State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-112

Judge:

Complainant:

ORDER

June 27, 2024

The Complainant alleged a superior court judge made erroneous rulings in a family law matter, that there were clerical errors in a minute entry, and that the judge failed to report lawyer misconduct.

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 members Roger D. Barton, Louis Frank Dominguez, and Regina L. Nassen did not participate in the consideration of this matter.

Copies of this order were distributed to all
appropriate persons on June 27, 2024.

I. Introduction and Summary

This complaint of misconduct against the Honorable , Judge of the Court, County, is submitted with a sincere sense of respect for our judicial system, along with personal dismay and sadness over the experience of broken trust in our system, and yet with a hope that something good will come about as a result of this complaint.

This complaint focuses on the final ruling of , respecting the three-year limitation on complaints of judicial misconduct. The prior comments and citations of the proceeding are referenced for context and understanding.

<u>Respondent alleges that the Judge violated the following</u>:
Application Part A, Comment 3;
Canon 1: Rules 1.1; 1.2;
Canon 2: Rules 2.2; 2.3; 2.5; 2.6; 2.7; and 2.15.

This proceeding was about one issue: <u>affordable insurance to secure remaining spousal support</u>, so that Respondent, , would not be in disobedience of a standing court order.

The total remaining spousal maintenance owed to Petitioner was at the time of the hearing (R. 662, 664, Exhibit 187, T2, p. 15), since fully paid.

Respondent had timely petitioned the Court for relief regarding the current term life insurance policy, which had shot up over ten-fold in cost, such that it was now more than a total month's pension income (T1, p. 13 and p. 26- 27), and at he could not afford it. He signed an affidavit under penalty of perjury that he had less than to his name (R. 702, #2), and testified to the same (T1, p. 23-24).

He offered three affordable alternative insurance solutions to secure that support, but the Judge rejected them all:

1) A new insurance policy in the amount of (Exhibit 192);

2) An identical term insurance policy from the same company, but with affordable monthly payments of (Exhibit 193);

3) Retain the current policy, but Petitioner would have to call the company to authorize a change from an annual to monthly payment schedule, so that Respondent could afford the payments (R. 696, p. 3, 8; T1, p. 41; T2, p. 15 and 39).

References to the Record: (R. #) from the Index of Record. T1 is the transcript for , T2 is for , and T2020 is for .

II. Competence to hear the Petition. ACOJC Canons 1 and 2, Rules 1.1; 1.2; 2.5.

Judge openly admitted, " " (T1 p. 16), but the petition was all about insurance. How can a judge adjudicate a Petition when he doesn't understand the subject matter. Perhaps he should have recused himself.

III. The Judge's ruling violated Rule 1(b), ARFLP, and ACOJC Canon 1, Rule 1.1

"

The *"just"* outcome would have been to grant leave to replace the exorbitantly expensive, expired term policy from (now costing per year)(Exhibit 189) with the policy (costing per month, or per year)(Exhibit 192). The policy, which Respondent had obtained and was in force on the day of the hearing, secures every dollar of remaining support that is owed to Petitioner. Petitioner is not damaged in any way.

Moreover, the *"just"* outcome would be to secure what remains in support payments, of insurance to secure . It is not just to secure this amount with a quarter-million dollar insurance policy. Petitioner isn't morally entitled to a windfall if Respondent dies before completing the payment of support.

The *"prompt"* determination should have been an immediate order.

The best *"inexpensive"* determination is the policy. Alternatively, in case the Judge were to determine that of insurance must remain in place until all spousal support is paid, Respondent had offered an additional remedy: an identical term policy from the same company, but payable in affordable monthly payments of (Exhibit 193, R. 712 Attachment 2).

Had the trial ordered this "ministerial" exchange, Respondent would not have appealed it. He just wanted peace and get on with his life. Nevertheless, the Judge even refused to allow the exchange of an identical new policy at one-fourth the cost, in easy monthly payments. This savings would have allowed Respondent to pay the remaining alimony more quickly.

The Court is a court of equity as well as a court of law. An identical policy was an equitable solution. **Rules 1.2; 2.2; 2.5.**

The Judge was also negligent to enforce Rule 1(b) against Petitioner, since this rule is incumbent upon the parties. It reads, **"Parties . . . should construe these rules . . . in a manner that ensures a just, prompt, and inexpensive determination of every action and proceeding."** Thus, Petitioner is also duty-bound to affirmatively and proactively adhere to this rule, to pursue and seek after prompt, inexpensive justice. **Rule 2.15.**

But Petitioner behaved in the very opposite manner as is required by this rule, and the Judge was completely derelict in his duty to enforce it. Petitioner rejected the "inexpensive" remedy and demanded the very most expensive one, even though it was against her own financial interests; Petitioner litigated instead of pursuing a "prompt" resolution through reasonable, good faith negotiations; Petitioner even contended *against* what is an irrefutably "just" exchange (i.e. swapping a new, cheaper, *identical* policy from the very same company) and, instead, zealously sought to put Respondent in jail, (where he, obviously, could not work to earn income to pay an insurance bill or spousal maintenance), just as Petitioner had done the prior year (R. 657), even though this is against her own best interests financially.

