

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 14-056

Judge:	No. 1090514894A
Complainant:	No. 1090514894B

ORDER

The complainant alleged that a superior court judge demonstrated bias, a lack of civility, and an improper demeanor.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After review, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of court rulings. Accordingly, the complaint is dismissed in its entirety, pursuant to Rules 16(a) and 23.

Dated: May 14, 2014.

FOR THE COMMISSION

/s/ George A. Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on May 15, 2014.

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

FOR OFFICE USE ONLY

2014 058

COMPLAINT AGAINST A JUDGE

Name: _____ Esq. Judge's Name: _____

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

Please see attached information.

COMPLAINT AGAINST A JUDGE

a. Case name and number:

v.

b. List any attorneys who appeared in the case:

When I became involved, _____ Esq. &
 _____ Road, Suite _____ Arizona
 represented Mother. Later, Ms. _____ withdrew and Mother represented herself.

c. List names and phone numbers of any witnesses who observed the judge's conduct:

1. Dr. _____, _____ Arizona
2. _____
3. _____
4. _____ CPS Specialist,

a. Case name and number:

v.

b. List any attorneys who appeared in the case:

Esq.

c. List names and phone numbers of any witnesses who observed the judge's conduct:

1. _____

COMPLAINT AGAINST A JUDGE

Name: _____ Esq. Judge: The Hon. _____

My name is _____ and I am a member of the State Bar of Arizona at _____
I have practiced in the State of Arizona since 1984. I have been a Certified
Specialist since 1992. I have served for many years on the _____ of the
Section of the State Bar of Arizona and was the _____ of the _____ of the State
Bar of Arizona. I have also been repeatedly listed in _____ Lawyers in the category
of Family Law and have served as speaker in many CLE's on the issues of family law. I am also
a member of the Arizona Association of _____ and _____ I have
served on the _____ for _____ Judges and have been honored to be
named as a member of the _____

In the entirety of my career, I have never filed a complaint against a judge. I am not
filing my complaint now, to in anyway affect ongoing litigation. In fact, in both pieces of
litigation that I will reference to you, we have not contested the Judge's rulings on the merits, nor
filed an appeal. I think it is important for you to understand this background, as I am sure that
there is always some skepticism that the reason for complaint is because a lawyer or litigant is
unhappy with the court's rulings. In the _____ and _____ cases, my complaints all stem
from the behavior of the Judge; including demonstrated bias; a level of uncivility that was
unwarranted; and a demonstrated unprofessional and unfair demeanor. Judge _____ is clearly
not a judge who demonstrates lack of prejudice, integrity or courtesy; and he clearly does not
demonstrate a demeanor that promotes public confidence in the Court and the Judge's ability.

A. v. _____

In the midst of ongoing post-decree litigation, I was retained to represent Dr. _____
in _____ A primary reason for my retention, was that Dr. _____ then
current counsel was being treated dismissively by the Court and both he and Dr. _____ felt a

different representation may be better able to gain his understanding of the issues. At the time, Mother was represented by [redacted] Esq. However, during my tenure in the case, there was never any Court appearance in which Ms. [redacted] and I were present.

While I appreciate that the purpose of this complaint is not to re-try the action, a brief identification of the issues needs to be made so you can understand my concerns.

[redacted] (“Father”) and [redacted] (“Mother”) have [redacted] children, namely, [redacted] and [redacted]

Under the orders that were existing up until the time of the filing of the Petition, Mother had primary custody of all [redacted] children and sole decision-making. In May [redacted] independently, [redacted] and [redacted] contacted Father and requested that they be allowed to live with him, as things were so chaotic in Mother’s home. This included, but was not limited to: (1) [redacted] describing excessive and frequent alcohol consumption of Mother and [redacted] (“Step-father”); (2) erratic and often inconsistent behaviors of Mother; (3) extensive drug use by [redacted] as well as by many of the [redacted] (4) ongoing legal proceedings in the juvenile court regarding [redacted] and (5) the involvement of the police on no less than [redacted] occasions, when there were issues of either the parents (Mother or Step-father) hitting the [redacted] or the [redacted] hitting one of the parents (Step-father). This included a criminal complaint brought against Mother for battery to her [redacted] and charges against [redacted] for assaulting Step-father. There was a third incident wherein [redacted] was arrested for assault with regard to his father, [redacted] In the records regarding the last incident, the police were clear that [redacted] and Mother were both intoxicated. There is information in the reports on [redacted] that Mother was intoxicated at the time. [redacted] explanation of what occurred during the situation with him, was that both Mother and Step-father were intoxicated.

