

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 09-232

Complainant: No. 1371910658A

Judge: No. 1371910658B

ORDER

The commission reviewed the complaint filed in this matter and 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.

Judge _____ was assigned to _____ on September 14, 2007 when the case was transferred to the northwest location. The father, _____ (petitioner), had originally filed for emergency custody of the unmarried couple's two children, _____ (born 2/5/05) and _____ (born 8/14/06), following _____ birth when mother tested positive for methamphetamines, and Child Protective Services was notified by the hospital. The motion was denied by Judge _____ on August 22, 2006, the date of filing. Just over a year later, when Judge _____ began work on the case, allegations of substance abuse and parenting time were still at issue. Since this time, mother has been represented by two attorneys, _____ and _____ while father has represented himself.

This complaint is being filed because Judge _____ has repeatedly and blatantly violated the Code of Judicial Conduct. His behavior, while not publically displayed beyond the walls of the courtroom, brings into question the respectability of the judicial office and casts doubt upon Judge _____ ability to execute his duties with integrity. In particular, Judge _____ has failed to perform the duties of the judicial office impartially and diligently.

Impartiality

Judge _____ behavior in the court room has consistently demonstrated gender bias, displaying a demeaning disrespect for Mr. _____ and resulting in decisions that fail to take into consideration the impact on the couple's two children. One verifiable example of this, as documented in the minute entry dated March 14, 2008, occurred when Judge _____ ordered Mr. _____ to take a drug test immediately following the hearing, stating that in the event of a positive or diluted urine test, the father's "parenting time with the child shall cease, pending further Order of the Court." (Mr. _____ was clean and parenting time was not suspended.) Since, as stated by the Court, drug use is not in the best interests of children, this order made sense and was accepted as such by all parties. However, even when the children's mother, _____, was "found to be in contempt of Court for failing to comply with the Court's TASC order" for random drug testing, Judge _____ took no action (ME: July 31, 2008, p.5). This order for drug testing was made because of failed drug tests, in which Ms. _____ tested positive for methamphetamines. By March 3, 2009, Ms. _____ had still not completed her Court-ordered drug testing. When Mr. _____ asked Judge _____ if Ms. _____ would lose her parenting time in the event of another positive drug test, reminding the judge that he, himself, had been held to this standard, Judge _____ chided Mr. _____ telling him that "slapping the hand . . . will not get you what you want." (*Tape of Court transcript requested multiple times, beginning March 3, 2009, but has not been made available to Mr. _____*.)

Yet another example of Judge _____ failure to conduct his Court impartially occurs with Judge _____ own Court orders and consequences he imposes in finding the respondent and/or petitioner in contempt of Court when a Court order has been violated. On June 10, 2009, Judge _____ found Mr. _____ in contempt of Court "for failure to allow Mother parenting time" during two weeks of her assigned time in the month of May. Mr. _____ had, indeed, restricted Ms. _____ access to the children; however, he

did so in compliance with the April 21, 2009 order that required the mother or her lawyer to provide "Petitioner/Father proof by May 1, 2009 evidencing she is in the rehabilitation program. Failure to provide proof dated May 1, 2009 shall result in the Court suspending Mother's parenting time pending further hearing and the children being returned to Petitioner/Father." Mother did not comply with the order (she had indicated a plan to re-enroll at Pinshot Gardens, a program she had left a month earlier after a few weeks of attendance) though her lawyer submitted a paper on May 5 stating Ms. intentions. When Judge began the process of granting make-up parenting time for Ms. Mr. questioned Judge incredulous that the judge seemed to be finding him in contempt of Court. Judge stated that Mr. had "personal knowledge" that Ms. was at Pinshot Gardens, implying that this superseded the judge's orders. He further asked Mr. if he truly wanted the judge to enforce all the orders and to be "real careful in how you answer that question," a reference to the fact that Mr. is in arrears with child support and had already been threatened with jail time on March 3 and again on June 10. (The fact that Mr. had paid \$1205 in child support since March 3 was unacknowledged. This is despite the fact that Mr. earnings place him below the federal guidelines for poverty and that Ms. education and previous earnings, prior to her drug addiction, exceed his.) During this same hearing, Ms. was in violation of the court order that required her to submit by June 1 status reports of the rehabilitation progress to be reviewed by Judge *in camera*. This was brought up by Mr. and was dismissed summarily without finding Ms. in contempt nor was she found in contempt for her failure to provide Mr. with documentation of her whereabouts by May 1. In addition, Mr. offered proof that Ms. had lied to the Court during the previous hearing when questioned about driving an unlicensed, uninsured, vehicle without a driver's license. (She was transporting the children without child restraints in this vehicle, as well, a fact that Judge does not see as problematic because the vehicle is a pick-up truck.)

