

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-129

Complainant: No. 1269710348A

Judge: No. 1269710348B

ORDER

The commission reviewed the complaint filed in this matter, as well as the audio recording of the hearing, and found no ethical misconduct on the part of the judge.

The complaint is dismissed pursuant to Rule 16(a).

Dated: September 18, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on September 18, 2006.

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

Complaint Against Judge (attachment)

CJC-06-129

Background:

My Consent Decree of Dissolution of Marriage was signed by [] and entered by the Court on [] A Minute Entry ruling was entered on [] stating in part:

"IT IS FURTHER ORDERED that Respondent shall be precluded from seeking any modification and/or enforcement of the Decree until such time as Respondent has completed the parenting class and filed a Certificate of Completion with the Court."

My case was subsequently transferred to the [] on or about [] Subsequently, I filed a Petition for Modification of Parenting Time and Support, requesting a 50/50 custody arrangement with my daughter. When I went to Court on [] and requested a 2-5-5-2 parenting time schedule, Judge [] stated that she had never heard of such a thing. I requested this type of access as my former spouse and I lived quite a distance apart. I never missed Parenting Time with my daughter and wanted more. Instead, Judge [] almost gave me LESS time with my daughter and INCREASED my child support. I informed Judge [] that my former spouse COULD NOT, by prior Court Order, request any type of enforcement or modification of the Decree until she had completed the parenting class. Judge [] ignored me and stated that since I brought it up, that it could be modified. The Petition that was filed was MY petition, not my former spouse's. I still do not know why Judge [] ruled the way she did.

In late [] I received a Minute Entry Ruling from the Court. The ruling stated that my former spouse had sent a letter to the Court dated [] and that the letter indicated it was mailed to me. The letter was not in pleading form, just a letter to Judge [] stating that I was out of work and had not paid my child support obligation for a period of three weeks and that I was unable to provide the health insurance for my daughter as I was unemployed. Judge [] issued a ruling on that letter. The ruling stated in part:

"IT IS ORDERED that Petitioner/Father shall either provide health care insurance for the minor child or reimburse Respondent/Mother directly for the actual costs of coverage. Failure to comply with this order may result in the Court setting a Non-Compliance Hearing and issuing appropriate sanctions.

IT IS ORDERED that Petitioner/Father shall make immediate efforts to come current on any past due child support by making additional payments through the Clearinghouse.

If Petitioner/Father is not current by [] Respondent/Mother may file a Motion to Enforce Child Support and Orders Regarding Health Insurance with this Court (NOT Family Support or Expedited Services).

Upon receipt of the Motion, the Court will set this matter for hearing on the Non-Compliance calendar."

I was never served, by certified mail or personally, with the letter my former spouse sent to the Court. My former spouse conveniently transposed my address (I have the envelope) in an attempt, I believe, to make sure that I did not know about the letter.

Judge [] entered orders in direct violation of the Minute Entry ruling entered on [] [] precluding my former spouse from seeking any modification/enforcement of the Decree until she completed the parenting class. That ruling/order has NEVER been modified. IT HAS BEEN [] YEARS SINCE SHE WAS ORDERED TO TAKE THE CLASS and she still has not done so. I believe she has been subsequently ordered to take it by Judge [] (2 times) and by Judge [] (1 time).

Once I received the [] Minute Entry, I filed, on [] a Notice of Non-Receipt and Request to File Response to the "letter" sent to and ruled upon by Judge [] On [] Judge [] conducted a telephonic conference (off the record) with me and my former spouse. Judge [] obviously realized that she had made a huge mistake by issuing a ruling against me and in favor of my former spouse (when I had not been served) when she was precluded from seeking any modification/enforcement of the Decree until she completed the parenting class. Judge [] subsequently struck both the letter and my response thereto.

On [] I filed, yet again, a Petition for Modification of Parenting Time and Child Support. My former spouse could no longer take care of our daughter (she was basically homeless) and asked me to take her. I did. She has lived with me since [] Due to my former spouse's inability to provide any type of stable environment for our daughter, on [] I filed an Ex-Parte Petition for Emergency Temporary Custody. Judge [] denied my emergency custody request, but did set a hearing for the following week on [] It was then that I obtained counsel. I was granted Temporary Emergency Custody of my daughter with a hearing to be held on [] A discussion was held regarding my former spouse's failure to complete the parenting class. Judge [] stated in her Minute Entry Ruling of [] in part:

"IT IS FURTHER ORDERED that prior to the Hearing set on [] Respondent/Mother shall complete the Parent Information Program and shall file proof of completion of the Parent Information Program. Respondent/Mother is advised that failure to complete the Parent Information Program may preclude a request for modification."

Judge [] made yet another mistake. She "advised" my former spouse "that failure to complete the Parent Information Program may preclude a request for modification." There is a standing Order in my case that my former spouse is to complete the Parent Information Program or she "shall be precluded from seeking any modification and/or enforcement of the Decree."

