

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-300

Complainant: No. 1432010588A

Judge: No. 1432010588B

ORDER

The complainants alleged that a superior court judge was rude, displayed an improper demeanor, and attempted to coerce them into a settlement.

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 reviewing the information provided by the complainant and the judge's response, 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.

Dated: February 23, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on February 23, 2012.

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

2011-300

CONFIDENTIAL
 State of Arizona
 Commission of Judicial Conduct
 1501. W. Washington Street, Suite 229
 Phoenix, Arizona 85007

COMPLAINT AGAINST A JUDGE**Your name:****Judge's name:****Date:** 11/28/2011

This complaint arises out of a Settlement Conference that occurred on November 17, 2011. Judge _____ ordered the Settlement Conference on September 22, 2011. Judge _____ is assigned to our case, which is Case No. C-2010

During a hearing with Judge _____ on September 6, 2011, _____ who is opposing counsel for the defendant (_____ Estates Community Association), strongly urged Judge _____ to order me and my wife, _____ into mediation with Judge _____. _____ was not present in the courtroom, but rather appeared telephonically. I believe that a court transcript of this hearing exists that will confirm that _____ asked specifically for Judge _____ to conduct the court-ordered Settlement Conference. At the time, I thought it was a little odd that _____ seemed to be so verbally adamant that only Judge _____ would suffice and later mentioned to my wife that I was concerned about a potential conflict of interest between _____ and Judge _____

Judge _____ granted _____ request for Judge _____ and issued the order dated September 22, 2011 (see Attachment #1).

Prior to the Settlement Conference, I did some research on Judge _____ on the internet and discovered that Judge _____ had been disciplined by the State of Arizona Commission on Judicial Conduct. Judge _____ had received both a reprimand (Case _____ dated July 12, 2007) and a censure (Case _____ dated November 12, 2010). On October 26, 2011, I notified my attorneys of what I discovered and voiced my concerns about Judge _____ previous behavior.

In order for the members of the Commission on Judicial Conduct to fully understand why Judge _____ conduct is so disturbing to my wife and me, I think it is necessary to include some of the background behind our case. In order to accomplish this, I have included the Confidential Position Statement that our attorney, _____ prepared for the Settlement Conference and provided to Judge _____ prior to the meeting on November 17, 2011 (see Attachment #2).

The Settlement Conference began late, at approximately 9:15am on Thursday, November 17, 2011. The initial meeting location was in Judge _____ courtroom. My wife, _____ and I were present with our attorneys, _____ from _____

For the defendant, opposing counsel present was _____ was not present. There were also three HOA board members present consisting of _____

COMPLAINT AGAINST A JUDGE (continued)

Your name:

Judge's name:

Date: 11/28/2011

. Additionally, two Farmer's Insurance representatives were present on behalf of the HOA insurance company.

After a few minutes of opening remarks by Judge [redacted] my wife and I, and our attorneys were led to Judge [redacted] office by Judge [redacted]. I believe that the opposing counsel, HOA board members, and the Farmer's Insurance representatives stayed in Judge [redacted] courtroom, but cannot confirm because I did not see them again.

As we walked into Judge [redacted] office, one of the first things I noticed were several hard liquor bottles on his bookshelf. There were at least 6 liquor bottles, all which appeared to be opened and currently being drunk from as none of them were completely full. I thought that this was a very odd message to send to citizens like my wife and me since this is the first and only time we have ever been in a judge's office. It definitely is not the type of message that reflects favorably on the Pima County Superior Court.

There was a short introduction period in which Judge [redacted] asked some biographic data about [redacted] and me. There was a little banter between our attorneys and Judge [redacted]. This took about 10 minutes.

Judge [redacted] then proceeded to conduct what I would refer to not as a mediation or settlement conference, but rather a "bullying session". First, he berated our attorneys. He specifically attacked [redacted]. He initially attacked our case, claiming that none of the counts that are included in our case have any merit. I was particularly shocked at how Judge [redacted] asked to explain why we had filed a defamation claim. As [redacted] started to answer Judge [redacted] question, he immediately cut her off, speaking over her so she could not respond, and then proceeded to tell [redacted] that "just because somebody knowingly publishes something that is false doesn't mean that it is defamation". This was the last time that [redacted] or any of our attorneys attempted to speak during the settlement conference.

