

FILE
COPY

March 7, 2016

From: Barbara Figaro

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RE: Russwurm vs Figaro Taney County Missouri Case # 15AF-CC0059

To: Commission on Retirement, Removal and Discipline of Judges

2190 S. Mason Road, Suite 1, St. Louis, MO 63101

Phone: (314) 966-1007 Fax: (314) 966-0076

Email: jim.smith@courts.mo.gov

AND

To: Office of the Chief Disciplinary Counsel

3327 American Avenue, Jefferson City, MO 65109

Phone (573) 635-7400 Fax: (573) 635-2240

Complaint Against: Judge Eric Eighmy, 38th District Court, Forsyth, MO

First, I would like to say that I have filed related complaints with the Office of Chief Disciplinary Counsel against the 3 attorneys involved in my divorce proceedings. They are my original attorney Dan Brogdon, and my husband's 2 attorneys Brandi Smith and Rudy Arambulo. I believe all 4 of the people I have filed against have violated Federal, State and Local Laws and/or Rules; have violated the Rules of Professional Conduct and have improperly acted separately and jointly during the course of the divorce proceedings. I am going to try and limit this complaint to the actions of Judge Eighmy.

I believe Judge Eighmy did not judge in a fair and/or impartial manner. I believe he violated Federal, State, and Local laws in the way he conducted my divorce proceedings and the manner he dispersed our assets. He accepted their assertions without any supporting documentation. Attorneys for my husband misrepresented numerous items. They claimed NJ apt. was real estate. It was not. They listed 10's of thousands of dollars as non-marital property but could

produce no evidence of such. They listed value of apartment contents different on every form and twice on another form. They listed numerous items that did not even exist, and judge awarded them to me. They listed many items twice and even 3 times. These were also awarded to me. Judge disregarded appraised values in many instances. Judge awarded a tax deferred savings account to my husband stating it was part of pension.

RULE 002 CODE OF JUDICIAL CONDUCT

RULE 2-2.2 Impartiality and Fairness

(A) A judge shall uphold and apply the law, and shall perform all duties of judicial office promptly, efficiently, fairly and impartially.

(B) A judge may make reasonable efforts, consistent with the law and court rules, to facilitate all litigants, including self-represented litigants, being fairly heard.

On July 7, 2015, My husband John Russwurm Filed for divorce. Although I live in Hollister, MO, my husband and his attorney Brandi Smith, chose to have me served while I was in NJ for my brother's funeral. They did this to try and establish that I did not live in MO. The first deception to the court.

On July 16, 2015 while I was in NJ and VA for my brother's illness and funeral, I was served with divorce papers. This document contained numerous lies, errors, omissions and incorrectly stated that I lived in NJ.

On August 27, 2015 there was a hearing in Taney County Court. Or at least I thought it was going to be a hearing. I was asked to leave the court room. When I was told to go back in I was told I had 10 days to vacate my home. I was told to leave my home, leave the state and only take a few pieces of clothing and toiletries. According to my attorney's response to the complaint I filed against him **"Consistent with fairly common practice in the area, the trial judge asked the attorneys to discuss the case with him in chambers prior to any hearing. We discussed our respective positions, and the judge told us how he would rule. Therefore, no hearing was held."**

I don't know what was discussed between the judge and the two attorneys, but I was ordered out of my home and out of the state. If this is common practice of Judge Eighmy and the attorneys, all of their cases should be investigated.

I do believe he/they violated the 5th and 14th amendments to the Constitution, The Constitution of the State of Missouri, and the Missouri State Statutes when he ordered me out of my home without due process of law and dispersed our assets.

I don't think I can list all of the laws and rules that were violated during the course of the divorce proceedings. I am going to say what happened, to the best of my recollection, then at the end list

some of the laws, rules, and manners in which the judge could have acted legally, fairly and impartially to make things right.

08/27/2015 Hearing Continued/Rescheduled

All parties appear with counsel. Husband is to remain in the marital home located in Taney county. Wife is to remain in the home in New Jersey. Parties are to maintain these homes during the pendency of this case. This case is set for November 3, 2015 at 9:00am for trial. Parties are to meet 30 days before trial and make sure there is an agreement as to when property was purchased and the source of funds used for the purchase. If there is not agreement then the parties are required to obtain documents to support their positions as to the source of funds. This court is not going to hear just oral testimony on what was sold and purchased and where the money came from. The parties are required to submit a consolidated Form 9 by October 28, 2015. Judge Eighthmy

Hearing Continued From: 08/27/2015; 11:00 AM Hearing

The judge effectively made me homeless and deprived me of all items a normal person would need to get by. Forced to move in with a friend then live in a 16 year old camper on a rented lot in campground. No access to printer or fax or scanner which I needed during trial prep. Denied me access to meet with my attorney. I had no access to everyday items I need to live: Documents, checkbooks, files, medical records and so much more. My jewelry, my clothes, coats, shoes and personal items were denied me for almost 2 years, while husband enjoyed my home, additional lots, both boat slips and everything in our home. I got to live in squalor he got to have parties and live at the lake: in my home.

