State of Arizona

COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-015

Complainant: No. 1383710604A

Judge: No. 1383710604B

ORDER

The complainant alleged the judge failed to comply with procedural rules when imposing a criminal penalty and engaged in ex parte communications with opposing counsel. The commission reviewed the transcript of the hearing and found no evidence of ethical misconduct. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: June 15, 2010.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed
to the complainant and the judge
on June 15, 2010.

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

Wednesday, January 20, 2010

To The Honorable Members of The Judicial Board of The State of Arizona

My name is I am a legal permanent resident of the United States of America. I married on June 20 2003. We had two children, born February 21 2004, and born January 10 2007. I left Mr. on December 2 2007, due to domestic violence issues while seven months pregnant with my daughter, Matija.

Judge of Flagstaff Arizona has been the presiding Judge over this case DO- since the filing of the divorce and subsequent custody matters.

It is with great concern in regards to Judge behavior throughout the course of these proceedings that I write to this board at this time. I am acting pro-per, and I have done much research on such matters as far as law in this State and Country through the Cline Library at NAU and have consulted with several attorneys on the matters I am presenting but I do request at this time leniency in any errors that I may have made as far as representation of materials.

On January 2 2008, Petitioner, filed a motion for Contempt against myself, Evidentiary hearings thereon were held on February 15, and March 14, 2008. The Court thereafter took the matter under advisement.

On May 8, 2008, this Court, by Minute Entry Order, found me guilty of criminal and civil contempt and set sentencing on the contempt finding for May 29, 2008.

At the sentencing hearing on the criminal and civil contempt, I appeared without counsel, requested a continuance and stated that " I have consulted with an attorney and would like my attorney to be present". The court denied my request for a continuance: denied Petitioner's request that as "As a sanction against Respondent, that the children be placed in the custody of the Petitioner with supervised visitation to the Respondent". Instead, as the sanction against me the Court stated:

"It is ordered, as a sanction, Respondent is assessed all of the attorney's fees to date that have been incurred by Mr. until today's hearing."

And

"It is further ordered that attorney is to file an affidavit detailing all attorneys fees to date, along with an Order of Judgement with the court", (emphasis added).

While denying my request for a continuance so that I could have counsel present the court stated:

"In the future, should the issue re-arise, the court advises the Respondent of her right to counsel and the right to appointed counsel....", (emphasis added).

I believe that if I was entitled not only to counsel, but to appointed counsel should the issue re-arise, I was entitled to those same rights on May 29, 2008.

In its Ruling finding me in both criminal and civil contempt the Court, citing Arizona case law, stated:

"The general rule is that criminal contempts are acts which obstruct the administration of justice or tend to bring the court into disrepute, as distinguished from civil contempt which consists of failing something which the contemnor is ordered to do for the benefit or advantage of another party to the proceeding",

And

"If its purpose is to punish a past violation of a court order, the contempt is criminal. If its purpose is remedial. I.e. to compensate for the cost of the contemptuous conduct or coerce future compliance with the court's order, the contempt order is civil."

The comment to Rule 33.1 Arizona Rules of Criminal Procedure states, in part:

"The general distinction between civil and criminal contempt is the purpose for which the punishment is imposed. A person is imprisoned for civil contempt to force compliance with a lawful order of the court: he holds the keys to the jail and can gain release at any time by complying with the order.

"A criminal contempt citation, on the other hand, is intended to vindicate the dignity of the court. It is a criminal offense for which a specific punishment is meted out, over which the Defendant has not control".

Rule 33.4(a) Arizona Rules of Criminal Procedure states:

"The court may not punish a person under the provision of this rule by imprisonment longer than 6 months, or a fine greater than $300.00, or both, unless the person has either been found guilty of contempt by a jury or has waived the right to trial by jury".

The court specifically found me guilty of both criminal and civil contempt, and, as to the finding of criminal contempt Rule 33.4(a) the Order entered by this Court for me to pay all of the Petitioner's attorney's fees to date (which Petitioner now alleges were almost FORTY SEVEN THOUSAND DOLLARS) was contrary violation thereof.

I further submit that the Hearing re Contempt conducted herein was not conducted in compliance with Rule 33.3 Arizona Rules of Criminal Procedure, which Rule states:

"Except as provided by law or Rule 33.2, a person shall not be found in criminal contempt without a hearing held after notice of the charge. The hearing shall be set so as to allow a reasonable time for the preparation of the defense: the notice shall state the time and place of the hearing, and the essential facts constituting the contempt charged, the notice may be given orally by the judge in open court in the presence of the person charged, or by an order to show cause...."

I submit that the Petitioner did not specifically allege that I had committed criminal contempt nor did I receive notice of the charge of criminal contempt setting forth the essential facts thereof, prior to the hearing.

