

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 15-294

Judge:

Complainant:

ORDER

The complainant alleged a superior court judge had violated her constitutional rights and made improper rulings in a family law matter.

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.

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

Dated: November 25, 2015

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 November 25, 2015.

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

2015-294

I understand the commission cannot reverse court orders or assign a new judge to a case.

I declare, under penalty of perjury, that the foregoing information and the facts I have provided upon which my allegations of judicial misconduct are based are true and correct.

Signature:

Date:

INSTRUCTIONS

Use the following space or plain paper of the same size to explain your complaint. Explain why you believe what the judge did constitutes judicial misconduct. Be specific and list the names, dates, times, and places relevant to your allegations. Additional pages may be used and relevant copies of documents may be sent with your complaint (please do not send original documents). Use one side of each page only and write legibly or type your complaint. Please keep a copy of your complaint for your records.

SEE ATTACHED

To Whom It May Concern:

I am praying and asking for help and relief. I have _____ as a result of judicial malfeasance, gross negligence, and failure to adhere to proper court procedure. The grounds for this complaint arise from numerous violations of my constitutional _____ and state rights, including due process, denial of my freedoms, and the _____ of unethical ex-parte communication. Most importantly, Judge _____ has failed to consider the safety, well-being and best interests of _____

I have not seen _____ for over _____. As the primary care giver for his whole life, these circumstances are causing irreparable emotional strain and confusion for him. I was blind to the destruction that would happen to me after I was served with papers that would kick me out of my home and ban _____. The absence of due process in this case has prevented me from defending myself from false accusations and has squashed my civil rights and most importantly abolished _____. During this case, the following rules of the Arizona Code of Judicial Conduct have been violated:

Rule 2.2 – Impartiality and Fairness

“To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.”

Rule 2.5 – Competence, Diligence, and Cooperation

“A judge shall perform judicial and administrative duties competently, diligently, and promptly.”

Rule 2.6 – Ensuring the Right to Be Heard – “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 law. The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party’s right to be heard according to law.”

Rule 2.9 – Ex Parte Communication

“A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

- a. the judge reasonable believes that no party will gain a procedural , substantive, or tactical advantage as a result of the ex parte communication; and

- b. the judge makes provision to promptly notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond."

Rule 2.15 – Responding to Judicial and Lawyer Misconduct

"A judge who does not have actual knowledge that another judge or lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action."

On _____ the petitioner in this case,
filed the following

1. Petition for Dissolution of Marriage **[EXHIBIT 1]**
2. Emergency Motion for Pre-Decree Temporary Orders – Re: Drug Testing – Without Notice **[EXHIBIT 2]**
3. Motion for Pre-Decree Temporary Orders Re: Legal Decision Making, Parenting Time and Exclusive Use of the Home. **[EXHIBIT 3]**
4. Order to Appear **[EXHIBIT 4]**

_____ contemporaneous filings, including his _____ were merely a premeditated litigation tactic planned for the holiday season in an attempt to gain a strategic advantage in this case and _____ the three filings blatantly repeat his false allegations and therefore are in violation of ARFLP Rule 47(A).

Rule 47(A) on Temporary Orders of Arizona Rules of Family Law Procedure (ARFLP), states that "The motion shall be filed after or concurrently with the initial petition, shall incorporate the relevant allegations of a filed petition by reference and **not separately repeat themselves.**"

The Order to Appear I received stated "Order to Appear Re: Emergency Motion for Pre-Decree Temporary Orders Re: Drug Testing – **Without Notice**" and listed **[EXHIBIT 4]**

The Order to Appear I received is not in accordance with ARFLP Rule 4(C) or Rules 40, 41, 42 and 91.

Rule 2.2, Rule 2.5, Rule 2.6

Due to the _____ most law firms were closed. I called many firms during the week prior to _____ but failed to find and obtain council prior to my appearance.

Without counsel, I appeared in court for the first time in my whole life. Judge asked me if I would be willing to undergo random and also submit to a and that day. I agreed because I had nothing to hide.

Judge chose to address an order without having proper procedural documentation in place as required by any Petition for Dissolution or Temporary Orders Re: Legal Decision Making, Parenting Time and Exclusive Use of the Home.

Due process was not preserved. I was not informed that would be any kind of hearing regarding Legal Decision Making, Parenting Time, and Exclusive Use of the Marital Residence.

Minute Entry: **[EXHIBIT 5]**

- States "Return Hearing" and also states "This is the time set for Return Hearing regarding Petitioner's Petition for Dissolution of Marriage (with and Motion for Pre-Decree Temporary Orders Re: Legal Decision Making, Parenting Time, and Exclusive Use of the Home."
- **Does not state or list** that I was appearing for "Emergency Motion for Pre-Decree Temporary Orders Re: Drug Testing – Without Notice"
- States "IT IS ORDERED that, absent an agreement by the parties, Mother shall exercise liberal parenting time at the marital residence as long as she provides 24 hour notice to Father."

Documents I have been unable to obtain and/or confirm existence of:

- Judge preliminary denial of the Petitioner's Emergency Motion for Pre-Decree Temporary Orders Re: Drug Testing – Without Notice.
- A verified signed motion granting the court order.
- Minute Entry that is signed by Judge

ARFLP Rule 49 on Disclosure states that documents relating to the following sections must be filed within days after the filing of a response to an initial petition:

- A. Resolution Statement
- B. Child Custody or Parenting Time
- C. Child Support
- D. Spousal Maintenance and Attorneys' Fees and Costs
- E. Property
- F. Debts

Judge _____ knew that both parties had not filed these necessary documents. (Most importantly, there is no Parenting Plan in my case.) ARFLP Rules 40, 41, 42 and 91

The _____ came back with all negative results. The _____ came back positive, but only for _____. It was unknown to the court and Judge _____ that I am prescribed an _____ medication and have been so for the prior _____

Between _____ and my Evidentiary Hearing scheduled for _____ [EXHIBIT 5, Page 4], I knew I needed to find counsel but had no resources as my husband had been providing the only source of income since _____. At this time, my _____ provided the financial support necessary to retain _____ as my lawyer.

- Rule 2.6, Rule 2.9

I appeared on _____ for what I thought would be my Evidentiary Hearing. _____ from _____ Group and the opposing counsel _____, talk in the hallway for over an hour. _____ returns and tells me that I need to complete an additional _____ of _____. I am confused and ask her to explain why I did not receive an evidentiary hearing and why the court did not receive any of my evidence. ARFLP Rule 76

Not having an Evidentiary Hearing is a violation of A.R.S. § 13-4238, which states, "The defendant is entitled to a hearing to determine issues of material fact, with the right to be present and to subpoena witnesses." This is also a violation of A.R.S. § 25-407, which states, "The court shall hold an evidentiary hearing within sixty days after the party files the motion."

- States "This is the time set for a Temporary Orders Hearing regarding Petitioner's _____ Petition for Dissolution of Marriage _____ and _____ Motion for Pre-Decree Temporary Orders Re: Legal Decision Making, Parenting Time and Exclusive Use of the Home."
- States "Both parties testify that the agreements stipulated to on the record are their agreements, that they understand the agreements and believe them to be in their best interests at this time, that no one has threatened, promised or coerced them in any way to get them to reach the agreements, and that the terms are fair and equitable."
[EXHIBIT 6, Page 2]
- States "THE COURT FINDS that the agreements reached by the parties this date are in the parties' best interests, are fair and equitable, constitute a binding agreement under

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**