

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 17-295

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge did not afford them a fair and unbiased proceeding in a civil matter.

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 Art Hinshaw and Anna Mary Glaab did not participate in the consideration of this matter.

Dated: December 20, 2017

FOR THE COMMISSION

/s/ Margaret H. Downie

Margaret H. Downie

Executive Director

Copies of this order were distributed to all appropriate persons on December 20, 2017.

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

Comp

2017-295

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

Subject: Complaint Against Proceedings

Remedy: The words "no fraud" were cited by the Honorable [redacted] in his "Settlement" document that was filed with [redacted] on or about [redacted] however, the Judge did not give the Plaintiffs the opportunity to challenge that assumption in open court. The Commission and/or the Honorable [redacted] needs to intervene to provide the Plaintiffs with complete legal proceeding disclosures and opportunity for a fair and unbiased mediation.

Dear Sir or Madam:

The Honorable [redacted] presided over a Mediation hearing that was held in his Court in [redacted]. At no time during the mediation hearing did the Judge raise the issue of fraud before the Plaintiff's as is evidenced by the Court Reporter's Transcript. Given that the transcript proves the words "no fraud" were never asked of the Plaintiffs, the Plaintiffs had no opportunity in open court to challenge the issue of no fraud in regards to the Defendant's alleged claims of having no money to pay for their liabilities of damages to the Plaintiff's property (both in views taken and in unsightly wall modifications). The Judge's assumption of no fraud in mediation was a failure in legal proceedings and a taking of the Plaintiff's rights to a fair and unbiased mediation. The Commission and/or the Judge are requested to intervene with a finding of proof of no fraud verified by financial disclosures of the Defendants [redacted] who have not denied making the claim to the Plaintiff's Attorney

[redacted] left his clients alone in the courtroom while he met with the Defendants and/or their respective attorneys. [redacted] returned with the Mediator, retired [redacted] claiming the Defendants had no money and when I said, "then we get a judgment that shows up on their credit report" [redacted] replied "no". The Court is requested to subpoena [redacted] for testimony to fully understand what transpired in the Plaintiffs' absence between Attorney [redacted] and the Defendants and/or their respective attorneys.

There exists a high probability that fraud did indeed occur. It was disclosed by Defendant [redacted] to a neighbor, [redacted] that during the time of litigation and mediation, they enjoyed a casino lifestyle that included living at the [redacted] in a high-end RV and from time to time living in the hotel. This is not the lifestyle of someone who has no money or assets to pay for the approximately [redacted] in damages created by [redacted] to the Plaintiff's property. Further, the Defendants receive two pension checks and a social security check every month. [redacted] offered no explanation as to why a judgment and monthly payments could not have been provided to the Plaintiffs.

The Plaintiffs relied on the knowledge and experience of their highly paid counsel and years of experience of Retired [redacted]. A reasonable attorney or mediator would not be justified in relying on the word of the Defendants when there existed the potential for fraud yet that is apparently exactly what they did. Since the time of the "Settlement" document claiming "no fraud" was filed by the Honorable Judge [redacted] admits having no knowledge of the financial condition of the Defendants and he subsequently Withdrew from the case before dismissal. The Plaintiffs attempted

to represent themselves on the issues of fraud, compel the Defendants _____ to agree to verbiage in the formal written settlement agreement that conformed to the intent of mediation negotiations or tell us what they did not agree to and why, and for the Stipulation to Dismiss. The Honorable _____ found fault with the Plaintiff's pleas and subsequently awarded attorney fees to the Defendant's attorneys. The victims have been unduly punished by the Court. It is the Plaintiff's hope that the Commission on Judicial Conduct and the Honorable _____ will provide some measure of support for justice in this case.

The claim of no money and no judgment against the Defendants substantially affected the Plaintiff's decision to enter into the binding settlement agreement rather than pursue a different course of action. **The Plaintiffs were deprived of their legal rights to compensation for damages.** Had the Honorable _____ raised the issue of no fraud in the hearing, the Plaintiffs could have requested a continuance until the Defendant's financial disclosures were produced or they could have walked away and proceeded to trial. Trust but verify!

It is also of particular concern of the possibility that the business relationship between _____ and Defendant _____ was the reason that the venue was changed from Court to _____ for the Mediation. Attorney _____ pattern of deception in this case was disclosed in the Plaintiff's Reply to _____ Response to the Plaintiff's Order to Show Cause. The Plaintiffs also disclosed to the Mediator, and had long been known to attorney _____ that real estate fraud had been committed by _____ and his real estate listing agent during litigation of this case for which _____ became another victim.

The claim of no money is a material fact that needed to be proven. The statement of having no money was made with the single intent to deceive the Plaintiffs and free the Defendants of their liabilities. The Plaintiffs had reasonable cause to trust their attorney and the mediator who transmitted the potentially fraudulent statement to the Plaintiffs with no proof having first been acquired by these legal professionals.

The Plaintiffs suffer substantial financial injury as a result of the Defendant's claim of having no money. The Plaintiffs will continue to suffer emotional injury that will no doubt be carried on for years in sleepless nights as victims of the apparent fraud in this case if the Judicial Review Commission ignores what transpired in Judge _____ Court.

Respectfully submitted,

CC Transmitted by Email to