

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-278

Complainant: No. 1266210826A

Judge: No. 1266210826B

ORDER

The commission reviewed the complaint and found no evidence of ethical misconduct on the part of the judge. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: January 15, 2010.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on January 15, 2010.

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

CJC 09-278

COMPLAINT AGAINST A JUDGE

Your name: _____ Judge's name: _____ Date: 10/9/09

Instructions: Describe in your own words what the judge did that you believe constitutes misconduct. Please provide all of the important names, dates, times and places related to your complaint. You can use this form or plain paper of the same size to explain your complaint, and you may attach additional pages. Do not write on the back of any page. You may attach copies of any documents you believe will help us understand your complaint.

This complaint is submitted to the Commission on Judicial Conduct based on bias towards Petitioner; and administratively taking excessive amount of time to make a decision on the Petitioner's motions filed with the Court. The Court has caused the Petitioner undue hardship in having to pay excessive cost due to her counsel having to contact Judge _____ court and inquire about the unanswered motions that were filed and paying enormous cost for expert witnesses to travel to Arizona to testify. The actions of Judge _____ court points to intentional bias behavior toward the Petitioner. See below the memorandum of points.

This complaint is not about a judge's unfavorable ruling, however, it's about violation of a judicial code intended to impose a binding obligation upon a judge. The Petitioner filed similar motions as well as the Respondent, however, the Petitioner motions were denied without reason, but yet the Respondent requests were granted (see attached Exhibits). The Petitioner's motions are essential to the resolution of this case. The constitution allows for a fair hearing, however, the Petitioner petitions to the court have been denied for no reason, making it financially impossible to get fair hearing in a bias court.

Rules of the court should be applied in a manner that is consistent with U.S. and state constitutions, statutory laws, case law, court rules, and within the context of the circumstances of the judge's conduct. However, such remedies have not been applied in my case.

Memorandum of points:

1. In March 2009, (see attached Exhibit/transcript and motions dated March 2009), Judge _____ indicated in a court hearing that my motions were denied. However, according to statutory law, Judge _____ is required to provide a reason for his denial, but, he did not. Again, this may have been grounds for an appeal, but Judge _____ bias behavior is repeated throughout this case.
2. On July 28, 2009, a motion was filed by the Petitioner regarding the request for a subpoena to Cox Cable. This subpoena was and remains to be essential to this case, because documents from Cox Cable will establish the historical behavior of pornography addiction of the opposing party. On August 7, 2009, the respondent's counsel filed a motion seeking a protective order against the subpoena, in an effort to prevent the court from viewing the opposing party double lifestyle.

3. On August 12, 2009, the respondent's counsel filed an erroneous motion with the Court indicating the subpoena was moot. Judge _____ accepted the erroneous allegation, although the Petitioner's counsel submitted documentation (dated August 17, 2009) to the court outlining the true facts.
4. On August 17, 2009, the Petitioner filed a reply to the respondent erroneous motion dated August 12, 2009. The Petitioner's submitted a reply to the court and provided documentation to the court revealing that the respondent's counsel intentionally lied to the court to prevent his client unsavory lifestyle from being revealed.
5. On August 20, 2009, the court filed a minute entry stating the subpoena for Cox Cable was moot, which was based on the respondent's counsel motion dated 8/12/09, which was erroneous. Judge _____ did not attempt to review the Petitioner's reply before filing their minute entry. The Petitioner's reply was filed with the court on 8/17, days before the Court filed the minute entry.
6. On August 25, 2009, the Petitioner's counsel telephoned Judge _____ office and spoke with his clerk, Irene. Mr. Levine, petitioner's counsel, stated to Irene, that a reply was filed with the court dated 8/17/09, countering the respondent's erroneous reply. Irene specifically stated that she would look into the matter and call Mr. Levine back the following day regarding the error in the minute entry.
7. On August 27, 2009, the Petitioner's counsel called Judge _____ office again to check the status of the minute entry being amended, and again, he spoke with Irene. Irene asked Mr. Levine to resubmit (by fax) the filed motions directly to her and that she would call Mr. Levine back within the next hour. Mr. Levine submitted to Irene additional copies of the previous filed motions. However, Irene never called back. The Petitioner was sitting in Mr. Levine office when the event occurred.
8. On August 27, 2009, the Petitioner's counsel filed a motion with the court requesting that Dr. Geffner testify telephonically since he resides in San Diego California. Noted: the court set a date for the hearing **without** asking either party or the expert witness, if the date was in conflict with other hearings or scheduling.
9. On September 1, 2009, the Petitioner's counsel filed a motion with the court indicating requesting that Dr. Geffner could testify telephonically on the schedule hearing date.

