

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 08-290

Complainant: No. 1349010763A

Judge: No. 1349010763B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. Although the judge was very direct and straightforward about the possible consequences of a trial, he did not act inappropriately. The purpose of a settlement conference is to candidly discuss the consequences each party might face if a matter goes to trial.

Because the contents of the complaint do not support the claims, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: March 10, 2009.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on March 10, 2009.

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

(respondent counsel), (Guardian at Litem), (my attorney) and I convened at office for our divorce mediation. and his attorney, had a short, private meeting with the Best Interests Attorney, prior to my attorney's arrival.

Shortly after, started the mediation. I do not recall being advised that it was a "Rule 69 meeting" until we signed the hand written notes drafted by at the end of the day. I was not aware at the time that the process was binding. For the duration of the mediation, which lasted until approximately 4:00 pm, I was unprofessional, verbally abusive and appeared prejudiced against me and biased to the benefit of the opposing counsel and party.

Early in the process called me names such as "passive aggressive" and launched into a verbal reprimand in front of opposing counsel, my spouse, and my attorney. This attack was launched with regard to issues related to my requests for sole custody and relocation. He asked the Best Interest Attorney if relocation was recommended. Mr. Theut's response was something to the effect that Dad says no, so it ain't happening. then pressed me to decide whether I was willing to concede on it or take it to Court and lose, because he could guarantee that I would lose. I simply responded that I'd have to back down on it since my spouse's original proposal was not genuine.

raised his voice at me, called me passive aggressive and told me that I gave in because I knew I was going to lose not because of anything my spouse did, he continued on with this attack stating that it was no wonder there was no communication in the marriage, etc. This verbal attack went on for an inordinate amount of time, with no justifiable provocation from me or grounds for such an unprofessional, abuse of power.

A short time later he asked what some of my concerns were with regard to my spouse and his parenting. referenced the letter I sent him which cited only recent incidents that occurred during limited parenting time with my son. dismissed all of my concerns, with the exception of the unlocked guns, as micro managing. He called me a micro manager, stated that my concerns were not valid safety concerns and that I was not going to be able to dictate what goes on in Dad's house when my son is with Dad. Following the Pro Tem's lead, felt free to throw in her sarcastic comments about my concerns with medicating my son with adult over-the-counter medications.

(Refer to my enclosed letter to , Best Interests Attorney, regarding safety concerns for my son while in his father's care. The concerns were with regard to unlocked rifles and handguns, saw cutting on the face, allowing to use a razor knife, heart condition, yelling and physicality and medicating with adult over-the-counter aspirin and failing to relay that information to me during exchanges. was already in receipt of my answers to his very detailed questionnaire regarding our family history, marital discord, friends, preschool teachers, doctors, etc which I hand delivered to his office

did not question as to the extent of his involvement in representation of my son, ----- Had he inquired, he would have found that ----- did nothing until ----- when ----- contacted me via phone at approximately 7:15 pm. to schedule a home visit the following day. Apparently he failed to do any work on the case as ----- Best Interest Attorney, and realized that the ADR was scheduled for ----- I asked if he simply wanted to meet ----- and see his home, he responded that he wanted to talk to me about my concerns. I informed him that it would not be possible to do that in ----- presence. ----- then asked if we could talk and send ----- to another room to play. I stated that ----- would not play independently while a visitor was there. ----- stated he would give my attorney a courtesy call to let him know he was coming to visit, which I found out he failed to do.

berated me for requesting sole custody and kept asking me what decisions were so important with regard to my son that ----- could not share in them. He also threatened that if I did not allow ----- more parenting time than what Judge ----- ordered during the Temp Orders hearing, then ----- would take me to Court for half time parenting and that he would win. He did not even take into consideration the age of my child, that he would be starting kindergarten and that even the Court ordered parenting social worker recommended that the visits be one night weekly for 3 hours and every other weekend. She also recommended that my spouse take a parenting class. I was, in essence, threatened and coerced into allowing my spouse even more time during the week with our son.