On or about [] my attorney, my former spouse and I had a settlement conference and we reached an agreement as to custody, parenting time and support. The Stipulation regarding our agreement was signed as an Order by Judge [] on []. Basically, we still have joint custody, I am the Primary Residential Parent and my former spouse is to pay child support in the sum of [] per month.

Present Issues:

Since the entry of the [] orders, I have had to again file a Petition for Modification of Custody and Parenting Time and for Contempt for Non-Payment of Child Support. The Petition was filed on [] and hearing was set for []. When my attorney filed the Petition, her office sent an Order to Show Cause for the Judge to fill in the date and time of the hearing. Instead of using my attorney's form, Judge [] issued her own Order to Appear. In that Order to Appear, Judge [] stated that my former spouse had to be served by [] which is well before the statutory requirement of three (3) days prior to the hearing. My former spouse's living arrangements were transient at best. She had even taken my daughter to a homeless shelter. I finally found her at the [] and attempted to have her served there. The process server had a hard time trying to serve my former spouse, but she was served on Monday, []. This was one day, ONE DAY, after Judge [] said to have her served, but seven (7) calendar days prior to the hearing. Also, [] was a Sunday. It was not a "business" day.

When I went to Court with my attorney on [], Judge [] refused to enter any orders on my behalf, even though my former spouse did not appear. Once Judge [] looked at the Order to Appear, which was prepared by HER STAFF and signed by HER, she noticed that the time to appear said 1:30 AM, not P.M. She also said that because I had gotten her served one day after the [] (a Sunday), that she could not go forward. She stated, on the record, that it was HER fault that the Order to Appear was wrong, yet she did nothing. She told my attorney that she would not issue a bench warrant when service was not proper and the time of the hearing was wrong on the Order to Appear. My former spouse was served in plenty of time for the hearing and everyone who has a brain knows that the Court is not open at 1:30 a.m. The hearing was subsequently reset to []. After I filed my judicial complaint against Judge [] she subsequently disqualified herself and [] was assigned to the case. Judge [] had a conflict on [] so Commissioner [] sat for the Return Hearing on that date.

In the hearing of [] my former spouse admitted, under oath and in open court, that she had a job at [] SHE ADMITTED THAT SHE WAS WORKING. Yet, she had paid no child support whatsoever since []. This was **the most important** fact for the future Evidentiary Hearing set on [].

On [] the Evidentiary Hearing was held in front of Judge []. My former spouse walked into that hearing having never filed a response to my original petition (filed on [] never having answered discovery requests nor having provided any answers to the Request for Admissions or providing the medical releases as ordered by Judge [] (Order to Compel and for Sanctions signed by Judge [] on [] never filing a Proposed Resolution Statement or a Witness and Exhibit List. Yet, she walked in with a witness (never disclosed) and was permitted to have the witness testify over the objection of my counsel. My counsel was give ten (10) minutes to voir dire the witness prior to her testimony.

Here again, my former spouse did absolutely NOTHING she was ordered to do and Judge [] let her get away with it. My former spouse was allowed to get on the witness stand and outright lie to the Court. She told Judge [] that she COULD NOT work during her pregnancy (she was pregnant from [] to [] due to her medical condition. She stated she had [] She never produced ONE document that proved that she had any medical condition at all. Not one. She was ORDERED to produce these documents by Judge [] himself, but she never did. Then she testified that she was ill and could not work. There was no proof and she produced nothing to substantiate her claim.

In the end, Judge [] believed that my former spouse could not work due to her "medical condition" and therefore found that she was not in Contempt. However, she testified in [] under oath, in front of Commissioner [] that she had a job and was working. Did Judge [] even look at Commissioner [] notes from the [] hearing? Was he even aware that she testified that she was working? Did he review the file? Did he know the case?

I did everything I was supposed to do in order to have my day in Court. She has not done ONE thing she has been ordered to do in the past 5 and 1/2 years and there are no repercussions for her. She walks away every time with no consequences for her actions. Judge [] walked away from this as well. I am sure this committee will find no fault with Judge [] but someone needs to be held accountable. Judge [] made a serious mistake when he found that my former spouse could not work during her pregnancy when she testified in [] that she was working. I believe that this violates the standard of care the he should have taken in order to properly adjudicate my legal matter. I have ordered the CD from the Court hearing with Commissioner [] Perhaps you should review it as well. It is obvious that Judge [] had no clue as to what happened at the Return Hearing. To make matters worse, Judge [] ordered me and my former spouse to take a High Conflict Resolution Class and to participate in mediation. He then went on to "admonish" my former spouse to take the Parent Information Program Class within thirty (30) days of the date of the Court hearing [] To no one's surprise, she still has not done that. I will tell you this, I will not take the High Conflict Resolution Class, nor will I attend mediation. There is nothing to mediate. I am the person who has been wronged and I am ordered to take a class and to attend mediation? What a joke. I have lost complete faith in the judicial system in Arizona.

As a last note, and not that you would care, but as of this date, [] my former spouse is over [] behind in child support. She has not made a child support payment in over a year. Where is the justice for my child and myself? Obviously not in the Superior Courts of Arizona.

