

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-310

Complainant: No. 1378610192A

Judge: No. 1378610192B

ORDER

The complainant alleged the judge made an erroneous ruling and failed to enforce orders. The commission reviewed the complaint and found no ethical misconduct on the part of the judge. The judge acted within his discretion in deciding how to rule on matters, and the commission is not authorized to change a judge's decisions. Therefore, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: February 26, 2010.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on February 26, 2010.

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

Complaint against Judge**Case #2006-**

It has taken me months to get over the emotional trauma and disbelief related to what Judge _____ has ordered in my case, and I am reminded of it on a weekly basis. I find it very hard to believe that judges can do things like this and get away with it.

Judge _____ has shown obvious bias. He has made outrageous rulings and statements that are unfair, inappropriate, and seem to follow no rationale logic or rules. When he stated his ruling at the end of our Evidentiary Hearing, I could not believe what I heard. He has not protected my child, and has sanctioned me for trying to do so. He has caused me significant financial hardship with respect to attorney's fees and sanctions, when I acted reasonably and was taking steps to protect my child as instructed by counsel and medical professionals. He has made a ruling that has interfered with my ability to care for my other child every Thursday morning. My attorney, as well as several other attorneys in his firm, is shocked at what Judge _____ has ordered. The attorneys and others who have heard what has happened in my case have stated that the judge "obviously does not like you," "he is being vindictive toward you for no apparent reason," and "you must look like his ex-wife." Everyone that hears what this judge did is in total disbelief.

Judge _____ has violated numerous Canons of Judicial Ethics to include:

1. **Canon 1-A judge shall uphold the integrity and independence of the judiciary.**
2. **Canon 2(A)-A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.**
3. **Canon 2(B)-"...nor shall a judge convey... the impression that they are in a special position to influence the judge..."**
4. **Canon 3(B)(4)-A judge shall be patient, dignified and courteous to litigants..."**
5. **Canon 3(B)(5)-A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice...per commentary...A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias.**
6. **Canon 3(B)(7)-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 the law..."**
7. **Canon 3(B)(8)-A judge shall dispose of all judicial matters...fairly."**
8. **Canon 3(B)(9)-A judge shall not, while a proceeding is pending or impending in any court, make public comment that might reasonably be**

expected to affect its outcome or impair its fairness or make any public comment that might substantially interfere with a fair trial or hearing.

Judge _____ has protected and empowered my abusive ex husband and has put me in a situation to continue to be harassed and controlled, and I feel he did not take into account the facts in this case, the children involved, or that it was a high conflict divorce involving abuse, cocaine use, alcohol abuse, and homicidal and suicidal threats by my ex husband, who has a head injury with related documented emotional and behavioral issues. A prior Custody Evaluation was ignored. It seems he just turned his head to multiple facts with respect to the safety of our child and my ex husband's demeanor and assessed inability to co-parent.

Now I am stuck having to accept this very unfair ruling, and there is apparently nothing I can do, as my time for an appeal has run out. My attorney, whom I retained after the Evidentiary Hearing, to try to correct the unbelievable rulings, felt a Motion to Reconsider would be the appropriate course of action in trying to correct what this judge did. We did this, and the judge denied it. My attorney then apologized to me because he recommended this action and that we did not proceed with an appeal after experiencing how unreasonable and unfair Judge _____ proved to be. It may have been to my disadvantage that I did not have an attorney for the Evidentiary Hearing, however, I could not afford one at the time, and the issues brought forth during the Evidentiary Hearing should not have warranted the need for one. I had chosen not to fight the visitation issue due to the unfortunate CPS outcome. I should not have needed an attorney if Judge _____ was being fair and reasonable, and looking out for my child's best interest.

My only options at this point are filing this complaint, and going to the media and public. My attorney has suggested waiting 6 months and filing a request for modification, but what kind of fool would I be to go in front of this judge again? I feel I would never get fair treatment in front of this judge and fear what else he may do to me and my children. I fear retaliation from this complaint, should I ever end up in front of this judge again, but feel that somebody needs to be made aware of what this judge is doing, and do something to reprimand him so that he cannot continue to behave this way in the courtroom. Personally, after what he has done in my case, and after what I have heard from others regarding this judge, I feel he should not even be on the bench. There is no excuse for his behavior.