At one point when ----- and his attorney left the room to talk in private, ----- asked the Best Interests Attorney whether he'd gotten any information from ----- doctors. ----- responded that he'd asked ----- therapist if she had a written report. When ----- heard ----- reference Dr. ----- rolled his eyes, made a disgusted face and very sarcastically said ----- . He proceeded to call her an extremely derogatory name, which was the equivalent of calling her an idiot. I was so shocked and appalled by all of his behavior and the failure of anyone in the room to intervene that I just sat there. After being in a verbally abusive marriage and being isolated from all of my support network, I felt victimized during the entire process. ----- failed to reference the recommendation made by the Court social worker as well as failing to question ----- regarding how he arrived at his recommendations in light of the fact that he didn't contact any of ----- doctors, teachers, friends or family. ----- also ignored the significance of Judge ----- order for a Guardian ad Litem to represent my son, as well as a letter from social worker ----- addressed to my attorney, with the same recommendation.

----- left after all the parenting related issues were covered and then ----- proceeded to divide up the retirement accounts with ----- reading all of the information from her voluminous binders she brought with her. My attorney, ----- stated on numerous occasions that we did not receive any of the disclosure or discovery from them. ----- kept sarcastically saying that everyone was claiming they didn't have anything and dismissed my attorney by agreeing to send the information over to his office after the fact (refer to attached emails and correspondence dated after ----- regarding discovery). Additionally, ----- performed calculations per ----- approximation of what he considered to be community versus separate funds in the respective retirement accounts. He unilaterally decided that none of my husband's ----- retirement would be counted as community property, despite the fact that he contributed a portion during our marriage.

When [redacted] inquired about bank account balances, I told him that on [redacted] my spouse withdrew my son's CD of \$20,000+, split it and deposited ½ into his own account and the other half into mine. I attempted to explain to [redacted] that the money was not community property, it was our son's money and that a substantial amount of those monies came from my sole and separate [redacted] income and monetary gifts from my family. [redacted] argued with me and said that no matter how many times I said it was [redacted] money, it didn't make it [redacted] money. He concluded by stating that each of us could consider it a gift. I pressed the issue and he asked my spouse if he would be willing to set up an account for [redacted] in the amount of \$10,000, which my spouse refused stating he was concerned about legal fees. Ultimately [redacted] got [redacted] to agree to set up a 529 account for [redacted] in the amount of \$7,500 and ordered that I do the same. Consequently, my son's \$20,000+ was taken by my spouse, divided and reduced to a promised \$15,000 to be set aside for a 529 account. Refer to correspondence regarding [redacted] CD from me, [redacted] and [redacted] response stating that her client was confused when he withdrew the funds and that they would be restored if a mutual time and meeting place were agreed upon. There was no follow through and [redacted] and my spouse did not truthfully disclose the nature of his transaction during the mediation. Thus my son suffered a substantial loss due to [redacted] unilateral decision to call that money community property.

When the topic of child support came up, [redacted] attributed a salary of \$38,000 for me since that was approximately what I made 5+ years ago before I resigned to stay home with my son. I attempted to tell [redacted] that I was almost 51 years old and re-entering the work force would be difficult at best, especially during the current economic climate. He responded that he pays his secretaries more than \$38,000/year. He also boasted that he charges \$500 per hour and pays his paralegals over \$90,000/year. [redacted] informed me that I would have a job if I'd been seriously looking for one. He dismissed the fact that I'd been searching for employment [redacted] from October through mid-January because my spouse led me to believe that [redacted] and I could relocate closer to family. I informed him that I had to turn down a position in [redacted] as well as one in [redacted] which I applied for after my attorney told me there was a 100 mile distance rule with regard to relocation. [redacted] barked back that I only wanted to move away to get my son away from his father. He asked me whether I'd bothered to apply with City of [redacted]. When I attempted to explain I'd never been employed by City of [redacted] he cut me off and demanded a yes or no. When I responded with a negative, [redacted] attempted to insinuate that I wasn't trying to obtain employment in [redacted]. I was finally able to explain that I previously worked for [redacted] County. [redacted] also ignored [redacted] comment that during the temporary orders hearing we discussed the fact that I would remain at home with [redacted] until he started kindergarten. In the event I obtained full time employment prior to starting school, we would have full time childcare costs to deal with.