Judge [redacted] then verbally chastised [redacted] for sharing some case information with my wife and me. I felt that this was inappropriate for a judge to instruct an attorney to withhold information from his or her clients. We demand that our attorneys share everything with us, whether the information is good, bad, or indifferent. It is not Judge [redacted] place to determine what our attorneys share with us.

After Judge [redacted] spent approximately 45 minutes verbally attacking our attorneys and our case, he then asked me a question. As I began to answer, Judge [redacted] screamed, "Look, god damnit!" I immediately stopped answering his question. The expression on his face was one of anger. I wasn't sure why he yelled this obscenity at me and was totally stunned by his behavior. At that moment, all I could think of was to laugh, as I could not believe that Judge [redacted] was actually doing this and I felt somebody needed to attempt to calm the tension in Judge [redacted] office. It did not work.

Judge [redacted] continued to get increasingly angry at me because I would not submit to his bullying tactics and agree to just "walk away" from our case against the HOA. My wife and I, as well as my attorneys, remained mostly silent through the next portion of Judge [redacted] tirades. It became clear to me that this was not going as Judge [redacted] wanted it to go. At approximately 11:15am, Judge [redacted] asked us for a settlement dollar figure to present to the opposing side. We gave him a proposed settlement dollar figure and Judge [redacted] once again, verbally attacked our attorney, [redacted] for providing previous case information of similar lawsuits. Judge [redacted] then exited his office and said that he was going to meet with the opposing side. As he exited his office, he grabbed a pack of

COMPLAINT AGAINST A JUDGE (continued)

Your name:

Judge's name:

Date: 11/28/2011

cigarettes out of his desk. I surmised that he was going to have a cigarette break in addition to meeting with the opposing side.

Approximately 15 minutes later, Judge returned to his office. It was around 11:30am. My first thought was how could Judge have had time to smoke a cigarette and meet with the opposing side in such a short amount of time. Judge had spent over 2 hours attacking us, yet spent less than 15 minutes speaking to the opposing side. It just didn't make sense to me.

The first words out of Judge mouth when he returned, was that the opposing side's rebuttal to our proposed dollar figure amount was that "they want to be assured that they are dealing with a sane, rational person". Judge addressed this statement to me.

I said to Judge that I didn't think that this settlement conference was the time, place, or forum to attack or judge my mental stability. Judge immediately started talking over me, raising his voice, and telling me that I was to blame for bringing up the emotional distress claim in our lawsuit and that my mental stability was "fair game".

I am a disabled veteran who has a 100% Veteran's Affairs (VA) disability rating. I have been diagnosed with and suffer from Post Traumatic Stress Disorder (PTSD). I also suffer trauma from a dislocated hip and shoulder, degenerative disc disease in my spinal column, no hearing in my right ear and shrapnel in a few areas of my body, and I have been hospitalized for heart irregularities. All of these health issues are service- connected, arising out of combat in the first Gulf War, for which I received a Bronze Star for Valor. I completed my career as a U.S. Army Major.

Having said this, the emotional distress claim in our lawsuit should not give Judge a "free pass" to attack my disability, which is exactly what he did for approximately the next 1½ hours. At this point, I made a decision that I could either continue to sit and suffer through Judge verbal attacks on my personal character, or I could stand up to Judge bullying and attempt to salvage what was left of my dignity.

My wife and I had been ordered by Judge to attend this Settlement Conference from 9:00am – 12:00noon, a total of 3 hours. We believed that we had to stay until 12:00noon and thought that if we tried to leave Judge office at any time, we would be held in contempt of Judge order. I kept thinking that we just needed to make it to 12:00noon and then we could just go home and try to deal with what just occurred at Judge bullying session. What I refused to do at this point was to continue to just take the verbal abuse and so I chose to verbally fight back in an attempt to get Judge to cease his verbal attacks on me and my wife.

At approximately 12:15pm, my wife asked our attorney, if we could leave. Judge said that he didn't have anything on his schedule until 1:30pm, therefore, we needed to stay and try to get a settlement. Even though we had already spent from 9:15am – 12:15pm, approximately 3 hours, we still had not received any dollar figure amount from the opposing side! All we had received was a continuous verbal assault on our attorneys, our case, my mental disability, and my wife's senses.

