

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-148

Complainant: No. 1364110658A

Judge: No. 1364110658B

ORDER

The commission considered the complaint filed in this matter and after reviewing the recording of the hearing, found no evidence of ethical misconduct on the part of the judge. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: October 21, 2009.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on October 21, 2009.

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

June 1, 2009

Commission on Judicial Conduct
1501 West Washington Street, Suite 229
Phoenix, Arizona 85007
Attn: Judicial Complaint

Re: Superior Court Judge

To whom it may concern:

This complaint is in regards to Judge _____, _____ County Superior Court Judge, Division.

In regards to this letter, I, _____, am the Petitioner and _____ is the Respondent in the case in which background is being given. Mr. _____ counsel is _____ although she has never filed a formal Notice of Appearance (not limited scope), for some reason she is considered Counsel of Record.

On February 22, 2008, a Petition for Dissolution of Marriage with Children, a Motion for Temporary Orders and various other pleadings were filed and the case was assigned to Judge _____, Case Number _____

During the time period of February 22, 2008 and July 18, 2008 various hearings were conducted and a Decree of Dissolution was signed on July 18, 2008, which included many issues such as, division of property, division of debts, spousal support, child support, child custody and parenting time. On September 2, 2008, I filed Petition to Modify Child Custody and the matter was scheduled for a return hearing on November 21, 2008. During the November 21, 2008 Return hearing Judge _____ set the matter for trial, which was to be held on March 30, 2009.

Since there was an upcoming trial, I requested discovery, which included a Request for Production. In the Request for Production I requested that Mr. _____ produce all emails from his primary email account between the periods of January 1, 2007 to present. On January 9, 2009 Mr. _____ filed an Objection to the Request for Production and the matter was set for an Oral Argument on February 13, 2009 (See "Exhibit A").

During the February 13, 2009 Oral Argument, Respondent was represented by counsel (Ms. _____) and she argued against the production of the electronic mail requested. Ms. _____ handed her

Notice of Appearance to Judge [redacted] staff, but it was not filed with the court and it was not given to me. During this hearing, Judge [redacted] stated that I needed to have the opportunity to "prove my case" and also stated that "the children may be in danger and we will not know until we look." At this time, Respondent was ordered to produce all emails (excluding emails that contained attorney-client privilege) between the time periods of July 1, 2008 to present. During this hearing it was also ordered that the electronic mail was to come directly from Microsoft as I had requested. I had requested that the emails come directly from Microsoft so that we could guarantee their authenticity. The emails containing attorney-client privilege were to be delivered to the Court for in-camera inspection (*See "Exhibit B"*). On or about February 27, 2009, Ms. [redacted] had a stack of documents delivered to me, which contained a few emails, mostly from my Mother, with the same content, over and over, with a variety of fonts and several emails from Ms. [redacted] to Mr. [redacted] and vice versa. Due to the fact that her package contained emails with attorney-client privilege, I immediately surrendered them to the Court, so that the Court could determine whether or not I should be permitted to read them, which Judge [redacted] Judicial Assistant accepted. On February 23, 2009, Ms. [redacted] filed a Motion to Require Accelerated Responses to Discovery Requests and the Court scheduled an Oral Argument on March 4, 2009, but no Order to Appear was issued. During the March 4, 2009 Oral Argument the parties discussed Ms. [redacted] Motion, which was granted and Mr. [redacted] was ordered to sign Microsoft's Consent to Release the Emails. It was further ordered that I provide the information requested in the Request for Production on or before March 20, 2009 and that I pick up the emails containing attorney-client privilege that I left with the Court (*See "Exhibit C"*).