[redacted] prepared the Settlement Conference Memorandum for the Alternate Dispute Resolution without receipt of responses to discovery, requests for production and answers to the uniform and non-uniform interrogatories. [redacted] used an estimate of \$80,000 for my spouse's income, when in fact it was thousands higher, asked for \$1,000/month spousal maintenance for me for five years, child support per the guidelines, my attorney's fees of \$7,500, mention of the different retirement plans which we had no disclosure amounts on and the personal and community property taken by the husband. This is despite the fact that we didn't have access to [redacted] retirement, assets, salary, accrued sick and annual benefits, life insurance, etc.

used resolution statement estimate of \$80,000 for my spouse's salary instead of using his real salary. assigned all the child care costs to my side of the calculation and allotted me only \$175/month despite the fact that I had a signed contract with School district for \$260/month for part-time care for . The end result was I would receive \$480/month for child support, with my current income at \$0 and income in excess of \$83,000 per year (with an upcoming COLA and also longevity pay).

The opposing party didn't want to give any spousal and stated the best he could get me was \$700/month for 2 years. The matter of recovering \$7,500 in my attorney's fees was denied because stated that I had more assets than my spouse. He was referring to inherited farmland, which is jointly owned, unpartitioned and the majority of it is in a life estate for my Mother. It is an asset that I cannot realize any gain from. My attorney attempted to recover some fees due to my spouse's continued non-compliance and contempt which caused me to incur unnecessary legal fees (Temporary Motion and Contempt Motion). still refused despite not knowing what my spouse's assets were.

would not allow me to answer questions with anything other than yes or no. There were numerous occasions that explanation was required, if I attempted to provide an explanation, rolled his eyes, used facial expression to indicate his disgust and abruptly interrupted me and commanded me to answer with yes or no.

When my spouse vacated our residence per Judge order, he took almost all of our community property as well as some of my personal property, which included tools I inherited from my Dad after his death abruptly asked what I wanted from the community property and then went in to find out what my spouse was willing to turn over. When approached me again, he informed me of what I could have and stated that I already had computers, didn't I. I again attempted to tell him that my spouse had left me with 1 inoperable computer and another substandard gaming computer with pirated software that I could not obtain service for. He once again rudely and tyrannically interrupted me and demanded a yes or no, did I already have computers. My attorney was entirely defeated by the onslaught and he just nodded his head yes when I looked to him for help.

The mediation continued on for almost 7 hours which placed me in a position of duress in itself since I left my son in a child care facility which had a mandated 4 hour time limit. I had to leave the mediation room numerous times to phone and check in on my son as well as see if he could remain in their care until the mediation was done. At one point, there was a shift change and the new person at the facility informed me that I needed to start phoning my emergency contacts to come pick him up. I advised my attorney and he told me to hold off because they would have the agreement drafted shortly. The overall climate was one of and working in concert to force the agreement through while my attorney acquiesced to their aggressive and hostile style.

named the realtor) to sell our residence, he appointed a parenting coordinator and another coordinator as well as appointing himself as the binding arbitrator. I was advised not to file any form of complaint until the decree was finalized in order to escape further abuses from or suffer penalties from him.

I contacted [redacted] the following week and was told that the agreement was binding and that he would try to get [redacted] to disclose [redacted] actual salary for use in the child support calculations. He also said he would try to get [redacted] to use actual child care costs.