Additionally, at the time of the filing of the Petition, [redacted] had been charged on several juvenile counts, including some having to do with his drug use. [redacted] was supposed to do drug testing per the terms of the Juvenile Court. As [redacted] continued to refuse to do that, and/or was coming up positive on his drug tests, Mother unilaterally sent [redacted] to a rehab facility in [redacted]

Subsequent to being released, additional juvenile charges were pressed against him, and, he was again either refusing to test, or testing positively.

Also during this time, Mother lost two jobs. The records on one of them was clear that she lost her job for inappropriate and insubordinate conduct in the workplace.

Shortly after the requested to live with Father, Mother said she would agree to that. Yet, she refused to sign the necessary paperwork and sent contradictory messages to Father and the saying she would enforce the current orders. This continued even after Father filed his Petition. By things had so deteriorated that the refused to see Mother. This was after both Mother and had been arrested at the home of the family friends, the Subsequent to that time, Mother did not see the (by her choice as well as the In Mother's husband, sent an e-mail to Father, advising that the were no longer welcome in their home until they changed their attitude.

In addition to the issues with regard to custody and parenting time, there were also issues with regard to child support. Mother provided her pay stubs, when she was working. At a hearing, Mother identified that she recognized that her income when she works, is about and Father's is about . At the same hearing, she advised that she made three times the income of Father.

1. Making Rulings Without Evidence

The only evidentiary hearing that occurred was on Nevertheless, at all of the hearings leading up to that hearing, the court allowed Mother to say whatever she wanted to say on the merits, and then would accept what Mother said as though it were true, without any right of cross-examination, and without any demonstration of proof. When Father would try to present his comments on the merits, or try to address the items that Mother had commented upon, Judge routinely shut me off, advised that it would not listen and would then make statements as to his rulings, based upon whatever Mother had said. At one hearing on discovery, counsel undersigned put onto the record that Judge had not yet held any evidentiary hearing, therefore, he could not in any way have "taken evidence" to allow it to make any of his

rulings. Judge recognizing the accuracy of that statement, then tried to justify his positions by suggesting that he could “take judicial notice” of things that had happened in the confines of the litigation in previous hearings (that were never held in front of Judge and make the determinations that he was currently making.

2. Treating the Parties Inconsistently

On there was a hearing on various motions, some of which had to do with discovery. One of the things that Mother requested was all kinds of information about a home in which was owned by Father and his current wife, as well as a condominium in the metropolitan area, owned by Counsel undersigned asked Judge why any of that information would be necessary or relevant, since the issue was solely child support and neither piece of real property was income-producing. Judge based upon Mother’s comments that she believed that Father had surreptitiously put the house in in a trust to avoid child support claims (which candidly made no sense), ordered that Father had to provide all the information requested by Mother. After Judge ruled with regard to Father’s homes, counsel undersigned asked that Mother likewise have to provide information with regard to her ownership in a home in which was an income-producing property. Judge refused to order Mother to provide that information despite his previous order that information about houses could be relevant and despite his recognition that Mother’s home was income-producing. There were various other discovery rulings that day, that were clearly one-sided and required Father to have to provide all kinds of documentation whereas Mother was not held to the same standard. At the conclusion of the hearing, counsel undersigned advised on the record that the court was rendering “disparate treatment” of the parties.

3. Failure to Allow the Children’s Wishes to Be Heard, Yet Inferring Alienation

After the incident resulting in Mother’s arrest and culminating in both refusing to visit Mother, Father had asked, repetitively, that the children be interviewed by the court or by someone appointed by the court. Further, in various hearings, Mother alleged and

the court then also alleged that the were not having contact with Mother due to "alienation" by Father. While the were writing notes to their Mother expressing their concerns, Mother claimed the did not write the notes. As these allegations became more repetitive, particularly from the Court on its own accord, Father continued to ask for the to be interviewed. The Court repeatedly denied Father's request. At trial, a Child Protective Services worker testified and advised that there were various notes written by the (see attached at **Exhibit "1"**), that he had discussed with the children, and he believed had been written by the children. Those items, as can be seen, were clear indicators by the children of the concerns that they had about Mother. Additionally, Father had available as a witness who had interviewed the and would testify as to her belief that the children wrote the letters, on their own, without any parental involvement. Ms. specifically advised that:

"...But, you know, just because these children wanted to be given more chance to express their voice in all of this matter. It was after they had moved to too. So there was a big change in their life right then."