Judge then announced that he was going to take another cigarette break. My wife asked Judge if we would be done by 1:00pm, as we had to pick up our daughter at the school bus stop at 1:30pm. Judge again repeated that he could delay his 1:30pm hearing if needed. I felt as if Judge was refusing to let us leave even though we had already passed the 3 hour time limit set by Judge order.

Approximately 45 minutes later, at 1:00pm, Judge returned from his cigarette break. One of our attorneys, returned with Judge At that point, Judge said that he

COMPLAINT AGAINST A JUDGE (continued)

Your name:

Judge's name:

Date: 11/28/2011

"failed" because he did not get us to settle. He then asked us what we would settle for. My wife, [redacted] spoke up and said that Judge [redacted] hadn't given anything to consider from the opposing side. At that point, Judge [redacted] said that the opposing side's settlement offer was \$0.00. I was stunned. We had just endured over 3 hours of bullying, brow-beating, verbal attacks, and totally inappropriate behavior by a Superior Court judge for nothing!

When Judge [redacted] asked if she agreed with anything I said during the settlement conference, she told him that "yes", she did agree with me. At that point, Judge [redacted] threw his eye glasses across the room and they landed on the floor. This was the second time Judge [redacted] threw his eye glasses in anger and frustration.

Judge [redacted] then demanded that I tell him how much I had spent on attorney fees. I informed him that I would not give him that information as I knew that at this point the opposing side was not mediating in "good faith". We had made 2 separate dollar figure proposals to the opposing side, adjusting our settlement amount down a total of \$210,000.00. Conversely, the opposing side offered no proposed dollar settlement amount and made a demand that questioned my mental stability.

I also felt that Judge [redacted] was not mediating in "good faith" either. It was very clear to me that Judge [redacted] was not trying to bring the opposing sides together, rather Judge [redacted] focus appeared to be intimidating my wife and I into just giving up on our lawsuit and walking away with nothing.

Judge [redacted] attempted to coerce me into disclosing how much I had spent on attorney's fees, but I continued to refuse. Judge [redacted] was visibly angry that I rebuffed his numerous attempts to gain this information from me. It was now approximately 1:15pm and I decided that we had tolerated enough as this point. I informed Judge [redacted] that we had to leave immediately in order to pick up our daughter at the bus stop.

As we were leaving, Judge [redacted] made two offers in rapid succession. He asked if we would accept \$40,000. I did not respond as we were done at this point. Judge [redacted] then asked if we would accept \$60,000. Once again, I did not respond. Before I left, I told Judge [redacted] I wanted to give him a hug. I felt sorry for Judge [redacted] and continue to do so. It is unfortunate the Judge [redacted] disgraced his position and the Pima County Superior Court by his inappropriate behavior and conduct.

Since we were not allowed to leave until 1:15pm, we ended up being late to the bus stop and our daughter was walking home by herself. This was unacceptable, as we informed Judge [redacted] several times that we needed to leave in order to pick up our daughter.

I am still trying to comprehend what happened at Judge [redacted] office. I am very concerned that we will not be able to get a fair trial in Pima County Superior Court, as Judge [redacted] office and courtroom are adjacent to Judge [redacted] office and courtroom. I cannot prove there was collusion between [redacted] and Judge [redacted] prior to the settlement conference on November 17, 2011, but I definitely feel that there is a possibility of it. Nothing else can logically explain why Judge [redacted] was focused entirely on intimidating my wife and me to just walk away from our case.

This is I do know. We did not deserve to be humiliated, intimidated, harassed, and verbally attacked in a court-ordered settlement conference presided over by a Superior Court judge. Nobody

COMPLAINT AGAINST A JUDGE (continued)

Your name:

Judge's name:

Date: 11/28/2011

deserves this and the fact that Judge _____ has been previously reprimanded AND censured
for similar behavior against a court employee (_____) and a practicing attorney (_____)
shows that Judge _____ is incapable of controlling his inappropriate and abusive behavior. Now Judge
_____ has chosen to subject his bullying tactics onto litigants (my wife and me). This is unacceptable
and the residents of Pima County deserve better treatment than this.

Signature:

Printed Name:

Date: