

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-136

Complainants: No. 1394210874A

Judge: No. 1394210874B

ORDER

The complainant alleged that a superior court judge failed to disclose a potential conflict of interest and disqualify herself, behaved in a rude and improper manner toward one party, and failed to report child abuse. After carefully considering the allegations and the judge's response, the commission found insufficient evidence of misconduct on the part of the judge. The complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: September 8, 2010.

FOR THE COMMISSION

/s/ Keith Stott

Executive Director

Copies of this order were mailed to the complainant and the judge on September 8, 2010.

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

“Complaint of Judicial Misconduct”

Judge, Superior Court in Maricopa County
Phoenix, Arizona

- 1) Judge _____ was a Partner at Lewis & Roca, L.L.P., Phoenix, from 2002 until 2007 when she was appointed to the bench by then Governor Janet Napolitano.
- 2) While practicing law at Lewis and Roca L.L.P., Ms. Bergin represented the Arizona Attorney General’s Office in several court cases
- 3) While practicing law at Lewis and Roca L.L.P., Ms. Bergin represented the Banner Hospital group.
- 4) Ms. _____ is currently the judge in a case that involves Banner Hospitals. Did not recuse herself from this case
- 5) Ms. _____ is involved as the judge in a case that involves the Arizona Attorney General’s Office. Did not recuse herself from this case

The “appearance of impropriety” has permeated this case throughout this two-year period. This case needs to be reviewed by an outside and impartial review body.

"Better that ten guilty persons escape than that one innocent suffer," says English jurist William Blackstone. The ratio 10:1 has become known as the "Blackstone ratio." Lawyers "are indoctrinated" with it "early in law school." "Schoolboys are taught" it. In the fantasies of legal academics, jurors think about Blackstone routinely.

CANON 1

A JUDICIAL EMPLOYEE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.2

Promoting Confidence in the Judiciary

A judicial employee shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

I believe that Judge _____ violated this Canon 1 and I will share throughout this document the reasons why she violated the confidence of the people of Arizona.

CANON 2

A JUDICIAL EMPLOYEE SHALL PERFORM THE DUTIES OF JUDICIAL EMPLOYMENT IMPARTIALLY, COMPETENTLY, AND DILIGENTLY

RULE 2.1

Giving Priority to Ethical Duties

A court employee shall regard the ethical duties provided in this code of conduct as having the highest priority.

I believe that Judge _____ stepped over the Ethical line by maintaining her position on the bench even though she had represented both the Hospitals along with their staff's and the Arizona Attorney General's Office as an attorney that were involved in this case. She should have stepped away for the appearance of impartiality coats this case. She should have taken certain actions against several of the attorneys in this case but did not take any action for obvious inappropriate behavior by several attorneys.

RULE 2.2

Impartiality and Fairness

A judicial employee shall perform court duties fairly and impartially.

I believe that Judge _____ was partial to the State and its employees and demonstrated a disregard for the inaction of the attorney for the defense. She knew full well that the attorney for the defense was coming to court unprepared and late more often than not. She did nothing to make an adjustment or remind the attorney of his responsibilities. I believe this showed a bias on her part for wishing the outcome to be in favor of the prosecution.

RULE 2.3

Bias, Prejudice, and Harassment

A judicial employee shall perform court duties without bias or prejudice and shall not manifest bias or prejudice by words or conduct, or engage in harassment in the performance of court duties. This includes but is not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

Judge _____ did not recuse herself in the matter of Chaunell Roberson when she discovered that the hospitals involved in the case were former clients of hers

Judge _____ did not recuse herself in the matter of Chaunell Roberson when she discovered that the Arizona Attorney General's Office was involved in the case as she once worked for the Arizona Attorney General's Office, WEDNESDAY, APRIL 13, 2005

Judge _____ of Lewis and Roca, LLP made a statement to the Board. She stated that she was retained by the Attorney General's Office for the numerous open investigations against Dr. Hall. She gave a synopsis of the cases that are included in the consent agreement. She stated that Dr. Hall has shown four major deficiencies: aggressive surgical advocacy, poor record keeping practices, poor patient communication and poor surgical care and follow up. She stated that the proposed consent agreement restricts Dr. Hall from performing surgery and recommends five years of probation.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, **even if the judge believes there is no real basis for disqualification.**

A judge shall perform the duties of judicial office "impartially", and diligently.

Judge _____ is quoted as saying, "I have developed a great deal of respect for the professionals who work in this field—the lawyers, CPS workers, social workers, probation officers and staff. The case workers and probation officers in particular are on the front lines every day, facing situations that most of us only read about in the newspaper. They are the ones who make a true difference in the families' and children's lives." This statement demonstrates a preconceived bias towards CPS workers and **particularly** "case workers" placing the Parent in a secondary role before the trial ever begins.

RULE 2.5

Competence, Diligence, and Cooperation

(A) A judicial employee shall perform court duties competently, diligently, and promptly.

