

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-338

Complainant: No. 1407610819A

Judge: No. 1407610819B

ORDER

The complainant alleged that a superior court judge was rude and allowed an attorney to be disrespectful. He further alleged the judge engaged in a pattern of legal error by making mistakes in minute entries and issuing incorrect rulings. After reviewing the allegations and listening to the recording of the trial, the commission found no evidence of ethical misconduct on the part of the judge. The complainant disagrees with the outcome of his case and is attempting to appeal the matter through the commission; however, the commission is not a court and cannot change judicial decisions. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: April 26, 2011

FOR THE COMMISSION

/s/ Keith Stott

Executive Director

Copies of this order were mailed
to the complainant and the judge
on April 26, 2011

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

COMPLAINT AGAINST

I, _____ scheduled an appointment with an attorney, Zubair Aslamy in January of 2010 to assist me with a parenting time schedule with my girlfriend at the time, Kimberly Illyes. Kimberly and I were having disputes regarding parenting time and I needed some assistance in resolving our conflicts. When I met with attorney Zubair Aslamy, I asked him if I should avoid the court system with this matter. I specifically asked him "Do you think the courts are biased and will treat me unfairly because I am the father?" He quickly replied, "no". He could not have been more wrong.

First and foremost, this complaint is not about me being upset with Judge _____. This is not about me not getting what I wanted for me. This complaint is about the way Judge _____ handled the trial, how he handled motions leading up to trial, how he manipulated the timeliness of responses to motions, how he ignored the fact that the mother, Kimberly Illyes, is currently mentally ill and has a history of mental illness, how he ignored evidence at trial, how he ignored testimony at trial, failed to follow his own confidentiality provisions as ordered by allowing my personal medical records be filed with Clerk of Court, etc, etc.

Judge _____ abused his judicial discretion, acted in a biased manner against me, failed the family court system and most importantly, failed the little girl whose best interest he is paid to protect and who is the centerpiece of this case. Judge _____ absolutely did not look out for the best interest of my daughter. Judge _____ only concern was to look out for his best interest and do whatever he could to punish me, which in turn, affects my daughter. I was looking for fairness and impartiality in this case for my daughter, not for myself.

A large number of fathers want nothing to do with their children. Judge _____ helps force that reality upon the fathers that do want to be an equally treated parent in the lives of their children. Judge _____ is commonly referred to as the Honorable David B. _____ and I adamantly believe that the last thing David _____ should be referred to as is "honorable".

I am the Petitioner and have been pro per since August, 2010. I will herein after refer to myself as Father.

The Supreme Court's Committee on the Rules of Procedure in Domestic Relations Cases established in 2003 by Supreme Court Administrative Order 2003-63 which is comprised of 16 members who are judges, attorneys, mental health professionals and court personnel from around the state, at its inaugural meeting agreed to a Mission Statement that guided its work states - *to establish a comprehensive statewide set of rules of procedure for family law cases aimed at achieving fair, effective, uniform and timely resolution of family disputes, using non-adversarial, "problem-solving" means to the extent possible and appropriate.* The new rules consisted of three overriding emphasis: (1) early intervention, (2) timely disposition, and (3) increased use of problem-solving approaches.

Chief Justice Ruth McGregor signed the Order approving the new Arizona Rules of Family Law Procedure (ARFLP) with an effective date of January 1, 2006 according to Judge Mark W Armstrong, Chair of The Committee on Rules of Procedure in Domestic Relations Cases. The new rules are intended to provide uniformity, stem the proliferation of diverse local rules, and assist the family courts in the **efficient** administration of justice. Family law cases include divorce as well as legal separation, annulment, paternity, child support, child custody and protective orders. The new rules strongly emphasize Alternative Dispute Resolution (ADR) and Therapeutic Jurisprudence.

Therapeutic Jurisprudence is aimed, in part, at **reducing conflict** between parties. Inter-parental Conflict as a Risk Factor for Child Maladjustment is associated foremost with self-destructive behavior, depression, and diminished academic performance in children according to John H. Grych (Association of Family and Conciliation Courts, January, 2005).

Rules generally applicable to civil cases assume a **conflict** driven system that adopts "**litigation**" rather than "**problem solving**" as a dispute resolution model. This is "**DESTRUCTIVE**" to families!!!

According to the Honorable Arline Rotman (Retired) Association of Family and Conciliation Courts (AFCC) Resource Development Committee Chair states, in part: (1) The **Rules of Civil Procedure**" are **often ignored** in Family Court because they are "ill fitting;" this breeds disrespect for legal rules and common sense. **Rules of Family Law** procedure would more likely be followed and enforced. (2) The need to **take family disputes out** of "**traditional**

litigation" and into **"problem solving"** rules instead; (3) The need for revised discovery and disclosure requirements **"unique"** to families who share **discoverable** information and (4) The need to **relax** the rules of evidence for family law cases.

This is a family court "Paternity" case which should be utilizing the "problem solving" process v. the Rules of Civil procedure more commonly known as "litigation" as referenced above. As per the information above, Judge (Judge) has violated the Arizona Rules of Family Law Procedure (ARFLP) which will be evidenced by the following:

Rules generally applicable to civil cases assume a conflict driven system that adopts "litigation" rather than "problem solving" as a dispute resolution model. This is **'DESTRUCTIVE'** to families!!!

Judge conducted this Trial in the format of **"litigation"** at the request of Angela Wilson-Goodman (AWG), counsel for the Respondent (Mother), as opposed to utilizing the **"problem solving"** procedure.

Judge asked AWG at the Trial on August 6, 2010 to clarify that she wished to utilize the **"litigation"** process. She responded that was her wish and requested the witness for the Father to leave the room until the Father's testimony was concluded. Zubair Aslamy (Aslamy), counsel for the Father, made no comment. (Rule 2.9 - Ex Parte Communication violation). Father wants what is in the best interests of his daughter, Kyloe Ann Carlson (Kyloe).

A judge should uphold and promote the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety in their professional and personal lives. Judge violated his judiciary rights by allowing AWG to have control of his court previous, during Trial on August 6, 2010 and after Trial. (RULE2.5. Competence, Diligence, and Cooperation: A judge shall perform judicial and administrative duties competently, diligently, and promptly.)

Very early in the case on May 5 2010 Father (acting Pro Per) wrote a letter to Julie Skakoon (Skakoon), Parenting Conference Provider with a copy to AWG and Mother stating in part: *"Due to the history of Ms. Illyes's borderline personality disorder diagnosed by Dr. H Lee Mitchell in 2007, including instability in moods, poor interpersonal relationships, negative self-image and violent and destructive behavior, I believe it is in the child's (Kyloe) best interest that*

the Court be provided with information relative to any previous and future physician's impressions relevant to the care, custody, and access to the minor child.... (Exhibit A)

Judge [redacted] was aware of this letter (if not sooner) when the Reply to Response to Motion to Compel Petitioner's Discovery Responses was filed on July 19, 2010 and attached as Exhibit 2 prior to Trial.

This Paternity and child custody case as far back as March, 2010 has involved Father's requests for medical records pertaining to the mental health of Mother as Mother requested the medical records of Father.

Father requested Aslamy contact AWG pertaining to Judge [redacted] reviewing both Father and Mother's medical records through an in-camera review and remain sealed for the security and privacy of both Father and Mother in a letter dated May 25, 2010.

Aslamy prepared the letter to AWG which in part stated: "As you know, Mr [redacted] has an issue with signing medical releases that would result in you and whomever else you please to view his medical records. However, what I propose is to stipulate that each party provide his/her medical records to Judge [redacted] for an *in-camera* review. By doing so, each party's right would be protected. I also suggest that a full custody evaluation be performed. (Exhibit B)

Judge [redacted] was aware of this letter when the Response to Motion to Compel Petitioner's Discovery Responses filed July 6, 2010 and attached as Exhibit A. (Exhibit C)

On May 26, 2010 AWG responds in part: "it is not Judge [redacted] responsibility to weigh any evidence at this time, so I can see no reason to pursue an in-camera review. Instead, the records need to be produced pursuant to subpoena and provided **solely** to counsel. (Exhibit D)

1) What authority and control over Judge [redacted] does AWG possess to make such a statement in the letter: "it is not Judge [redacted] responsibility" when in fact in *Hays v. Gama* "the court made it plainly clear in *Hays* the statute governing custody determinations, A.R.S. & 25-403(A), provides that **"the court shall consider ALL relevant factors."** We have similarly cautioned that, when custody of children is involved in a court proceeding, it seems to us to be **"the duty of the trial court to hear "ALL" competent evidence which may be offered."**

2) For what purpose does AWG want Father's medical records provided to AWG **solely**?
Father does not trust AWG professionally nor ethically.

3) Why is AWG suppressing the medical records of Mother when she clearly was aware of Father's concern with Mother's medical issues which is in the best interest of Kyloe?
Judge was aware of this letter when the Reply to Response to Motion to Compel Petitioner's Discovery Responses filed on July 19, 2010 and attached as Exhibit 4 prior to Trial.

The suppression of valuable medical information is clearly NOT in the best interest of Kyloe. The Honorable Arline Rotman states: "The need for revised discovery and disclosure requirements **"unique"** to families who share **discoverable** information" is vital to the **"protection"** of families. Therefore, an in-camera review would be the most appropriate solution. Judge remained silent on this request and abused his discretion. (Rule 2.2 - A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially)

Judge ignored the Therapeutic Jurisprudence Method which is aimed, in part, at **reducing conflict** between parties by remaining silent prior to Trial and at Trial.

On September 28, 2010 Father filed an Appeal Pro Per. An Electronic Index of Records was requested by the Court of Appeals. In reviewing the Electronic Index of Record filed on November 5, 2010 a "Stipulation" entitled **"Full Agreement for a Custody and Parenting Time"** signed by Father and Mother on April 12, 2010 with Skakoon appeared on ECR. The list was transferred electronically to the Court of Appeals on everything in ECR with the exception of the "Stipulation" which was entered on ECR but omitted due to the fact the Stipulation was entered after-the-fact. (Violation of Rules of Judicial Conduct.)

A telephone conversation with Grethe who prepared and filed the Index stated she was instructed to stop forwarding documents on October 27, 2010 (one day prior to the inclusion of the "Stipulation" on ECR). Other documents dated October 27, 29, November 2, 2010 were recorded on the ECR but not included in the Electronically filed Index on November 5, 2010 to the Court of Appeals?