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Ms. described as follows:

"She was very articulate. She is very -- she came across as very intelligent and articulate."

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As to she stated:

A. again, very smart little very open, very honest, no difficulty talking her [sic] or Very open and honest and would answer all my questions freely.

Q. And do you feel that she was, in any way, coached or manipulated or told what to say?

A. No.

, pg. 190,]

Despite both witnesses that the had not been coached or manipulated, that the were intelligent and articulate, and that the believed what they were saying and had written the items in question, Judge continued to make comments that the

“obviously” did not write the e-mails/notes and that he “could infer” that they were likely being alienated. After Ms. [redacted] started testifying, she indicated that she had some notes, and that she had submitted them to me and to my client on the Friday prior to the Monday hearing. The court then decided that it would not allow Ms. [redacted] to testify, because her notes had been disclosed to counsel undersigned and Father (who had hired her), and those notes had not been provided to Mother. I am attaching hereto as **Exhibit “2”** pages 197-216 of the [redacted], hearing which address this situation.

Ultimately, the Court entered its ruling (*see Exhibit “3”* attached hereto). Judge [redacted] does not comment on any of the issues concerning Mother’s behavior or the [redacted] concerns. Instead, while placing the [redacted] with Father and ordering therapeutic intervention, the remainder of the ruling is essentially a vitriolic attack on Father.

4. Unsupported Rulings Which Demonstrate Bias and Unfair Treatment

I will address my concerns herein. My first concern is that the Judge was simply making up rules, which even he identified were not accurate. His suggestion that the witness could not testify because her report had not been disseminated is problematic, because the court recognized there is no requirement for an expert report. “Okay. To say that -- number one, you are correct that the -- that an expert is not required to write a report.” [redacted] pg. [redacted] ll.

The court then, however, determined that the notes that Ms. [redacted] had provided which Ms. [redacted] testified were solely her notes to prepare for the trial were a “report” and he inferred it was not disclosed because Father did not like the report. As stated the Court:

It is not correct that the proponent is entitled to say that's not a report. It's not going to be a report until some future time when it's been corrected. The -- what happened was the witness is told we don't need a report in this case after she presented a report, and there wasn't enough time to massage it to correct the aspects of the report that Father objected to.

[redacted], pg. [redacted] ll.

The court’s “inferences” that Father told her not to provide a report because he did not like it were directly contrary to the testimony presented from the witness. The court stated:

THE COURT: Because the -- it's -- the Court finds that there was a report prepared by the expert. That report was not disclosed to Mother when it was received for -- if --to the extent that Father is taking the legal position that he didn't have to disclose it until 30 days after counsel received it, that's clearly not tenable, because our hearing is today. Under the circumstances, it was required to be immediately disclosed.

MS. Well, may I make a record? Or are you done? I'm sorry. I didn't mean to interrupt.

THE COURT: And no, I'm not quite done. The -- based on what Ms. has just told me, she prepared what she regarded as a report, or at least a first draft of a report, and was told no, we don't need a report. All we need is testimony. There was clearly a discussion about what was in the report. And here we are today, and we don't have a report. I infer from the all the facts that are before me that Father did not like the contents of the report. And specifically, for example, the statement about interviewing Mother. And I think it's a fair inference from all these facts that it was -- that there was a conscious decision not to present this, give a copy to Mother, because of what was in it.

MS. May I make an offer of proof or ask Ms. questions to sustain the record?

THE COURT: Okay.

BY MS.

Q. Ms. after you -- first of all, when you prepared this, was it to prepare you for today's hearing?

A. Yes.

Q. And it was just to get your thoughts in order, correct?

A. Yes, that's --

Q. Did we ever ask you for a report?

A. No.

Q. Okay. And in -- after you sent this report out, were there various things that you decided you wanted to change not necessarily because anybody asked you to do that?

A. Yes. I do that normally with my reports.

Q. And, in fact, oftentimes when you are the --

MS. Objection.

THE COURT: Please don't interrupt.

BY MS.