My husband's attorney did not submit combined Form 9 twenty days before trial date. The first time I saw the combined Form 9 was in the court hallway on the morning of trial, December 18, 2015. Prior to that time, about 10 minutes before we entered the court room, I had never seen that document. The lawyers had to make copies in the court room for the judge. The judge accepted this document when neither me or my attorney had a chance to see or review this document prior to the court appearance. During all court appearances I stated that the form was incorrect and did not represent my figures. I became very upset and told my lawyer everything on form was wrong. He said not to worry, judge would go over each item and I would be able to tell him it was wrong. I testified that form was incorrect, values were wrong, items to go to wrong person and items did not exist and I never saw that form. Judge chastised me for attempting to change values and dispute form.

12/18/2015 Hearing Held

Both parties appear with counsel. Smith allowed to withdraw. Arambulo enters appearance on behalf of Petitioner. Case called. Court learns that Respondent had recently changed her values on both real estate and property. Court received the Form 9 and learns that over 30 items that the parties have widely varied values as to the items or real estates values. Court orders the Bill Rolwing will value the lots in Taney County. The

parties are to have Holt Auction service value the personal property that is in contention. Parties are to select an appraiser for the apartment in NJ. If the parties are unable to mutually agree on an appraiser then they are to notify the court of this by January 15 and notice up the appropriate motion on a Thursday. Parties are to split the expense of the appraisals. Court at trial will apportion the costs of the appraisals. Case set for trial March 8, 2016 at 9:00am. All supplements to discovery responses are due before February 25, 2016. Parties may submit a interlocutory order of divorce so long as both parties sign it. Judge Eighmy/cb

Scheduled For: 12/18/2015; 9:00 AM ; ERIC DELL EIGHMY; Taney

Sound Recording Log Sheet

FTR LOGSHEET. CB

On the morning of December 18, 2015, original day of trial, Brandi Smith withdrew as my husband's attorney and Rudy Arambulo became attorney for my husband.

Judge denied me my RIGHT TO BE HEARD

March 22, 2016 -- Judge interrupted trial several times to hear other cases. He had private side bar communications with Brandi Smith, opposing counsel. Talked and asked questions off the record. Rudy Arambulo had me on stand twice. My lawyer had me on stand once. My lawyer allowed the judge to shut down the trial before he could cross examine me after Rudy Arambulo's examination. I was not able to refute testimony of my husband, nor did we get a chance to introduce documents into evidence. Judge said he heard enough about this house and shut down trial. I was denied my right to be heard. I have all of the recordings from the hearings and trial and there are parts of the trial that were off the record and not recorded.

03/22/2016 Sound Recording Log Sheet

Court Trial Held

Both parties appear with counsel. Case called. Trial conducted. Case taken under advisement. Judge Eighmy/cb

Scheduled For: 03/22/2016; 9:00 AM ; ERIC DELL EIGHMY; Taney

RULE 2-2.6 Ensuring the Right to Be Heard

(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.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Comment

[1] 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.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according

to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are: (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether recusal may be appropriate. See Rule 2-2.11(A)(1).

Comment

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2-2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

Rudy Arambulo, Opposing counsel questioned me for a substantial period of time. When he asked misleading questions and I attempted to answer, I was reprimanded by judge and told not to expand and only answer questions as asked. My lawyer got to ask me a few questions disputing that I lived in NJ, and was on east coast for my brothers illness and funeral, when I was served with Divorce papers. My lawyer got a chance to ask about trip to VA regarding my brother's death and funeral. Judge broke for lunch. After lunch I was put on stand again. I thought my attorney would question me and introduce the documents we had prepared. However, Rudy Arambulo, Opposing counsel again questioned me for a substantial period of time. Judge said he heard enough about this house and shut down trial. Judge did not give me a chance to refute my husband's testimony or present any documents into evidence.

I was not able to introduce evidence that I paid the \$143,000 we put down on my home in Missouri and I always paid half the mortgage and half of all expenses and maintenance in our home. I physically maintained the home and property while my husband went shooting, fishing and socializing every day, and was drunk and abusive almost every night. My husband had a girlfriend for years. When I found out, August 2014, I left him. I returned to our home April 1, 2015 and he said he wouldn't see his girlfriend any more. We spent every day and night together and took several trips together. We tried to put our marriage back together, but he went back to his girlfriend. I still paid hundreds of dollars every month for our house expenses; I paid until judge ordered me out of my home and out of state August 2015.

John has approximately 30+ guns. Judge ordered them appraised. He had 13 guns appraised. These appraisals did not include customized items for every gun such as custom grips or stock, laser sights on almost every gun and other customizations. He only had about half his guns appraised.

The apartment in NJ is a leased apartment. Judge classified it as Real Estate, even though no deed was ever put into evidence. Judge ordered my husband and I were each to retain shares of stock in our name. In order to lease the apartment, you had to buy one share of stock in corporation. Judge did not award that share of stock to me.

I did present deed for my home in NJ that I purchased in 1974. I married John Russwurm in 1984. John was never on the deed to that home, which deed the judge had at time of trial.

Judge ordered appraisal of contents of apt in NJ. This is a less than 700 sq ft leased apartment. Appraisal listed contents as \$1345. My sister lived in the apartment for years and supplied all furniture, dishes, pots and necessary items. She lived there full time. All utilities were in her name as she was the only one living there. Over time I purchased furniture piece by piece. My husband and I stayed at apartment when we visited with kids and family, holidays and special events. Judge arbitrarily assigned value of \$26,335 for apartment contents, stating the items listed were sparse. I did not list items owned by my sister, nor appliances that were part of the lease. I testified to this in court. Judge asked my husband John when was the last time he was at apartment with me in NJ. John told him June 2014. This was true. However Judge said we were separated since 2012. This was not true. I was not given the opportunity to present evidence that this was not true.

He unfairly awarded my home to my husband then proceeded to award me a financial settlement about half what would have been fair. I still have not received the check for the settlement Judge awarded me. Judge said if husband didn't satisfy judgment in 6 months, husband would be required to sell house. In as much as, for whatever reason, Judge arbitrarily favored my husband in every aspect of this divorce, I wait to see if Judge orders home sold if judgment is not satisfied by March 21, 2017. I can't help wonder if Judge Eighmy knows my husband or what his reason for his actions.

Judge gave me no credit for a home I owned 10 years prior to my marriage to John. John was never on deed to my NJ House. Which I sold in 1999 to put money down on our Missouri home. Our home in Missouri was purchased with money I received from the home I purchased in 1975 with my first husband (who I bought out of that home).

Judge did not follow Missouri Revised Statutes when issuing settlement figures: I owned my home in NJ since 1975. I married John in 1984. John was never on the deed. I bought my first husband out of that house. Sold it in 1999 and put **\$143,000** down on my Missouri home. Paid for two boat slips and all moving expenses. Judge gave me no credit for that money.

Missouri Revised Statutes

Chapter 452

Dissolution of Marriage, Divorce, Alimony and Separate Maintenance

- [←452.325](#) Section 452.330.1

- 452.335→

August 28, 2014

Disposition of property and debts, factors to be considered.

452.330. 1. In a proceeding for dissolution of the marriage or legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall set apart to each spouse such spouse's nonmarital property and shall divide the marital property and marital debts in such proportions as the court deems just after considering all relevant factors including:

(1) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children;

(2) The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;

(3) The value of the nonmarital property set apart to each spouse;

(4) The conduct of the parties during the marriage; and

(5) Custodial arrangements for minor children.

2. For purposes of sections 452.300 to 452.415 only, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(1) Property acquired by gift, bequest, devise, or descent;

(2) Property acquired in exchange for property acquired prior to the marriage ✖
or in exchange for property acquired by gift, bequest, devise, or descent;

(3) Property acquired by a spouse after a decree of legal separation;

(4) Property excluded by valid written agreement of the parties; and

(5) The increase in value of property acquired prior to the marriage or pursuant to subdivisions (1) to (4) of this subsection, unless marital assets including labor, have contributed to such increases and then only to the extent of such contributions.

3. All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation or dissolution of marriage is presumed to be marital property regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection 2 of this section.

4. Property which would otherwise be nonmarital property shall not become marital property solely because it may have become commingled with marital property.

5. The court's order as it affects distribution of marital property shall be a final order not subject to modification; provided, however, that orders intended to be qualified domestic relations orders affecting pension, profit sharing and stock bonus plans pursuant to the U.S. Internal Revenue Code shall be modifiable only for the purpose of establishing or maintaining the order as a qualified domestic relations order or to revise or conform its terms so as to effectuate the expressed intent of the* order.

6. A certified copy of any decree of court affecting title to real estate may be filed for record in the office of the recorder of deeds of the county and state in which the real estate is situated by the clerk of the court in which the decree was made.

For the most part, it doesn't matter whether title is in one spouse's name or both; the law assumes that an asset belongs equally to both spouses if it was acquired after the date the couple married.

There are, however, some important exceptions to this general rule. For instance, if Spouse A adds Spouse B's name to a deed to non-marital property, and Spouse B later proves in court that Spouse A had a "donative" intent (meaning, wanted to make a gift), there is a

"Commingled" Property

"Commingling" property is very common, and simply refers to blending non-marital property with marital property.

Let's say, for example, that Spouse A inherits money before the marriage and uses it for a down payment on a house. After this, Spouse A marries Spouse B, and they live in the home. During their marriage, they use marital income to pay the monthly mortgage. In this case, they have commingled a real property asset by using marital funds to pay down the mortgage on a separate property home.

To sort things out in such cases, Missouri courts use a formula to fairly compensate Spouse A for any contributions made toward the home both before and after the marriage. Spouse A will get a non-marital and marital percentage that reflects his or her total contribution and any appreciation in value, whereas Spouse B will only get a marital interest.

In determining a fair division of property, courts must consider all of the following factors:

- **whether and how much each spouse contributed to the acquisition of the property** *
- **the value of either spouse's non-marital property** *
- the spouses' behavior during the marriage (e.g., a spouse's property award may be reduced if he or she squandered marital assets), and

Missouri follows a principle called "the source of funds rule." This means that when a court is deciding whether property is marital or separate, it will examine who paid for the property, and how. Property that is marital is divided equitably, but property that's separate is awarded to the rightful owner. *

Some of the Issues I believe were improperly decided by Judge Eighmy:

Judge awarded husband as non-marital a deferred comp amount of \$35,000. This was a voluntary tax deferred savings account, not an employer contributed retirement account. This account was improperly classified as non-marital. Husband listed many items as non-marital

stating he bought with inheritance. Did not show any evidence in court. Sold our pontoon boat for \$8,000 then bought a shotgun and declared that as non-marital.

Judge ordered appraisals, then refused in many instances to use those figures. Most instances he favored my husband . When I testified that many items my husband listed were extremely over stated in value or just did not exist, or duplicated, he ignored my testimony. Apartment is less than 700 sq ft. It would be ludicrous to find \$26,355 worth of used items in that space. John submitted three different figures for NJ apt. contents. One was a list which included many items that did not exist or did not belong to me. His total of this list was approximately \$10,100.

He classified many items as non-marital which were in fact marital.

Judge awarded me numerous items that just don't exist. He awarded me items with extremely overly inflated values, while awarding my husband not only my home but items with extremely undervalued values. Even many items he ordered appraised. If it went to my husband, he charged a lesser than appraisal amount, where many items he awarded to me he charged me more than the appraised values.

Judge classified apartment in NJ as real estate and awarded it to me, when in fact I lease the apartment. The property is owned by Crestwood III, Inc. and I have a lease and 1 share of stock in the corporation. He charged \$28,000 to my side of assets.

Immediately after Judge filed the results of the trial, I hired a new attorney. Matt Miller. He immediately filed documents with the court requesting correct documents be received in evidence and or a new trial.

04/21/2016 Sound Recording Log Sheet

/hk

Motion Hearing Held

Case set for evidentiary hearing on June 21, 2016 at 9:00am for a thirty minute hearing. Each party to bring to court a timeline of when the form 2's were filed with opposing party and a copy of each form 2 in the same condition as it was filed with the opposing party. Each party to send a copy of this timeline and attachments to the opposing party by June 15, 2016. Each timeline to be supported by an affidavit signed by the party. Judge Eighmy/cb

Scheduled For: 04/21/2016; 9:00 AM ; ERIC DELL EIGHMY; Taney

June 21, 2016:

It became evident during this hearing that my lawyer, Dan Brogdon, had submitted incorrect form 2 to opposing counsel back on October 19, 2015. Apparently Brandi Smith, my husband's lawyer, had submitted my husband's form 2 to my lawyer, Dan Brogdon. Somehow my lawyer sent that form 2 (w my husband's figures) back to opposing counsel as my form 2. Brandi Smith prepared Form 9 for December 18, 2015 trial using those figures. I believe Brandi Smith, my

husband's lawyer knew the mistake had happened, chose to take advantage and proceeded to prepare a fraudulent document. On morning of trial, December 18, 2015 she withdrew from case and Rudy Arambulo took over as attorney for my husband and presented the falsified document to the court. The first time I saw that document was about 10 minutes before we entered the courtroom on December 18, 2015. I kept trying to tell judge that was not my document, The figures were all incorrect, classification of items was wrong and many items listed were severely overvalued and/or did not exist. My lawyer never owned up to how those figures were arrived at or that he or his office had made that mistake.

What happened in the development of the Form 9, presented in court at original trial date on December 18, 2015, did not come out until evidentiary hearing on June 21, 2015. Complaints were filed against all three attorneys involved.

07/14/2016 Motion Hearing Held

Miller and Arambulo appear with parties. Case called. Motions and testimony heard on the record. Court denies Respondent's motion for new trial. Court does grant Respondent's motion to correct judgment. There is a mathematical error in the judgment. Court notes that there have been issues as to Respondent' discovery on 12-18-16 trial date that had to be continued on that date to correct this issue. On 3-22-16 this case was tried and the court decided this case after the parties allowed to present their case using their discovery that was on file with their respective counsel. Court notes that there was a mathematical error and the award to Plaintiff is in error. It should be reduced to a figure to be determined by the court after the court has had an opportunity to review the Form 9. Court grants motion for relief from judgment for the sole purpose to correct the mathematical error in judgment. Judge Eighmy/cb

Scheduled For: 07/14/2016; 9:00 AM ; ERIC DELL EIGHMY; Taney

Judge Eighmy still refused a new trial and still refused to accept the corrected documents my new attorney, Matt Miller supplied during the hearings of June 21, 2016; July 7, 2016 and July 14, 2016. He allowed me to testify at the hearing on July 14,2016 and disregarded all testimony from that hearing. If judge accepted these documents as evidence during court hearings, how is it he could ignore their contents and information in his decisions. Once he gave us the evidentiary hearing and accepted the documents, did they not become part of the court record?

Judge found out during evidentiary hearing that form 9's filed by attorneys were incorrect and/or fraudulent but still chose to use them to come to settlement figures. On June 21, my new attorney Matt Miller presented a corrected copy of form 9 to Judge during evidentiary hearing. He accepted documents into evidence. He refused to correct settlement. On July 27, 2016, Rudy Arambulo, my husband's attorney, submitted a document to court, with a bunch of figures with no explanations stating about \$24,000 worth of mistakes they obviously knew about, claiming to fix mistakes. Judge accepted this unsubstantiated document as evidence; after refusing a corrected document from my lawyer with numbers, and items correlating to items.

When judge realized what had transpired he said I should sue my attorney and he would not correct the errors. My new attorney petitioned the court for a new trial and or for the court to accept the corrected documents into evidence. Judge denied the motions and proceeded to base settlement on documents and figures he knew were either incorrect or fraudulent.

When Judge found out my attorney had violated numerous Rules of Professional Conduct, Judge said sue him, but did not file Rule 2-2.15.

Judge Eighthmy did not comply with the below rules:

RULE 2-2.15 Responding to Judicial and Lawyer Misconduct

(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 disciplinary authority.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

Comment

[1] Taking action to address known misconduct is a judge’s obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one’s judicial colleagues or members of the legal profession undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system. This Rule 2-2.15 limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this code, communicating with a supervising judge, or reporting the suspected violation to the appropriate disciplinary authority. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate disciplinary authority.

RULE 2-2.16 Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

Comment

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges’ commitment to the integrity of the judicial system and the protection of the public.

SUPREME COURT RULES 78.01

Evidence was presented that my attorney submitted erroneous figures to opposing counsel. Judge said I should sue my attorney. He found that my attorney was negligent in preparing my settlement documents, did not attempt to correct the mistakes he had made, and did not properly represent me in court. When my new attorney submitted corrected documents, Judge Eighthmy accepted them into evidence, however refused to use them to correct all the errors in the settlement agreement. On July 27, opposing counsel admitted to almost \$24,000 in known errors and suggested Judge award me an additional \$11,860. Judge accepted their revised document for consideration, but refused mine. Document supplied to judge from opposing counsel contained a miss-mash of figures with no explanations. Judge accepted it. If he could accept their corrected document, why did he not accept mine. I believe we had demonstrated more than enough evidence to warrant a new trial. He denied request. We requested he receive new evidence. He denied request. He took new testimony from me during a hearing on July 14, 2016, but chose not to take the information into consideration.

Judge Eighthmy chose not to adhere to below rule. I believe that Matt Miller and I presented more than enough information and evidence for Judge to invoke this rule.

78.01. Granting a New Trial

The court may grant a new trial of any issue upon good cause shown. A new trial may be granted to all or any of the parties and on all or part of the issues after trial by jury, court or master. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact or make new findings, and direct the entry of a new judgment.

