivered for a potential CC&Rs amendment, it definitely violated the Arizona laws. BTW, a (certified) international mail only cost [] in [] (and to [] in []), using [] address" as an excuse, did not send any notice, is discrimination of the HOA against [] .

No matter how [] s law was considered in this lawsuit, NO NOTICE is enough to make [] the prevailing party.

Based on what [] attorney [] told [] . Based on Rule 14 of [] Court Rules of Appellate Procedure—Civil, "(b) No further appeal may be taken from a final decision or order of the superior court under these rules, except where the action involves the validity of a tax, impost, assessment, toll, statute or municipal ordinance.". HOA fine is not assessment in this context, so [] cannot appeal to the Court [] .

Maybe Honorable Judge [] was too busy and missed very important parts of evidence. [] spent too much time on this lawsuit and got laid off by his paid employer. [] has been working for this company for [] years. Now, [] has no any income. [] is the officer of the [], but not paid for this job because the Foundation is a non-profit organization. Currently, [] has over [] in credit card debt.

Wish Honorable Judge [] could reconsider her decision, or the Commission on Judicial Conduct can help Honorable Judge [] make a correct decision. Since [] cannot appeal to the Court [] based on Rule 14 of Superior Court Rules of Appellate Procedure—Civil, this is [] last hope, wish Honorable Judge [] could understand [] situation.

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Attached you can find:

A. The Rulings made on _____ by Honorable Judge _____

B. The Ruling made on _____ by Honorable Judge _____ ;

C. The Motion for Rehearing, in it, there are two Exhibits to show HOA does have _____ Gilbert AZ address and the first email communication was made on _____, _____ months after new CC&Rs were amended;

D. Appeal Memorandum;

E. _____ email to his attorney _____ : how _____ responds to The Rulings made on _____ by Honorable Judge _____ The red color parts are 1-on-1 responses to address the incorrectness of the Rulings by using the existing evidence in _____ Exhibits, HOA's Exhibits, and trial transcripts.

Sincerely,

CLERK OF THE COURT
DEPUTY CLERK

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Attorney for Appellant _____ *c/o* _____

**IN THE COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF _____**

_____, an
Arizona nonprofit corporation,

Plaintiff,

vs.

_____, *c/o*
record owner

Defendant.

Case No.:

LC Case No.:

APPELLANT MEMORANDUM

(Assigned to the Honorable _____)

_____, on behalf of

Counterclaimant,

vs.

INC.

Counter-defendant.

_____, Defendant/Appellant _____, *c/o* _____, by and through counsel
undersigned, hereby submits the following Appellant Memorandum in accordance with this
Court's Order dated _____, and pursuant to Rule 8(a), _____ Court Rules of
Appellate Procedure.

1. STATEMENT OF THE CASE

This case was filed on _____, in _____ Justice Court (Case No. _____)

1) by pro per Plaintiff, , President of the Homeowners
2 Association (“HOA”) for the community (“ ’ or “HOA”) against
3 Defendant/Appellant for alleged breach of the community’s covenants, conditions and
4 restrictions (“CC&Rs”), arising from unpaid fines imposed by the HOA for alleged violations of
5 the short-term rental restrictions on Defendant’s property. (See Transmittal of Appeal on Record
6 to Court (“Transmittal”), Part 3 of 3, p.179.) The Complaint is characterized as
7 enforcement of a “debt or obligation” and it appears to seek a judgment in the amount of
8 referencing alleged fines and fees incurred between and . *Id.* The
9 Complaint seeks an award of court costs and interest at the legal rate but does *not* allege attorneys
10 fees. *Id.* It does not appear from the record that the Complaint was ever amended. *See*
11 Transmittal, Part 1 of 3, pp. 4-12.)

12 Defendant is the record owner of in the community, and
13 is an officer of Defendant foundation. *See* 12/4/23 Trial Transcript “TT2” at page 70, lines 24 –
14 25. Defendant filed an Answer and Counterclaims on .

15 The first trial of this matter took place on , and judgment was found in favor
16 of Plaintiff/Appellee HOA. That judgment was vacated due to lack of recording of proceedings,
17 and a second trial commenced on . The second trial was continued and completed
18 on . Again, the lower court found in favor of Plaintiff/Appellee HOA and
19 awarded a principal amount of in a judgment dated with an interest
20 rate of per annum and directed the Plaintiff’s attorney to submit a *China Doll* and affidavit
21 for its fees and costs.

22 Defendant/Appellant filed his Notice of Appeal on , and filed an
23 Appellant Memorandum on . Final judgment was entered on .
24 The Court also awarded in attorneys’ fees and in costs on .
25 (See Transmittal, Part 1 of 3, p.82.) Plaintiff/Appellee HOA filed its Entry of Judgment on
26 . An amended Judgment was filed on reflecting the principal

1 amount of but not the attorney fee award. (See Transmittal, Part 1 of 3, p.66.). The list
2 of Judgments in the Transmittal also does not reflect the attorney fee award. (See Transmittal,
3 Part 1 of 3, p.13.).

4 The County Court's Order dated , noted that
5 Defendant/Appellant's Notice of Appeal was "timely filed," but that Defendant/Appellant
6 needed to comply with *Boydston v. Strole Development Co.*, 193 Ariz. 47, 49, which held that in
7 Arizona, a limited liability or business entity may not represent itself in superior court. This Court
8 further noted that Defendant/Appellant is a nonprofit corporation which must be represented by
9 counsel, and that Defendant/Appellant must comply with Rule 31 "prior to transmittal of the
10 appeal." See County Court Order dated at page 2.
11 Counsel undersigned filed its Notice of Appearance on and filed an Amended
12 Notice of Appeal on behalf of Defendant/Appellant on .

13 **2. ISSUE(S) ON APPEAL**

14 A. Whether trial court erred in finding that the amendments to the
15 community restricting short-term rentals were valid and enforceable against
16 Defendant/Appellant.

17 B. Whether the trial court erred in awarding attorneys' fees to the Plaintiff where the
18 complaint did not seek attorneys fees and the complaint was never amended later to include such
19 a claim.

20 **3. LEGAL ARGUMENT**

21 **A. Standard on Appeal**

22 Questions of law, including the interpretation of CC&Rs and their enforcement, are
23 reviewed *de novo*. *Kalway v. Calabria Ranch HOA, LLC*, 252 Ariz. 532, 537 (2022). (Citing
24 *Powell v. Washburn*, 211 Ariz. 553, 555–56 (2006); *Glazer v. State*, 237 Ariz. 160, 167 (2015).)

25 **B. Community's Amendments to CC&Rs is**
26 **Unenforceable.**

**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.**