Q. Oftentimes, when you have been hired by one side to do a report, isn't it true that you collaborate with the attorneys and/or the client before a final product has been prepared?

A. That is correct.

Q. And in this case, it was no different that there was some collaboration that you were asking us for, and we said we don't really need that, because we don't need the report?

A. You basically stated that it was too late to get the report in and that the report -- I wasn't finished with it yet, so it was -- I felt that it was too late too, because it was, you know, coming up on the trial on Monday. But, unfortunately, I couldn't get it done any sooner.

Q. And the Judge just said that he is inferring that Father did not like the contents and, therefore, that is one of the bases that he is prohibiting you from testifying about what the said.

THE COURT: That misstates what I said.

MS. Well, then please state it again, Your Honor, so I can get it correctly.

THE COURT: That Father didn't like what was in the report, and therefore, the witness was instructed by Father not to complete the report.

BY MS.

Q. Okay. So, according to the Judge, he is inferring that Father did not like the contents of the report, and therefore, he instructed you not to complete the report. Is that --

A. That is not --

Q. -- true at all?

A. That is not correct. I spoke with --

Q. Is there any truth to that kind of an inference?

THE COURT: No, no. Let her finish her answer.

MS. Okay.

THE WITNESS: I spoke to both Dr. and the attorney and said I was still going to work on the report. And then they basically stated that it may be too late, because we're going to trial on Monday. And that's where I left it. And that's why I kept the report in my files, because I was going to only use it for notes.

BY MS.

Q. Okay. And --

THE COURT: Okay. I draw the same inference from the statement you don't -- it's too late to finish the report. I draw the same inference that

Father did not want this -- a report in this form to be disclosed to the other side.

BY MS.

Q. Did Father ever make a statement I do not want a document like this, in this form, to be disclosed to the other side?

A. No.

Q. No. He wanted me to actually correct the report and make it the way I needed to make it.

pg. 205,

5. Allowing Mother to Argue Issues Not Previously Identified

In or about _____ the court specifically ordered that no issues would be addressed unless they had been put before the court by _____. Mother filed nothing prior to that date, other than her Response to Father's Petition. The court further ordered that Mother was to file a pretrial statement. Counsel undersigned sent her a pretrial statement, but she refused to participate. She failed to file her pretrial statement in accord with the Court order. In fact, the pretrial statement that Mother provided in court was dated _____, _____ (which was a Saturday) and was not signed. Nevertheless, the court allowed Mother to submit her pretrial statement, and allowed her to argue issues that had never been raised by _____ nor in any timely filed pretrial statement.

6. Refusing to Impose Rules of Cross-Examination

Despite the fact that Mother was on cross-examination and despite the fact that counsel undersigned was asking yes or no questions, Mother continued to evade the questions. On multiple occasions, counsel undersigned asked the court to assist and ask the witness to please answer the question. On three separate occasions, counsel undersigned asked for the court's assistance, and on those occasions, the court simply replied, "The two of you are doing fine." I am attaching hereto as **Exhibit "4"**, pages 158-168 of the _____ hearing to demonstrate the same.

7. Calling Father a Liar When He (Not Mother) Had Complied With Court Order

The testimony was without dispute that Father had participated in one appointment with Dr. and had the participate in one meeting with Dr. which was exactly what was ordered. The testimony was also clear that Mother was advised that they had met their appointments, and that she should do the same. The testimony was also clear that Mother had refused to meet with Dr. who is one of the professionals that Mother identified to be used for the therapy appointments. I am enclosing the transcript of the agreements (**Exhibit "5"**) reached on during a mediation session with The Honorable The language states:

Father agrees to initiate reunification therapy counseling. The mother and the will discuss going forward at the time of the hearing. Mother will pay the costs associated with that therapy. This shall consist of one appointment with Mom only, one appointment with the only, then one appointment with Dad only. And the only is to be considered in the context of having occurred by

Mother never participated in her appointment. Instead, Mother came to the court and advised that Father had failed to do what was agreed, when Father did exactly what was agreed. The court, again, responded as follows:

Q. Did you get a notification on to go see Dr. and he would fit you in before Yes or no?

A. I got a demanding email from you, and you said, you have to go see Dr. And I was like, why? The reunification, if you look at the root word, is reunify. It was supposed to be me and my It --

Q. That's not what Judge ruling says.

A. That's not true. And you know it, you're splitting hairs here. You're splitting hairs and lying to this Court? How in the heck would I go meet with Dr. and for what reason? Just so he can -- I can defend myself? It was supposed to be me with the and you know it. And you're lying to the Judge.

