

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-085

Complainant: No. 1389410725A

Judge: No. 1389410725B

ORDER

The complainant alleged that a superior court judge demonstrated bias by pre-determining her case, making inconsistent rulings, failing to prepare for a status conference, and failing to rule on a motion for several months. After analyzing the allegations, the judge's response, and listening to the recordings of two relevant hearings, the commission found no evidence of misconduct on the part of the judge. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: July 23, 2010.

FOR THE COMMISSION

\s\ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on July 23, 2010.

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

COMPLAINT AGAINST A JUDGE

Your Name:
No. DO-

Judge's Name:
No.

Date: February 2, 2010
Opinion Filed: 4/14/09
(Court of Appeals)

This complaint is respectfully submitted to the Commission on Judicial Conduct. I contend that Judge _____ a pro-tem judge for Coconino County Superior Court, a division of the Arizona Supreme Court, has failed to provide me my constitutional rights to the 14th Amendment and due process. I believe this injustice has been intentional. I believe the described events and attached documentation related to the Domestic Relations Case 2008-0205 will clearly illustrate that Judge _____ has violated the following rules in Canon 2 of the Arizona Code of Judicial Conduct: Rule 2.2 Impartiality and Fairness, Rule 2.3 Bias, Prejudice and Harassment, Rule 2.5 Competence, Diligence, and Cooperation, Rule 2.6 Ensuring the Right to Be Heard Rule, and Rule 2.10 Judicial Statements on Pending and Impending Cases. This misconduct is substantiated in several documents and throughout the entirety of this case. Below are the specific incidents which I believe clearly demonstrates the judicial misconduct of Judge _____

1. I believe that matters set before Judge _____ on August 8, 2008 should have been dismissed. The Petitioner filed a Petition for 50/50 Visitation, under ARS 25-415, in loco parentis. The Petitioner is not the child's legal parent. At that time, and being exercised now, reasonable visitation was/is being granted to the Petitioner, a non-parent.

Case law established in Troxel firmly lays the foundation that special weight to protect parent's constitutional rights must be provided. I was a fit mother and my parenting decisions should have been given special weight. Not only was no special weight was given to my case, but I have evidence that I wasn't given equal weight or time in the hearing in which these decisions were ruled upon. In the landmark decision in Troxel, case law documents "The Due Process clause does not permit states to infringe on the fundamental rights of parents to make child rearing decisions simply because a Judge believes a "better" decision could be made. McGovern case law states "A trial court must not only apply "the statute as written", but must also apply procedural and evidentiary safeguards in a "constitutionally acceptable manner". Judge _____ based her ruling on Thomas V Thomas and emphasized that "this court has considerable discretion in awarding visitation". However, the Court of Appeals ruled that using Thomas V Thomas was in dictum because this case did not involve visitation rights. In regards to Thomas V Thomas, the Court of Appeals ruled that nothing in the record suggest that Judge _____ applied the presumption that I acted in the best interests of my child.

Judge _____ did not rely upon the guidance established in the legal foundation of case law set forth in Troxel, Thomas V Thomas, or McGovern. This case law should have provided clear direction throughout the initial hearing. However, Judge _____ took liberties with this case and proceeded to determine issues as if the matter was a dissolution or custody proceeding; of which it was neither. Thus, due to the lack of Judge _____ competence to apply case-law, this case has spanned the length of two years and continues not to be settled. My battle in upholding my constitutional rights has caused a great deal of

emotional anguish and financial hardship to me and my family. The following numerations of events build upon this statement.

2. In preparation for August 8, 2008 Temporary Orders hearing, Judge demonstrate a lack of ruling impartially or fairly by requiring that I provide financial documents but not the Petitioner.

The minute entry of the hearing held on August 8, 2008 documents that the petitioner was allowed one hour and forty-five minutes to testify. I, the Respondent, was allowed fifteen minutes. Please see **Attachment 1**, Minute Entry dated August 8, 2008. An audio transcription is available upon request. Contrary to the judicial obligation to provide special weight to the mother's determination of her children's best interest, Judge denied me equal time to present evidence and testimony. Upon me taking the stand, Judge allowed all of my witnesses to enter the courtroom; thus signifying their testimonial would not be permitted. A continuance was not considered. Findings of fact were unsupported or corroborated by evidence. I did not receive a full, fair, and impartial hearing. Again, the case law of Troxel directs the courts that the issue of visitation should arise only in the best interest of the child and that all relevant facts should be considered—I argue that time was not fairly given to me to present all relevant facts.

The outcome of this hearing cements Judge lack of impartiality and fairness in this case. I was granted sole custody. The non-parent, who Judge incorrectly refers in-writing to as the "non-legal mother", was granted "parental rights" 25-408.6 and 25-408. I was forced to adhere to Parenting Plan C. Judge had a predetermined decision to enforce a parenting plan before the evidentiary hearing occurred. This was a visitation proceeding not a custody proceeding. The State of Arizona Court of Appeals Special Action held that Judge erred in this decision. Please see **Attachment 2**.

In addition, although the Judge's rulings were in accord to a custody issue, the Judge never required the Petitioner to participate in the health and financial responsibilities of my daughter. This is another example of the lack of impartiality and fairness. Please see **Attachment 3**.