On or about March 10, 2009, I filed a Request to have the Assigned Judge Order Release of the Requested Emails and a Motion to Continue the March 30, 2009 Evidentiary Hearing/Trial, which schedule another Oral Argument for March 26, 2009 (*See "Exhibit D"*). On March 20, 2009 I received a call from Judge [redacted] Judicial Assistant changing the Oral Argument from March 26, 2009 to March 25, 2009, but no Order to Appear was issued. On March 25, 2009, I arrived at the Court in a timely fashion, checked the Court Roster on the door (which stated that the hearing was in Judge [redacted] Courtroom) and walked into Judge [redacted] Courtroom and no one was there, not even Judge [redacted] nor his staff. I waiting approximately ten (10) minutes and went to check with Judge [redacted] staff and Family Court Administration, Judge [redacted] staff did not answer the call button and Judicial Administration confirmed that the hearing was scheduled in Judge [redacted] normal courtroom. I continued this routine another three to four (3-4) times to no avail. I asked a Deputy Sheriff if she had any idea what was going on and she said that the Courtroom had audio and visual surveillance and they would be aware that I was in the courtroom. Prior to leaving the Courthouse, I decided to check in with Family Court Administration one more time and I finally ran into Judge [redacted] Judicial Assistant and she stated that Ms. [redacted] had requested a telephonic appearance because she had a field trip with her daughter (which has not been filed with the Court) but Ms. [redacted] failed to pick up the phone when she called, nor did Mr. [redacted]. Several minutes into our conversation, Judge [redacted] Judicial Assistant informed me that the hearing was re-scheduled to March 27, 2009, but that, once again, the same Order to Appear was to be utilized and that a new one would not be issued. When I returned home there was a message from Judge [redacted] Judicial Assistant stating that she was calling to set up the telephonic conference, but I was never informed that this was a telephonic appearance. I found it unusual that when I spoke with Judge [redacted] Judicial Assistant, she failed to mention that she had been trying to reach me, but I was in the Courtroom and an attempt for a telephonic conference did not occur. Furthermore, I find it interesting that Mr. [redacted] was not defaulted for his failure to appear at this hearing and he was rewarded by the hearing being rescheduled.

On March 27, 2009 I arrived at the Courthouse a few minutes late and rushed towards Judge Courtroom and there was a note stating that "Judge [redacted] can be seen in Room 124", so I immediately went to that room. When I walked in the Courtroom, I walked into a trial setting, the clock was running, the parties were dressed to the nines, and the subject matter was not as indicated on the Minute Entry that was to be utilized according to Judge [redacted] Judicial Assistant (*See "Exhibit E" Motion to Continue March 30, 2009 Trial/Evidentiary Hearing for the events that took place at the March 27, 2009 "Oral Argument/Ex Parte Trial"*). Please bear in mind that no Order to Appear was issued for this hearing.

During this hearing, I was informed that the Request for the Emails was becoming too confusing and the request for them was going to be denied. Shortly thereafter, Judge [redacted] stated that he was throwing out my pleadings based on my failure to tell him that the children were in any danger. After Judge [redacted] stated that he was throwing them up due to my failure to inform him that the children were in danger, he then stated that the Petition to Modify was untimely. Judge [redacted] then apologized to Mr. [redacted] and Ms. [redacted] and stated that "sometimes these pleadings get ahead of me." Judge [redacted] continued to reiterate that I never told him that the children were in danger, but I told him in the original Petition to Modify that they were in danger, I told him the same in the Motion to Compel Discovery and I repeatedly told him the same during this hearing. At the conclusion of the hearing, Judge [redacted] then stated that the March 30, 2009 Trial/Evidentiary Hearing would proceed, but the only issue to be discussed would be Respondent's Petition to Enforce Parenting Time and Respondent's Legal Fees. Furthermore, during the March 30, 2009 Trial we briefly discussed enrolling the children in school, in which the Judge requested that I file my plans for the children's schooling during the summer of 2009, his ruling is harsh in comparison with the actual events that took place during the Trial. Also his ruling is contradictory to the law of school age, which is eight (8) years of age. I feel as if I had not filed the Motion to Continue that I filed in regards to the March 27, 2009 trial events, this subject would not have arisen and that this was a slap intended for me, which ultimately was against the children.

