

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-046

Complainant: No. 1420110156A

Judge: No. 1420110156B

ORDER

The complainant alleged that a superior court judge improperly denied his request for a change of judge for cause.

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, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to investigate the legal sufficiency of the judge's rulings. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: April 19, 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 April 19, 2012.

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

Pursuant to Article 6.1 § 4 of the Arizona Constitution

A judge's failure to decide cases or rule on motions in a timely fashion constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute and demonstrates a "willful and persistent failure to perform his duties".

Moreover, Pursuant to A.R.S. §12-128.01(a),

“A superior court judge or commissioner shall not receive his salary unless such judge or commissioner either certifies that no cause before such judge or commissioner remains pending and undetermined for sixty days after it has been submitted for decision”.

Judge and former Judge have refused to rule on Plaintiffs'

Motion for Sanctions filed on December 2, 2010, among other motions for relief. The evidence establishes that Judges _____ and _____ have filed false affidavits to the Supreme Court in order to receive their salary.

“The signing of a series of false affidavits by a judge brings the integrity of the entire judicial system into question, and is prejudicial to the administration of justice.” *Ariz.*, 1983 *In re Weeks* 134 *Ariz.* 521, 658, P.2d 174.

Judge has fully knowledge that the Commission has issued a Revised Order on December 20, 2011, in which clearly stated that the Court should rule on all the motions presented by the Plaintiffs. Judge has failed to do so.

Judge is wholly aware of it, and had the opportunity to disqualify wholly corrupted Judge. Instead, Judge blatantly and intentionally denied Plaintiffs' Affidavit for Change of Judge for Bias, Prejudice, Misconduct and Corruption filed on January 19, 2012, intentionally disregarding the undisputable facts set forth thereof. Therefore, Judge is rubberstamping Judge Fraud Upon the Court.

Admittedly, [REDACTED] went even further by issuing an Order denying Plaintiffs Affidavit for Change of Judge by merely quoting from his previous ruling made on June 27, 2011, and then stated as follows:

“Mr. latest Affidavit is nothing more than a frivolous disagreement with the judge’s rulings and the language in the Affidavit is unprofessional, inappropriate, and is hereby stricken from the record. It is ordered denying the Affidavit to Change Judge. It is further ordered that Mr. shall not file any future such requests in this case or sanctions may be imposed for failure to comply with a court order. If Mr. has a disagreement with Judge rulings, his remedy is to file an Appeal, if legally appropriate and there is good faith basis to do so.”

asserted that Plaintiffs’ disagreement with the Court ruling should be taken to an Appellate Court, willfully and wantonly disregarding the fact that Plaintiffs have filed a Motion for Judgment as a Matter of Law, pursuant to Rule 50 of the Arizona Rules of Civil Procedure.

Plaintiffs have substantiated their Motion for Judgment as a Matter of Law, with newly discovered evidence provided by the Defendants ING and Lincoln National’s Disclosure and Statement of Facts, confirming that Plaintiff was at all times the Irrevocable Beneficiary and Successor Trustee of the Alicia Christopherson Trust 1993.

Judge is attempting to dismiss Plaintiffs’ proven cause of action with prejudice, with a Defendant Bank of America’s frivolous, insufficient and impertinent Motion to Dismiss filed under Rule 12(b)(6), having knowledge that this rule is not a dispositive motion, neither a proper response to Plaintiffs’ Motion for Judgment as a Matter of Law, filed under Rule 50 of the Arizona Rules of Civil Procedure.

All the Defendants have failed to set forth any facts to substantiate a defense against Plaintiffs’ legitimate and proven cause of action. Neither have provided clear and convincing evidence with supporting affidavits in order to contradict the undisputable facts presented by Plaintiffs.

Plaintiffs have fully proven all their claims in each of its elements, and the accumulation and Weight of the Evidence is beyond doubt. The defendants have failed to set forth facts showing that they have clear and convincing evidence in order to disprove the undisputable facts presented by Plaintiffs. Therefore, there is no reason to keep litigating this matter. The case is proven, and the matter is over. Therefore, the Court should have granted a final judgment in whole in Plaintiffs’ favor in all their claims against all the Defendants.

Most importantly, Rule 50 is a conditional ruling on the Merits of the Weight of the Evidence, for a Judgment, not for Dismissal. If the court does not grant a Motion for Judgment as a Matter of Law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion.

According to A.R.C.P. Rule 50(a)(2), (b);

Motions for judgment as a matter of law may be made at any time before the submission of the case to the jury. Such a motion shall specify the judgment sought and the law and facts on which the moving party is entitled to the judgment.

If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. Such a motion may be renewed by service and filing no later than 15 days after the entry of judgment.