Judge _____ was certainly not prompt or diligent in carrying out her duties as evidenced by not following up on specific court orders and understandings:

- ✓ **The court ordered that the defense attorney would submit to the court all existing recordings that had been withheld from the court by a certain date. Not only did the attorney not comply with that date of submission but never complied with that order of the court.**
- ✓ **The court ordered that upon receiving the recordings the Arizona Assistant Attorney General would have those recordings transcribed and shared with all the attorneys involved in the case**
- ✓ **Judge _____ did not show diligence when she assumed that the Parent and her attorney were the only people in the court room that knew about the recordings and was not diligent enough to ask who else might have known and she would have found out that several people knew about the recordings and withheld that evidence from the court.**
- ✓ **She ordered the Mother's attorney to be prepared the next time for court – Never done!**
- ✓ **She ordered the Mother's attorney to be on time – he was late again the very next time**
- ✓ **Judge _____ reprimanded one attorney for withholding evidence from the trial and he repeated withholding the same evidence from the same case with the same judge, no action taken,**

D. Disciplinary responsibilities.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate

Judge _____ was certainly not prompt or diligent in carrying out her duties as evidenced by:

- ✓ **Ignoring the Adoption and Safe Family Act that requires disposition of juvenile cases within one year, keeping a child in Foster care for over 655 days, more than 9 months past this requirement**

Judge _____ **certainly did not demonstrate her competence when she shared the following in a magazine article; “I had no exposure to juvenile law before coming to the bench, though, so I have learned it through rapid-fire on-the-job training. And there are some things about being a judge that you can learn only by doing. Examples for me include making sure that everyone gets their say while at the same time keeping control over the courtroom and staying on time; and maintaining detachment from some of the very distressing cases we hear.”** This quotation demonstrates that the Judge Judge _____ recognizes her own inadequacies on the bench and is learning her job as she goes along

Judge _____ **certainly did not demonstrate her competence by asking the Arizona Assistant Attorney General to explain the law to her during the trial, “I had no exposure to juvenile law before coming to the bench, though, so I have learned it through rapid-fire on-the-job training. And there are some things about being a judge that you can learn only by doing. Examples for me include making sure that everyone gets their say while at the same time keeping control over the courtroom and staying on time; and maintaining detachment from some of the very distressing cases we hear.”** This quotation demonstrates that the Judge _____ recognizes her own inadequacies on the bench and is learning her job as she goes along

Judge _____ **called on a person in the gallery because they raised their hand as if it were a classroom instead of a court room**

Judge _____ **refused to listen to Chaunell Roberson for 655 days while she begged to be able to go home, but the moment Chaunell Roberson said she did not wish to go home the Judge _____ immediately listened to her wishes and made the decision partially based on Chaunell asking to not go home.**

Judge _____ **did not share with anyone why the change in Chaunell Roberson’s desire to not go home after 655 days being isolated from her Mother, her Father and her siblings**

Judge _____ **inappropriately delayed the calendar in this case to allow the Arizona Attorney General’s Office to continue to gather evidence and to hold Chaunell Roberson against her will until her will changed and the evidence changed to benefit the prosecution of the Mother in this case. She even stated in court that she had no reason to keep this child in custody?**

RULE 2.8

Professionalism

Judicial employees shall be patient, respectful, and courteous with litigants, jurors, witnesses, lawyers, co-workers, and others who work in the court or contact the court.

- ✓ **70% of human communication is nonverbal and Judge made it extremely clear that she was not going to give the Parent in this case an impartial trial as she demonstrated her disbelief and impatience with the Parent throughout the three hearings I sat in on to support the Parent. Making faces, blowing air out and rolling her eyes and demonstrating nonverbally that she was uncomfortable.**
- ✓ **Judge spoke with the minor child in this case and without any deliberation what so ever made her decision to take the wishes of the minor child and the medical research and medical testimony of a "Psychologist" without licensed medical background, licensed medical training, without licensed medication experience or without any medical license what so ever.**

RULE 2.14

Disability and Impairment

A judicial employee who has a reasonable belief that the performance of another judicial employee or a judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall immediately report the observed behavior to a supervisor, administrator, the appropriate Human Resources Office, or the Commission on Judicial Conduct. A judicial employee who receives a report of impairment shall take appropriate action, which may include a confidential referral when the judge or judicial employee agrees to seek assistance from an appropriate assistance program.

- ✓ **Judge heard testimony and took that testimony as truth but continued to allow a person with a disability and impairment to continue with this hearing and help in her own defense.**
- ✓ **The Disability and Impairment was so severe, intense and drastic; that it required the immediate decision, without deliberation, of physical custody of not only the child in question but the taking of the other child with no history what so ever and not even involved in this case.**
- ✓ **Judge allowed a witness to testify in her court under oath that had a (1) Factious Disorder; Not Otherwise Specified, (2) Paranoia, (3) Delusional Disorder; Persecutory Type, (3) Asperger's Syndrome; Rule Out Pervasive Developmental Disorder, and (4) Autism Spectrum Disorder**

RULE 2.15

Duty to Report

A judicial employee shall report to a supervisor, administrator or judge within the judicial department any violation of the law in the course of court employment or that may affect the violator's ability to perform court duties and any violation of the applicable code of conduct by a judge, another judicial employee, or the reporting employee. Employees shall not be subject to retaliation for reporting violations if such report is made in good faith and shall cooperate and be candid and honest in any investigation and disciplinary proceeding.

