

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 07-053

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Complainant: No. 1304100144A

Judge: No. 1304100144B

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**ORDER**

The commission reviewed the complaint filed in this matter, the case file, and the recordings of hearings and found no discourtesy or ethical misconduct on the part of the judge. The legal issues are properly on appeal.

The complaint is dismissed pursuant to Rules 16(a) and 23(a).

Dated: June 11, 2007.

FOR THE COMMISSION

/s/ Keith Stott  
Executive Director

Copies of this order were mailed  
to the complainant and the judge  
on June 11, 2007.

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

CJC-07-053

COMPLAINT AGAINST A JUDGE

Your name:

Judges name:

Date: 02/15/07

The Judge ignored the testimony, reports and specific recommendations of three different court appointed Psychologists and supplanted their expert findings with his own personal opinions while providing no basis whatsoever for those opinions. In relocation cases, Arizona statutes require that emotional and developmental impact of moving or not moving be determined, yet the available profession reports pertinent to that question were not considered. After intentionally suppressing factual evidence and expert advice to the contrary, the Judge determined that simply because the Mother was moving out of Arizona, that is was in the children's best interest for them be taken from their life long stable home of their happily re-married mother and placed in the unstable home of their abusive father who is currently being divorced by his third wife. The correctness of this decision may be subjective, however, the Judge, in point of fact, failed to consider many factors which Arizona Statues require in relocation cases, for example;

None of the facts that document Respondent's long history of domestic violence were even allowed into the hearing or mentioned in the ruling, let alone given full and careful consideration, as clearly required by Arizona law. The statute requires that the parent's background be considered, yet the judge ignored the father's arrest record for domestic violence, substantiated CPS reports of father's physical abuse of the children, the prior Judge's  recent suspension of father's access time due to another incident of abuse, and the findings and specific recommendations of Conciliation Services as well as the assigned Parenting coordinator and the children's court appointed therapist, all of whom agree that the children are afraid of their father and are enduring continuing emotional trauma from past mistreatment by their father.

The Judge dictated a parenting plan with no input whatsoever from the mother nor from the court appointed parenting coordinator. An inexperienced family court Judge concocted a bizarre and unworkable access plan with no discussion or involvement from the parents, the children themselves, the children's court appointed therapist, the court appointed parenting coordinator. This is another example of this Judges belief that his own opinions supplant any and all professional advice and also the statutory rights of the parents or the children.

During the evidentiary hearing, the judge was not impartial in considering evidence. Exhibits were exchanged between the parties at the same time. The Judge allowed all of Respondent's evidence to be admitted and yet sustained Respondent's unjustified objection to critical evidence that was properly provided and disclosed by Petitioner. The judge was aware that this evidence answered the pivotal questions in relocation cases, for example that that Petitioner's job transfer was not optional and that the children's new schools were immensely better than their current schools.

During my deposition, which Judge [ ] has read, Respondent's attorney complained that all of my employment records he received by subpoena were silent as to whether my transfer was optional. He then asked if I had any information or document that would speak to that specific question. I agreed to try to obtain something for him and asked my prior boss, the head of the entire business unit I worked for, to write a statement for the court. He did so and that document was provided as an exhibit during discovery. Respondent's attorney was therefore fully aware that this document would be extremely damaging to his case to keep the children from relocating with me. He made no effort whatsoever to assess the validity of that document, and then objected to its admittance on the grounds he did not have time to verify its authenticity.

I recognize that the Judge cannot be expected to qualify every piece of evidence submitted, but in relocation cases, where the best interest, and in this case, the safety of minor children are being decided, it is unconscionable for the Judge, after making a point to inform me that the burden of proof for the reason for the relocation was on my shoulders, to then intentionally ignore the very piece of evidence which I obtained in order to show the cause of the transfer. Respondent's attorney had this document just as long as every other document in evidence, yet the Judge knowingly ignored this critical evidence based solely on Respondent's false claim that he did not receive it in time to 'verify' the source, which could easily have been verified with a 5 minute phone call by either Respondent's attorney or the Judge. I told the Judge that the document was from my boss and that it showed that my transfer was not optional, but he still refused to admit that evidence, and yet he then went on to write in his ruling that the children would not be allowed to relocate with me because I had not sufficiently proven my need to relocate.

I strongly believe this action on the part of Judge [ ] to be highly unethical and represents a serious dereliction of his moral duty and also of the requirements of the Arizona statutes to fully consider all relevant factors in order to determine the best interest of a child. I am steadfast in my belief that it is completely improper for Arizona Courts to knowingly make such an important decision as the best interest of a minor child, to include their physical and emotional well being and in fact their entire future, with the knowledge that critically important and perhaps pivotal and decisive information is within reach, but to intentionally allow those facts to have no force and effect due entirely to the trick or device of a clever attorney.