10. On September 2, 2009, the Petitioner's counsel filed a reply against the respondent's motion, which asked the court to deny petitioner/mother's request for Dr. Geffner to testify telephonically.
11. On September 2, 2009, the Petitioner's counsel called Judge _____ office to check the status of the revised minute entry for the subpoena to Cox Cable. Again, he spoke with Irene, Judge _____ clerk. Irene stated to Mr. Levine that she will call him back. That call never came!
12. On September 17, 2009, the Petitioner's counsel called Judge _____ office and spoke with Irene regarding the status of motions filed for the subpoena and the motion filed for Dr. Geffner to testify telephonically. During this conversation (noted: petitioner was present in Mr. Levine office as the telephone call took place), Irene stated that she was unsure of the whereabouts of the motions and that she would call him back with an answer. That call never came.
13. On September 18, 2009, the Petitioner's counsel called Judge _____ office and again was routed to Irene. The petitioner's counsel stated that the court minute entry filed on 9/16/09 did not address the petitioner's prior filed motions. Irene stated that she would bring this to Judge _____ attention and call the Petitioner's counsel back. Again, Irene did not call back with a response.
14. On September 25, 2009, the court filed a minute entry stating that the Petitioner's request for a subpoena was irralevent to the upcoming hearing and squash. However, it must be noted that Judge _____ language in the minute entry outline the exact wording that is shown in the respondent motion (highly suspicious), which the respondent counsel asked Judge _____ to deny petitioner's request. And Judge _____ did! The court did not provide statutory or case law for his denial. However, every subpoena the respondent has submitted to Judge _____ has always granted. However, the Petitioner's motions for similar or same requests were always denied, for no apparent reason. All occurrences points to bias.
15. On October 2, 2009, the Petitioner's counsel contacted Judge _____ office regarding the motion filed requesting Dr. Geffner to testify telephonically. Again, he was routed to Irene. Irene stated to Petitioner's counsel that Judge _____ denied the request for Dr. Geffner to testify telephonically and the minute entry should appear online within the next 24 hours. The Petitioner's counsel asked why Judge _____ deny such a basic request; which is granted in 99.5 percent of cases. Irene stated, "Judge _____ stated he was going to deny your request." However, Irene did **not** say if Judge _____ had actually reviewed the petition, neither did she indicate if the Judge _____ ever considered reviewing

any petitions the Petitioner file. Furthermore, it must be noted that Judge has granted (in every motion filed) the Respondent's petition for his witness to testify telephonically. However, denying the Petitioner expert witness to testify telephonically with no reason given, concludes absolute bias. What makes this matter appalling is the fact that the Respondent's witness works in Phoenix (this witness did not indicate of having a demanding schedule that would not require testifying telephonically). However, the Petitioner expert witness resides and works in another State, with a demanding schedule. This is the reason the Petitioner asked the court for this witness to testify telephonically. The Petitioner's expert witness had already provided a report for the court's review and was willing to testify telephonically regarding the pertinent information noted in the report. The circumstances Judge has created against the Petitioner are prejudicial and bias.

16. On October 5, 2009, the Petitioner's counsel called Judge office to inquire about the minute entry that supposedly submitted online. Again, he spoke with Irene, and "was told that Judge was denying the Petitioner request." The Petitioner's counsel asked Irene "where is the minute entry," and again was told it should be online within 24 hours. However, the minute entry did not appear online.
17. On October 5, 2009 at 4:25pm, the Petitioner's counsel contacted her and stated the sad news that was conversed to him by Judge clerk, Irene. The Petitioner was told she would have to shell out thousands of dollars just to get Dr. Geffner to Arizona for the court hearing. In addition to cost she has to pay the legal counsel and other cost Judge has already levied against Petitioner (including paying hefty cost to two different doctors and other attorney fees). **Money that the Petitioner is unable to pay.** Due to Judge cruel and bias behavior, the Petitioner is steps away from losing her home because of a Judge that is demanding that she pay excessive cost for a witness to testify in person along with other expenses. Judge actions are uncivilized and prejudicial. Again, Petitioner is unable to pay thousands of dollars for the expert witness to testify in person. The law was created in an effort to allow witnesses to testify by telephone and help minimize cost for those that are unable to. However, it must be noted that the respondent's counsel requested a telephonic hearing for their witness and it was granted (in less than ten days after filing their petition with Judge). However, when the Petitioner filed similar motions, it is denied for no apparent reason, and it took over 40 days before a minute entry was issued. Simply a case of bias. A law was created to allow for expert witnesses to testify telephonically and unburden those that are financially unable to pay for such services. Judge has intentionally prevented Petitioner from receiving a fair and unequitable hearing based on his bias behavior.

