

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-032

Complainant: No. 1276810308A

Judge: No. 1276810308B

ORDER

A review of the complaint filed in this matter reveals that there was no misconduct on the part of the judge. There is no evidence to support the complainant's allegation that the judge suffers from dementia.

The complaint is dismissed pursuant to Rule 16(a).

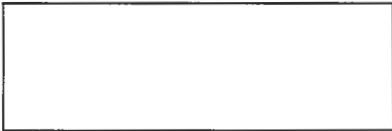
Dated: May 1, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on May 1, 2006.

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



2 February 2006

CJC-06-032

Commission on Judicial Conduct
Re: John R. Ditsworth, Judge
Case # FN 2002-005754
Petitioner: Sterling O. Smith

SYNOPSIS:

From [redacted] through the present January 2006, Judge [redacted] has presided over the marriage dissolution case of [redacted] petitioner, and [redacted] respondent. This case has been ongoing for nearly [redacted] years without any resolution in sight and during which time his honor has made numerous errors of evidentiary fact and statutory law, made questionable comments both oral and written but seemingly without malice.

The errors have been compounded with time, resulting in an estimated 2000% detriment to petitioner/husband's financial condition and which are likely to make him unable to pay current and future financial obligations. Legal expenses have topped \$60,000 and are expected to rise significantly if there is an appeal.

REQUEST:

Petitioner/husband respectfully requests that the commission immediately intervene in this matter following a complete and in depth review of his honor as regards his mental capacities and capabilities as petitioner/husband feels he may be suffering from Alzheimer's Disease or some other ailment which mimics Alzheimer's. These contribute to comprehension and memory problems and affect judgment and analysis.

EVIDENCE:

CJC-06-032

Petitioner/husband lost his father in [] to injuries/illness related to Alzheimer's Disease. His father entered stage III, the final stage in early [] Both his parents resided in their own home one block from petitioner. With his father's decline, both parents became shut-ins and their welfare fell on the shoulders of the petitioner. Since they required near full-time attendance, traveling to downtown [] created a severe hardship to the petitioner and his parents. A change of venue to [] was requested and explained to his honor, but was rejected by him.

When the matter finally came to trial in [] he made a ruling certain parts of which were contrary to law, but all of which were easily corrected with a reconsideration and/or partial retrial and a motion to that effect was filed with him. During the [] hearing his honor appeared to be paying close attention, asking questions for clarification and making hand written notes. But when he issued his minutes on [] the issues he had questions about and which were clarified, he still had confused. These were not complex issues but still plague the proceedings..

His honor has demonstrated a distinct bias toward the feminine side in this dissolution. At trial in [] he allowed [] to call a witness not previously disclosed to us, who testified that [] could be re-educated to learn a trade different from that which she has practiced for [] [] was alleging she had [] [] and a bad back but presented no medical evidence of either. Nor did she disclose to us either condition during the disclosure phase, pretrial. Based on these

assertions, though, spousal maintenance amounting to [] month for [] months was awarded to her for re-education.

It was proved and not disputed by wife, that she had in her possession in excess of [] in cash which she did not declare on her interrogatories. [] has consistently failed to account for these funds and I've received no credit for them. Since then it has been determined that she has accumulated an additional [] in Student grant money, cashed in an [] IRA and has acquired an additional amount of about [] to be explained later. She then had nearly [] in her possession and control, which the judge has refused to require her to account for. In addition, she lives in one of our community property homes rent-free as it has no mortgage. None of these things seem to matter to him, though.

[] had started college in the [] just prior to trial, attending a semester of several classes earning A and B grades. In the [] she was enrolled for 3 classes which is when she received the student grant money of []. At this point, she promptly quit school citing a conflict with her work schedule. This was emphasized in the [] retrial but did not seem to be grasped by his honor. One week prior to the [] trial, [] filed for an individual bankruptcy Chapter 7 of an estimated [] in unsecured loans she had acquired on or about [] the time she filed for dissolution.. When asked for documentation of these debts to determine their community status, none was provided, just balances. She was not required to account for the debts by his honor, nor is he pressing the issue as I have asked.

He continues to show a distinct bias in [] favor by failing to require she

account for the funds she has and the debts she owes and not sanctioning her for this nor for filing for individual Chapter 7 bankruptcy without advising me or the court. In fact he has rewarded her for her misbehavior by increasing her share of the community some 2000% as estimated by me.

[] fraudulently filed bankruptcy one week before the trial in [] She disclosed this to no one involved in this divorce. I learned of it by the time the motion for reconsideration hearing scheduled for [] took place. His honor was notified then by me.

