

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-216

Complainant: No. 1370510510A

Judge: No. 1370510510B

ORDER

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

Dated: December 17, 2009.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on December 17, 2009.

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

I am filing a formal complaint against Judge _____ who currently presides at the Maricopa County Superior Court _____ in the Family Court Division. I am writing this complaint in regards to my case, FC2008-_____, which is currently being overseen by Judge _____. I feel Judge _____ has failed to comply with the Code of Conduct that is expected of all judges.

Canon 4(G) – A judge shall not practice law.

Judge _____ inappropriately gave my ex-husband legal advice during an evidentiary hearing. Criminal charges were pending against my ex-husband, and just before he was about to testify she advised him that he should not testify because anything he said could be used against him in the criminal case. Because she did that, he chose not to testify. Just because he doesn't have legal representation does not mean she should be giving him legal advice. That is not her job, and it is a clear violation of her judicial duties.

Canon 3 (B9) – A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.

As mentioned above, my ex-husband was going to testify in one of our hearings and the judge suggested that he not testify since he had a pending criminal case. She also told him that anything he said could be used against him. After she said that he chose not to testify, which hurt both the criminal and family cases. It allowed my ex another couple of months to conjure an alibi without previous testimony that would have likely impeached him in the criminal trial. In fact, his story changed from the time we had the family court hearing to the criminal trial. Had we had his sworn testimony things might have been different, but that didn't happen since she chose to give him legal advice. It was not her place to do so and resulted in an unfair hearing.

Canon 1 – A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.

Since Judge _____ was assigned to my case I have lost confidence in the judicial system.

Canon 2(A) – A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Judge _____ has proven time and again that she does not make her decisions based on the law, and she has destroyed my confidence in the judiciary. For example, within a year's time, she has allowed my ex-husband to try to modify child support 4 or 5 times without establishing or proving any change in circumstances (as required by the law to modify child support) and once AFTER the issue had already been litigated and decided by another judge. It was very transparent to that judge sitting that my ex-husband was being dishonest about his earnings and trying to get out of paying child support. When my ex-husband filed a petition asking for reconsideration, Judge _____ allowed him to do so and set yet another hearing, even after my lawyer filed a response on my behalf in which she explained in detail that the issue was already litigated and could not be re-litigated under the law. My lawyer's response also included in detail why the decision was made and included several items of evidence to prove our case. This was also after Judge _____ told us in court that we would not be discussing past issues of support, but only support that would be made in the future. Instead of taking the time to read and make the decision based on the information provided to her, she set another hearing so it could be explained to her in person. A judge should be able to comprehend documents that are drafted by a lawyer and cite legal precedent, and she should understand the law enough to know what is acceptable and what is not. Someone trying to modify child support several times within a few months without a justifiable reason should not be allowed to do so to the harassment of his opposing party. Eventually the judge reluctantly denied the motion put forth by my ex-husband, but then quickly added that if he didn't agree with her ruling, he could file ANOTHER petition. Considering this was an issue we had already been working on for a period of several months AFTER the divorce was finalized, I feel it was completely ridiculous of her to suggest further and needless litigation of the exact same issue.

Canon 3 (B2) – A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

Judge [redacted] lacks the ability to make hard decisions, even when they are completely necessary and the correct ruling seems obvious in light of the law. Instead of being tough and assertive with her rulings, like those she should have made in reference to my ex-husband's drug-use, she has seemingly tip-toed around the issues and when she finally does make a decision, she does so hesitantly. In addition to that, she continually asks what both parties want and if there isn't an agreement she makes us attend more status conferences, more evidentiary hearings, and more telephonic conferences until she eventually makes up her mind. Even then, she has a tendency to change her own court orders anytime my ex-husband does not agree with them and files something. A judge should feel confident in their position to make tough decisions without depending on two parties agreeing that are obviously not in the place to agree about anything. That is why there is a judge. They need to act out as the objective, unbiased party, and I don't think she has shown she is capable of taking on that role.

Canon 3 (B3) – A judge shall require order and decorum in proceedings before the judge.

During our court proceedings, Judge [redacted] has allowed my ex-husband and his parents to make scenes in her court room with absolutely no consequence. My ex-husband's mother constantly sits behind him on the benches whispering things for him to say and ask, as well as when he should object to certain information. Just because my ex-husband is representing himself does not mean that the judge should allow that kind behavior. At first, whenever my lawyer would object, the judge would admonish his parents by reminding them that they cannot tell him when to object and what to say, but at the last hearing we went to, both of his parents were telling him what to say and being very obvious about it, and when my lawyer brought it to Judge [redacted] attention, she not only chose to ignore how inappropriate it was, but actually stopped the court proceedings to allow him to go talk to his parents. She has also allowed his father to rudely yell things to her from the back of the courtroom in the presence of other people and in the middle of a hearing and neglected to correct him for his lack of respect. She constantly allows situations like that in her courtroom and as a result, the situations just keep getting worse. It has gotten to the point now where my ex-husband constantly and rudely interrupts my lawyer whenever she speaks. In fact, it got so bad that my lawyer had to stop in the middle of responding to ask my ex-husband to please stop interrupting her and to wait until she was done speaking before talking. He had already made his argument and had no reason to keep talking over my lawyer, but Judge [redacted] let him do it, anyway. I don't feel like it was my lawyer's job to correct my ex-husband. I feel like it was Judge [redacted] job to make sure that order was kept and to keep the proceedings going in a controlled manner. Even after my lawyer corrected him, Judge [redacted] did not say anything to my ex-husband and allowed him to continue interrupting my attorney when she spoke.