I'm not sure where to begin, and there is a lot of information to provide you with. I hope you will take the time to read and consider what has been done to me and my children by Judge _____ and respond and take action appropriately. I know that I need to start taking action to correct what this judge has done because I am faced with it every week, both financially and emotionally, and it is not right. I worry about my 3 year old child. What the judge has ordered interferes with my job on a weekly basis. I realize you cannot change what he has done to me, or what he has not done to protect my child, but I am hopeful your involvement prevents him from creating devastation for others, and somehow assists me in not having to ever go before this judge again.

I think a little history in my case is necessary. Upon our divorce, my ex husband and I went through a custody evaluation by [redacted]. After evaluation of both myself and my ex husband, the children involved, and speaking with behavioral health professionals involved with us, and friends and family members, [redacted] found my ex husband to be “argumentative and controlling,” and he along with the past visitation supervisor, and past counselors, felt my ex husband was “insistent, demanding, irritating and controlling.” He felt that my ex husband’s behavioral and emotional consequences from his head injury definitely impacted his ability to interact cooperatively with others and this could hamper his ability to co-parent. He recommended that my ex husband continue psychiatric treatment and drug testing, and that he complete a parent education program. He recommended tapering supervised visitation for my ex husband and our child, and that I should have decision making authority regarding our child (**See Exhibit A, attached Custody Evaluation**).

This document had previously been sealed at the request of my ex husband, *in error*, as a sentence stating that both parties agreed to this was slipped into our divorce decree without my knowledge, after multiple passing back and forth between the parties during negotiation, and I missed it. When I saw the statement in the decree, a short time after it had been final, I tried to have it corrected through my attorney, but we were unsuccessful. Recently, as our case was brought before Judge [redacted] I requested that this document be opened for his review, as it was directly relevant regarding my ex husband’s demeanor and behaviors, as well as to his request to change to joint custody, and not at all unreasonable, which my ex husband’s attorney accused me of.

However, just prior to the Evidentiary Hearing, I agreed that it could remain closed after being pressured by my ex husband’s attorney during our pretrial conference, as my ex husband stated he was not going to pursue the joint custody that he was asking the Court for, and therefore, his attorney insisted it was not necessary to open it. However, the judge did see certain pages of the custody evaluation, which were included in my initial response to my ex husband’s filing, related to [redacted] evaluation of my ex husband (**See attached Exhibit B, Petitioner’s Response to Respondent’s Petition to Modify Parenting Time**). In the minute entry from the Evidentiary Hearing (**See attached Exhibit C, minute entry from Evidentiary Hearing**) the judge stated that opening the custody evaluation is “moot based on the agreements reached between the parties.” But, then he made a very inappropriate statement, based on *no facts heard by him that day regarding custody*, in open court which will be discussed later.

I currently have sole custody of our child, [redacted] and my ex husband has visitation. His visitation was limited initially, due to him coming off of supervised visitation. His visitation was to be further expanded when [redacted] turned 3 years old, per our decree, which was 1/6/09. The expansion plan was already spelled out in our decree; however, holidays and vacation were not. There was also a statement in our decree, which was demanded by my ex husband at the time of negotiation, stating we would “consider” joint custody at one year. He would not sign the decree without this statement being added, and my attorney recommended I agree to put the statement in, as it really meant nothing; it was just a statement, and my ex husband’s demand was causing increased attorney’s

fees (See attached Exhibit D, Divorce Decree/Custody Agreement and Parent Access Plan).

Prior to turning three, my ex husband retained his attorney and a motion was filed with the Court for joint custody, expansion of his parenting time (which was already called for in the decree as noted above), and to be able to pick up and drop off at day care (See attached Exhibit E, Petition to Modify Parenting Time). His attorney's request for Mediation was denied in error, and this was not addressed by my ex husband's attorney, which could have taken a phone call to straighten out, which is interesting and concerning. We then ended up in a Resolution Management Conference (RMC) in front of Judge Prior to the RMC, I made it clear to my ex husband's attorney that I had concerns regarding expansion of parenting time and I was going to take to a therapist and was not going to pursue Court intervention at that time. I told him that I felt we could possibly work out the holiday and vacation issues without Court intervention, but that I would not agree to joint custody, and I clarified that the day care provider has made it clear that *she* does not want my ex husband at the day care (See attached letter to respondent's attorney Exhibit F). I was being reasonable, but not without taking the necessary and correct steps to protect my child.