[redacted] attempted to obtain all of the discovery, interrogatories and requests for production which were not provided by opposing counsel prior to the ADR. The two attorney's went back and forth via email with regard to discovery, salary and child care. [redacted] approach was aggressive and hostile and her emails contained insinuation that [redacted] was not truthful and that he in fact had received all the information prior to the ADR and perhaps misplaced it. [redacted] referred to me as "passive aggressive" in her emails to [redacted]. He asked her to stop calling me names, to which she replied that she didn't call me the name, [redacted] did. At that point my attorney emailed me and told me I was better off without my despicable spouse and that he would reduce his bill to compensate me for the child support difference using my spouse's real salary and my child care costs. It was evident that after [redacted] emails attacked [redacted] personally, he wanted to get the case resolved and closed, even if it was not in my best interest.

[redacted] formally dropped the Contempt Motion which was scheduled to be heard on [redacted] without advising me. I received a copy of the motion in the mail. One of the main premises for filing the motion was because my spouse took my personal property as well as the majority of the community property, in direct violation of what Judge [redacted] ordered in the Temporary Orders hearing.

During the period from [redacted] until I ultimately was forced to sign the final draft of the agreement, [redacted] aggressively and with hostility emailed, called and sent written correspondence to [redacted] threatening legal action against me if I didn't sign the decree. She stated that I was in violation of the agreement by not allowing the increased parenting time which was in the Rule 69 document. [redacted] advised me that the increased parenting time was not in effect or enforceable UNTIL the decree was signed by the Judge and entered by the Court.

[redacted] did not attempt to enforce terms the opposing party agreed to comply with via his signing of the Rule 69 Agreement. My personal property has not been returned to me, the community property which was supposed to be returned has not been, my spouse has not paid his half of any of our son's medical co-pays, he continues to engage in parental alienation tactics, etc. All my attempts to have [redacted] follow through with obtaining compliance from the opposing party have yielded the same response. [redacted] claims that once the decree is signed and entered by the clerk of court, I will have recourse for contempt by taking my spouse back to court on everything he is in violation of. I explained to [redacted] that it seems patently unfair and biased that I must comply with all of the terms of the Rule 69 PRIOR to the decree being approved and entered, yet my spouse doesn't have to comply with anything. I also explained that I do not have the money to continually take him back to court on issues that should have been resolved during the process.

Despite the fact that I was forced by my attorney to sign the decree [redacted] it was rejected by the Judge because [redacted] failed to include standard language regarding domestic violence. [redacted] delegated the task to his secretary to contact me, explain the problem and ask me to come to the office to sign the revised decree. I inquired to find out whether verbal and psychological abuse qualified as domestic violence, because it was inflicted during the marriage by my spouse and was ongoing. She stated that it was abuse but that refusal to sign the decree would just end up drawing out the process and costing more money. I asked her to have

contact me regarding the question and his answer was essentially the same.

I made a decision to release _____ and retain _____ to achieve some level of compliance from the opposing party so that I don't have to incur more legal fees taking my spouse back to court once the decree is signed.

Judge _____ hostile behavior toward me was an abuse of power, tyrannical and dictatorial. I am in hopes that his behavior isn't condoned by the _____ Judicial System and that he does not inflict his bias and prejudices in future cases. The end result for my son and I is that we continue to suffer emotional and psychological abuse from _____

_____ has license to continue his wreckless supervision with our son and dismisses any of my concerns as "micro managing" and has not complied with numerous points in the agreement. However, due to _____ aggressive and hostile nature, I've had to comply with all of the increased parenting time for _____ and been the target of her namecalling and demands for unreciprocated compliance.

I'm confident that I would have prevailed in my Contempt motion if it had gone before Judge _____ as originally scheduled. I am fairly certain that I would have had a much different result if my case had gone to Court and if the Best Interests Attorney had performed his job. I am confident that I would not have been subjected to abuse and disrespect had this case gone before a Judge.

Thank you for your thoughtful consideration in this matter.