Canon 3 (B4) – A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyer and of staff, court officials and others subject to the judge's direction and control.

As previously mentioned, Judge [redacted] does not require my ex-husband to behave in a dignified manner or be courteous to my attorney and I during court proceedings. Further, I have never once felt that Judge [redacted] has been attentive, necessarily aware, or patient with my case. Each time we appear in front of her either in-person or telephonically, she has a tendency to completely rush through whatever issues we are going over. I don't feel like she takes the time to truly listen to the facts, but instead wants the summarized version so she can make a decision (when she does) and get us out. There have been several times when she has tried to cut our hearing short and we have had to stop her and let her know that we still have pending issues to discuss. This is usually met with an obvious annoyance and a 'get on with it then' attitude. It makes me feel incredibly uncomfortable and often makes me feel like we got absolutely nothing accomplished. She is anything but patient.

As far as being courteous, we had a hearing on May 8th, 2009. This was supposed to be our last hearing, and since I had been officially divorced since October 2008 and we were going on 7-months of court proceedings

after the decree was issued, I was excited to be done with it. As a single mother of three, I had already lost a lot of time from work, as well as a lot of wages, going to court hearings. It was a huge financial burden on me and my family. My ex-husband – who had been testing positive for drugs for over a year – fraudulently received a prescription for amphetamine and we had the doctor testifying. After the doctor testified and we were able to prove that my ex-husband not only lied to the doctor but perjured himself in court and in court pleadings, the judge proceeded to sympathetically speak to him and explain the concept of lying to him. I don't feel it was necessary to tell a 28-year old man what lying is, especially since he had been doing it throughout the whole judicial process, and we had been able to prove it time and time again. Then, instead of acting as a judge and making a decision based on the facts she heard, she asked him what HE wanted to do about his drug problem. I would never think a judge would ask a known drug-abuser what he wanted to do. This was extremely upsetting for me considering the safety of my children was at stake and she was seemingly leaving it up to him as to what his consequences should be. As if that wasn't upsetting enough, she went and scheduled ANOTHER hearing. Thinking of having to miss more work and lose more money, of course, made me upset and I started crying. Judge _____ then *yelled* at me in the court room and told me to "stop the theatrics and drama" and pull myself together. Considering the fact that she chose to yell at me, the one who had been truthful and honest, instead of the person guilty of perjury and drug-use, I was completely humiliated and embarrassed.

Canon 3(B)(5) – A judge shall perform judicial duties without bias or prejudice.

During the hearing I spoke of above, Judge _____ claimed that she wasn't taking sides and that it was HER job to make sure the children have a relationship with their father, when in fact it is HIS job to make sure he has a relationship with his kids. It is HER job to make sure my children are safe and taken care of. My ex-husband could have easily had more parenting time with the kids had it not been for his constant positive drug tests ranging from cocaine, to marijuana, to amphetamines, and alcohol. Judge _____ even at one point ordered ME pay for HIS drug testing. Why would anyone think to put that on the shoulders of a single mom trying to raise three kids? Especially when she knew HE was the one on drugs. My lawyer had to quickly file a petition asking her to change the order. Thankfully, Judge _____ did rescind her order, but just the fact it even got to that point is unjustifiable.

Also during the hearing above, the judge explained to my ex-husband that she wasn't sure it was in the children's best interest to be in the presence of their father while he is under the influence. She made a ruling to reduce his parenting time for a short period, then went back on her ruling to increase his parenting time on two occasions before he even started his drug treatment as previously agreed upon. This was after ANOTHER positive test for amphetamine (8x's over the cut-off level). She granted him more parenting time before treatment had began and with another positive test on his record which is not in my children's best interest, yet she granted him the time because my ex-mother-in-law submitted a request to the court that it be changed. My ex-mother-in-law is not even a party to the case!

Regardless, Judge _____ allows my ex-mother-in-law to draft motions and other pleadings for my ex-husband on his behalf. Judge _____ accepts them like they are written by him even though it is obvious that he is not drafting the pleadings. (The pleadings he drafts do not look or sound anything like what his mother drafts.) The judge says nothing about his mother filing petitions or acting as his lawyer and engaging in the unauthorized practice of law, and she has allowed my ex-mother-in-law to immerse herself in our case. There are countless, frivolous, and malicious pleadings filed by my ex-mother-in-law and ex-husband, and Judge _____ lets them continually abuse me and control me thru these constant filings with the court.

