

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 06-097

Complainant: No. 1282810450A

Judge: No. 1282810450B

ORDER

The commission reviewed the complaint filed in this matter and found no misconduct on the part of the judge.

The complainants allege that the judge was biased, had ex parte communications, and should have disqualified herself. The commission determined, after reviewing the recordings of the proceedings, that the judge acted within the scope of her authority.

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

Dated: June 27, 2006.

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on June 27, 2006.

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

COMPLAINT AGAINST THE HON. [REDACTED]

This complaint concerns the Honorable [REDACTED] Judge of the [REDACTED] Municipal Court. I believe Judge [REDACTED] has violated Canons 1, 2, and 3 of the Code of Judicial Conduct by not being fair and impartial and free of inappropriate outside influences by believing false allegations of her staff without due process of law or allowing me an opportunity to confront these witnesses; calling me a liar; inappropriate familiarity with the prosecutor, and demonstrating bias against me and my wife by her comments and demeanor.

In the afternoon of [REDACTED] I accompanied my wife to the [REDACTED] Municipal court for the purposes of assisting her in obtaining an order of protection against her ex-fiancé due to repeated inappropriate sexual conduct on his part, threats to her and her children; and false information which he related to the opposing party in a custody dispute, which caused my wife to lose unsupervised visitation with her eldest child. The custody dispute in question is in the [REDACTED] Superior Court, and concerns my wife's ex-husband not her ex-fiancé mentioned above. I am a licensed attorney in Arizona and currently representing her in her custody dispute concerning her two oldest children with her ex-husband. Therefore, since the order of protection in question related to her child custody action, I was assisting her. This is relevant since I have been charged with misdemeanor DV criminal damage and threatening and intimidating allegations against my wife, and am currently released from custody on my own recognizance with release conditions that prevent me from having communication with my wife other than concerning her child custody representation. My wife has attempted to have my release conditions modified to allow us to have "normal marital relations", but the prosecutor has opposed her efforts and refuses to cooperate with her request. The Honorable [REDACTED] is the judge assigned to hear and rule on my criminal charges.

As we were waiting in the outer lobby of the courthouse in the clerk area, we were the only people sitting in the lobby area and I was assisting my wife with the forms required for the order of protection. As soon as we sat down in the lobby/waiting area and began filling out the forms, the clerks behind the glass began asking my wife questions concerning past restraining orders that my wife and I had obtained against each other, and my wife informed them that they had all been dismissed. Like any normal married couple, we were quietly discussing things as we waited, and my wife seemed to need a little emotional reassurance so I put my arm around her shoulders for support. We observed the clerks watching us and quietly discussing things with each other, and at one point we heard one say to the other, "what do we care?" We also saw the [REDACTED] Prosecutor [REDACTED] who observed us sitting together and then walked into his office and closed the door.

We were instructed to wait in the appropriate courtroom for the Honorable [REDACTED] to see us. We waited for an extraordinary amount of time, approximately one-half hour, before the judge entered. At one point my wife even went out to the clerks and inquired whether the judge knew we were in the courtroom, and the

clerk replied, "She knows you're in there and she is on her way." As soon as she entered, she immediately asked me: [redacted] don't you have release conditions which prevent you from associating with [redacted] I replied, "Yes your Honor, but the release conditions specify that I can have communication with my wife concerning her child custody representation. I am her attorney of record in that matter in [redacted] Superior Court and this matter directly relates to that child custody representation." At that point, Judge [redacted] asked me to approach the bench, and the following exchange occurred:

Judge: My staff witnessed you in the lobby area doing inappropriate things which clearly had no relationship to your representation of [redacted]

[redacted] That's not true. I don't know what you are talking about.

Judge: Come now [redacted] you know what I mean.

[redacted] No, I don't know what you mean. What allegations are you talking about?

Judge: You were seen smooching in the lobby and you should know that is inappropriate conduct for a courtroom.

[redacted] That did not happen. That is not true your Honor. I did not "smooch" or kiss my wife in the lobby. The only thing that I may have done is put my arm around her, but I did not do anything inappropriate.

[redacted] Interjected)

[redacted] That is not true. We did not!

Judge: [redacted] I do not believe you.

[redacted] Well it's the truth! Are you saying that I cannot have normal marital relations with my wife?

Judge: [redacted] you better watch yourself. I'm warning you. That is all!

[redacted] Interjected)

[redacted] That's a lie! We did not do anything!

Judge [redacted] then proceeded with the order of protection hearing, and summarily informed my wife that the allegations contained in her petition were "unclear" and she would not grant the order of protection, but would set it for a hearing and rule after hearing from both sides. It should be noted that the next judicial day, my wife went to the [redacted] Superior Court and filed a petition containing the same

allegations for an order of protection, and it was granted virtually immediately without need for any significant clarification.