Committee - 1974

The source is prior Rule 78.01. In revising prior Rule 78.01, there is no intention to eliminate any of the reasons for which new trials heretofore have been granted or to change the law concerning the grounds for granting a new trial. The revision has been made solely to make the Rule more concise.

Compare: Rule 59(a) of the Federal Rules of Civil Procedure.

78.05. After-Trial Motions, Including a Motion for a New Trial Based Upon Affidavits

When any after-trial motion, including a motion for new trial, is based on facts not appearing of record, affidavits may be filed which affidavits shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits. Depositions and oral testimony may be presented in connection with after-trial motions.

78.07 After-Trial Motion - Allegations of Error Required

a) In jury tried cases, except as otherwise provided in this Rule 78.07, allegations of error must be included in a motion for a new trial in order to be preserved for appellate review.

The following matters need not be included in such motion to preserve the allegations of error:

- (1) Questions of jurisdiction over the subject matter;
- (2) Questions presented in motions for judgment under Rule 72.01(b); and
- (3) Questions relating to motions for directed verdict that are granted at trial.

Allegations of error based on matters occurring or becoming known after final submission to the court or jury shall be stated specifically.

(b) Except as otherwise provided in Rule 78.07(c), in cases tried without a jury or with an advisory jury, neither a motion for a new trial nor a motion to amend the judgment or opinion is necessary to preserve any matter for appellate review.

(c) In all cases, allegations of error relating to the form or language of the judgment, including the failure to make statutorily required findings, must be raised in a motion to amend the judgment in order to be preserved for appellate review.

(d) The trial court may amend or modify any judgment in accordance with Rule 75.01 or upon motion by any party. Unless an amended judgment shall otherwise specify, an amended judgment shall be deemed a new judgment for all purposes.

78.08. New Trial - Plain Errors May Be Considered

Plain errors affecting substantial rights may be considered at a hearing on motion for a new trial, in the discretion of the court, though not raised in the motion or defectively raised, **when the court finds that manifest injustice or miscarriage of justice has resulted there from.**

Other Laws or rules I believe were violated include:

Rules of the 38th Judicial Circuit Christian and Taney Counties

RULE 51 COURT-TRIED CASES

51.3 PREPARATION OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

In all court-tried cases in which findings of fact and conclusions of law are required, or properly requested, the parties, through their attorneys, shall submit proposed findings of fact and conclusions of law at the conclusion of the trial or within a reasonable time thereafter as directed by the Court.

68.4 FILING OF FINANCIAL STATEMENTS

(3) **Supplemented Statement of Property and Income Required.** If any changes occur prior to the trial date, the information provided on **Forms 1, 2 and 3 shall be updated no less than 15 days prior to trial and served on the opposing attorney with a Certificate of Service of same to the Court.**

(5) **Consolidated Statement Required -Time.** A consolidated statement of marital and non-marital assets and debts of Petitioner and Respondent **(Form 9) shall be submitted in every contested Dissolution of Marriage or Legal Separation action. Twenty days prior to the scheduled trial date of any such action the parties shall file with the Court their Form 9.** If the parties are unable to agree upon a Form 9, then each party shall submit a proposed Form 9 to the Court and the Court may schedule a pre-trial conference to resolve any differences in the proposed forms.

(7) **Court May Issue Such Orders as Appropriate.** Irrespective of whether a hearing is held, if the Court determines that any verified motion or verified response thereto, or any testimony given under oath pursuant to this rule is perjured or made with reckless disregard to whether the allegations contained therein are true, then the Court may issue such orders as it may deem appropriate, including, but not limited to, orders for costs and expenses of litigation under this rule, including attorney fees.

Before my first appearance in court, Judge Eighmy met with 2 attorneys, (Dan Brogdon and Rudy Arambulo). I believe at that time, before my very first court appearance, Judge Eighmy decided the total outcome of the final judgment and resolution of the proceedings. Before my first appearance in court, Judge Eighmy decided to illegally remove me from my home and give it to my husband. During one of the first hearings, Rudy Arambulo submitted a form to the judge asking him to award my home to my husband and award me \$78,000. Basically that was almost exactly the way the first judgment read. It appears to me I went through almost 2 years of hell and paid over \$20,000 in legal fees with no chance of getting a fair settlement as between Judge Eighmy and Rudy Arambulo they had decided the whole course of the hearings and trials before I even got in court. Surly this can't be considered a fair and/or impartial judge and/or ruling.

The day I went to Rudy Arambulo's office to sign some documents, Judge Eighmy called him. Arambulo tried to get off phone quickly, but should a Judge even be calling an attorney?