We have proven several times that my ex keeps lying about his income to get out of paying child support. Despite all the evidence presented at the last child support hearing, the judge refused to make a ruling and instead set another hearing, which meant I couldn't file an application with the Department of Child Support Enforcement. I had to wait another month for her to make a decision, yet she advised my ex-husband to come back again in a month and file to modify again if he wasn't happy with the ruling she did eventually make. Even after I mentioned that he only made a \$10.00 payment and I needed the balance to meet my financial obligation to my kids, she stated that he was only a month behind and he could pay whatever and whenever he

can, even though her court order says the full amount is due on the 1st of every month. Her failure to hold my ex accountable for her own court orders shows me that she is biased in his favor.

Judge _____ claims she doesn't take sides, and judges should be impartial, but with every hearing I have in her courtroom, I feel more and more that she is, in fact, taking sides. One more example of this is that at our last hearing on August 7th, my ex-husband claimed he hadn't talked to the kids over the phone in about 2-weeks. That was an absolute lie, and I informed Judge _____ that he had, in fact, talked with the children a few times, and there were other times when we attempted to call him and he didn't answer. She didn't take into consideration anything I said and made it very apparent that she was going to believe him even though he has lied countless times in pleadings and during court proceedings, including several times at that very hearing. I even had an audio recording of him and his parents lying to the police about her court orders, but she wasn't interested. Instead of giving me the benefit of the doubt she believed him and wrote a court order stating that I have to be home every day at 4:30 pm so the kids can talk to him. Being a single mother with kids that have activities outside of the home in the evening, in addition to having to work all-day with very little time to pick up groceries, make dinner, and help the kids with homework prior to us having to leave for their activities, it is completely unreasonable for her to demand that I be home everyday at a certain time. Judge _____ had she actually been trying to work with both parties, would have suggested I have the children call him a few times a week at a time that would work best depending on the situation. Instead, however, she has given him another way to control me thru the court system and another way to harass me and find out what I am doing on a daily basis. Considering the past my ex-husband has with abuse, control, and manipulation I am not comfortable that he knows my whereabouts every day, but Judge Stephens fails to see it that way.

Canon 3(B)(7) – A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications outside the presence of the parties concerning a pending or impending proceeding.

I have a strong belief that Judge _____ is partaking, or has partaken in, ex parte communications with my ex-husband's parents. When my tires were slashed for the second time on my birthday, and there was a witness that not only saw, but chased, my ex-husband out of the parking lot, the judge agreed to temporarily suspend his parenting time. This was around Christmas time when my ex-husband was supposed to have the children. He went to jail overnight for stabbing my tires out but his parents bailed him out. What she chose to do was suspend his parenting time, but she tried to substitute his parents in for HIS parenting time, even though they have no legal right to have their own time with the children and hadn't even requested it. Needless to say I was taken aback at her suggestion. She was going to put it into a court order until I told her that I was in no way comfortable with her substituting anyone in for him during his parenting time. I thought it was completely inappropriate for her to suggest it and was not even aware she could do that. It causes me to believe that she is reading letters or having some kind of communication with my ex-husband's parents because I have no idea how a judge can assume that the grandparents could even take the kids on Christmas considering they weren't in the courtroom to say so.

Canon 3 (B8) – A judge shall dispose of all judicial matters, promptly, efficiently, and fairly.

During most, if not all, of our court hearings Judge _____ tells my ex-husband to file another motion if he doesn't agree with her decision. Of course he does and we are in court again discussing the same issues repeatedly. In addition, because she allows my ex to re-litigate the same issues over and over, we have had to attend so many court hearings that I have lost count. I do know that I have been severely financially burdened by how many days I have had to miss from work to go to court, and many times it's simply because she is unable to make decisions or allows my ex to have her reconsider them over and over, which encourages him to drag this on and on. We were divorced in October of 2008. It is almost October of 2009, and she is still scheduling evidentiary hearings for things she could and should have resolved a long time ago. She has wasted not only my time, but the court's time, and my attorney's time. Most of the issues we have had in front of her could have been solved promptly, efficiently and fairly. Unfortunately, they were anything but quick and fair.

Judge _____ is everything wrong with the judicial system. When my case was first brought to the Superior Court due to my divorce I had faith in the court system, law, and justice. I believed that the court would seek out truth. Instead I have spent over a year in front of a judge that not only believes lies, but chooses to reward perjury. I cannot fully explain or express my disappointment, nor is there anyway I can get back the time I've lost going needlessly to court over and over again because of her inability to do her job efficiently. I want to get on with my life and I want a new start for my family. A year and a half later, it has gotten worse, not better. I feel that if Judge _____ did her job properly I would have already been able to move on and she would not be allowing my ex to use the court system to maintain power and control over me, and harass me. I truly hope that this gets looked into so that someone else doesn't have to go thru what I have had to go thru.

I am willing to testify as a witness, and my boyfriend, James _____ was also a witness to some of what is mentioned herein. In addition, I am willing to provide the Commission with any audio transcripts it may wish to hear, such as the judge giving my ex-husband legal advice or yelling at me.

Thank you for taking the time to read this.

Sincerely,