Moreover, Plaintiffs have demanded for Jury Trial in both causes, on August 8, 2011. All the Defendants have been properly served in compliance with Rule 5(b) of the Arizona Rules of Civil Procedure. On December 27, 2011, Plaintiffs filed a Motion to Set and Certificate of Readiness, along with a Demand for Jury Trial.

This is not an issue to be resolved in an Appellate Court. This is not just an erroneous finding of facts and conclusions of Law. This is an egregious Fraud Upon the Court perpetrated by former Judge [redacted] and Judge [redacted] and Presiding Judge [redacted] in complicity with the Defendants Dr. [redacted] and [redacted] through their counsels [redacted] and [redacted] of Fennemore Craig P.C., and Defendant Hospice Compassus Inc. and counsel [redacted] of Sanders & Parks P.C. Therefore, the matter should be resolved in this instance.

Rule 1.1 of the Code of Judicial Conduct: "A judge shall rule in compliance with the law, including the Code of Judicial Conduct."

Additionally, Judge [redacted] ruling stated that Plaintiffs should not file any further request for change of judge, having knowledge that Judge [redacted] has committed Fraud Upon the Court and that his rulings are contrary to Law and the Weight to the Evidence. Judge [redacted] is attempting to preclude Plaintiffs from exercising their right to be heard in compliance with the law.

Rule 2.6 (A) "A Judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law."

“The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed”

Clearly, Judge has demonstrated his bias by denying Plaintiffs Rights as a Litigant, considering the fact that Judge has been ruling fraudulently on many occasions, and the Defendants have failed to respond to Plaintiffs’ factual allegations of fraud.

Rule 2.2 of the Code of Judicial Conduct: “A judge shall uphold and apply the law and shall perform all duties of judicial office fairly and impartially.”

Furthermore, there is a precedent established with Judge and former Judge

As a result of Plaintiffs Motion to Set Aside a Court Order for Fraud Upon the Court and Affidavit for Change of Judge for Bias and Prejudice filed on February 25, 2011, Judge was voluntarily retired and the case was reassigned to Judge on February 25, 2011.

Admittedly, Judge went even further by willfully and wantonly over sighting Plaintiff’s Motion to Set Aside Court Orders and Judgment for Fraud Upon the Court, filed on January 6, 2012. Plaintiffs have set forth thereof, that wholly corrupted Judge issued an order on December 20, 2011, granting the Defendants a **nunc pro tunc order** “correcting the record to reflect entry of Judgment in favor of the Defendants, in accordance with the Judgment signed July 11, 2011.”

Judge issued the nunc pro tunc Order in favor of the Defendants after seven months of Plaintiffs’ factual allegations of fraud upon the Court, having knowledge that the Defendants have never responded to this cause of action in compliance with Rule 7(a) of the Arizona Rules of Civil Procedure. Which as a result, Plaintiffs filed for an Entry for Default Judgment on April 11, 2011.

Additionally, Fennemore Craig P.C. are not the Attorneys of Record to obtain any judgment for the Defendants in Plaintiffs Medical Malpractice cause of action. As was extensively pled during the entire course of this litigation, of Sanders & Parks is the appearing counsel for the defendant Dr. and and Hospice Compassus Inc.

Even if the Defendants would have legally obtained a judgment in their favor, which they did not, the Court is precluded from issuing nunc pro tunc orders. Especially after seven months of Plaintiffs' proven allegations of Fraud Upon the Court, to which the defendants failed to respond and are in violation of Rule 7.1(a), Arizona Rules of Civil Procedure.

Most importantly, nunc pro tunc orders are illegal in Arizona.

Pursuant to Rule 58(a), Service of Form of Judgment; Entry, 1970 Amendment: "Black v. Industrial Commissions, 83 Ariz. 121, 317 P.2d 553 (1957) has been viewed by some as **prohibiting the entry of an order or judgment nunc pro tunc in Arizona.**

The purpose of the amendment is to reject the basis for that view and to adopt the rationale of the dissenting opinion of Justice in that case. The amendment does not specify the conditions, circumstances and effects involving the entry of a judgment or order nunc pro tunc. These are best determined by references to the considerable body of law on the subject. See e.g., Mitchell v. Overman, 103 U.S. 62, 26 L.Ed. 369 (1880); 6A Moore's Federal Practice (2nd ed.), para. 58:08; 1 Freeman, Judgments, (5th ed. 1925), chapter III, sections 121 to 139." **"The right of a party to appeal will not be cut off and rights acquired by third persons without notice will not be affected adversely by an entry nunc pro tunc.** See supra, sections 138 and 139. The record of the reasons required by the amendment shall include not only the circumstances for entry of the judgment but also the reasons for the kind of notice given and if no notice is required the reasons for dispensing with notice."