Judge had a **"Duty to Report" A.R.S. 13-3620. Duty to report abuse, physical injury, neglect and denial or deprivation of medical or surgical care or nourishment of minors; medical records; exception; violation; classification; definitions**

A. Any person who reasonably believes that a minor is or has been the victim of physical injury, abuse, child abuse, a reportable offense or neglect that appears to have been inflicted on the minor by other than accidental means or that is not explained by the available medical history as being accidental in nature or who reasonably believes there has been a denial or deprivation of necessary medical treatment or surgical care or nourishment with the intent to cause or allow the death of an infant who is protected under section 36-2281 shall **"immediately"** report or cause reports to be made of this information to a **peace officer** or to **child protective services** in the department of economic security, except if the report concerns a person who does not have care, custody or control of the minor, the report shall be made to a peace officer only. A member of the clergy, christian science practitioner or priest who has received a confidential communication or a confession in that person's role as a member of the clergy, christian science practitioner or a priest in the course of the discipline enjoined by the church to which the member of the clergy, christian science practitioner or priest belongs may withhold reporting of the communication or confession if the member of the clergy, christian science practitioner or priest determines that it is reasonable and necessary within the concepts of the religion. This exemption applies only to the communication or confession and not to personal observations the member of the clergy, christian science practitioner or priest may otherwise make of the minor.

- ✓ **Judge** was consistently "terse" and "sharp" with the biological mother in comparison to her demeanor with others in the courtroom

- ✓ **Judge** reprimanded one attorney for being late for court. He promised he would not be late again but came late the very next time. He was consistently late for court

- ✓ **Judge** reprimanded one attorney for not being prepared for court. He apologized and came the very next time in court unprepared and unfamiliar with the case

- ✓ **Judge** reprimanded one attorney for withholding evidence from the trial and he repeated withholding the same evidence from the same case with the same judge, no action taken, D. Disciplinary responsibilities.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority*.

- ✓ **Judge** allowed Child Protective Services to withhold pertinent and critical information in the form of Educational Reports, Medical Reports and Psychological Reports from people hired out-of-state to render reports and evaluations

Reports Are Useless
 Comments (6) *By Thursday, Sep 24 2009...continued from page 2*
Perhaps the doctor has provided the court with exactly what it wants, a quick answer to the ultimate question of whether a defendant is competent to stand trial.
 One example occurred during a 10-day period in June 2008, in the courtroom of juvenile judge Judge
 During that time, Bergin received at least three Rule 11 evaluations from Dr. Franzetti. Each of the juveniles in those cases allegedly told him that a public defender "is there to help me."
 But one of those juveniles told the other mental-health professional assigned to his case that the public defender "is the guy who takes you away after you get into trouble."

It wouldn't have taken much for the judge to have compared those two dramatically differing accounts and, perhaps, considered what was going on and demanded an explanation.

- ✓ Judge _____ has consistently frustrated the biological Mother in this case by making her speak through her attorney rather than speaking directly to the judge as others in the courtroom have been allowed to do
“Examples for me include making sure that everyone gets their say while at the same time keeping control over the courtroom and staying on time; and maintaining detachment from some of the very distressing cases we hear.”
- ✓ Judge _____ has not shown an interest in finding out all the facts and extenuating circumstances involved in this case.
- ✓ Judge _____ allowed medical testimony from a “Psychologist” that included testimony about Pharmaceutical and Medication analysis, the determination of Psychiatric diagnoses from the DSM IV TR Psychiatric Manual of Mental Disorders, determination of medical necessity of medical procedure for an adolescent, and the interpretation of medical reports, medical evaluations, medical procedures, laboratory results from blood workups, toxicology reports, EEG, Cat scans, MRI’s and the intensive review of medical records. The record demonstrates that everyone agreed to Ms. Brenda Bursch’s expertise as a “Psychologist” but it was never agreed to or stipulated that she was appropriate to make such medical decisions without being a Physician or a Psychiatrist.

Even the “appearance of impropriety” should be avoided!

Even Abraham Lincoln would not have been allowed to practice law without being a licensed and board approved attorney. Why is Brenda Bursch Ph.D. allowed to practice medicine without a license or being a board certified Physician or a Psychiatrist in the state of Arizona?

The items listed above made it possible for Arizona Child Protective Services to take, hold and eventually gain full custody of a minor child without a single substantiated piece of evidence that the Mother had ever done anything except be over protective and scared for her daughters medical well being.