

State of Arizona  
COMMISSION ON JUDICIAL CONDUCT

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Disposition of Complaint 10-135

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Complainant: No. 1394110270A

Judge: No. 1394110270B

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**ORDER**

The commission reviewed the complaint and the judge's response and found no misconduct. However, the commission decided to issue an advisory comment reminding the judge to beware of situations involving ex parte communications. The commission also reminded the judge that she is not automatically required to disqualify herself when a litigant files a complaint with the commission.

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

Dated: August 27, 2010.

FOR THE COMMISSION

\s\ William Brammer

\_\_\_\_\_  
J. William Brammer, Jr.  
Commission Chair

Copies of this order were mailed to the complainant and the judge on August 27, 2010.

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

MAY 24 2010

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF GREENLEE**

	)	No. DO
	)	
Petitioner,	)	
	)	<b>PETITIONER'S RESPONSE TO</b>
	)	<b>COURT'S 5/17/2010 MINUTE</b>
	)	<b>ENTRY RE: 6/18/10 CUSTODY</b>
	)	<b>HEARING; AND MOTION TO</b>
	)	<b>CONTINUE 6/18/10 CUSTODY</b>
Respondent.	)	<b>HEARING (TRIAL)</b>

**COMES NOW** Petitioner, *Pro Per*, hereby responds to this Court's 5/17/2010 Minute Entry Order regarding the 6/18/2010 Custody Hearing (Trial) date as follows:

**FACTUAL BASIS**

1. On Monday, 5/10/10, a Telephonic Hearing was held in this matter to set a Temporary Visitation Schedule. At that time, Petitioner also requested this Court rule on her Motion for Change of Custody filed Friday, 4/2/10 and set a hearing date.
2. At the conclusion of the Telephonic Hearing and with the input of both parties, a Custody Hearing (Trial) was set for Friday, 6/18/10.
3. As this matter is of a sensitive nature and brought before this Court by Petitioner because the minor child has threatened to harm himself, amongst other things, the

1 outcome of this hearing (trial) will have a life-changing affect on the minor child's  
2 future. This matter is therefore, not *just* a simple "hearing" *per se* but is to be  
3 considered by all intense purposes a *Custody Trial* as discovery deadlines for both  
4 parties to abide by have been ordered and potential witnesses may be called to testify  
5 by either party.

- 6
- 7 4. To date, Petitioner has yet to receive the minute entry order (*hereinafter referred to*  
8 *as "MEO"*) regarding the Monday, 5/10/10 hearing and its final Orders regarding a  
9 Temporary Visitation Schedule and the initial scheduling of the 6/18/10 Custody  
10 Hearing (Trial).
- 11 5. On Friday, 5/21/10, Petitioner contact the Clerk's Office and inquired as to whether  
12 the Monday, 5/10/10 MEO had been generated, filed in the Court file and distributed  
13 to the parties. Petitioner was informed by "Mary" she could not presently locate the  
14 file and believed the Court file was still in the possession of this Court's courtroom  
15 clerk.
- 16
- 17 6. On Wednesday, 5/19/10, Petitioner received an e-mail from Respondent indicating  
18 he had filed a letter with this Court Friday, 5/14/10 and included the contents of the  
19 letter to the Court in the body of his e-mail to Petitioner. (*See attached "Exhibit*  
20 *A"*).
- 21
- 22 7. As both parties are *Pro Per* in this case and have been from it's inception, *any*  
23 *documents filed with this Court are to be construed as a "pleading"* on each  
24 respective party's behalf.
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- 1 8. Petitioner, immediately responded to Respondent via e-mail, indicating she would be  
2 filing a response. (*See attached "Exhibit B"*).
- 3 9. On Wednesday, 5/19/10, Petitioner prepared and mailed via U.S. Mail to this Court,  
4 her Response to Respondent's 5/13/10 Request to Continue 6/18/10 Custody Hearing  
5 (Trial). (*See attached "Exhibit C"*).
- 6 10. A separate courtesy copy was forwarded via U.S. Mail to chambers on Wednesday,  
7 5/19/10.
- 8 11. On Thursday evening, 5/20/10, Petitioner received via U.S. Mail an envelope from  
9 chambers post-marked 5/19/10 with an in-chamber MEO dated 5/17/10 indicating  
10 this Court had granted Respondent's requests in his 5/13/10 letter to the Court which  
11 included accelerating the Custody Hearing (Trial) to Monday, June 14, 2010. (*See*  
12 *attached "Exhibit D"*).

#### 15 OPPOSITION AND ARGUMENT

- 16 1. Anytime a "Motion to Continue" pleading or *any pleading* for that matter is filed with  
17 *any court of law* in any matter,; criminal, civil, domestic, probate; if *any opposing party*  
18 *is involved*, the opposing party has a right pursuant to the *Arizona Rules of Court*, to  
19 respond as to their position on the requested continuance and/or relief sought by the  
20 initiating party.
- 21 2. Petitioner was not contacted by Respondent prior to his filing of his 5/13/10 letter to the  
22 Court nor ,was Petitioner contact by the Court prior to the Court entering a MEO  
23 granting Respondent's requests and rescheduling/accelerating the Custody Hearing  
24 (Trial) from 6/18/10 to 6/14/10.

