

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-173

Complainant: No. 1397300412A

Judge: No. 1397300412B

ORDER

The complainant alleged that a municipal court judge was biased, exhibited improper demeanor, prematurely made up his mind, and improperly issued an order of protection. The commission reviewed the allegations and found no evidence of ethical misconduct on the part of the judge. The hearing recordings do not support the allegations of ethical misconduct, and the judge's decision to uphold the issuance of the order of protection involves a legal matter outside the commission's jurisdiction. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: August 27, 2010.

FOR THE COMMISSION

 /s\ Keith Stott
Executive Director

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.

CONFIDENTIAL

State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

To Whom It May Concern:

On July 14, 2009 Judge _____ of Chandler Municipal Court oversaw a hearing on an order of protection complaint filed by my wife _____ against me. The case number is _____. I filed a cross petition for order of protection against Nancy that the Judge also heard on the same date.

Judge _____ did not abide by his duty to be fair and impartial in this hearing. My wife and I were arguing at the time and I had told her to move out of my residence. She was upset about this and filed the order of protection, not because I threatened her with violence, but because she saw it as a way to get the upper hand over me.

When I tried to ask my wife questions about her pattern of dishonesty (whether she ever gave me false names) the Judge stopped me and said that the question was irrelevant (see page 29 of the hearing transcript). Then he said I could not ask her because she had a constitutional right not to incriminate herself. Don't I also have a constitutional right to confront my accuser and isn't their honesty always relevant? And don't I also have a constitutional right to bear arms – a right that had been taken away from me by the judge? And isn't it the Judge's role to be impartial and seek out the truth, not to give legal advice to one side or the other?

Not long after the hearing I had a family law attorney contact my wife, and through the attorney we decided to reconcile. My wife filed a motion to dismiss the order of protection on August 11, 2009 and saw Judge _____. As soon as my wife entered into the courtroom, the Judge lost his temper and began yelling at her, saying there was no way he was going to dismiss the order of protection. This showed that he had already made up his mind before even hearing the reason for my wife's motion just like I believe he did at the first hearing. My wife felt too intimidated to even contradict the judge and just went along with everything he said. He did not ask her if she was trying to the dismiss motion under duress as he was supposed to do, according to the law¹. He told her that he would only dismiss the order of protection if she showed proof that I went to counseling classes.

When my lawyer made a public record's request to get the recording from this hearing, the judge's assistant told him that there was no hearing and that the judge just ruled on my wife's motion without ever talking to my wife. After my lawyer wrote a letter to the court that documented the court's denial that there was a hearing or that any audio existed, he got a call

¹ Rule 7(A) of the Arizona Rules of Protective Order Procedure:

1. At the time a Motion to Dismiss or Quash is filed or requested, court personnel shall verify the identity of the plaintiff.
2. The plaintiff shall personally appear before the judicial officer and explain why dismissal of the order is sought. The judicial officer shall make sufficient inquiry of the plaintiff to determine that the plaintiff is not making the request under duress or coercion.

back from the judge's assistant acknowledging the existence that there was a record of the hearing (see Sept. 28, 2009 letter from my attorney to the court and expedited request to supplement the record on appeal). I believe this shows that the Judge was trying to cover up his behavior and his failure to follow the law in that hearing.

A close review of the July 14 hearing shows that the judge had really made his mind up that he was going to rule against me at the beginning of the hearing. The Judge's demeanor showed that he wanted to show me that he was the boss, telling me before the hearing even started that he suspected I was the one of "those kinds of people" who had my "fingers in things" (see page 5 of the July 14 transcript).

I never threatened my wife, and had Judge _____ conducted the hearing impartially or listened to what my wife had to say when she tried to dismiss the order of protection he would have been able to determine this. He could have learned that my wife was just looking to gain the upper hand on me in a domestic conflict situation.

Judge _____ conduct through this entire ordeal showed that he was not fair and impartial and he was not dignified and courteous. I believe that the Judge's conduct violated the following Canon's of Judicial Conduct: Rule 2.2 (Impartiality and Fairness), Rule 2.3 (Bias, Prejudice, and Harassment), Rule 2.6 (Ensuring the Right to Be Heard). Rule 2.8 (Decorum, Demeanor, and Communication with Jurors).

Sincerely,