THE COURT: Okay. All right. Ms. That's it. The hearing's over. Go ahead and sit down. I'm going to make a finding today. The Court finds that [sic] knowingly presented a false claim to the Court, or a false defense, in relation to the settlement before Judge The Court listened to the recording before Judge -- of what happened before Judge There was an agreement before Judge

that Mr. [sic] was going to -- that there was going to be reunification therapy between [sic] and the children. Dr. [sic] listened to what Judge [sic] said, he agreed with it, there was no conditions. There was no "I'm only agreeing to three visits." It was completely clear what was agreed to, and Ms. [sic] you can shake your head at me if you like.

MS. HAMILTON: I will shake my head, because you don't understand what went on.

THE COURT: No, I understand --

MS. [sic] And you're not looking at the minute entry, but --

THE COURT: No, I understand --

MS. [sic] regardless, okay.

THE COURT: I understand perfectly well what happened. I watched the hearing that that minute entry came out of.

MS. [sic] You couldn't have, Your Honor.

THE COURT: And Mr. [sic] attorney knows very, very well that what was said during the settlement conference outside the agreement being placed on the record was not part of the record. Mr. [sic], assisted by competent counsel, agreed to participate in reunification therapy.

MS. [sic] As directed in --

, pg. 166, l.

THE COURT: He got up here today and he lied to me. By saying that he had not agreed to that, he has presented a false claim that there was no agreement to participate in reunification therapy. That this agreement was only for [sic] visits. I further find that his -- that the excuses for his non-participation are just that, excuses. He told the truth today when he said I never had any intention of engaging in the reunification therapy.

The -- based on that, the Court finds -- it's ordered -- issuing an order to show cause why Mr. [sic] should not be held in contempt.

MS. [sic] Okay.

THE COURT: For his disregard of the agreement that was -- that he entered into in front of Judge [sic] Written notice will be issued. You'll have a hearing. The rest of the case is taken under advisement, but I feel that it's -- I felt that it's necessary to announce that part of my ruling right now. The authority for that is ARS § 25-415A. You give your word to a Judge, Mr. [sic], you keep it.

MS. [sic] I'm going to subpoena Judge [sic] as a witness, just so you know. Just so you know.

THE RESPONDENT: And I do keep my word.

THE COURT: That'll happen. That'll be entertaining. Well. Okay. The rest of it is taken under advisement. The order to show cause will be issued at some point with the decision or before that. We're at recess.

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Obviously, not only did Father participate to the letter of the agreement; not only had Mother not participated and agreed she didn't participate; but only after counsel undersigned advised that she would subpoena Judge to the hearing, did the court subsequently cancel the hearing. Again, the Court was biased against Father and refused to recognize who had not complied.

8. Refusal to Address Mother's Behaviors

Finally, even though the issues from the children's perspective were replete with concerns about Mother's drinking, the abuse in the household of Mother, particularly with regard to parent/child interaction, the drug and criminal behavior of the (and , in Mother's home, the instability in residences, employment, etc., and the criminal activity of both Mother and (which not only resulted in their arrest, but was highly embarrassing to the in the presence of their family friends), the court disregarded virtually all of that information. Little to none of it shows in the Court's ruling. Rather, the court chose to vilify Father in its ruling, despite the recognition that the wanted to live with him, and Mother needed to participate in reunification therapy.

In this case, essentially Judge ruled in my client's favor. That said, I have never been treated with the lack of civility, the clear bias, the making up of rules and the sparring with me as a professional that Judge seemed to enjoy and gloat about. This type of behavior is appalling and clearly in violation of the Judicial Rules of Conduct.

B.

In this case, I represented Again, I felt Judge was rude, condescending, picking fights, and doing whatever he could to support the other side's positions,

and to rule against my client. It is not that we lost. It was the rude treatment that was so one-sided and biased and unflattering of a judicial officer that was of concern.

I realize that these kinds of complaints are probably put in a file and nothing comes as a result. I still felt it necessary to spend my time in putting this information together for you, because I do not want anyone to ever experience the courtroom demeanor and hostility and bias that Judge brings to his courtroom. Of course, I can be contacted for any additional comment you may want.

Sincerely,