On [redacted] I appeared before Judge [redacted] for the purposes of my "cattle call" pre-trial conference in my misdemeanor DV criminal damage and threatening and intimidating charges. Immediately prior to the pre-trial conference, my wife had approached the [redacted] Prosecutor [redacted] for the purposes of requesting that my release conditions be modified to permit "normal marital relations" between us, and to inform him that she was not interested in testifying to aid the prosecution of the charges against me. A heated argument between my wife and [redacted] [redacted] ensued, wherein he indicated that he would oppose any modification of my release conditions allowing us to communicate and cohabitate, and he would compel her to testify against me whether she wanted to or not, and would prosecute her for perjury if she testified differently than what was in the police report. Later while I was waiting in the courtroom to be called for my "pre-trial conference", [redacted] approached the bench off-the-record and whispered to Judge [redacted] that [redacted] intends to make a motion to modify his release conditions", the judge whispered to [redacted] "I will wait to rule on any motion until I receive your written response." This intended off-the-record ex-parte communication is highly inappropriate, smacks with the appearance of impropriety, and this overt overly-friendly rapport between judge and prosecutor is indicative of inappropriate judicial partiality and is a violation of Canons 1, 2, and 3 of the Code of Judicial Conduct.

I affirm, under penalty of perjury, that the foregoing information and the allegations contained in the attached complaint are true.

[redacted]

4-3-2006
Date

FORMAL COMPLAINT AGAINST THE **CJC-06-097**
HON. [REDACTED]

I believe Judge [REDACTED] has violated my rights and did not act appropriately in the court room, not only that she accused me and my husband of inappropriate acts and would not grant an order of protection. I believe the judge has concurred with the prosecutor and has developed a bias attitude against me and my husband. Let me explain...

On [REDACTED] my husband and I went to [REDACTED] municipal court to file a restraining order against my ex-fiancé. He had sexually harassed me at my sister's house, when I got upset with him he called my ex-husband and told him lies and had my weekly unsupervised visitation withdrawn from me. Shortly thereafter he would not return my children to me until I called the police. So my husband [REDACTED] whom represents me in my child custody case, suggested I get a restraining order and came with me to help me fill it out..

My husband currently has charges of DV criminal damage pending. His current release conditions state we can have contact with regard to my child custody case. While we were in the waiting room I saw [REDACTED] (The Prosecuting attorney) go from the hallway to a little office around the corner he paused and glanced at me and my husband, before entering his office. Then I noticed the ladies behind the counter whispering to each other and one of them asked me "Are your restraining Orders still in effect?" I said no they have been quashed. Then they went back to whispering and one of the ladies said "What do we care?"

We were told to wait in the court room. My husband informed me "This is the same judge that is hearing my DV case. We were in there for about 30 minutes I went to the lobby area and asked the ladies if the judge had been notified we were in the court room. She said "she knows you are in there she will be there in a minute."

As soon as she entered, she immediately asked my husband don't you have release conditions which prevent you from associating with [REDACTED] He said, "Yes your Honor, but the release conditions specify that I can have communication with my wife concerning her child custody representation. I am her attorney of record in that matter in [REDACTED] Superior Court and this matter directly relates to that child custody representation." Just then, Judge [REDACTED] asked him to approach the bench, and the following conversation occurred:

Judge: My staff witnessed you in the lobby area doing inappropriate things which clearly had no relationship to your representation of [REDACTED]

[REDACTED] That's not true. I don't know what you are talking about.

Judge: Come now [REDACTED] you know what I mean.

[] No, I don't know what you mean. What allegations are you talking about?

Judge: You were seen smooching in the lobby and you should know that is inappropriate conduct for a courtroom.

[] That did not happen. That is not true your Honor. I did not "smooch" or kiss my wife in the lobby. The only thing that I may have done is put my arm around her, but I did not do anything inappropriate.

(I Interjected)

[] That is not true. We did not!

Judge: [] I do not believe you.

[] Well it's the truth! Are you saying that I cannot have normal marital relations with my wife?

Judge: [] you better watch yourself. I'm warning you. That is all!

(I Interjected)

[] That's a lie! We did not do anything!

The judge then started the hearing regarding my order of protection, briefly read my request and said, "Your allegations are unclear" and said she would "Set this for a hearing when both sides are present." The next day I went to Superior Court and was granted my order with little inquiry and no problems with clarity.

I have written a letter to the prosecutor stating I believe the police report was embellished and I was not going to aid in prosecution based on the police report and requested the charges be dropped. I also requested on [] that his release conditions be changed to allow us contact with each other allowing normal marital relations, I stated there was no physical threat. The prosecutor [] and I had an argument and he basically said no I won't allow you to do this and if you refuse to testify I will make you, I am denying your request then he added at the bottom Husband won't stay away.

I believe Judge [] and the prosecutor [] are in cahoots and the Judge is biased against me and my husband.

[]

4.3.06
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