His honor then vacated his previous divorce ruling of [] until the bankruptcy court's automatic stay was lifted. The divorce was not final at the time. He did not know whether he could reinstate his prior ruling and consider the requested changes or would have to hold an entirely new trial. He later opted for a complete new trial, which was eventually held in [] and which resulted in the estimated 2000% additional cost to me over his prior ruling of [] not to mention the extraordinary costs for attorney fees. I had understood we were to have a partial retrial of the previous ruling. His second rulings are so egregious that I may not be able to meet current or future financial obligations if the ruling is allowed to stand.

There is further evidence of his diminished mental capacity. Namely an acquiescence to authoritative persons. I am represented by [] a respected divorce lawyer in [] [] however, retained the services of an old acquaintance, [] three weeks before the second trial of [] []

is a highly respected lawyer/mediator in the field of domestic relations. His honor gives him extraordinary deference. This deference is symptomatic of Alzheimer's. My Dad, a formerly strong man deferred to me on simple matters. I became the parent and he the child, eventually.

Additional evidence of diminished mental capacity is found in the inappropriate comments by the victims of Alzheimer's. His honor has made two that I am witness to and several that my attorney noted.

One verbal comment was at the second spousal support hearing of early [redacted] a few months before the [redacted] second final dissolution hearing. At that time [redacted] was representing herself. She had filed numerous complaints against me, my former attorney [redacted] her former attorney [redacted] and the judge himself. She demanded he recuse himself. At this hearing his honor addressed all her outstanding motions. Upon questioning [redacted] as to why she thought he should recuse himself, she replied that she didn't think he would be fair to her in the upcoming second trial. In denying her request he asked her, "Well, didn't you see what I gave you last time?". This was an inappropriate comment and an indication of bias.

The next inappropriate comment was written in his minute entry following the second trial. At this point it is necessary to digress in order to explain the estimated [redacted] acquired which was alluded to earlier and its relationship to the inappropriate comment.

On or about the time of the first trial and [] bankruptcy filing of [] she also filed for disability from the Social Security Administration. It is unknown what ailment or ailments she alleged then as she has refused to disclose any of that information at trial. She was originally denied compensation though until [] Her case was reconsidered; she was granted 100% disability and awarded monthly compensation of [] (more than the [] month she had been awarded in [] for maintenance to attend college and which she affirmed was adequate). The Social Security Administration will provide back pay compensation to a claimant who is originally turned down, appeals and then wins. [] should have received a lump sum payment equal to [] month or []

During questioning on the stand by the judge at the second trial of [] he repeatedly asked [] to disclose her disability. She refused, became hostile and had to be silenced by her own attorney, [] She quieted down, but that was the end of her questioning.

In his minutes, his honor declared that he had to award [] indefinite spousal maintenance of [] month because her attitude and behavior on the witness stand indicated to him that she had some mental illness. He then, in his minutes chastised me for not having my own doctors examine her. I only learned of the SSD assertions three weeks prior to trial, only after [] was retained, even though she was approved in [] This was a highly inappropriate comment for several reasons. First it assumes she had a 100% mental disability and was not just a bad actor on the stand with a bad attitude. Her disability could have been one of several ailments

she alleged earlier, none of which were mental. The question arises then which specialist should be hired as she refused to disclose any information regarding her ailment.

COMMENTS:

To this date, his honor has not required [] to provide any medical evidence of a disability which would prevent her from being gainfully employed. Certainly most mental disabilities (assuming she has one) are manageable with treatment and medication, as would the other ailments she claimed she had in earlier hearings. Again, no one but [] and her attorney know what her disability is. This is not only an example of improper written statements, but also another example of confusion, bias and kowtowing to authority in that if [] alleged it, therefore it must be true.

Alzheimer's victims can be confused relatively easily. Many of his honor's inconsistencies and apparent partialities indicate that he maybe confused. He wouldn't realize that he is. He would not realize there is any problem, but in an attempt to compensate for a diminished capacity will rely on the more dominant personality [] to sort out the confusion for him. The problem is, [] can tell him just about anything which sounds reasonable but may be totally false and his honor would accept these as fact.

The determination of his mental impairment would have to be by someone such as a neuro-psychologist as the signs and symptoms are not overtly apparent to the lay casual observer, unless of course, that person had long experience with other persons who had the disease. Be that as it may, a judge with that ailment can unintentionally cause serious harm and this judge has shown a propensity to do just that.

Therefore, it is imperative that the judge be evaluated soon and his caseload put on hold or transferred.

Based on my years of observation and interaction with my Alzheimer's diseased Father, I am greatly concerned that his honor may be suffering from the early stages of this same disease, but he does not know it. He, therefore, would not be inclined to seek treatment and/or recuse himself from this and other matters where the harm he could do is inestimable. Medication is available for persons in the initial stages of this disease allowing the patient to live a normal life. The key is to not wait too long for treatment.

Sincerely,