Now, I need to touch on what went on with my child during the first year my ex husband was off supervised visitation, and what was going on as he was asking for his increased parenting time. There were ongoing concerns of sexual inappropriateness. . . . displayed and verbalized inappropriate sexual behaviors after visits with his Father. These were a concern to numerous individuals to include myself, my ex husband's past visitation supervisor, a developmental nurse and a child therapist! And the judge was made aware of this. Each incident was addressed with my ex husband immediately via email and I kept in touch with his visitation supervisor, who was very concerned. There were four instances, over the course of the year. The last occurrence in October 2008 was very disturbing, and at that time, the visitation supervisor advised me that I needed to withhold visitation and go to the judge immediately. I did withhold one evening 4 hour visit, and was very nervous about this, due to my ex husband's past behavior, and my ex husband called the police to my home. I was not at the home and received a call from the police and they simply stated that they hoped we could work this out. I stayed up all night preparing paperwork which I downloaded from the Court website, and I then went to the Court and tried to file an emergency modification. However, when I gave my paperwork to the clerk, she asked for my permanent modification request. I obviously did not have time to prepare this, nor did I know I needed to. She told me that the judge would most likely not hear me if I did not have this attached! I found this absurd and unbelievable. I went to the law library and tried to see if I could get it done, but it was obviously too involved, time consuming, and I did not have the paperwork with me to accurately complete it, so I left.

I then consulted with an attorney, *which the judge was made aware of during both the RMC and Evidentiary Hearing; as I wanted to be sure I handled the situation in the correct manner.* She advised me that in order to handle the situation with the concern regarding sexual inappropriateness correctly, I needed to take to be evaluated by a

2. Second, ***I have another child at home who I am responsible for and need to get off to school Thursday morning.*** Traveling to Gilbert and back Thursday morning prohibited me from caring for my other son, and I am sole provider.
3. Third, ***it was unreasonable that my ex husband was refusing to carry out the responsibility of caring for our child in the morning as I do every other morning when the child is in my care. It is not my job to perform my ex husband's parental duties at the expense of my schedule, my job, and my other child, so that my ex husband can get to work at 8am. I should not be made responsible for getting my ex husband to work due to his choice of where to live and work and be the one fighting the rush hour traffic. If he wants a mid week overnight, he should have to perform the duties associated with it. I should not have increased responsibility. If he is not willing to carry out these responsibilities, he should not have the overnight visit. He should do what every other parent does in the morning...get himself up and ready for work, get the child ready, take the child to day care and then get himself to work. It is his job to figure that out...it is not my job to take care of my ex husband. He made his own choice on where to live and work knowing where the child resided and where the day care was.***
4. Fourth, ***it is his visitation day that he is getting credit for the expenses associated with caring for the child in a 24 hour period, so why should I have to travel an hour to an hour and a half every Thursday morning and incur the expense of fuel when he is getting credit for the cost associated with caring for our child during the 24 hour period. This unreasonable travel is actually costing me approximately \$1,458 per year.***
5. Fifth, ***my ex husband argued 50/50 travel...how is me driving 8 hours a month and him driving maybe 3 hours out of his way a month 50/50?***
6. Sixth, ***why should I have to drive over an hour in traffic and drop off and pick up time because of where he chose to live before I even go to work. My office is in Gilbert. So I would have to get up, leave my other child, travel over an hour from Ahwatukee to Gilbert and back to Ahwatukee to day care to drop off child and then travel 30 to 45 min back to Gilbert to my office!!! It is 52 miles round trip, and out of the way for me as compared to roughly 8 miles out of the way for my ex husband to drop off at day care on his way to work!! The judge was made fully aware of this in both the Joint Pre-hearing Statement, the Motion to Reconsider, and the Objection to Respondent's Updated Affidavit of Attorney Fees and Costs (See Exhibits M, N and O).***
7. Lastly, in mediation, ***the mediator suggested picking a midway point Thursday mornings, which isn't even right, but my ex husband refused this, and the judge was made aware of this.***

See the transcripts (Exhibit I Evidentiary Hearing)...Judge said it was a "difficult decision"! ***During the evidentiary hearing the judge said it would have been best to agree on a mid way point...but then said since this did not happen... I would pick up child!*** This makes no sense. He ruled since the parties could not agree, I will pick up child from ex husband every Thursday morning and I would need to figure out

what to do with my other child in the mornings! ...All because I had a more "flexible" job, which my ex husband argued. My job may be more flexible than his but I make it work for me and the children...not for him at the expense of my other child and my work schedule. My job is not always flexible. I should not be penalized because I have chosen a potentially more flexible job than him. I let the judge know that my schedule is not as flexible as my ex was making it sound and I too had mandatory morning meetings and in fact did not work part time as my ex was arguing. I work full time 32 hours or more and have full benefits. I also drive up to 90 miles a day sometimes, which the judge was made aware of. When I have early morning meetings, I do not have the luxury of a chauffeur, I figure it out.