A three-minute phone call by Petitioner could have resolved the entire matter. But Petitioner refused and the Judge refused to order her. (R. 696, p. 3, 8). Respondent notified the Judge and Petitioner of this simple solution, but Petitioner refused to make the phone call, and the Judge declined to order her to make the call (T2,p.39). **Application Part A, Comment 3; Rule Canon 2.5, comm 4 (Right to be heard and resolved without unnecessary cost).**

IV. Errors in the Minute Entry of (R 710): **Rules 1.1; 2.5.**

1) is not her proper name listed under "Title", nor did Petitioner make an appearance by that name. Again, her legal name is
.

2) The subject line of the hearing has been changed from the previous week to "Evidentiary Hearing", but this hearing is simply a continuation and conclusion of the previous week's hearing on Respondent's Petition for Relief re Insurance (T2, p. 3, L 18)

3) Respondent wasn't "allowing the insurance policy to lapse". This statement insinuates that he could have prevented it from lapsing—that he had the money to pay it—which is not true. Thus it is not a fact, and the Judge was under a **Rule 82** standard of findings of fact. The evidence presented is conclusive that he did not

have the money to pay the premium. This is why he sought relief from the Judge in the first place.

4) By definition, if it can be made current (second bullet point on page 2), then it hasn't "lapsed". The first two bullet points are self-contradictory. The company confirmed that the policy could be reinstated any time within five years (R. 712, Attachment 1).

5) Ordering Respondent to bring it " ( ) " subsumes a supposed fact that he has the financial wherewithal to pay it. But there is no evidence that this was true; and in fact it was not true. The fact is that he was not able. This is the reason for the Petition in the first place.

6) This minute entry is devoid of facts required under **Rule 82,** requisite to make any conclusions of law, and also fails to make conclusions of law.

7) The Order required an impossible turning back of the clock, so that the policy would be paid in full by , months before hand. **Rule 1.2; 2.5**

8) This is not about a modification of support, as the judge discussed in court, but is an attempt to maintain insurance in place to protect existing support obligations to Petitioner in case Respondent dies before the support is fully paid. Thus, the finding on page one is legally irrelevant, stating that there is no substantial and continuing change in circumstance. The ruling was determined in part on an erroneous legal foundation. **Rules 1.1; 1.2; 2.5.**

If the Judge makes numerous basic errors in the Minute Order, how can we have any confidence in competence to find facts and apply the law? **Rules 1.2; 2.5.**

For reference, the same kind of errors appeared in the minute order the prior week (R. 707):

1) Petitioner's name is incorrect. Petitioner is not , but changed her name to many years ago;

2) Petitioner did not appear *Pro Per*, but was represented by counsel;

3) Respondent was not represented by but appeared *Pro Per*;

4) did not appear; Petitioner does not exist as , but again, as ;

5) The hearing was not continued for the purpose of calling more witnesses (p. 1, line second from bottom), but to give more time to conclude testimony (T1, p. 47);

6) Moreover, Respondent never received that Notice of intent to seek incarceration. Had he received it, he most certainly would have moved the Judge for a continuance, so that he could obtain pro bono counsel to protect him from going to jail. 7) This minute order is devoid of findings of fact as required under **Rule 82**.

V. Judge did not abide by Rule 82, ARFLP. ACOJC Rules 1.1; 1.2; 2.2; 2.5.

The rule begins, "If requested before trial, the court must make separate findings of fact and conclusions of law." The Judge did not do what the court rules say it "must" do.

Respondent had made a Rule 82 Motion at the beginning of the proceeding in the Petition (R. 696, p.1, 5, and 8). Moreover, the court had already stated that Rule 82 is "the law of the case" (T 2020, p.9). In spite of this, the Judge did not make findings of fact, nor conclusions of law based upon the facts.

The following statements are some of the relevant facts and sound conclusions of law that should have been made by the Judge. If he had abided by this court rule, he would have had to rule for Respondent's petition, which would have also been in the best interests of Petitioner and the State of Arizona

1. Respondent does not have the money to pay the premium (T1, p. 10, 26-27).

2. Even if he did have the money, it would still be a just cause to Petition the Judge to exchange insurance policies and reduce expenses, so long as it secures Petitioner's support, per Rule 1(b) ARFLP, and according a self-evident commonsensical notion of fairness and justice, and would enable the speedier repayment of support obligations.

3. Petitioner, as owner, is the only one who can authorize a change in payment schedule from annual to affordable monthly payments (R. 696, p.3; T1, p41; T2, p.15 and 39).

4. The policy has two grace periods, and could be reinstated at any time in and, in fact, at any time within five years (R. 712, Attachments 1 and 2). *Thus, the Judge erroneously concluded that the policy had lapsed.*

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.