

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-400

Judge:

Complainant:

ORDER

August 23, 2024

The Complainant alleged improper legal rulings by a superior court judge hearing 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 member Colleen E. Concannon did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on August 23, 2024.

2023-400

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.

On or around _____, I filed a civil complaint against a defendant. Between _____ and _____, I along with the Defendants filed our appropriate motions (see attached).

On _____, Judge _____ ruled in the Defendant favor, which he is allowed to do, but it was based on the fact that I failed to respond, which was not the case. Judge _____ has failed to review any of my responses that were filed between _____ and _____ which my latest response to the defendants were submitted and filed to the court on _____ prior to his order being issued in favor of the Defendants.

Judge _____ has acknowledge reviewing ALL of the Defendants motions and responses in his proposed order but have not acknowledge the receipt of Plaintiffs motions after the First Amended Complaint and filings despite of copies being logged into the system and filed with the court, (as attached)

I am making this complaint because it appears to be come incompetencies with Judge _____ ability to implement court practices and procedures when it comes to case management. Ive filed an amended complaint with the court to resolve some discrepancies with my initial complaint and none of those changes have been applied nor addressed in his ruling.

Ive attached a copy of his order along with all of my responses which none of them has been addressed. The responses include:

1. Responding to all of the Defendants motions
2. First Amended Complaint to updated the Plaintiffs name and remove the corporation since Plaintiff is pro se, that change has not been implements as per his current order, it still shows the LLC.

I am referencing Case number _____, complaint against Judge _____ in reference to a family case he was responsible for overseeing and was previously reprimanded for due to the lack of ability to address court orders timely and correctly.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

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IN THE

COURT OF
STATE OF ARIZONA

COUNTY

Plaintiff,

vs.

et al.,

Defendants.

:
:
:
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: Case No:
:
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RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY DISPOSITION

AND NOW, comes the Plaintiff, _____, by and through themselves, *pro se*, to file the instant opposition and in support thereof avers as follows:

I. INTRODUCTION

1. The Defendant's motion for summary disposition premised on the Defendant's motion to dismiss the Plaintiff's first amended complaint and the motion to strike the second amended complaint fails to take into consideration Arizona's liberal policy when it comes to granting leave to amend complaints, especially with regards to curable defects and additional information, which renders the Defendant's motion for summary disposition baseless and moot thereby warranting denial of the same.

2. Based on the foregoing, the Plaintiff respectfully requests that the Defendant's motion for summary disposition be denied as moot.

II. LEGAL STANDARDS

3. "Rule 15. Amended and supplemental pleadings "15(a) Amendments. 1. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within twenty days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party. Leave to amend shall be freely given when justice requires."

4. "Rule 15(a), Rules of Civil Procedure, 16 A.R.S., provides that 'Leave to amend shall be freely given when justice requires.' This court has stated that amendments to pleadings should be granted with great liberality, so that cases may be decided on the merits rather than on mere technicalities of pleadings, and so long as the granting of the amendment does not prejudice the other party. (citations omitted) It is the rule in this state that the granting of the motion to amend is left to the sound discretion of the trial judge. (citations omitted)." *Cagle v. Carr*, 101 Ariz. 225, 227, 418 P.2d 381, 383 (1966).

5. "The purpose of an amended pleading is to include matters which occurred before the filing of the original pleading but which were either overlooked by the pleader or were unknown to him at the time. It is a substitute for the original and relates to the facts that existed when the original pleading was filed. An amended pleading supersedes the original." *Barron & Holtzoff, Wright, Federal Practice and Procedures*, § 441, Volume 1(A), page 707.

6. "An amended pleading is one which clarifies or amplifies a cause of action *90 which can be identified with certainty as the same cause of action originally pleaded or attempted to be pleaded. It is a perfection of an original pleading rather than the establishment of a new cause of

action." *Superior Manufacturing Corporation v. Hessler Manufacturing Company*, 10 Cir., 267 F.2d 302, 304 (1959).

7. The authorities are in general agreement that "the rule permitting amendment of pleadings is to be liberally construed in favor of allowance of amendments, particularly when the opposing party is put to no disadvantage." *Hoye v. Service Products Corporation*, 286 F. Supp. 299, 301 (1968).

III. STATEMENT OF FACTS

8. The Plaintiff initiated the instant action against the Defendant by way of defamation, after which, the Defendant filed a motion to dismiss which resulted in the Plaintiff filing a first amended complaint and the Defendant's filing of a subsequent motion to dismiss.

9. The Defendant's motion to dismiss highlights various issues of detail and fact which require amplification and clarification in the second amended complaint filed in the instant matter which is warranted pursuant to Rule 15(a) as *Cagle v. Carr*, 101 Ariz. 225, 227, 418 P.2d 381, 383 (1966) and other relevant cases.

10. Upon the filing of a second amended complaint, the Defendant has filed the instant motion for summary disposition which is neither a motion to strike nor a motion to dismiss; but rather is a motion for summary judgment on the merits of the action as a whole prior to the completion of discovery.

11. The Defendant bases their motion on the basis of the procedural technicality of obtaining leave to amend prior to filing which is insufficient in and of itself to justify the relief requested and the same bases for their original motion to dismiss which have been corrected in the second amended complaint amplifying the facts and claims giving rise to the Plaintiff's causes of action.

**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.**