

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-438

Judge:

Complainant:

ORDER

August 14, 2024

The Complainant alleged a justice of the peace acted as an advocate in two eviction cases.

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 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 Delia R. Neal did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on August 14, 2024.

CONFIDENTIAL

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

FOR OFFICE USE ONLY

2023 - 438

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.

Please See Attached

This judge is uniquely friendly and is a generally pleasant person. She is well liked by many – perhaps especially by court staff. However, the mistakes she made on were so significant that some concluded they could no longer

These concerns were immediately reported to the leadership of the bench and to the appropriate people at in County. They took whatever action they considered to be appropriate. Perhaps, on the day of the events, this judge was simply having a bad day.

I did not bring this complaint until now because I thought there was a chance this judge would However, on the Judge did I therefore have an ethical duty to bring this material forward.

Background on Arizona Residential Evictions

The justice courts in County are high volume courts that are currently hearing a total of approximately residential eviction actions each month. The vast majority of residential eviction cases allege non-payment of rent as one of the allegations. In Arizona, prior to filing an eviction action for unpaid rent, the landlord must give the tenant a five-day cure notice. This notice must: (1) state the amount of any unpaid rent and any other amount due; (2) notify the tenant of the landlord's intent to terminate the lease if the amount due is not received within five days after the notice is given to the tenant, and (3) inform the tenant that if the amount due is not paid, the tenant must then surrender possession of the residence.¹ After that time period has run, the landlord can file an eviction action.

Arizona is a “pay and stay” jurisdiction. A tenant can pay all of the rent and any late fees any time before the lawsuit is filed and avoid eviction.² If the eviction action has been filed, then the tenant must pay all past due rent, late fees, attorney's fees and court costs.³ If the tenant does so literally anytime before a judgment is entered, he or she can avoid eviction. However, after a judgment has been entered, reinstatement of the lease is generally solely in the landlord's discretion.⁴

Residential eviction actions typically move through a courthouse significantly faster than any other type of litigation. Depending on the aggressiveness of the landlord, tenants who fail to pay rent can be removed from their residence in about 2½ weeks. If the procedural requirements have been met, often the only defense to an allegation of nonpayment of rent is proof that the rent actually

¹ A.R.S. § 33-1368(B).

² *Id.* Also, a landlord can obtain a judgment for rent, costs and attorney's fees where possession of the dwelling was returned to landlord after the eviction was filed, but before the judgment was signed. *Keenen v. Biles*, 17 P.3d 111, 113 (Ariz. Ct. App. 2001).

³ A.R.S. § 33-1368(B).

⁴ *Id.*

was paid. In Arizona, once the summons is served, a court date is set for the landlord and the tenant to appear in no more than six and not less than three days.⁵

A residential eviction judgment has two separate and distinct parts. Unlike other civil judgments that provide only for the award of monetary relief, a residential eviction judgment also awards the landlord possession of the rental property.⁶

Many, but not all, Justice Courts in _____ County schedule their eviction calendars in clusters by landlord attorney. A somewhat typical eviction calendar could have 15 cases filed by ABC law firm set for 1:00 p.m., 20 cases filed by DEF law firm set for 2:00 p.m., and 25 cases filed by GHI law firm set for 3:00 p.m. The information provided by the court, and served on the tenants, instructs the parties to call-in for their remote proceeding 15 minutes prior to the time it is scheduled. On the computer screen, the judge can see how many people have signed into the system, and, perhaps after some announcements, will begin calling each case individually.

A typical afternoon moves forward. Of the 15 1:00 p.m. cases, four are dismissed after a verbal motion from the landlord. One alleges something other than only nonpayment of rent. The tenant disputes those alleged facts and the case must be set for a trial. Five tenants failed to appear and five involve tenants who admitted they have not paid their rent. None of those tenants dispute any of the amounts their landlord claims are due.

For the five tenants that did appear, the judge explains their remaining options, including possibly obtaining rental assistance; but also explains the writ of restitution process and the date the tenant may actually be required to move. Some judges do this using some type of group rights advisement.

At this first court date (called an initial appearance⁷), the judge must determine (among other things) whether the case should be set for a trial. An example from one of our Best Practices suggests the following language: “Your landlord is claiming that you have not paid rent for October. Is that true? [If tenant says, yes] Is there a reason why? [Listen for anything that sounds like a potential defense (e.g. It’s been really hard since he cut off the electricity, etc.)]. If the tenant disputes the facts, then the case must be set for a trial.”

Case on

This eviction action alleged nonpayment of rent. The tenant responded that he believed he had been paying his rent automatically but someone had accessed his bank account and reversed almost every rental payment he made. After discussing the NSF charges in the tenant leger, the landlord attorney stated that if the tenant was disputing anything, the case could be set for a trial and requested that the tenant file an Answer with any supporting documentation.