During the evidentiary hearing, the Judge interrupted and terminated Petitioner's questioning of her husband on the stand. The Judge stated that the testimony was 'repetitive' and a waste of time. My husband is intimately involved in the children's lives

and his testimony was very important, but the Judge just said "it's OK, I get the picture". However, moment's later the Judges gave an extra hour to Respondent's attorney to question his own client. Clearly this action was not impartial.

**The Judge showed extreme bias by failing to compel respondent to provide critical information and documents during discovery.** This occurred on several occasions, and in spite of several written requests from Petitioner. For example, Petitioner was forced to defend her child support calculations in spite of the fact that Respondent had not even provided basic financial information like W-2 forms from his then wife, without which it was impossible to separate the 1.2 million dollar income shown on their joint tax return. The Judge refused several requests from Petitioner for the court to compel the release of those documents, and then at the hearing, the Judge simply accepted the verbal claim of Respondent that ALL of the income was from his wife.

In determining the best interest of minor children in a relocation case, it would be prudent and diligent to determine the reason that one party was in the midst of being divorced for a third time, especially considering that he was divorced by his first two wives for domestic violence against them and also against the children. The Judge failed, again despite written requests by Petitioner, to compel Respondent to provide any information, statement, or documentation to Petitioner during discovery on this extremely critical question.

Respondent stated in a Conciliation Services interview that he wasn't paying his child support because his attorney had informed him that he didn't have to pay because of the Judges calculation error. I made a written request to Respondent's attorney, [redacted] to confirm or deny and informed Judge [redacted] of this and two other events of contempt of the court's orders by Respondent that also caused significant harm to myself or to the children. It was not until I opened a case with Child Support Enforcement that Respondent paid up his arrears which was coincidentally immediately prior to the relocation hearing. Judge [redacted] granted my request for an additional hearing on Respondent's contempt, but scheduled it during our already set Relocation hearing and simply glossed over the contempt charge without even questioning Respondent or his attorney about any of the incidents. No clarification or finding was made and no consideration was given to these defiant behaviors in determining the best interest of the children, of which one statutory factor is the likelihood of a parent to obey court orders.

**The judge also gave the appearance of impropriety in his general treatment of Petitioner.** At the beginning of the relocation hearing, the Judge stated to Petitioner, in what petitioner considered a sarcastic tone, "well, [redacted] let's see what you have in store for us today". The Judge later made the statement to Petitioner that "I am not sympathetic toward you" and throughout the hearing, would not offer any explanation after refusing to hear Petitioner's objections. For example, when Petitioner learned of the surprise witness she asked "Your honor, can I object to this witness?". The Judges simply answered "no, you can't" with no concern or question as to why I objected.

The judge improperly allowed Respondent to call a compensated expert witness with no prior disclosure whatsoever. Petitioner/Mother's strong objection was disallowed. The witness was the estranged third wife of Respondent. She is currently divorcing him and her testimony was pre-engineered by Respondent's attorney (note that attorney's invoice lists a conversation with the witness and her attorney specifically about her expected testimony - Exhibit F). This expected testimony was not disclosed to Petitioner at any time prior to the day of the hearing, yet the Judge allowed it. This witness' testimony was completely discredited by her own admission during cross examination, yet the Judge still relied on her completely speculative comments in his ruling, as 'proof' that Petitioner did not need to relocate to [redacted]

Therefore, in determining the best interest and safety of two minor children, the Judge knowingly ignored factual, credible, written statement from my boss who approved the transfer, summarily discounted my own testimony and the testimony of my husband, and instead relied exclusively on the admitted speculations of a wholly unqualified ad-hoc 'expert' witness who has a clear conflict of interest in this case, to determine that my job transfer was optional. This 'finding' was then used in the Judges ruling as justification to prevent the children's relocation.

The Judge engaged in ex-parte communications with Respondent's attorney. The hearing ended on [redacted] and the Judges ruling that the children cannot relocate with me outside Arizona, was posted on [redacted]. Each day prior to that posting, the judges office informed me that no decision had been made and that until the ruling is posted, no-one knows what the ruling is, and therefore they could not tell me anything. As evidenced by his (Exhibit B) filing, Respondent's attorney, [redacted] claims he had also no knowledge of the ruling until it was posted on [redacted] however, the Judge accepted a motion (Exhibit A) from [redacted] on [redacted] requesting that I return ALL of the children's clothing and school books, and the Judge signed that order on [redacted] proving that the Judge had informed [redacted] about the ruling at least several days in advance of it being published. I have suspected for some time that the Judge and the Respondent's attorney were communicating about this case without my participation, but I was unable to prove it until now.

Further evidence that the outcome of the case was pre-determined and known to the Father was that the father told the children on the day of the hearing, [redacted] that they would need to get their belongings from their mother because they would be living with him now. That was 4 days prior to the decision and 8 days prior to the ruling being posted. On the morning of [redacted] the father changed the emergency contact cards at both schools telling the schools that he was now the primary custodial parent. That was 5 days prior to the ruling being posted. The children told me on [redacted] that their father had told them that I would have to send all of their belonging back in two days (which is the language of his motion of [redacted] that was not even signed into an order until the next day).