On May 19, 2009, more than 15 months after the finding of contempt by this court, Petitioner's attorney filed his Affidavit of Attorney's Fees, and Costs, and Order, in which he has requested almost FORTY SEVEN THOUSAND DOLLARS (including costs and "legal services performed by the undersigned and his assistants", as well as court expenses through May 29, 2008 (which were not ordered by this court).

Mr. affidavit states, in part:

"That Attorney worked on this matter and his normal and usual charge for legal services was $190.00 per hour of attorney time. Additionally, that the undersigned counsel's normal and usual charge for services performed by his legal assistant is $90.00 per hour:

Rule 92(F) A.R.F.L.P. states:

"If the court orders incarceration, a fine, or any other sanction for failure to comply with a court order, the court shall set conditions for the purging of the contempt based on the contemnor's present ability to comply. The court shall include in its order a separate affirmative finding that the contemnor has the present ability to comply with the purge and the factual basis for the finding...(emphasis added).

I respectfully submit that this court did not set any "conditions for purging of the contempt" finding against me, did not include in its Order a separate affirmative finding that I had the "present ability to comply with the purge and the factual basis for that finding".

Arizona Rule of Criminal Procedure:

A.R.S. 12-861 Rule 33:

"Requires a Jury trial if the defendant's potential punishment exceeds six months incarceration or a fine in excess of $300.00 or both..."

"Criminal contempt actions are , in nature, criminal prosecutions where the accused has various rights...Foremost amongst these rights is the right to counsel."

In State v Wall, 49 N.C. App.678,679 (1980) The Court held in a contempt proceeding that the indigent accused had the right to appointed counsel.

"The defendant was entitled to be represented by counsel. Since he faced a possible prison sentence, he was entitled to have the state provide him with an attorney if he could not afford one. G.S. 7A-451(a)(1)."

I have a Constitutional Right to Jury Trial in a criminal contempt case.

United States vs. Barnett.

3. "The trial of all crimes, except in the case of Impeachment, shall be by Jury..."

" In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed..."U.S. Constitution. Amend VI.

No conviction can stand if the accused has been denied the right to counsel. Judge denied my right to counsel even after I explicitly requested it. This was a deliberate and clear Civil Rights Violation perpetrated by Judge

Judicial Ethics

" Nothing is more dangerous and destructive of the impartiality of the Judiciary than a one sided communication between a judge and a single litigant. Even the most vigilant and conscientious of judges may be subtly influenced by such contacts." Rose v. Florida, 60.so.2d 1181(Fla.1992.)

I have provided with these documents pages from opposing counsel , affidavit of fee's. Documented by Mr. himself, are several conversations Mr. held with Judge personally without the presence of myself or any counsel representing me. On most of these occasions, I had no counsel and was acting as my own attorney. Judge never attempted to call me to participate in these conversations nor was I ever informed either by letter or phone call as to the content of these conversations. I only became aware of these conversations almost fifteen months after they had occurred and only by way of the bill provided by opposing counsel, These conversations went back and forth with Mr. initiating the ex parte communication as well as Judge initiating ex parte communication. Also underlined is communication with Judge secretary who would have been the appropriate contact for any dealings with court issues dealing with clerical situations.

"Ex Parte communications ...those communications involve contact between a decision maker and one party outside the presence of another interested party. " T.C.A. Section 4-5 -304

Canon 3. A Judge Shall Perform the Duties of The Judicial Office Impartially and Diligently

(7) 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. 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 concerning appending or impending proceeding...(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond".

There is no way of knowing what was spoken of between Judge and Attorney This is a clear violation of Judge Judicial Code and also serves to bring the Judiciary into ill repute by his deliberate and repeated actions.

Canon 2, A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A Judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.

Initiating of the telephone conversation by the Judge constituted an improper ex parte communication. Syllabus point 2 of Kaufman states.

"The initiation of ex-parte communication of a Judge is strictly prohibited by Canon 3A (4) of the Judicial Code of Ethics. It was recognized in Kaufman that" [i] in order to promote public confidence in

the Judiciary, courts have imposed sanctions varying from reprimand to removal against Judges held to have engaged in "Ex Parte" communications." 187 W.Va. at 169-170,416 S.E. 2d at 483-84

Kaufman states,

"The very act of talking to one party without the presence of the other creates an Ex parte communication. " 187 W.Va. at 171,416 S.E. 2d at 485.

"When a trial Judge initiates Ex Parte communication suggesting various procedures to the prosecution...the accused's rights to a hearing before an impartial judge is nullified." .7"668 p, 2d at 1171-72.

T.C.A. Section 4-5 304 defines Ex Parte Communication as,

"Unless required for the deposition of ex-parte matters, specifically authorized by statute, an administrative judge, hearing officer or agency member serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communications."

I have a due process right to an impartial judge. Ex Parte communication constitutes a "Denial of Due Process". Due Process Clause of The Fourteenth Amendment -434 Pa. 478, 255 A. 2d 131.

The provisions of Rule 81, Canon 3 (A) (4) of the Code of Judicial Conduct, 17A A.R.S. , prohibits a judge from initiating or considering Ex Parte applications concerning a pending or impending proceeding.