A final example of Judge intimidating and demeaning behavior towards Mr. occurred when, on June 10, 2009, the judge ordered Mr. to pay Ms. attorney's fees, though Mr. can not afford the services of a lawyer for himself. The mother's drug addiction, her multiple illegal activities of the past year, and concerns with regard to the care and protection of the children were not deemed to meet the standards of an emergency and, apparently, are frivolous in their nature. In addition, Judge has threatened the Mr. with further expense that he can ill afford should he ask that Ms. undergo drug tests after her release from Pinshot Gardens. This effectively closes to Mr. any legal avenues for protecting his children from the threat of drugs.

Failure to Perform Duty Diligently

Jose like other judges for Family Court, is in a unique position to have a positive impact on the lives of children whose families are in crisis or are dysfunctional in some way. For and Judge role is critical, for he alone has access to information that would allow him to make decisions in the best interests of two

children whose lives have been disrupted by drug addiction and domestic discord. Yet Judge [redacted] has failed to perform his duty diligently, and, as a result, has needlessly put children at risk.

To begin, Judge [redacted] has failed to acquire Court documents that are critical to making informed decisions about parenting time. The most egregious example of this was when Judge [redacted] did not review documents from Pinshot Gardens, documents that contain information about Ms. [redacted] diagnosis, treatment, and prognosis. (She was given a dual diagnosis as Severely Mentally Ill and Drug Addicted, according to a phone conversation between Ms. [redacted] and Mr. [redacted] a diagnosis the father is unable to confirm for himself.) Given Ms. [redacted] history of arrest for shoplifting, burglary, animal cruelty, and assault, in addition to her addiction to methamphetamines, a reasonable person would consider this information important when considering child safety. This is especially true when Judge [redacted] is the *only* person not working for Ms. [redacted] to have access to information about her mental illness or the status of her addiction recovery. Other documents available to the Court have also confirmed Ms. [redacted] danger to her children, yet Judge [redacted] has chosen to ignore these, as well. During the early months of [redacted] involvement with the case, reports from Ameripsyche, a counseling agency that worked extensively with Ms. [redacted] at the recommendation of Child Protective Services, documented filth and dangerous living conditions, including chemicals that children were allowed to play with as they climbed the kitchen counters and the feces-covered floors upon which they crawled. Pediatric reports indicated poor hygiene. Documented evidence that Ms. [redacted] failed to keep appointments in order to address orthopedic problems for the couple's young son was deemed unimportant, as was her subsequent negligence in scheduling well baby checks and immunization. From the earliest days of his involvement with the case to the present, Judge [redacted] has failed in his duty to learn the facts of the case before making a decision.

Another way in which Judge [redacted] has failed in diligently carrying out his responsibilities is by neglecting to make sure that his own orders have been carried out in a way that protects the children. Last fall, nearly a year after a hair follicle test confirmed exceptionally high levels of methamphetamine in Ms. [redacted] body, she failed a urine test due to methamphetamine use. On October 17, 2008, Judge [redacted] ordered supervised parenting time. While this would seem to be a prudent response (albeit delayed, at best), the decision was rendered useless in protecting the children because there were no parameters for the supervision. For example, although Ms. [redacted] was initially required to submit a list of names of supervisors for Mr. [redacted] approval, she did not do so. Ms. [redacted] named only two people: her mother and a woman with a criminal record that included drug charges. (This was in violation of Ms. [redacted] probation, but that's another story.) When Mr. [redacted] objected to this woman's reliability as a supervisor, Judge [redacted] said all that was needed was "another pair of eyes" and, as long as it wasn't a child molester or someone with a needle hanging out of her arm, then the person was adequate in assuring the safety of the two toddlers. The judge went on to give an example of how the person would not be there to stop the mom from doing drugs but would be able to prevent the children from reaching for a pot of boiling water their mother had left on the stove. From this point on, Ms. [redacted] no longer even submitted

names for Mr. [redacted] or the Court's approval, changing supervisors often and offering no opportunity for Mr. [redacted] to research the backgrounds of those people who were a part of his children's lives nor could he determine whether or not there were even supervisors present in the home. Again, Judge [redacted] failed.

The third and final example of Jose [redacted] failure to diligently perform his duties as a judge is directly related to his prejudice towards Mr. [redacted]. In a hearing held on August 6, 2009, to address a motion to correct the Court record (a clerk had inadvertently switched the parents' weeks in the court minutes from a previous hearing, and Mr. [redacted] had petitioned for the correction in order to keep five doctors' appointments for the children, scheduled months in advance by referral), Judge [redacted] denied Mr. [redacted] motion, saying that the weeks made no difference. While Mr. [redacted] agreed that normally this would be the case, he had scheduled the appointments based on his knowledge of the weeks prior to the hearing where the mistake occurred. The fact the doctors' names, the dates, and the reasons for referral were included made no difference to Judge [redacted]. That the missed appointments and resulting delays in treatment would have consequences for the children was not a consideration.

Conclusion

Judge [redacted] is unfit for his position as a judge in the Maricopa County Family Court. He must be subjected to disciplinary action and removed from the bench. No child, no family deserves to be at the mercy of a man who acts in a way that is immoral and unjust. Jose [redacted] is a disgrace to his profession.