On March 30, 2009 the Trial/Evidentiary Hearing proceeded and although my Petition to Modify had been thrown out, Mr. [redacted] Response still remained as subject matter of the hearing. Respondent was awarded 28 weekends of make-up Parenting Time, to begin on April 3, 2009 as well as attorney's fees related to the Contempt of Court issue. Ms. [redacted] was Ordered to file her Affidavit of Attorney's Fees for the issue of Contempt. Ms. Marquis filed a Motion for a Telephonic Status Conference, in which she requested that I go to jail for obeying the March 30, 2009 Minute Entry, as well as her Affidavit and Judge [redacted] scheduled a Status Conference for April 30, 2009. However, during the April 30, 2009 Status Conference Judge [redacted] stated that in regards to the Attorneys' fees "that was not what he meant", he said that "he meant all events leading up to the issue of Contempt." Ms. [redacted] stated that she needed Discovery, a Deposition and numerous other pleadings in order to prove Contempt, which is untrue because I admitted withholding the children in Court on November 21, 2008. Judge [redacted] also stated that Mr. [redacted] make-up Parenting Time was to begin on April 3, 2009 (which it did) he disregarded his original ruling and then stated that on April 30, 2009 that it was to begin, awarding Mr. [redacted] four additional weekends of make-up time. Ms. [redacted] is claiming that I should be responsible for Mr. [redacted] Legal Fees because the latest series of events was created due to my contempt, but Judge [redacted] stated that this was his fault because "sometimes these pleadings get ahead of me", so I am wondering why I am responsible, when the Judge claimed that this was his fault. During the April 30, 2009 Status Conference the subject of me going to jail did not arise until Judge [redacted] asked if there were any more questions and I brought forth the subject. Shortly after I brought

forth the subject of jail, Judge stated to Ms. "I already told you that I am not going to send Ms. to jail", which is interesting because that was never said in my presence. Due to the fact that I followed Judge Order, he said "that he would not hold me to the standard of an attorney." During this conference I stated that I believed that it was inappropriate for the children to be exchanged as though they were cargo and Judge corrected me by stating "this is not about the children, this is about the child exchange."

While preparing for this complaint, I contacted the Clerk of the Court in an effort to obtain a copy of the March 27, 2009 "Oral Argument" which by my experience was a trial (*See "Exhibit F" Audio Diskette of March 27, 2009 "Oral Argument"*). When I reviewed the audio and video transcript disc of the hearing, I discovered that the transcript was barely audible and was divided into four (4) different files and that the video did not appear to coincide with the events that transpired at the actual hearing. While carefully reviewing the disc, I discovered that Judge stated that "everyone agrees that it was an accident" (in regards to the child's injury). It appears as though Judge did not firmly believe that I believed that it was an accident because he immediately changed the subject to the car upon my arrival and for the remainder of the time, this was not subject matter.

I apologize for the background of this case taking so long to explain, I feel as though it is imperative that you understand my position prior to understanding my requests. I believe that Judge and Ms. conducted several ex-parte hearings, without cause. There were several hearings that were conducted without an "Order to Appear" being issued. I believe that the entire case was thrown out in order to protect Mr.

 emails from being released to me and additional reasons that remain unclear. I believe that Judge is more interested in protecting Mr. email account than he is in protecting the children. When Mr. filed his objection to the Request for Production, I filed a Motion to Compel Discovery, which contained evidence that Mr. was a danger to our children as well as his children from a previous marriage. Furthermore, Judge read the Motion to Compel discovery, which contained evidence that Mr. committed perjury in this case and an unrelated Family Court matter (*See "Exhibit G" Motion to Compel Discovery*). Judge failed to notify the proper authorities in regards to Mr. crimes when they were been brought to his attention. Mr. knowingly and willfully defrauded his children of child support and Judge knowingly and willfully held him unaccountable for his actions, despite the fact that he is an officer of the Court. I believe that Judge conduct in this case should be investigated as I believe that my rights have been wrongfully taken from me by his actions and have impeded on my duty to protect my children. He continues to make rulings and when the opposition does not agree with his ruling, his rulings change. My largest concern with this matter is that Judge continues to be my appointed Judge and I have to appear in his court again on July 9, 2009 and I am fearful that he will continue to abuse his judicial discretion and the cost will be enormous to my children. I thank you in advance for your time and consideration with this matter, should you have any questions or concerns, please feel free to contact me at (623) 298-3816.

Sincerely,