When discussing the pickup time for Thursday morning, Judge _____ makes the comment, "**She has sole custody.**" (See Evidentiary Hearing notes, Exhibit I, page 115). This was inappropriate and what was the point of stating this? It was not my choice at all, regarding the pickup time? I have sole custody for a reason, and the judge chose to ignore the facts, and seemed to ridicule me for it in court.

During the evidentiary hearing, Judge _____ REFUSED to hear the FACTS of inappropriate sexual behavior and verbalizations. He would not let me tell him! He instructed me to only tell him what my actions were as a result of behaviors and verbalizations (see transcripts attached). Yet, he found me unreasonable for taking my child to a therapist. He also found it was unwarranted for CPS involvement, and held this against me, even though I was instructed to call them by a medical professional who evaluated my child and wrote a letter to the judge stating such, and I was not the only one to call CPS. So as a parent with valid concerns, I did what was right, I did what I was instructed to do to protect my child, and was sanctioned for it. Interesting, had I not followed instruction, I could be found negligent! How could he find me unreasonable if he does not even know what my child was doing or saying? How could he find me unreasonable given my ex husband's history of mental illness, head injury, drug and alcohol abuse and homicidal and suicidal threats? How could he find me unreasonable given the fact that I followed the instruction of legal counsel and medical professionals? Furthermore, I have sole custody for good reason, and he chose to totally ignore this as well. I am well within my rights to take my child to a therapist, and this is not unreasonable, nor is it reason to have to pay my ex husband's attorney fees!

One of the most concerning things Judge _____ did during the Evidentiary Hearing was state in open court that he would have just given my ex husband joint custody that day if he had continued with this request! He stated that the facts he heard in our case did not support sole custody! ***My ex husband dropped the request for joint custody and there were no facts regarding this argued in the hearing!*** This was completely out of line for the judge to make this comment and violated Judicial Canons (See transcripts from Evidentiary Hearing Exhibit I, page 106). Judge _____ basically invited my ex husband back into Court for joint custody on a silver platter, demonstrating I would never get a fair trial on this issue. What I think Judge _____ needs to take note of now is the fact that my ex husband filed to change to joint custody, then dropped it, and

federal agency and a judge have found me unreasonable.” As I have said previously, this judge has empowered my abusive ex husband. Recently my child, who is 3, has proceeded to tell me that “girls poop out the front hole” and told me his Dad told him this. I am truly concerned about what my ex husband will show and teach my child, knowing why I divorced him. Now what do I do? If I take my child to a therapist I will be found unreasonable and sanctioned if I go back into court?

It is a small world, and I recently met another person who had Judge [redacted]. He reported that Judge [redacted] “totally screwed him” and he had to spend thousands in attorney’s fees to get what he was deserving of with his children. What was interesting was that his ex wife, as my ex husband, also had [redacted] for her attorney! Coincidence? I have also discussion with a woman who had Judge [redacted] as well. She said “he was horrible and she could not believe he was back on the bench.” She said the judge who took over her case said that Judge [redacted] made “gross errors.”

Right now, if Judge [redacted] was fair and unbiased, my ex husband should be delivering our child to day care every Thursday morning, or at least a midway point should have been ordered, as even the Judge stated this as the best option. But, then he did not order this best option. Sunday child exchanges should be at a midpoint to make it fair as well. I should be receiving the correct child support amount and unpaid medical percentage should be correct. I should not be paying any money to my ex husband for doing what I was instructed to do to look out for the best interest of my child. If anything, my ex husband should have been found unreasonable for numerous things and be paying money to me. We may not have gotten Judge [redacted] to budge on decreasing visitation time or making it supervised again due to the action of CPS, but at least the concerns should be on the record, heaven forbid anything happen in the future. And I ask you, if it does, do I dare go before Judge [redacted]? A mother should not be sanctioned for doing what is reasonable in protecting a child! Children need to be protected by our judicial system, and in this case, mine was not. Judge [redacted] is an example of why people lose faith in our court system.

Thank you for your time and consideration regarding my experience with Judge [redacted]. I remain hopeful something can be done to reprimand this judge. I do not think he should be on the bench. I believe he violated *numerous* Canons of Judicial Ethics. I know I will need to be back in court to correct these rulings. I was recently informed by my attorney that a sanction cannot be reversed. I know that I cannot ever go before this judge again. He has made his bias, his inability to be fair, and his insensitivity to what is best for a child, clear.