In closing, after the judge found out during the post trial hearings that his figures and settlement were based on erroneous or fraudulent figures and documents, and that my lawyer failed to provide proper representation, if he could have acted fairly and impartially, he could have ordered a new trial, or at least recalculated the settlement so it would have been fair and equitable. Even though he knew what he did was wrong, he made no effort to correct. He gave

us post trial hearings and accepted corrected documents into evidence; but refused to use the testimony or documents to amend the judgment.

Respectfully Submitted,

Barbara Figaro

Date

Document List for Judge Eighmy Complaint

1. Complaint form from Website
2. Document 2 -- 15 Page Complaint
3. Constitution State of Missouri
4. MO Statute -- Article 1 Bill of Rights Article 010091
5. Guide to Judiciary Policy
6. Brogdon Response to OCDC Complaint and OCDC accepting Complaint
7. Docket Entry 7/14/16
8. Respondent's Motion for Relief of Judgment
9. Respondent's Motion to Reopen Evidence
10. Respondent's Amended Motion To Reopen Evidence, For New Trial. To Amend Judgment, and for Revision of Clerical Errors
11. Deed from 1975--Purchase NJ Home
12. Stock Certificate and Lease for NJ Apartment
13. Apartment Contents Appraisal, Johns itemized list of Apartment Contents, John's Form 2 Listing his value of Apartment Contents
14. Judges Settlement Pages and Corrected Version Submitted by Matt Miller in post trial Hearing
15. Copy of typed Judgment prepared by Rudy Arambulo. No Values listed for items listed. Did not include some items. Included items that just don't exist. Included improperly declared items.
16. Holt Auction Appraisal

Commission on Retirement, Removal and Discipline

2190 South Mason Road, Suite 201

St. Louis, Missouri 63131

(314) 966-1007 (phone)

(314) 966-0076 (fax)

This is a brief description of the purposes, jurisdiction and procedures of the Commission on Retirement, Removal and Discipline.

Background

The Commission on Retirement, Removal and Discipline was created in 1972 when voters approved Article 5, §24 of the state constitution. The new article, which subsequently was amended in 1976, established the commission as an independent state agency responsible for investigating complaints against justices and judges on the Supreme Court, court of appeals, circuit and associate circuit courts, municipal courts and members of judicial commissions.

Judicial conduct commissions exist in every state and are responsible for overseeing the ethical conduct of judges both on and off the bench. They play a vital role in promoting public confidence in the judiciary and in preserving the integrity of the judicial process.

As a forum for citizens with complaints against judges, judicial conduct commissions help maintain the balance between judicial independence and public accountability and serve to strengthen the judiciary by encouraging judges to maintain high standards of professional and personal conduct.

Organization

The commission consists of six members with diverse backgrounds who serve six-year terms. It is composed of two citizens who are not members of the Missouri Bar, appointed by the Governor; two lawyers appointed by the Board of Governors of the Missouri Bar; one judge of the court of appeals to be selected by a majority of the judges of the court of appeals; and one judge of the circuit courts to be selected by a majority of the circuit judges of the state.

The current commission members are:

Skip Walther, Chairman

Arthur S. Margulis, Secretary

Michelle D. Aycock

Nancy Steffen Rahmeyer

Sandra C. Midkiff

Carlton R. Caldwell

Members are not compensated for their work but may receive their actual and necessary expenses. The commission meets and communicates by phone and e-mail throughout during the year. They are supported by a professional staff located at 2190 S. Mason Road, Suite 201, St. Louis, Missouri 63131. Although the commission operates independently, it is part of the judicial branch of government. The commission's rules of procedure are posted on the commission's website. The commission's budget is appropriated by the state legislature.

Jurisdiction

The commission has jurisdiction over Missouri judges of the Supreme Court, court of appeals, circuit and associate circuit and municipal courts, and members of judicial commissions. It does not have jurisdiction over court employees, administrative law judges, federal judges or court commissioners. Complaints against court commissioners should be filed with the Office of Chief Disciplinary Counsel, 3327 American Avenue, Jefferson City, Missouri 65109. Complaints against Missouri Workers' Compensation administrative law judges should be filed with the Administrative Law Judge Review Committee, Attn: Division Director, Post office Box 58, Jefferson City, Missouri 65102; (573) 751-7646. Complaints against federal judges should be filed with the Clerk of the Court, U.S. Court of Appeals, 8th Circuit, 111 S. 10th Street, St. Louis, Missouri 63102; (314) 244-2100.

