

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 08-291

Complainant: No. 1349110739A

Judge: No. 1349110739B

ORDER

The commission reviewed the complaint filed in this matter and found no ethical misconduct on the part of the judge. The complainant disagreed with the judge's rulings and interpretation of the law, and the more appropriate remedy would have been to file an appeal.

The commission cannot change a judge's decisions; therefore, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: March 6, 2009.

FOR THE COMMISSION

\s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on March 6, 2009.

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

COMPLAINT AGAINST A JUDGE

the above named and I were involved in a hearing regarding grandparents' rights. The backbone of my case were counseling and psychiatric records obtained about the grandfather's mental state. The grandfather had an issue with his mental state being exposed. At the beginning of the trial my previous counsel actually allowed opposing counsel to argue to the court that the counseling and psychiatric records he had in his hand needed to be sealed by the court, (which was not an issue) and that the opposing side had no objections to their use. Opposing counsel stated, "The court will see there is nothing in those reports." Opposing counsel then asked the judge if he could approach the bench and hand over the documents to the judge. She agreed, and collected the documents from opposing counsel, and in my belief, subsequently used those documents to formulate her decision regarding grandparent visitation.

I believe this action to be misconduct because my previous counsel had already disclosed these records to all parties and submitted the records as exhibits, so I'm not actually sure what was given to the judge. I suspect they were further redacted copies of the counseling/psychiatric reports. These documents were already disclosed so there was no reason for the Judge to agree to receive "extra" copies given to her by opposing counsel. (Please see attached minute entry which states in bold that any exhibits not submitted 5 days prior to the hearing may not be accepted/marked prior to the hearing).

As the hearing went on evidence was presented to the court regarding my decision for agreeing to supervised visitation time for the grandfather once a month for 4 hours, which had been constantly offered . However, grandfather refused this time.

This time was offered due to the genuine and legitimate concerns I have regarding the grandfathers ability to care for a 1 year old baby. Not only does the grandfather have mental illnesses he is battling, he also has a history of drug and alcohol abuse. The grandfather was hospitalized for Major Depressive Disorder, which is chronic and for suicidal ideation. As recent as a year ago he suffered an episode in which he described wanting to "drive his car off a cliff" Also evidenced in his counseling/psychiatric records was the unstable environment and dysfunctional relationship between the grandfather and step-grandmother. This is an environment that my son now has to endure.

The grandfather asked the court to award him visitation time that the father would be entitled to if he were stationed her. Thus, step in his shoes. The judge agreed.

After listening to my concerns, I failed to see any issues with this, and awarded to grandfather visitation the 1st and 3rd Saturday of each month, from 9-6p, unsupervised. When my son is 2 the visits increase to Friday overnight to Saturday evening, and when he is 3 all weekend. This was very concerning to me as the judge failed to even have the

grandfather drug tested, psychologically evaluated, or to even have the visits supervised. 9 hour visits is too much for a baby, and unsupervised is unbelievable with the concerns presented. (Please see attached minute entry regarding ruling).

After consulting with other experienced attorney's I was told that I had good grounds for appeal because the GP rights supersedes the father's, and I had consistently offered visitation time.

Out of the 8 visits the grandfather has been awarded by the court since he has only utilized 2. Approximately 50 days after being awarded time he cited work as the problem with maintaining visits and asked the court through a Motion for Reconsideration to review the time he was awarded, switching the visit day to the 1st and 3rd Sunday of each month. My attorney wrote a compelling response stating our routine, our church involvement, and the grandfather's failure to utilize the time ruled and given to him by the judge.

subsequently denied my Motion for Reconsideration and awarded the grandfather a change in days, without any regard for my son's routine or how her decision will affect him. I find this decision highly suspicious because

in her first ruling gave the grandfather time based upon what he asked for. At no time during the fully briefed evidentiary hearing did he state Saturday as a problem day for visits, in fact he initially asked for that day. This day was not presented as an issue; therefore he should deal with the original decision. What is presenting is that the judge effectively agreed with the grandfather's motion that Saturday's are inconvenience for him so regardless of his grandson's schedule, he wants what he wants.

Throughout this litigation there have been a number of blunders by the judge, showing lack of experience, and an uncanny ability for a judge to abuse power, and take the law in to her own hands. This was heavily evidence by her decision in the previous trial on regarding child support, pertaining to this case.

As father is in the military his argument was that only his base pay be used to calculate child support as opposed to his gross income, and that he should pay child support based upon being stationed at Base in Arizona rather than , where father is stationed and residing. In other words, he should pay child support based upon residing in Arizona. Father eventually won this argument. (Please see attached).

My confusion and my understanding is that the law is the law and although judges' have discretion, it is not there for judges' to take into their own hands. With this ruling the judge is ultimately saying that if a parent is residing in California, and their child is residing in the mid-west where cost of living is significantly lower, they can pay child support based upon the child living in the mid-west, and not look at both parents income, irrespective of where they are residing.

Disappointed by this decision, my previous counsel filed a Motion for Reconsideration outlining the benefits that father is entitled to being a military officer, and reiterating the law regarding child support. The motion was immediately denied. (Please see attached).

This has become extremely concerning to me because one has to wonder the motivation for the Judge to deny a motion, which outlined the law regarding child support and had legitimate grounds, and then grant the grandfathers recent motion without taking into account the wishes of my son and I.

During both trials the judge, without, any given reason denied my professional testimony on what happens to children who are being cared for by caregivers impaired by substance abuse, mental health issues and who are exposed to highly dysfunctional environments unsupervised, for periods of time.

Our first meeting _____ at the Resolution Conference _____ made a comment that greatly disturbed me. On hearing both arguments associated to the case regarding child support she made the comment, "I don't know why she's moaning. \$830 is a lot of money anyway." Frankly, that wasn't something that should have concerned _____ the principle and her job as a judge is to uphold the law, as fairly as possible. With a comment like that, it was easy for me to see why many decisions have gone in the father and grandfathers favor.

I believe that I was unfairly judged for reasons unknown from the beginning, which subsequently and ultimately influenced _____ decisions regarding my case, throughout this litigation, and allowed her to accept documents brought into court by opposing counsel, without being disclosed to other parties. Please help me to ascertain the truth, and investigate my concerns.