1 3. By non-contact with Petitioner prior to the filing of the 5/13/10 pleading, Petitioner's  
 2 rights pursuant to *Arizona Rules of Court* have been violated. Petitioner provides the  
 3 following support and examples for her argument in that a "time deadline" is afforded to  
 4 ***any party regardless of which bench the matter is before and/or the type of case***  
 5 ***(Emphasis supplied):***

6 **(I) *Arizona Rules of Criminal Procedure, Rule 8.7.III – Grounds for Motion:***

7  
 8 "As provided in Rule 8.5 (b), any Motion to Continue must establish  
 9 the existence of extraordinary circumstances and must justify any  
 10 delay as being indispensable to the interests of justice for the court  
 11 to grant the motion. In determining whether extraordinary circumstances  
 12 exist and a delay is indispensable to the interests of justice, although not  
 13 exclusive, the following factors will be considered by the court.

14 1. Were the circumstances cited as reasons for the continuance  
 15 unforeseeable?...

16 ...

17 3. Are the reasons relevant?

18 4. *Is any other party prejudiced...." (portions omitted, emphasis added).*

19 In applying this rule to Petitioner and her position, Petitioner agrees with the contents of the Rule  
 20 ***except for subsection (4): Petitioner has been prejudiced by not being allowed to respond and***  
 21 ***advise this Court of her position regarding the continuance.***

22 **(II) *Arizona Rules of Criminal Procedure, Rule 8.5(b) states:***

23 "...In a ruling on a Motion for Continuance, the court shall consider the  
 24 rights of the defendant and any victim to a speedy disposition of the case..."

25 In applying this rule to Petitioner and her position, Petitioner is the opposing party to Respondent's  
 26 request and therefore becomes "defendant" and/or "victim" and again, has rights to respond  
 27 pursuant to *Arizona Rules of Court*.

1  
2 (III) *Arizona Rules of Family Law Procedure*, Rule 35(A) (3): Family Law Motion Practice

3 “A. Formal Requirements: Time Periods...

4 3. Any party opposing the motion shall file any answering memorandum  
5 within ten (10) days thereafter. An answering memorandum shall be  
6 titled “Response to \_\_\_\_\_ (name of motion)...” (*portions omitted*)

7 This rule undeniably applies to Petitioner and this case and cannot be overlooked or dismissed by  
8 this Court. Petitioner was:

- 9 1. Not afforded her right to file an answering memorandum.
- 10 2. Petitioner was not even afforded the right to be advised by either  
11 Respondent or the Court (as to her position) prior to the present  
12 Custody Hearing (Trial) being continued pursuant to Respondent’s  
13 request for continuance.

14 (IV) Rule 43 – Service and Filing of Pleadings and other papers; Sensitive Data Form  
15 (C) (2) (c) *Service in General*.

16 “A paper is served under this rule by: ...” d. delivering the paper by any  
17 other means, including electronic means, if the recipient consents in writing  
18 to that method of service or if the court orders service in that manner—in  
19 which event service is complete upon transmission...”. (*portions omitted*)

20 This rule undeniably applies to Petitioner and this case and cannot be overlooked or dismissed by  
21 this Court. Petitioner has:

- 22 (A) Never been asked by Respondent or consented in writing to method of  
23 service by Respondent of pleadings upon Petitioner by electronic means;
- 24 (B) This Court has never ordered service upon Petitioner by Respondent in this  
25 manner. As such, pursuant to the rule, Respondent’s 5/19/10 e-mail at this  
26 time, is incomplete as to service of process.

27 Lastly, Petitioner provides the following examples and support that when a party files a  
28 pleading, *any pleading*, the opposing party, if one(s) exist(s), are/is afforded the *right pursuant to*  
*Arizona Statute(s) and Rules of Procedure, regardless of what type of case the matter may be*, to  
respond.

1 Also, see:

- 2 1. Rule 12(a) - (20 days to respond);
- 3 2. Rule 16(c) -- (3 days to respond); and
- 4 3. Rule 16(d) -- (5 days to respond). *Arizona Rules of Civil Procedure.*

5 **PETITIONER'S REQUEST TO CONTINUE 6/14/10 CUSTODY HEARING (TRIAL)**

6 Petitioner requests the 6/14/10 Custody Hearing (Trial) be continued for the following  
7 reasons:

- 8 a. Petitioner is pre-scheduled to attend a quarterly state-wide law enforcement/financial  
9 remedies organization meeting on Monday, 6/14/2010 with her assigned Attorney  
10 General. Petitioner is a member of this organization through her employment and  
11 position/assigned department and the organization meets 4 times a year throughout  
12 various cities in the State.: March, June, September and December; and
- 13 b. The necessity of an "emergency/expedited" hearing is temporarily moot as the minor  
14 child will be in the care and custody of Petitioner commencing 5/28/2010 through  
15 mid-July for the first portion of his summer break. This was the core basis cited by  
16 Petitioner in her Motion for Change of Custody.
- 17 c. Petitioner requests the Custody Hearing (Trial) be rescheduled to a date and time  
18 *after* 6/14/10 and 6/18/10 (Respondent's conflict) but prior to the end of July, 2010  
19 for the purposes of resolving this matter prior to the minor child recommencing  
20 school.
- 21 d. Petitioner further requests discovery deadlines be adjusted accordingly;
- 22 2. This is Petitioner's first requested continuance and is not for the purposes of unjust delay  
23 or cause; and
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1 3. A copy of this Response and Request has been forwarded to Respondent via U.S. Mail  
2 this date: 5/21/10.

3 **RESPECTFULLY SUBMITTED** this 21<sup>st</sup> day of May, 2010.  
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5  
6 *Petitioner, Pro Per*

7 An unconfirmed copy of the foregoing mailed via regular U.S. Mail 5/21<sup>st</sup>/2010 to:  
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11 **Arizona Committee on Judicial Conduct**  
12 **Arizona Supreme Court**  
13 **1501 West Washington Street, Suite 229**  
**Phoenix, Arizona 85007**

14 **By:**  
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