While giving me no opportunity to respond, the Judges signed an order on [redacted] based on outright lies contained in Father's request for that order the previous



day. Even after the actual facts were provided by the schools, proving that father had obtained the order thru deception, the Judge reaffirmed the order in its original form. Father claimed that I had de-enrolled the children on [redacted] and that I had taken their school books to [redacted] with me. The order demanded the books be returned and also that because the father had no clothing for the children, that I immediately ship ALL of the children's clothes to the father via Federal express. I obtained statements from both schools proving that father's claims were lies, (see attachments to Exhibit C). The children were never de-enrolled and the children's books are at their respective schools. Father has at least 5 sets of clothing for each child, per the children themselves. By the Judges own reckoning, I have the children for 80 days, yet I am currently under orders not only to return books which he Judge knows that I do not have, but to send ALL of my children's clothing to their father, leaving me with no clothes for them for my 80 days of access. Leaving me with no clothing for the children is confirmation of my contention that father's ultimate goal is for me to never see my children again, an goal that apparently the Judge, by his actions, supports. The Judge's reaffirmation of this outrageous order is another example of this Judges stubborn arrogance in refusing to admit his mistakes, even when those mistakes result in a clear injustice.

Judge [redacted] made an ad-hoc reversal of a previous order without notice or explanation. The Judge made a ruling on Child support and other financial matters. Both parties had objections to various parts of the decision. Respondent asked for a new hearing and was denied. Respondent then appealed. Subsequent to the filing of the appeal, Judge [redacted] without warning, reversed himself on the child support decision during the last 15 minutes of an unrelated hearing. Respondent seemed to be aware of that plan, but no notice whatever was given to Petitioner that that decision was being re-considered and would be sprung on her ad-hoc during the last few minutes of an unrelated hearing. The judge would not listen to Petitioner's objection to the original decision nor the ad-hoc reversal and allowed only a few moments for Petitioner to study pages of calculations for which she had no ability to prepare, nor was any basis given for the new numbers other than that the Judge had, on his own volition, "spoke to more experienced judges and found my mistake". The judge also suggested to Respondent's attorney that if he would voluntarily withdraw the pending appeal, that the Judge would enter against me the very large judgment that they sought. I was looking forward to that appeal as I hoped that a different judge would certainly compel Respondent to produce proper financial documents, however, the deal was made over my strong objections and with no opportunity for me to present my evidence as to the incorrectness of the basis for that judgment. Judge [redacted] while admitting, in order to avoid appeal, that his own calculations were incorrect due to his lack of experience in family court, suddenly accepts as accurate Respondent's calculation provided in the original hearing while refusing to even consider the very different calculations which I submitted during the first hearing. Judge [redacted] provided no reason for this inexplicable reversal, but Respondent's attorney seemed to know exactly what was going to happen.

I have attached my two requests for new hearings (exhibits D and E) because they contain details of the incidents mentioned above. I have since filed for appeal and withdrawn these requests as I do not feel I can get a fair and impartial hearing from Judge [redacted]. I believe that the bias and lack of integrity shown by the judge in this case is obvious and extreme and that the rights of myself and of my children have been violated by the Arizona Superior Court in this case. Further, I believe that the children were knowingly placed in a potentially dangerous home despite my own warnings based on extensive personal experience, despite the well documented history of domestic violence of their father, and also despite the specific cautions of Conciliation Services who recommended that Respondent be required to resume court ordered anger management which was terminated by respondent without permission. Astonishingly, this recommendation was also ignored by the Judge, leaving the children at risk.

Since being placed in their father's care, our youngest child's school teacher has called to inform me that she was observing extreme emotional distress in that child over an incident of being screamed at by his father, and his father threatening to get rid of the boy's dog. This incident was reported to Judge [redacted] with a request that the parenting coordinator be called in to make sure the children are safe and happy. This report and request were ignored by Judge [redacted] and once again respondent's verbal denials were accepted as factual evidence, despite numerous documented incidences of Respondent's past denials having been proven false. Consequently, the only result was that the teacher and her principal were warned by the father and/or his attorney not to report any more incidents to me. And the child was also instructed by the father to recant his request to speak to the parenting coordinator about the incident.

**The Judge has not and is continuing to not uphold the integrity of the Judiciary .** Judge [redacted] is well aware of all of the facts and conditions described here, and yet shows no inclination to determine the completeness or accuracy of the basis of his ruling. Nor is he exercising any diligence whatsoever in assuring the safety of the children that he has placed in a potentially harmful environment.

Judge [redacted] in this case, has strayed so far outside of the statutes as to effectively be making up his own laws. By his own admission, Judge [redacted] is not experienced in family court and sought the advice of more experienced judges in figuring out his support calculation errors. However, he did so only after his decisions were appealed and he has steadfastly clung to other, much more grievous errors, which effect the lives and safety of the children he is supposed to be protecting.