The recent case of McElhanon vs. Bing Ariz. 728 p. 2d. 273 (1986), the Arizona Supreme Court specifically disapproved of Ex Parte communications between a judge and a lawyer during a trial when such communications were initiated by the judge.

The reasons for the prohibition against Ex Parte communications are clear. Without such a prohibition the communicant may gain an unfair advantage in litigation by influencing the judge, while the other party is unable to rebut. The prohibition against Ex Parte communications is designed to 1. Insure the fairness of the judicial proceedings, and 2. Guard against the appearance of any impropriety to the end that the integrity of the judicial system may be preserved.

Through out the three year period that Judge has heard this case he has consistently and repeatedly shown bias throughout this case. Repeated requests to award child support, spousal support and attorneys fees were consistently denied, even though evidence was brought forth that Petitioner had full control of all finances and that I had no money or access to any finances. By law, I am entitled to equal defense in this State. I have never been appointed attorney fees where as Respondent has paid his attorney over ONE HUNDRED THOUSAND DOLLARS in fees, maintained ownership of joint business' and properties and homes.

With the contempt finding, Judge had stated that I had never participated with the custody evaluator and used this as his basis for criminal contempt even though he had evidence in front of him

that showed over twelve hours of visiting with the custody evaluator. Also Petitioner made statements in court in regards to the TWENTY FIVE THOUSAND DOLLAR BILL of the evaluator.

Repeated attempts were made in court to provide evidence to Judge in my defense, Judge denied all evidence to be brought in yet when attorney would admit exact documents, Judge allowed them.

Witnesses were denied testimony in regards to domestic violence situations, to provide a basis of truth that I was attempting to prove. Judge unilaterally deemed me a liar and continued to treat me as such throughout all proceedings giving no credence to anything I said.

Being in a courtroom with Judge is a sheer nightmare. He is the number one stricken judge within this community. His reputation is that of a " Rogue Judge", that follows the law that he creates in a courtroom . The case is an example of how Judge makes a decision of someone's guilt or innocence and then manipulates laws and court proceedings in order to have the end result he so desire by denying a jury the right to see full disclosure in a Capital One Murder Trial and putting an innocent man into prison for three years. also made statements to his innocence, as have I, all falling upon the deaf ears of a biased judge.

I believe in the United States of America to be fair and just to all. I am a single mom, who is well respected by this community. I am currently in school, maintaining a four point o, with invitations from my professors to apply for awards and scholarships consistently. I have dozens of highly respected persons from within this community who will stand up and speak on my behalf as to my impeccable integrity and honesty and attest to the caring, well respected person I am and who all stand in shock and disbelief as they have witnessed the ongoing behavior and actions of in the courtroom.

I believe I have the right to an impartial judge in my divorce proceeding and custody proceedings. has failed to do so. His behavior is disgraceful to the Judiciary and to this Great Country. His blatant initiation in Ex Parte communications with opposing counsel is sheer evidence that his ego is far out of control and he fears no law, even the ones he has sworn to uphold. Judge should have had the integrity long ago to excuse himself from this case. His own personal feelings of disdain towards me in the courtroom are clear with eye rolling, shoulder shrugging, moments of sheer anger and refusal to allow me to even speak in my defense.

Civil Rights violations are blatant as well, and the deliberate denial of any financial aid so as to insure proper representation was also a deliberate violation of the laws of this state.(A.R.S. 25-34 point 1 amended.)

He creates fear within the courtroom, amongst attorneys who feel that if they speak up against him they will end up in prison and amongst women whom he consistently displays condescension and bias, especially in the situations in regards to domestic violence.

Judge has deliberately and with malice, ruined my reputation within the community with his bias. I request at this time, a full investigation into his behavior in this case be started immediately. I request that this board review all court transcripts, speak to all witnesses involved and to begin to allow real justice to be served.

I also request at this time, I be allowed Due Process as is guaranteed by my Fourteenth Amendment Rights to an impartial trial. I request that sanctions be made against in the form of removal from the bench for blatant violations of The Judicial Code of Ethics, creating ill repute within the Judiciary and various Civil Rights Violations.

I also request that at this time, while under investigation, Judge be removed from all future proceedings involving this case. I am fully aware that will receive a copy of this complaint, and am very concerned for my future well being in regards to any filings in this court in the future as custody situations are open for the next fifteen years.

I believe that my circumstances and experience with Judge are not limited to my case alone. I request this board make a full public inquiry as to Judge behavior in other cases as well, done in a manner to protect all those who will come forward to speak up against him, including victims and attorneys. Through my research with other attorneys and with other women especially who have had the misfortune to appear in front of this judge, I have discovered that perhaps Mr. is not fit to sit on the bench as an impartial representative of the Government of this State and great care should be taken to allow him the power he now holds over innocent people's lives including that of children.

Sincerely and with great concern,