The underlying wrong is that Judge having fully knowledge that Judge rulings are contrary to the Law and the Weight of the Evidence, persists in maintaining wholly corrupted Judge on the bench..

Furthermore, wholly corrupted Judge issued an order denying all Plaintiffs' motions that could be interpreted as time-extending motions under Rule 9(b) Arizona Rules of Appellate Procedure. Wholly corrupted Judge has blatantly denied Plaintiffs' Constitutional rights as a litigant, willfully and wantonly disregarding the Rules of Law.

Pursuant to the Arizona Constitution Article 1 § 11, “Justice in all cases shall be administered openly, and without unnecessary delay.”

Presiding Judge has denied three separate Affidavits for Change of Judge in this cause of action, having fully knowledge that Judge and former Judge have committed Fraud Upon the Court. Likewise, Judge having knowledge that the attorneys and of Fennemore Craig and of Sanders & Parks, for the Defendants have committed Fraud Upon the Court, and have violated the Rules of Professional Conduct, failed to inform to the Appropriate Authority.

Presiding Judge has failed to inform the Appropriate Authority with regard to the Fraud Upon the Court perpetrated by the judges in complicity with the counsel for the defendants.

Rule 2.15 Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this code that raises a substantial question regarding the judge’s honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

Plaintiffs have already objected to Judge assignment to this case, due to his former partnership with Snell & Wilmer L.L.P., who are the attorneys for the defendant Aviva Life & Annuity Co., in this cause of action. Judge should have disqualified himself for all the reasons set forth in Plaintiffs Notice of Conflict to Change a Judge as a Matter of Right filed on October 25, 2011 and Notice of Contention Before Assignment of Judge as a Matter of Right filed on December 2, 2011

Rule 2.11 of the Judicial Code of Conduct: Disqualification: A judge shall disqualify himself in any proceeding in which the judge's impartiality might reasonably be questioned, including, but not limited to: (6) The judge was a party of the law firm who is participating in the matter in question.

The underlying wrong is that the Court does not consider Plaintiffs' petitions, in spite of Plaintiffs factual allegations of conflict of interest of Judge [redacted] due to his former partnership with Snell & Wilmer L.L.P., attorneys for the defendant Aviva Life & Annuity Co.

Additionally, the Court, in an effort to conceal the fact that the Defendant, Dr.

[redacted] has failed to respond to Plaintiffs' Medical Malpractice and Breach of Fiduciary Duty Complaint and Plaintiffs' First Amended Complaint, has failed to docket the Certificate of Service, submitted by the Plaintiffs on December 19, 2011. (See Request to Correct the Record)

The Payson Constable, [redacted] properly served Dr. [redacted] on December 12, 2011. For a period of two months, the docket showed [redacted] as an Affidavit of Attempted Service. Plaintiffs have requested to the Clerk on several occasions to correct the docket, and they have failed to do so. (See Attached Request with Affidavit of Service) This is another demonstration of the egregious fraud being perpetrated by the Maricopa Superior Court.

Finally, and most importantly, the Court is attempting to deny Plaintiffs' right to a fair and impartial trial. Plaintiffs have demanded a jury trial and filed a Motion to Set and Certificate of Readiness on December 27, 2011, and the Court refuses to rule on the matter.

(See Motion to Expedite Designation for Jury Trial filed on January 19, 2012)

Judge [redacted] has continued ruling fraudulently in the defendants' favor in this cause of action, and the Maricopa County Superior Court is rubberstamping Judge [redacted] Fraud Upon the Court, having knowledge that Judge [redacted] has disregarded the law and facts in a desperate attempt to dismiss Plaintiffs proven causes of actions.

The underlying wrong is that the Presiding Judge is maintaining the wholly corrupted Judge on the bench, having fully knowledge that Judge has committed Fraud Upon the Court. Presiding Judge has failed to take action and inform the appropriate authority.

A judge has “an ethical as well as a legal obligation to apply the law”.

Adv. Op. 92-10 and in re Jensen, 24 Cal. 3d 72, 593 P.2d 200 (1978)

For the purposes of this Complaint, Complainant incorporates all the information provided in Complaint #11-147, regarding the gross misconduct of former Judge and Judge

Having fully proven that Judge Judge and Judge have grossly violated the Arizona Constitution, Arizona Revised Statutes and the Arizona Code of Judicial Conduct, and have willfully committed misconduct in the administration of justice, Complainant, respectfully asks this Commission to impose the appropriate sanctions against these judges.

Respectfully submitted this 15th day of February, 2012

By_

//hand-delivered this 15th day of February, 2012
with attached Notice to Correct the Record

Commission of Judicial Conduct
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