18. There is no rule of reasoning by Judge [redacted] for his bias actions, which illustrates prejudicial on every level. As of October 8, 2009, the court had not issued a written minute entry; although Judge [redacted] office clerk, Irene, has made it clear that the Petitioner's motions will be denied. Again, Irene indicated that Judge Martin had not reviewed the motion. However, Irene blurted out that the Petitioner's motion will be denied. Irene did not say the motion had been denied, she purposely stated "it will be denied." From the several conversations the Petitioner's counsel had with Irene, its apparent to any person or a well trained Attorney, that no matter the amount of competent and sufficient evidence provided by the Petitioner to prove her case, it will be denied by Judge [redacted] without a thorough review, neither would he provide a reason (based on the law) for his denial. It's now been 40 days since my initial submission/motion (on 8/27/09) requesting Dr. Geffner to testify telephonically and still no written response from the Court as of October 8, 2009. In addition to the amount of time it took the court to respond to the Petitioner's motion for the subpoena to Cox Cable. The court (through Irene) was contacted about the error made in the minute entry dated 8/20/09, however, the minute entry was never corrected. In fact the Petitioner's motion was squashed after the court was notified of its error. Judge [redacted] cited it was irralevent to the upcoming hearing. However, this motion was crucial to the Petitioner's case, in terms of providing a suitable living environment in the best interest of the child. Throughout the court hearings, it shows that Judge Martin is *not* concern about the best interest of the child, (which is what this case *should be about*). Instead, Judge [redacted] is more interested in satisfying the respondent's counsel. The court's transcript provides obvious conversations between the two.
19. On October 8, 2009, the Petitioner's counsel contacted Judge [redacted] court again to inquire about the petition filed for Dr. Geffner to testify telephonically, and again, he was sent to Irene, and she stated, "Judge [redacted] isn't going to approve your client request.... the minute entry should be posted online within the next 24 hours." (quote). However, as of October 9, 2009 at 5pm, the minute entry was not posted online.

These are complaints of court delays, prejudicial and bias. The Judge [redacted] has failed to take action in a case that requires reasonableness and fairness across the board (not just to one party). The judgements in this case are *not* built on good faith, neither are there statutory or case law to substantiate the rulings made by Judge [redacted] Saying yes to one party and no to the other party (for the same request/petitions, in an effort to effectively present a case), and Judge [redacted] providing no statutory or case law for the denied decision, shows definite bias.

Another matter to make known, is the fact that Judge [redacted] failed to take action on requiring the Respondent to submit financial disclosure statements before awarding attorney's fees and court costs. There are statutory laws, case law, and court rules indicating these facts. As the petitioner, my financial disclosure statement was issued to the court (because it was the right thing to do) a second time in 2006. However, the court never requested the respondent to provide his financial disclosure, which will show the respondent income is two times more than the Petitioner. Again, bias towards Petitioner as an individual is apparent in this case. However, this may be a case for appellate court, but Judge [redacted] has repeatedly continued this unfair and bias cycle against Petitioner.

The judicial system should not be based on whether a Judge like or dislike a person in a specific case, such behavior is unconstitutional, and it has no place within a court-of-law. The U.S. Constitution was created by the people for the people. As a Petitioner, I have been denied the right to a fair judicial process. Justice delayed is justice denied.

Again, looking at the bias in this case, to any well trained Attorney, no matter the proper motions filed with the court or the amount of competent evidence submitted by the Petitioner (to prove her case), predatorily, it will continue to be denied by Judge [redacted]. There has not been a thorough review of evidence and/or motions filed, neither has Judge [redacted] provided a reason for his denial (based on any statutory law). Judge [redacted] bias behavior is habitual, and unfortunately will continue, which is infinitely wrong if the Commission on Judicial Ethics allow such behavior to continue.

There is also cause for concern that filing a complaint against Judge [redacted] may affect the outcome of my impending case or impair fairness thereof. There is an absolute history of bias in this case, and from my point of view, there are no enforcements in place to stop further damage. I request the Judicial Commission to watch this case closely and intervene.

Attachments:

Court's Minute Entries
Transcript of hearing (dated March 2009)
Motions filed by the Petitioner
Motions filed by the Respondent