Scope of Authority

The commission has authority to investigate complaints involving the following:

- Willful misconduct in office.
- Willful and persistent failure to perform duties.
- Habitual intemperance (e.g. alcohol or drug abuse).
- Permanent disabilities that interfere with judicial duties.
- A violation of the Code of Judicial Conduct.
- Conduct that brings the judiciary into disrepute.

The commission's primary concern is judicial behavior, not judicial decision-making. Only a higher court can overturn a judge's decision or ruling. The commission is not a court and cannot change a judge's decision (including child custody orders), intervene in a pending case, remove a judge from a case, or award damages or other monetary relief to litigants.

Complaints that allege misconduct solely on the basis of a judge's decisions will be dismissed without investigation. Neither the commission nor its staff can provide legal assistance or advice.

The Complaint Process

Anyone can file a complaint against a judge, and an official complaint form can be obtained from the commission's office or downloaded from this website. A letter will be treated as a complaint if it contains the information required on the official form. There is no charge for filing a complaint.

A complaint consists of a statement of facts describing the judge's conduct and listing the names of witnesses who can verify the facts. The complainant is not required to provide court rules, but may attach copies of documents that might help the commission understand the complaint.

Complaints must be mailed or delivered to the commission's office. All complaints are numbered and screened in the order in which they are received. The commission's investigation may take several months, depending on the complexity of the matter and the commission's caseload.

The complainant and the judge will be notified by mail of the commission's decision at the conclusion of the investigation. If either disagrees with the commission's decision, he or she may request that the commission reconsider its decision. The request for reconsideration must present evidence or argument that was not previously provided to the commission.

Judicial Discipline

The commission may reprimand a judge informally for violating the Code of Judicial Conduct or for failing to live up to the ethical standards described in the state constitution. Informal reprimands are imposed when the judge's conduct is improper, but not so serious as to require discipline by the Supreme Court.

In some cases, the commission may file formal charges and hold a hearing to consider evidence about the judge's conduct. If it finds the judge committed misconduct, the commission can recommend to the Supreme Court that the judge be reprimanded, suspended without pay or removed from office. The court also may retire a judge from office for a permanent physical or mental condition that prevents the judge from performing judicial duties.

Confidentiality

Papers and proceedings of the commission are kept confidential unless a formal recommendation for discipline or disability retirement is filed by the commission before the Supreme Court.

Frequently Asked Questions

Q. Do I have to use the commission's complaint form?

The commission's complaint form should be used, if possible, but a letter is acceptable.

Q. Will my identity be revealed to the judge?

As a general rule, no. Unless your complaint waives confidentiality, your identity is not revealed to the judge during the initial investigation. If there is a formal hearing and you are a witness, your identity may be revealed during the course of your testimony. In addition, your identity may be apparent based on the nature of your allegations. The commission notifies judges about complaints unless there is a good reason to withhold this information.

Q. Will filing a complaint with the commission change the decision in my lawsuit?

No. Commission proceedings have no effect on judicial decisions or appeals.

Q. Will my complaint automatically disqualify the judge from further involvement in my case?

No. Filing a complaint does not automatically disqualify a judge from hearing a case.

Q. Should I wait to hear from the commission before I appeal my case?

No. The time allowed for an appeal may expire, and the commission cannot grant extensions for filing appeals.

Q. Does the commission review all complaints?

Yes. Every complaint is reviewed by the commission and its staff but formal hearings are not held for every complaint.

Q. If my complaint is justified, will the commission tell me how the judge was disciplined?

If the judge is formally disciplined by the Supreme Court, a copy of the order of discipline will be sent to you. If the commission disposes of your complaint informally, you will be so notified. However, specific information about the informal disposition will remain confidential.

Q. If I am uncertain about whether to file a complaint, is there someone I can talk to first?

Yes. You can call the commission's office and talk to a member of the staff before you decide to file a complaint. The staff member will not be able to tell you if a judge has actually committed misconduct or give you any legal advice, but may assist you in explaining the procedures of the commission.

The Code of Judicial Conduct

All judges in Missouri are subject to the Code of Judicial Conduct, which contains the following

canons or broad general principles:

- A judge shall uphold and promote the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.
- A judge shall perform the duties of judicial office promptly, efficiently and fairly.
- A judge shall conduct the judge's extrajudicial activities so as to minimize the risk of conflict with the obligations of judicial office.
- A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity or impartiality of the judiciary.

The complete text of the code may be downloaded from this website.

Commission on Retirement, Removal and Discipline

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[Complaint Form.pdf](#)

[Code of Judicial Conduct](#)

[Supreme Court Rules for Procedure of the Commission on Retirement, Removal and Discipline](#)

[Enabling Missouri Constitutional Provision](#)