3. On June 28, 2008 I was court ordered to attend a Parenting Education Class. The Petitioner was not court ordered to do so. Not only was this court order a breach of Rule 2.2 Impartiality and Fairness, it also did not comply with ARS 25-351/352. This case did not involve the filing for a divorce, separation, parenting time/custody or any paternity proceeding. If this Court considered this case to comply with ARS 25-351/352, a fair and impartial measure would have been to order both Petitioner and Respondent to attend. Please see **Attachment 3**.
4. I was court ordered on September 2008 to have my child attend a class entitled "Children's Program on Divorce". Please see **Attachment 4**. My child felt uncomfortable attending a Children's Divorce Class in which a heterosexual based curriculum is used to discuss divorce. A written request by me and a motion to reconsider was filed by my attorney to waive this court order. Please see **Attachment 5**. In writing, I offered to have my child participate in individual counseling/therapy. It is public record that Judge has excused other children from attending this class for reasons such as: a child was participating in individual counseling or due to inappropriate classroom dynamics specific to a child's needs. I believe that Judge did not act impartially or consider the situation fairly, especially in light that I

offered an equitable solution to provide my child individual counseling. Judge did not act in the best interest of my child. Please see Attachment 6.

5. In answer to my request to waive my child's court ordered Children's Divorce Class, on November 19, 2008, nearly 40 days after my request and after the class had begun, Judge responded in a hand-written note "The Court of Appeals has jurisdiction in this matter until a decision has been filed with the court, this court shall not entertain ANY motions until the Court of Appeals has decided this matter". However, Judge again contradicted herself and scheduled a hearing on January 23, 2009 to entertain a motion regarding telephonic communication filed by the Petitioner. Thus, another example of the breach in Rule 2.2. See Attachment 7.

6. In attempt to rectify a situation of the courts consistently hyphenating my daughter's middle and last name, resulting in the incorrect documentation of my child's name as and giving the perception that the Petitioner had parental rights; a motion for a name change to omit one of my daughter's middle names was filed on January 21, 2009. See Attachment 8. In my letter addressed to Presiding Superior Court Judge Hendrix, I included this issue as well. Although this was not a domestic matter, this filing was shepherd to Judge Until Judge reluctantly recused herself on March 11, 2010 the matter was remained unheard until March 12, 2010 when the request was granted by Presiding Judge Hendrix. Please see Attachment 9. I contend that Judge unwillingness to address this matter for fourteen months is a breach of Rule 2.2.

7. Notice was delivered on December 1, 2009 that the Supreme Court denied the Petitioner's request to review. On January 21, 2010 Judge received written notice commanding her to take action on this matter. Judge scheduled a status conference on January 14, 2010. Judge was unable to provide counsel direction; she stated in court that she "Didn't have time to look at the file". It is evident by the clamor on the internet that this case is high-profile; Judge has been involved in the planning of several conferences where this case is the featured workshop topic, which I contend is another breach of Rule 2.10. Her inability to schedule time to review the file before a scheduled status conference set by her demonstrates a lack of competence and diligence as set forth by Rule 2.5. I also interpret her lack of preparation for this hearing to be a guise of harassment, a breach of Rule 2.5, which intentionally wasted my emotional and financial resources. Please see Attachment 10.

I believe the notoriety received from the perception of being a "gay rights activist" has swayed Judge actions. There have been several state-wide conferences/workshops that feature her decision regarding this case. Directly after such a workshop, Judge was witnessed in deep discussion with the opposing counsel. I believe her emotional investment in this case creates the inability for her to provide fair and impartial rulings.

8. On April 14, 2009, the Court of Appeals vacated the trial court's order and remanded the case for further proceedings. Thus, I exercised my right to request a change of Judge according to Rule 42(f)(1)(E) of the Arizona Rules of Civil Procedure which clearly states **Cases Remanded from Appellate Courts: When an action is remanded by an appellate court and the opinion or order requires a new trial on one or more issues, then all rights to change a judge or renewed**

and no event connected with the first trial shall constitute a waiver. On January 25, 2010, Judge [redacted] denied the motion of a change of judge. I believe that Judge [redacted] blatant refusal to comply with Rule 42(f)(1)(E) demonstrates a lack of competence and diligence as well as an aggressive act of harassment, breaching Rule 2.3 and Rule 2.5. Please see Attachment 11.

I assert that Judge [redacted] lacks command of the law. As referenced throughout this complaint, Judge [redacted] has refused to follow case law and Arizona Statutes. The Court of Appeals confirms that she failed to adhere to the foundations established by TROXEL, THOMAS V THOMAS, and McGOVERN. The Court of Appeals finds that she has erred in her ruling in this case.

After eleven months, three denied requests for a Change of Judge, and thousands of dollars in legal fees, Judge [redacted] reconsidered and granted the Motion for Change of Judge on March 2, 2010. Please Attachment 12.

I argue that the culmination of this case that has spanned two years, has created an overwhelming financial burden and caused me and my family great emotional distress. This hardship is due to Judge [redacted] consistent judicial misconduct. From the depths of my heart, I implore the Commission of Judicial Conduct to carefully investigate Judge [redacted] actions and intent. I do not believe I am the only parent to suffer at the hands of Judge [redacted] incompetence. Appeals are very costly. Many litigants will accept an unjust decision rather than incur the cost of an appeal. My love for my daughter and my morals can not allow me to do so. I pray that you help restore my faith in the judicial system.

Respectfully submitted.