⁵ A.R.S. § 33-1377.

⁶ *Id.* RPEA 13(c)(1).

⁷ RPEA 11.

Rather than set the case for a trial, the judge continued a discussion with the tenant, made factual findings, and went over the costs and attorney's fees associated with judgment. After a discussion about how and whether the tenant received a five-day notice. The judge announced she was going to sign the judgment; but then allowed additional discussion from the tenant. Next, she justified the apartment complex's actions to the tenant and explained procedures to the tenant based on After discussing whether the tenant had moved out of the residence, she told the tenant go to his bank and to get his money back. The judge then got into an extensive argument with the tenant. One of the last things the judge said to the tenant was " Shortly after that, she said she hoped everything worked out.

Case on

This eviction action alleged the tenant remained in possession of the residence after the lease had expired. On both parties signed a Mutual Rescission/Notice to Terminate Lease Agreement through the In it, the tenant agreed to move out of the residence on or before On the landlord filed an eviction action alleging the tenant remained in the unit.

At the initial appearance, the tenant alleged that she had moved out of the residence and had been given additional time to do so by landlord because she had to be admitted to a hospital. She said had not returned the keys because her landlord changed the locks on her apartment. The property manager then interrupted and denied changing the locks. The judge asked the tenant when she completed moving out by stating, "

The landlord attorney attempted to avoid any issue concerning changing the locks by stating that the tenant admitted she signed the termination agreement and admitted she had not moved out by the agreed upon date. He stated if the tenant wanted to file an action claiming wrongful eviction, that would be a separate case because the case before the court only concerned the tenant's holdover. The landlord attorney noted if the judge felt those additional allegations should proceed as part of this case, it should be set for a trial.

[Note: If a judge determines either a defense or a proper counterclaim may exist, "the court shall order a trial on the merits." RPEA 11(c)(1).]

The judge responded that the tenant could not have moved out if the landlord changed the locks. The landlord attorney then requested that the case be set for a trial. After some additional statements, the judge asked the landlord attorney whether he had anything to " the tenant's position. The landlord attorney responded by stating that the tenant admitted she still had the keys and was therefore in possession of the unit. The landlord attorney again requested that the case be set for a trial.

The judge responded that the tenant could not be in possession if the locks had been changed. The landlord attorney replied that issue involved a question of fact and " The judge gave the landlord an opportunity to call a witness at the initial appearance and

noted that she had “ ” Next, an argument between the landlord attorney and the judge occurred. The judge said that if the landlord attorney did not call his client as a witness at the initial appearance, the case would be dismissed. After the landlord attorney objected to this process, the judge denied she said she was going to dismiss the case and proceeded to lecture the landlord attorney. The landlord attorney said he was willing to call the property manager as a witness but objected because the tenant had admitted the allegations and the judge was “ ”

After some additional discussion, the landlord orally moved for a change of judge. The judge immediately denied the motion because a witness had already been sworn. The landlord attorney informed the judge that she could not deny a motion for change of judge unless she had issued an order. The judge then asked the attorney to tell her the rule and then she laughed at him. The landlord attorney responded by providing the applicable civil procedure rule rather than the correct rule, which is RPEA 9(c).

After a recess, the judge cited the correct rule; but denied the motion for change of judge as being untimely. The landlord attorney again requested that the case be set for a trial. The judge responded that the landlord had to establish a disputed fact. The landlord attorney again requested a trial and the judge again denied his request. He then called the property manager as a witness and asked minimal questions. The judge asked the landlord’s witness questions; but did not give the tenant an opportunity to do so. She then set the case for a trial.

(The subsequent trial resulted in a judgment in favor of the landlord. At trial, the tenant’s husband testified that the keys were not turned in until . The weight of the evidence established the locks were never changed. The tenant(s) could not get the key to work on one day; but the same key subsequently opened the residence on a different day. Of note, the unit had already been rented to another tenant and because the tenant in the eviction case had refused to vacate as agreed, the landlord was forced to pay for a motel room for the incoming tenants. The landlord’s motel expenses were not requested as part of the eviction judgment.)

Conclusion

In the first case, the pro tem judge steamrolled the tenant after the landlord attorney suggested that be case be set for a trial. The tenant’s defense may have lacked a factual basis; but he should have been given an opportunity to present it in a trial format.

The second case was eventually set for a trial; but it took a convoluted path to get there. At an initial appearance, a landlord is not required to provide testimony to support an eviction complaint in order to receive a trial. It would have perhaps been easier if the landlord attorney, when confronted with the situation, would have just immediately presented evidence in support of a prima facie case. However, both sides are entitled to a judge who follows well established procedural rules. The judge improperly denied the motion for change of judge, aggressively argued with the landlord attorney, and acted as an advocate for the tenant.

**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.**